



Oregon Department of Environmental Quality
January 17-19, 2017
Oregon Environmental Quality Commission meeting
Rulemaking, Action item H

Senate Bill 263 Materials Management Rulemaking

This file contains the following documents:

- EQC staff report
- Attachment A: Draft rules – with edits highlighted as redline
- Attachment B: Draft rules – with edits incorporated
- Attachment C: Minutes- Sept. 13, 2016, Advisory Committee Meeting

DEQ recommendation to the EQC

DEQ recommends that the Environmental Quality Commission adopt the proposed rules in attachment A as part of Chapter 340 of the Oregon Administrative Rules.

Overview

Short summary

The Department of Environmental Quality recommends that the Oregon Environmental Quality Commission approve the proposed rules, which would conform existing recycling and waste prevention and reduction rules to statutes Senate Bill 263 revised. The proposed rules would:

- Revise wastesheds' recovery goals and clarify those are now voluntary and not enforceable by DEQ
- Describe DEQ's methodology for measuring progress towards Senate Bill 263's new statewide food waste, plastic, and carpet recovery goals
- Add Senate Bill 263's four new recycling program elements, increasing to thirteen the options available to local governments. The new program elements are:

- A commercial recycling program that would require commercial generators of solid waste that generate large amounts of recyclable materials to source-separate recyclable material;
- A program for monthly or more frequent on-route collection and composting for food and other compostable waste from residential collection service customers;
- A recovery program for construction and demolition debris; and
- A food waste collection program that would require nonresidential generators that generate large amounts of food waste to source separate that waste for recovery.
- Amend the expanded education and promotion program element to include a contamination reduction education plan. The plan would require local governments that use this element to also determine contamination levels in collected recyclables and take educational action to reduce contamination.
- Update minimum numbers of recycling program elements required for certain cities. Senate Bill 263 raises the recycling program element minimums as follows:
 - Cities within the Metro Urban Growth Boundary must increase their recycling program element minimums by three to a minimum of seven or eight;
 - Cities with over 50,000 population and within 150 miles of Portland must increase by two elements to a minimum of six or seven;
 - Cities with over 10,000 people but not more than 50,000 and within 150 miles of Portland must increase by one element to a minimum of either five or six; and
 - Cities with over 4,000 people but not more than 10,000 and within 120 miles of Portland must increase by one element to a minimum of four.
- Add Senate Bill 263's seven new waste prevention education and reuse program elements and require program element minimums ranging from three to five elements, depending, for:
 - Each city within Metro or with a population of more than 50,000 people, each county responsible for the area between the city limits and urban growth boundary of a city with a population above 50,000, and each county responsible for an area outside of city limits within Metro's urban growth boundary;

- Each city with a population of more than 10,000 people but no more than 50,000 within a county of more than 100,000; and
- Each county of more than 100,000 people that is responsible for the area between city limits and the urban growth boundary of a city with a population of more than 10,000 but no more than 50,000.
- Remove DEQ rules’ references to the discontinued Two Percent Recovery Rate Credit programs (“Two Percent Credit Programs”);
- Revise rules allowing local governments to implement alternative programs to meet their minimum recycling requirements and, where applicable, waste prevention and reuse program requirements. The proposed rules would allow a local government using a DEQ-approved alternative program the adaptability of meeting either the lesser of its recovery goal or recovery levels comparable to similar communities.
- “Clean up” OAR 340-90 to make Division 90 consistent with the Senate Bill 263-based proposed rules.

Brief history

In 2011, DEQ convened a workgroup to help develop a long-term vision and framework for responsible materials management in Oregon. The commission adopted the resulting [*Materials Management in Oregon: 2050 Vision and Framework for Action \(2050 Vision\)*](#) as Oregon’s State Integrated Resource and Solid Waste Management Plan. The *2050 Vision* guides statewide policy for managing materials throughout their full life cycles, including recovery, reduction, reuse, and recycling.

Senate Bill 263 is intended to help DEQ, local governments, and Oregonians make progress under the *2050 Vision*. Senate Bill 263, which the Oregon Legislature passed and Governor Brown signed in June 2015, makes fundamental changes to the Opportunity to Recycle Act (ORS 459A). The Opportunity to Recycle Act was first passed in 1983 and was later updated in 1991 and 2001.

As Senate Bill 263 amends it, the Opportunity to Recycle Act offers local governments lists of elements to choose from in creating their recycling or waste prevention and reuse programs. Whether and to what extent statute requires those programs of a particular local government depend on that jurisdiction’s population and location.

The proposed rules would implement much of Senate Bill 263. A subsequent DEQ rulemaking will propose rules on the bill’s outcome-based recovery goals and its statewide expansion, by 2022, of the opportunity to recycle to multifamily tenants. Revenue to fund DEQ expenses directly related to the proposed rules was anticipated during the development of Senate Bill 245, which authorized increases in tipping fees, and was passed in 2015 as a companion bill to Senate Bill 263. The commission adopted tipping fee increases in February 2016.

Regulated parties

The proposed rules would directly regulate local governments: the cities, counties, and metropolitan service districts that provide Oregonians with the opportunity to recycle. The proposed rules would also affect the collection service businesses that implement recycling at the local level.

Request for other options

During the public comment period, DEQ asked for public comment on whether there were other options for achieving the rules' substantive goals while reducing the rules' negative economic impact on business.

Statement of Need

Generally

What need would the proposed rule address?

SB 263 revises Oregon statute, largely at ORS 459A. This makes DEQ's current recycling, waste prevention, and reuse rules in OAR 340-90 inconsistent with statute. Existing rules throughout OAR 340-90 also contain outdated rule language (e.g., an unnecessarily specific reference to used oil signs in "Purpose" at OAR 340-090-0005); problematic grammar (e.g., passive voice); and stylistic issues that have led Division 90 to differ from the state's rule guidelines (ORS 183.750).

How would the proposed rule address the need?

The proposed rules would implement SB 263 by making OAR 340-90 consistent with current statute and would provide more detail interpreting and implementing the new statutory language. The proposed rules would also address the aforementioned grammar and style issues throughout OAR 340-90, including the many rules within OAR 340-90 that SB 263 does not affect.

How will DEQ know the rule addressed the need?

The need will be addressed if local governments, with DEQ's assistance, understand their obligations under SB 263, as further explained by revised rules at OAR 340-90. DEQ will communicate with local governments and other stakeholders, such as collection service companies, as necessary, on how DEQ regions can help local governments implement the proposed rules. DEQ will work internally to ensure regional offices have support to assist local governments in implementing new requirements. DEQ will also know the rule changes addressed the need based on feedback from local governments and other stakeholders that OAR 340-90 is clear, understandable, and consistent with other Oregon Administrative Rules.

Wasteshed recovery goals

What need would the proposed rule address?

SB 263 updates existing wasteshed recovery goals and makes them voluntary, so those wasteshed recovery goals provide no basis for DEQ enforcement. Without the proposed rules, the Wasteshed Designation and Recovery Rates at OAR 340-090-0050 and OAR 340-090-0060 would remain inconsistent with the now voluntary recovery goals listed in ORS 459A.010, as amended by SB 263.

How would the proposed rule address the need?

The proposed rules would conform OAR 340-090 to statute by including the revised recovery goals for each watershed. DEQ's proposed rules would also remove administrative compliance burdens for local governments that fall short of their watersheds' recovery goals, as watershed recovery rates are no longer legally mandated.

How will DEQ know the rule addressed the need?

The need will be addressed if local governments, with DEQ's assistance, understand their watersheds' voluntary recovery goals and the goals' role in state and local policymaking.

Oregon's material-specific recovery goals

What need would the proposed rule address?

The proposed rules would clarify methods by which the recovery rates for food waste, plastic waste, and carpet waste are calculated and specify materials covered by each recovery rate calculation. ORS 459A.010, as amended by SB 263, sets the State of Oregon's material recovery rates for food waste, plastic waste, and carpet. These material recovery rates would, consistent with the *2050 Vision*, encourage recovery statewide of those three recyclable materials. Besides the material-specific recovery goals, SB 263 sets the state's rate of material recovery from the general solid waste stream at 52 percent for 2020 and subsequent years.

How would the proposed rule address the need?

The proposed rules would add a new rule, OAR 340-090-0068, for determining how the three material-specific recovery rates are calculated and reported. The proposed rules would also define "food waste," "plastic," and "carpet" to clarify which kinds of those materials are counted and which are not.

How will DEQ know the rule addressed the need?

DEQ will know whether the need has been addressed when DEQ calculates the recovery rates for food waste, plastic waste, and carpet waste, and ascertains whether the calculation methodology and specific materials included are sufficient. Under SB 263, DEQ must conduct a statewide survey of recovery rates for food waste and plastic waste in 2020. If that survey shows that statewide waste recovery goals for food waste or plastic waste are not being met, DEQ must submit a report to the legislature by September 15, 2022. DEQ's report must include: (a) an evaluation of options to improve recovery; and (b) recommendations for meeting or modifying the recovery goals for food waste and plastic waste.

Likewise, SB 263 requires DEQ to conduct a statewide survey of recovery rates for carpet waste in 2025. If the survey shows that the statewide waste recovery goal for carpet is not being met, DEQ must submit a report to the legislature by September 15, 2027. DEQ's report must include: (a) an evaluation of options to improve recovery; and (b) recommendations for meeting or modifying the recovery goal for carpet waste.

New recycling program elements

What need would the proposed rule address?

SB 263 provides each Oregon local government covered by the Opportunity to Recycle Act with four more potential recycling program elements in ORS 459A.007. Those four new options increase to thirteen the number of program elements available to local governments. Consistent with the *2050 Vision*, SB 263 provides local governments more adaptability in implementing their recycling programs by letting them draw from the menu of thirteen elements.

The four new elements are:

- A commercial recycling program that would require commercial generators of solid waste that generate large amounts of recyclable materials to source-separate recyclable materials;
- A program for monthly or more frequent on-route collection and composting for food and other compostable waste from residential collection service customers;
- A recovery program for construction and demolition debris; and
- A food waste collection program that would require nonresidential generators that generate large amounts of food waste to source separate that waste for recovery.

How would the proposed rule address the need?

The proposed rules would make OAR 340-090 consistent with ORS 459A.007, as amended by SB 263, by amending OAR 340-090-0040. The proposed rules would also elaborate on the four new recycling program elements, which are only briefly described in SB 263. The proposed rules would also attach a January 1, 2018, effective date to the new recycling program elements.

The proposed rules would also implement SB 263's new recycling program elements in ways that would recognize programs local governments have already been doing voluntarily. Aligning rules to recognize such programs would help local governments meet SB 263's higher numbers of required recycling program elements. For example, Metro's Enhanced Dry Waste Recovery Program (EDWRP) for construction and debris recovery would probably qualify as one of Metro's recycling program elements. Formally counting programs like EDWRP would also help DEQ measure Oregon's progress under the *2050 Vision*.

How will DEQ know the rule addressed the need?

The need will be addressed if local governments that choose any of the new recycling program elements are able to implement those programs. If the EQC approves these rules in January 2017, DEQ regional staff will have nearly an entire year to give local governments technical assistance before the new program elements come into effect. DEQ will also

receive descriptions of local governments' recycling programs when those governments submit their periodic reports to DEQ.

Amended expanded education and promotion recycling program element

What need would the proposed rule address?

Consistent with the *2050 Vision*, SB 263 aims to increase materials recovery. Through ORS 459A.008, SB 263 revises the expanded education and promotion element to require local governments that use that element to also determine contamination levels in collected recyclables and take educational action to reduce contamination.

Local governments using or seeking to use that element also need time to determine how to implement the new contamination component. DEQ's fiscal impact statement research shows that 79 cities and their associated counties currently use the expanded education and promotion element in their recycling programs.

How would the proposed rule address the need?

The proposed rules would make OAR 340-090 consistent with ORS 459A.008, as added by SB 263, by amending OAR 340-090-0040 and adding new rule OAR 340-090-0041. Because SB 263 only briefly explains the contamination reduction component of the revised expanded education and promotion element, the proposed rules would create standard, flexible criteria for implementation through contamination education reduction plans. The proposed rules would also attach a January 1, 2018, effective date to the contamination component of the expanded education and promotion element.

How will DEQ know the rule addressed the need?

The need will be addressed if local governments that choose the expanded education and promotion recycling program element are also able to implement the new contamination reduction component. If the EQC approves these rules in January 2017, DEQ regional staff will have nearly an entire year to give local governments technical assistance before the amended expanded education and production element come into effect.

Revise minimum numbers of recycling program elements

What need would the proposed rule address?

SB 263 amends ORS 459A.007's minimum numbers of recycling program elements required for certain cities. Absent the proposed rules, local governments could believe they must immediately change their individual recycling programs to comply with SB 263.

Local governments need time to decide how their recycling programs should be modified to include any of the new elements and to determine whether current voluntary programs could satisfy any of them. Based on research for the proposed rules' fiscal impact statement, DEQ has determined that 87 cities are subject to the Opportunity to Recycling Act's recycling

requirements following SB 263's passage. But the proposed rules would necessitate program changes in only some of those cities.

How would the proposed rule address the need?

The proposed rules would make OAR 340-090 consistent with ORS 459A.007, as amended by SB 263, by amending OAR 340-090-0040. The proposed rules would also attach a January 1, 2018, effective date to the new recycling program element minimums. After that date, minimums would increase as follows:

- Cities within the Metro Urban Growth Boundary would increase by three elements to a minimum of either seven or eight;
- Cities with over 50,000 population and within 150 miles of Portland would increase by two elements to a minimum of six or seven;
- Cities with over 10,000 people but not more than 50,000 and within 150 miles of Portland, would increase by one element to a minimum of either five or six; and
- Cities with over 4,000 people but not more than 10,000 and within 120 miles of Portland would increase by one element to a minimum of four.

For each city that has a minimum number of recycling program elements, the county-administered area between the city's limits and urban growth boundary, or, within Metro, the area outside the city's limits but within Metro, would also need a recycling program with the city's minimum number of elements.

How will DEQ know the rule addressed the need?

If EQC approves these rules in January 2017, DEQ regional staff will have nearly an entire year to give local governments technical assistance before the new recycling program elements come into effect. DEQ will communicate with local governments to help them understand their recycling program responsibilities and discuss whether recovery is improving. DEQ will also receive descriptions of local governments' recycling programs when they submit their period reports to DEQ.

Waste prevention education and reuse program elements

What need would the proposed rule address?

Consistent with the *2050 Vision*, SB 263 increases waste prevention and reuse requirements for certain local governments. SB 263 adds, in ORS 459A.007, seven new waste prevention and reuse program elements and requires some local governments to implement from three to five of those depending on population. Local governments also need time to decide how to implement the waste prevention and reuse requirements.

DEQ's research for the fiscal impact statement indicates SB 263 subjects all cities within the Metro region, and 18 cities and their associated counties outside of Metro, to new waste

prevention and reuse elements. Under the proposed rules, all of those cities, or their counties or Metro acting on their behalf, would be subject to new planning and reporting requirements. Most would need to modify existing education and outreach materials to satisfy these new requirements. A few cities would also need to expand current services and add or resume programs.

The seven waste prevention and reuse elements are:

- 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 waste prevention campaign targeting residential generators of waste and focused on one or more toxic or energy intensive materials or consumer purchasing practices;
- 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;
- A waste prevention and reuse education program in elementary and secondary schools;
- A program for the providing city or watershed funding or infrastructure support to promote and sustain reuse, repair, leasing or sharing efforts;
- A program for providing city or watershed technical assistance to promote and sustain the reuse, repair or leasing of materials or other sharing of efforts to reduce waste; and
- City or watershed support for a food rescue program that diverts to residents food that would otherwise be composted or disposed.

How would the proposed rule address the need?

The proposed rules would make OAR 340-090 consistent with ORS 459A.007, as amended by SB 263, by adding new rule OAR 340-090-0042. The proposed rules would also elaborate on the waste prevention and reuse program elements, which are only briefly described in SB 263. The proposed rules would also attach a January 1, 2018, effective date to the waste prevention and reuse program requirements.

For its fiscal impact statement, DEQ has reviewed recent documentation of existing Two Percent Credit Programs (discussed further under “Repeal rules on discontinued Two Percent Credit Programs”). DEQ determined that, under its proposed rules, many communities would use some existing programs to satisfy some or all of the first four waste prevention and reuse program elements: area-wide education and promotion; residential campaigns; commercial campaigns, and education in schools. Many communities could comply with those four elements by making some adjustments to outreach content or delivery mechanisms in their current programs.

How will DEQ know the rule addressed the need?

The need will be addressed if local governments that must have waste prevention and reuse programs are able to implement them. If the EQC approves these rules in January 2017, DEQ regional staff will have nearly an entire year to give local governments technical assistance before SB 263's waste prevention and reuse obligations come into effect. DEQ will communicate with local governments to help them understand their waste prevention and reuse program responsibilities and discuss whether waste prevention and reuse are improving. DEQ will also receive descriptions of local governments' waste prevention and reuse programs when those governments submit their period reports to DEQ.

Repeal rules on discontinued Two Percent Credit Programs

What need would the proposed rule address?

SB 263 eliminates the Two Percent Credit Programs but adds a similar waste prevention and reuse program requirement. Without the proposed rules, the obsoleted Two Percent Credit Programs at OAR 340-090-0045 would be inconsistent with statute.

How would the proposed rule address the need?

The proposed rules would make OAR 340-090 consistent with ORS 459A by eliminating references to the Two Percent Credit Programs from OAR 340-90.

How will DEQ know the rule addressed the need?

DEQ will communicate with local governments and receive descriptions of local governments' waste prevention and reuse programs, rather than Two Percent Credit Programs, when those governments submit their period reports to DEQ.

Revise rules on alternative programs

What need would the proposed rule address?

SB 263 lets local governments implement alternative programs to meet their minimum recycling requirements and, where applicable, waste prevention and reuse program requirements. SB 263 also allows a local government using a DEQ-approved alternative program the flexibility of meeting either the lesser of its watershed's recovery goal or recovery levels comparable to similar communities. Local governments using or wanting to seek alternative program approval will need time to determine whether an alternative program would best help them achieve their waste prevention, reuse, and recovery goals.

How would the proposed rule address the need?

The proposed rules would make OAR 340-090-0080 consistent with ORS 459A.007. The proposed rules would describe what is meant by "similar communities." The proposed rules would also attach a January 1, 2018, effective date to the revised alternative program requirements.

How will DEQ know the rule addressed the need?

If the EQC approves these rules in January 2017, DEQ regional staff will have nearly an entire year to give local governments technical assistance before the revised alternative program requirements come into effect. DEQ will communicate with local governments to help them understand their options under revised alternative program criteria. DEQ will also receive applications from some local governments for DEQ approval of alternative programs under the rules' new criteria.

Rules affected, authorities, supporting documents

Lead division

Environmental Solutions

Program or activity

Materials Management

Chapter 340 action

Adopt - OAR

340-090-0041 340-090-0042 340-090-0068

Amend - OAR

340-090-0005	340-090-0010	340-090-0015	340-090-0020	340-090-0030
340-090-0040	340-090-0050	340-090-0060	340-090-0070	340-090-0080
340-090-0090	340-090-0100	340-090-0110	340-090-0120	340-090-0130
340-090-0140	340-090-0150	340-090-0180	340-090-0190	340-090-0310
340-090-0320	340-090-0330	340-090-0340	340-090-0350	340-090-0360
340-090-0370	340-090-0380	340-090-0390	340-090-0400	340-090-0410
340-090-0420	340-090-0430	340-090-0510		

Repeal - OAR

340-090-0045

Statutory authority - ORS

459.045	459.995	459A.005-.085
459A.100-.120	459A.650-.685	468.020

Statutes implemented - ORS

459.015	459.250	459A	459A.005	459A.007
459A.008	459A.010	459A.020	459A.029	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	459A.515

459A.520 459A.550 459A.575 459A.650-.665 459A.675
459A.700-.740 646.608

Legislation

Ch. 584 OL 1995
Senate Bill 263 (Chapter 534, 2015 Laws).

Other authority

Chapter 534, 2015 Laws.

Documents relied on for rulemaking

Document title	Document location
Materials Management in Oregon: 2050 Vision and Framework for Action	Materials Management in Oregon
Public Notice Packet – Solid Waste Fee and Grants Rulemaking	Public Notice Packet – Solid Waste Fee and Grants Rulemaking

Fee Analysis

This rulemaking does not involve fees.

Statement of fiscal and economic impact

Purpose

Senate Bill 263 makes fundamental changes to Oregon's Opportunity to Recycle Act. Oregon's recycling laws, ORS 459A as amended by SB 263, offer lists of elements for local governments to choose from in creating their recycling or waste prevention and reuse programs. Whether and to what extent those programs are required of a local government depend on the jurisdiction's population and location.

The proposed rules would implement much of SB 263. This document explains the significance of the fiscal impacts of the proposed rules on: the Oregon Department of Environmental Quality; state and federal agencies; local governments; the public; and large and small businesses.

DEQ appointed an advisory committee to review this FIS. As ORS 183.333 requires, DEQ asked for the advisory committee's recommendations on:

1. Whether the proposed rules would have a fiscal impact;
2. What the extent of that impact would be;
3. Whether the rules will have a significant adverse impact on small businesses; and
4. How, if there is a significant adverse impact on small businesses, DEQ can mitigate that impact.

This FIS contains estimates based on available information. DEQ, although not required to perform original research for this FIS, gathered and included information from local governments and other stakeholders. DEQ used that information in models that show whether the proposed rules would have a significant adverse impact on stakeholders, including Oregon's small businesses.

To emphasize: the figures and estimates in this FIS are neither regulatory mandates nor expectations of recycling and recovery program investments from local governments or other stakeholders. The projections made in this FIS have been made for the purpose of evaluating potential fiscal impacts. This FIS is not designed to predict or influence rate setting or other decision-making by local governments, which is their responsibility, not DEQ's.

For this FIS, DEQ assumes most local governments would choose the lowest-cost options when selecting recycling or waste prevention and reuse program elements to satisfy SB 263's new minimum requirements. Of course, local governments could, for environmental or political reasons, opt to select program elements that might cost more to implement. SB 263 and the proposed rules offer more compliance options than any single local government would need to comply with its obligation to provide the opportunity to recycle. But the decisions about how best to implement the proposed rules would belong to local

governments. As reflected by the multi-option structures of SB 263 and the proposed rules, each local government should decide which program elements to use in satisfying its recycling requirements in the context of the community's financial, political, and environmental priorities.

Brief Summary

The proposed rules' fiscal impacts most directly relate to local governments' and DEQ's expenses. Local governments have discretion about whether or how to respond to those direct fiscal impacts. For this FIS, DEQ recognizes that the proposed rules could affect waste collection service rates for local governments that the rules directly affect.

The proposed rules would have, at most, minor fiscal impacts, whether direct or indirect, on the aforementioned categories and on housing development and construction. Fiscal impacts on small businesses should also be relatively low.

That said, DEQ recognizes that the fiscal impacts of the proposed rules could be experienced differently across Oregon depending, in particular, on local economic circumstances. Fiscal impacts could vary for each local government depending on its funding for collection services as opposed to its other government services.

Statement of Cost of Compliance

The total annual statewide fiscal impact of these proposed rules on all local governments statewide would be approximately \$640,000 in 2016 dollars. That total is the average marginal cost annualized over the first five years of implementation.

- Wasteshed Recovery Goals: estimated annualized cost statewide: \$0.
- Contamination Reduction Education Plan Component of Expanded Education and Promotion: estimated annualized cost statewide: approximately \$370,000/year.
- Recycling Program Elements and Increased Numbers of Required Minimum Elements: estimated annualized cost statewide: approximately \$170,000/year.
- Waste Prevention and Reuse Program Elements: estimated annualized cost statewide: approximately \$100,000/year.

The proposed rules' impacts on small businesses would be indirect, through potential increases in collection service rates billed to small business customers, and low, particularly when considered as a percentage of small businesses' operating costs. Small collection service companies could experience a relatively small direct impact. Large businesses' direct and indirect impacts would also range from negligible to minimal. Similarly, DEQ concludes that the fiscal impacts of the proposed rules on local governments and their licensed and franchised collection service providers would be low. Lastly, DEQ's estimated

fiscal impacts on DEQ, other state and federal agencies, and the public would range from negligible to minimal.

DEQ understands that the fiscal impacts of the proposed rules could be experienced differently across Oregon depending, in particular, on local economic differences. The fiscal impact could vary for each local government depending on a local government's spending on collection services as opposed to other government services.

Methodology

The proposed rules update existing rules and add new recycling and waste prevention program requirements for certain local governments. For this FIS, DEQ made a model of existing local government programs and the program changes local governments would need to implement to comply with the proposed rules. The model evaluates only the costs incurred to implement changes in local programs required by the proposed rules. These are the marginal costs, not local programs' total costs. Costs would be directly incurred by the local governments subject to the Recycling Opportunity Act or, in many cases, the collection service companies franchised to provide services.

DEQ's model then predicts potential collection service rate impacts. The model does not distinguish between direct fiscal impacts on local governments and indirect fiscal impacts on the collection service companies contracted to handle recycling. Thus, for this FIS, fiscal impacts on collection service companies are deemed direct fiscal impacts. Most local governments can recover increased costs through changes in franchise fees, while collection service companies could recover increased costs through rate increases. So, although collection service companies could incur fiscal impacts, the companies' net costs, after potential rate changes, could be as low as \$0.

These costs, whether incurred by local governments or collection service companies, could be subsequently passed on to waste generators through higher collection service prices. Thus, those costs could indirectly impact waste generators, including large and small businesses and the public. DEQ has estimated marginal costs to waste generators considering the proposed rules' potential effects on existing collection service rates, meaning, how the rules' fiscal impact would most measurably affect Oregon's businesses and households.

DEQ hired a contractor, Bell and Associates, to assist with this analysis. Bell and Associates is experienced in waste collection system financial analysis in Oregon communities and provided estimates of the potential impact on collection service rates.

Under the proposed rules, some local governments are expected to experience relatively small fiscal impacts. Although SB 263 increases the minimum numbers of required recycling program elements for many local governments, most already exceed SB 263's higher minimums. These local governments would not need to add more program elements and should incur only minor costs to comply with this portion of the proposed rules. The governments would incur only an increased reporting cost with more program elements to

report on but no new implementation. DEQ presumes that the costs of these local governments' existing recycling programs would already be reflected in the governments' existing collection service rates. So, the impact on collection service rates in these jurisdictions should be low. In contrast, local governments that are subject to additional recycling program elements and do not satisfy new requirements with current services will incur higher costs, both for reporting and, more significantly, for actual delivery of new services.

The waste prevention and reuse program elements are new and a minority of Oregon local governments are required to implement them. But in most of these jurisdictions, the waste prevention and reuse requirements are already met, in part, through existing services and programs. Thus, this FIS covers only the marginal costs of local governments' meeting the proposed rules' waste prevention and reuse program requirements.

DEQ makes an exception to its marginal cost approach regarding the revised expanded education and promotion recycling program element. The proposed rules amend the expanded education and promotion element to also require action to assess contamination in collected recyclables and use education to reduce that contamination. Although many Oregon communities already have programs to evaluate or reduce contamination, DEQ chose not to seek information on current contamination-related efforts for all local governments. Rather, DEQ estimates the proposed rules' new contamination education as a total, zero-baseline cost. By not using its marginal cost approach in this instance, DEQ likely overestimates local governments' new costs of implementing contamination reduction education programs.

Cost Model Covering Local Governments in Oregon

DEQ's cost model estimates fiscal impacts at the local level. The model covers the 87 Oregon cities subject to the proposed rules and their counties. DEQ anticipates that the proposed rules would necessitate program changes in only some of those 87 cities. DEQ has reviewed local governments' existing compliance with recycling program element minimums. For local governments subject to the waste prevention and reuse program proposed rules, DEQ has also analyzed wastesheds' prior Two Percent Credit Programs.

DEQ's evaluation includes whether local governments' existing programs would already satisfy the proposed rules. Where existing programs would not fully satisfy the proposed rules, DEQ identifies compliance gaps. DEQ then estimates the costs of bridging those gaps. If a city has a potential compliance gap, DEQ assumes the same gap applies to the unincorporated areas within that city's urban growth boundary. In those unincorporated areas, the county would be responsible for complying with the proposed rules.

Direct and Indirect Costs

The costs of these proposed rules could be paid for directly or indirectly:

- Directly using local government resources or the resources of licensed or franchised collection service companies delegated duties by their local governments; or

- Indirectly through taxpayers or ratepayers potentially paying for these additional services.

Some costs would be paid for directly and indirectly but would not actually be incurred twice. A local government or licensed collection service could incur a direct cost and could receive reimbursement of the cost by passing it through to ratepayers, who would pay it indirectly.

Jurisdictions with franchised waste hauling agreements almost always require that the collection service pay a “franchise fee” for the exclusive right to collect waste within a service area. This fee amount varies in Oregon, but it is typically three to five percent of gross receipts.

Local governments could pass on their costs of complying with the proposed rules to ratepayers through franchise fees. Franchisees could pass on any higher costs they incur to ratepayers. Higher rates could create more revenue, which, because franchise fees are typically percentages of gross receipts, would result in higher franchise fee payments to local governments. Such payments could partly offset the proposed rules’ fiscal impacts on local governments.

Cost Estimates

Sources included cost estimates provided by a sample of counties, cities, and franchised waste haulers, as well as estimates modeled or generated by DEQ or its contractor, Bell and Associates. Such estimates were based on information from programs already being implemented elsewhere.

Collection Service Rate Modeling

The rate model used for this analysis includes an operating margin for implementing required programs, assuming collection service franchisees would perform much of the implementation. DEQ modeled costs associated with contamination reduction education programs as being solely passed through into residential single family rates. In contrast, DEQ modeled costs associated with multi-family recycling programs as being solely passed through into commercial service rates. Other costs, such as general reporting and waste prevention and reuse implementation were modeled as system wide costs, allocated into all three collection service lines: residential single-family, commercial (i.e., dumpster), and drop-box collection.

Estimated Impacts on DEQ, State and Federal Agencies, Local Government, and the Public

Based on DEQ’s estimates for itself, other state agencies and federal agencies, the local

Oregon governments subject to the proposed rules, and the public, the direct and indirect impacts of the proposed rules would be relatively low.

DEQ

Direct Impacts

DEQ's materials management program, which would implement the proposed rules, should not experience fiscal impacts beyond revenues received through solid waste fees. Revenue to fund DEQ expenses directly related to the proposed rules was anticipated during the development of Senate Bill 245, which authorized increases in tipping fees. The legislature passed SB 245 in 2015 along with SB 263, and EQC adopted tipping fee increases in February 2016.

Updating the state's overall recovery goal and adding voluntary recovery goals for three specific materials would have a minimal to negligible fiscal impact on DEQ. DEQ's materials management program already tracks the metrics and materials involved.

Indirect Impacts

Potential pass-through increases in collection service fees could increase DEQ's waste collection service expenses by a relatively small amount. In this way, DEQ is similar to any other large business that either pays for collection service or leases space from a landlord who pays for collection service. See "Impacts on Large and Small Businesses" for a discussion of these impacts.

State and Federal Agencies

Direct Impacts

Besides DEQ, there would be no direct fiscal impact on state or federal agencies as a result of these proposed rules, which would regulate local governments.

Indirect Impacts

As with DEQ, potential pass-through increases in collection service fees could increase waste collection service expenses for other state and federal agencies. Any such increase would be relatively small and similar to any other large business that either pays for collection service or leases space from a landlord who pays for collection service. See "Impacts on Large and Small Businesses" for a discussion of these impacts.

Local Governments

Nearly all fiscal impacts of the proposed rules would be direct impacts on local governments. They are the parties that would be regulated under the proposed rules. All fiscal impacts on local governments should be considered direct impacts unless otherwise noted.

DEQ estimates that annualized marginal costs associated with implementing this proposed rule would be approximately \$640,000 per year for all local governments statewide in 2016 dollars. This figure represents a cost estimate over the first five years of implementation averaged on a per year basis. The figure includes all costs that could be incurred by local government franchised or permitted collection service companies acting as their agents.

Costs are estimated and described below for each of four areas of this rule: wasteshed recovery goals; contamination reduction; increased numbers of required recycling program elements; and new waste prevention and reuse elements.

For each of these four areas, DEQ has: (1) identified the local governments that may need to modify their recycling or waste prevention and reuse programs to comply with the proposed rules; and (2) estimated those costs of compliance. Estimates are discussed in the same order as this FIS's prior summary of the proposed rules.

Wasteshed Recovery Goals

Revising DEQ's rules to reflect the now voluntary wasteshed recovery goals in SB 263 would have no fiscal impact. In fact, local governments could experience financial savings, as DEQ would remove the administrative compliance burdens for local governments that fall short of their wastesheds' recovery goals. But any such potential financial savings have not been estimated.

Estimated annualized cost statewide: \$0.

Contamination Reduction Education Plan Component of Expanded Education and Promotion

DEQ's proposed rules amend the requirements of the expanded education and promotion element to include contamination reduction and education plans. DEQ's evaluation of local governments shows that 79 cities and their associated counties use the current rules' expanded education and promotion element in their recycling programs. One more jurisdiction, Junction City, plans to add the expanded education and promotion element to meet its newly increased minimum of required recycling elements under SB 263 and, thus, the proposed rules. Most of these local governments use the expanded education program element in its entirety. A few, such as Newport and Hermiston, currently have DEQ-approved alternative recycling programs that include some expanded education and promotion.

All local governments using the expanded education and promotion element, whether in whole or in part, would be subject to the proposed new requirements for assessing

contamination and taking action to reduce it. Local governments that find contamination reduction education plans to not be cost effective could stop using the expanded education and promotion recycling program element and choose another element instead.

DEQ generally assumes most local governments would, as the proposed rules allow, choose the least expensive option when considering which recycling program elements to add or replace to meet the new minimums. But DEQ does not presume which cities would opt to retain the expanded education and promotion element, which requires a new contamination reduction education plan, or use a replacement recycling program element. Those decisions would be made at the discretion of local governments. Indeed, SB 263 was designed so communities could flexibly implement their recycling programs from the expanded thirteen available program element options or through an alternative program.

For this FIS, DEQ has evaluated the cost of complying with its proposed rules on contamination using a DEQ-developed sample contamination reduction education plan. That plan is merely an example. DEQ neither presumes nor would require that any local government use that contamination reduction plan.

In contrast to DEQ's marginal cost approach to new recycling program elements, DEQ has estimated costs of implementing contamination education reduction plans from a "zero baseline" perspective. For this FIS, DEQ assumes, despite knowing otherwise, that no Oregon local governments are currently evaluating contamination or acting to reduce contamination with education.

DEQ's assumption creates an artificially high estimate of the contamination component's fiscal impacts. But DEQ's approach is much simpler than surveying over 70 cities to evaluate the current contamination management expenditures in each.

Cost estimates for this sample implementation plan stem from discussions with local governments. Estimates have been simplified and include costs of labor, vehicles, route maps, printed cart tags, and safety equipment. Also included is an estimate of the labor required to report contamination education reduction plans to DEQ.

Not included are the potential positive fiscal impacts. These are estimated cost reductions in solid waste system costs, which DEQ expects will result from less contamination in the recyclables collected.

Estimated annualized cost statewide: approximately \$370,000/year.

Recycling Program Elements and Increased Numbers of Required Minimum Elements

DEQ's analysis suggests that the following cities and their associated counties would need to add or modify programs to meet the increased number of recycling program elements required by SB 263: Eugene; Springfield; Junction City; Woodburn; McMinnville; and Newberg.

Each city would need to add a recycling program element. Although King City might also need to increase its number of recycling program elements, it is expected to apply for and receive alternative program approval. This list is based on DEQ's current information and may be modified based on new information.

For each city, DEQ has evaluated the number of elements currently satisfied and the number of elements required. DEQ has made some assumptions, sometimes based on information from cities' staff, about which additional elements each city might draw from to meet its minimum. DEQ generally assumes cities would satisfy their minimum requirements by choosing less costly and easier to implement recycling program elements.

DEQ derived cost estimates for these programs from several sources, including affected city staff or their franchisees and from DEQ's contractor, Bell and Associates. DEQ's assumptions are made for the sole purpose of estimating fiscal impacts. They are not DEQ's predictions, recommendations, or mandates.

DEQ assumes:

- Eugene would require mandatory multi-family recycling – element OAR 340-090-0040(3)(d) – or would implement a voluntary residential food waste collection program – element OAR 340-090-0040(3)(k).¹ The multi-family recycling program element is used for the estimate in this FIS, because that is the less costly of the two.
- Springfield would implement solid waste residential collection rates that encourage waste reduction, reuse and recycling through reduced rates for smaller containers – element OAR 340-090-0040(3)(h).
- Junction City would make some changes to its education and promotion materials – element OAR 340-090-0040(3)(c).
- McMinnville and Newberg would mandate multi-family recycling – element OAR 340-090-0040(3)(d) – each by adding an enforcement mechanism, such as amending their franchise agreements.
- Woodburn would do the same as McMinnville or Newberg or would implement a voluntary residential food waste collection program, satisfying element OAR 340-090-0040(3)(k).

DEQ assumes that implementing the mandatory multi-family recycling element, OAR 340-090-0040(3)(d), would pose a smaller direct cost to cities such as Eugene, where multi-family recycling is already widespread but not mandated. Eugene could make its multi-family recycling mandatory by adding an enforcement mechanism.

¹ "Mandatory" refers to requirements that landlords be provided with recycling service, and that landlords extend such service to their tenants. Oregon has no state mandate that tenants participate in recycling opportunities provided to them.

ORS 90.318 requires landlords in cities that have implemented multi-family recycling service to notify and educate their tenants. DEQ therefore assumes that notifying and educating multi-family residents would pose only a small additional direct cost to cities implementing multi-family recycling element, OAR 340-090-0040(3)(d).

Additional costs associated with implementing the multi-family recycling element include collection service, containers, and transport and processing of recyclable materials. However, this is true only in those communities where multifamily recycling service is not already widespread.

Cost estimates for waste collection rate changes (Springfield) include a can weight study of different classes of garbage collection service. The study would be conducted once every five years. Costs include labor for four seasons of field sampling, data entry, analysis, supervision and management, and travel and equipment.

The City of Junction City provided cost estimates for Junction City's education and promotion changes.

Cost estimates for voluntary residential food waste collection include food pails, administration, advertising, tip fee, avoided disposal tip fee, and transportation.

Separately, all local governments with increased minimum numbers of required recovery elements, including local governments already implementing a sufficient number of programs, would be subject to a more time intensive reporting obligation. DEQ assumes that the time required of local governments to annually report to DEQ would increase as their minimum numbers of recycling program elements increase, even if all other marginal costs are zero. This FIS estimates the cost associated with reporting obligations mainly from a 2016 survey of local governments and franchisees and a similar 2005 survey.

Estimated annualized cost (statewide): approximately \$170,000/year.

Waste Prevention and Reuse Program Elements

SB 263 subjects all cities within the Metro region, and 18 cities and their associated counties outside of Metro, to new waste prevention and reuse elements. Under the proposed rules, all of those cities, or their counties or Metro acting on their behalf, would be subject to new planning and reporting requirements. Most would need to modify existing education and outreach materials to satisfy these new requirements. A few cities would also need to expand current services and add or resume programs.

Oregon statute allows for counties and Metro to satisfy these requirements on behalf of their cities. Historically, wastesheds often claimed county- or region-wide use of the Two Percent Credit Programs and sometimes funded or performed these programs using county staff. For those counties that are subject to this proposed rule, DEQ assumes counties would continue

to provide such services, as the counties remain subject to the same requirements as the cities. Such service delivery would satisfy compliance requirements for those cities.

DEQ has reviewed recent documentation of Two Percent Credit Programs. DEQ determined that many communities could use existing programs to satisfy some or all of the first four waste prevention and reuse program element: area-wide education and promotion; residential campaigns; commercial campaigns, and education in schools.

Because draft rules for those first four elements require developing and submitting a plan to DEQ, DEQ has included a monetized estimate of staff time for planning and reporting. The net marginal cost of this administration should, at least for counties, be relatively small. Preparing the plan will streamline subsequent reporting to demonstrate compliance and counties were already spending some time reporting outcomes under Two Percent Credit Programs.

Further, for those first four waste prevention and reuse program elements, many communities may need to make some adjustments to outreach content or delivery mechanisms. Estimates of these changes are also included in this FIS. DEQ will also provide local governments with plan templates for area-wide education and promotion and residential and commercial campaigns, which would help those governments reduce implementation costs.

For this FIS, DEQ has not included any estimate of the positive fiscal impact of cost savings associated with elimination of the Two Percent Credit Programs, either for reporting or implementation. DEQ has also not estimated any financial savings or other community benefits resulting from enhanced waste prevention or reuse.

For a few cities, implementing the proposed changes discussed previously in this “Waste Prevention and Reuse Program Elements” section might not fully satisfy the proposed waste prevention and reuse program rules. More effort may be required:

- DEQ assumes that the Jackson County Recycling Partnership would reinstate and maintain its reuse guide for Jackson County, the “Re-Directory,” to satisfy the waste prevention and reuse technical assistance element. Because the county only recently discontinued its contract to maintain that service, DEQ considers the marginal costs of restarting the service to be zero. Even after re-instating the reuse guide, Medford might satisfy only four waste prevention and reuse elements although five are required. DEQ assumes that Jackson County and Medford would choose edible food rescue as their fifth element and they would use a combination of current food rescue funding and either local ordinance review or public outreach.
- Albany should satisfy four elements with only small changes to existing programs. DEQ’s assumed fifth element for Albany, education programs in schools, is already partially satisfied. Increasing the number of students contacted would satisfy the required fifth element. Albany’s franchised collection service company has provided DEQ with an estimate of the cost required to conduct this additional outreach.

Cost estimates were derived primarily from a survey of local governments and waste collection companies. Survey questions focused primarily on start-up costs. DEQ supplemented these estimates with assumptions about maintenance costs in subsequent years consistent with the standards proposed in the draft rules. Responses for each responding community were used to estimate costs for that community. Where communities did not respond or were not surveyed, DEQ used averages drawn from survey responses.

As with recovery elements, this FIS also includes an estimate of the costs associated with annual compliance reporting to DEQ.

Estimated annualized cost (statewide): approximately \$100,000/year.

Public

Direct Impacts

These proposed rules, which regulate local governments, would have no direct fiscal impact on the public.

Indirect Impacts

DEQ assumes that costs incurred by local governments or their implementing collection service businesses would be reflected in customers' collection service rates, either as an allowable operating cost or through an increase in franchise fees. This may artificially inflate estimates of indirect impacts, as some labor costs could simply be absorbed by existing local government staff.

Estimated rate impacts on households would vary depending on the particular community, its size, and the extent of its new obligations under the proposed rules, if any. Rate impacts can be simplified into four categories based on how local governments would be affected:

1. Among local governments that only need to implement a contamination reduction program to satisfy the proposed rules' minimum requirements, the estimated rate impact for households with collection service averages \$0.04/month. Examples of cities in this category include: Coos Bay; Grants Pass; Klamath Falls; Prineville; and Pendleton.
2. A second category of local governments would incur only one more fiscal impact: more reporting associated with a higher number of required recycling program elements. Examples of cities in this category include: Astoria; St. Helens; Hood River; The Dalles; Independence; Madras; and Tillamook. The total estimated rate impact, which includes contamination and reporting additional elements, for households with collection service in these communities averages \$0.05/month.

3. A third category of local governments would incur another fiscal impact that could be allocated, at least in part, to single family collection rates: complying with the new waste prevention and reuse elements. Local governments in this county include, as examples: Medford and Jackson County; Corvallis and Benton County; Eugene and Lane County; Bend and Deschutes County; and the cities and counties within Metro. The estimated rate impact for households in these communities is \$0.08/month.

That said, this average is inflated because of four outliers: the small east Multnomah County cities of Maywood Park, Wood Village, Fairview and Troutdale. Unlike smaller cities elsewhere in the Metro region, such as Gladstone or Durham, the Multnomah County cities are not currently satisfying requirements of the waste prevention and reuse programs through their county government's activities. Thus, the cost model treats each of these small cities as requiring separate and independent program development, implementation, and reporting to DEQ. Because their populations are small, these fixed costs result in higher per-household rates.

Once implementation is required, DEQ assumes those cities will likely partner with each other or other local governments, such as Gresham, Portland, Multnomah County, or Metro, to deliver at least some of the types of services required by the waste prevention and reuse program elements. So, the estimates for these cities contained in DEQ's cost and rate model may be unrealistically high. By removing these four outlier cities from the data set, the estimated rate impact for households in this group of communities falls to an average of \$0.05/month with a maximum value of \$0.07/month.

4. Last is the category of cities that would be required to implement another recycling program element and choose an element that has costs wholly or partially allocated to household rates. These cities include: Junction City; Springfield; and, potentially, Woodburn. Modeled rate impacts for households are \$0.29/month in Junction City, \$0.06/month in Springfield, and \$0.23/month in Woodburn if Woodburn implements residential food waste collection. Woodburn could decide to implement multi-family recycling instead, in which case the impact on single-family household garbage rates would be less.

It should be noted these are all average household rate impacts. Rate impacts in Springfield will be more variable as a consequence of adopting collection rates set on a per-pound basis; customers with larger containers could see their rates increase more, while customers with smaller containers could see their rates decrease.

Impacts on Large and Small Businesses

DEQ concludes that the proposed rules would not directly impact large or small businesses except for a relatively small impact on collection service companies. But there could be relatively low indirect impacts on large and small businesses due to potential rate increases for business customers of collection service companies. As discussed in this section, however, those impacts would constitute a small amount of either a large or small business's operating costs.

Large businesses – businesses with more than 50 employees

Direct Impacts

DEQ's proposed rules, which regulate local governments, would have no direct fiscal impact on large businesses besides, potentially, large businesses in the collection service industry.

As previously described under "Methodology," DEQ's model predicts collection service rate impacts but does not distinguish between direct fiscal impacts on local governments and indirect fiscal impacts on the collection service companies contracted to handle waste and recycling. So, for this FIS, fiscal impacts on collection service companies are considered direct fiscal impacts.

Of course, collection service companies can recover increased costs through rate increases. So, the net cost to those companies over time is expected to be close to zero. In fact, because many franchise agreements provide for an operating margin, which includes profit, as a percentage of allowable costs, including regulatory compliance, many franchised waste companies could realize a small net financial benefit from these proposed rules.

DEQ concludes that the proposed rules would not directly impact large business generally but could have a relatively small impact on large collection service companies.

Indirect Impacts

Every business, regardless of size, that uses waste collection services could experience some indirect fiscal impact as a result of these proposed rules. But that fiscal impact on businesses' overall operating costs would be relatively small at most.

As noted previously, DEQ assumes that the collection service industry's implementation costs would eventually be passed on to customers through rate review. Implementation costs incurred by local governments would also be passed on to ratepayers through higher franchise fees. Businesses that are customers of these franchised collection service companies could be billed at higher rates.

To evaluate the extent of possible rate impacts, DEQ analyzed program costs and collection service rates. Cost projections have been entered into rate models for a cross-section of Oregon jurisdictions to generate a range of likely rate impacts. As discussed previously under "Collection Service Rate Modeling," the only costs DEQ assumes would be allocated, at least in part, to commercial (i.e., dumpster) rates would be: (1) multi-family recycling costs; and (2) system-wide costs, such as reporting or waste prevention and reuse elements.

As with households, estimated rate impacts on businesses would vary depending on the particular community, its size, and the extent of its new obligations under the proposed

rules, if any. Among communities where the only commercial rate impact would be from increased reporting requirements, estimated rate impacts for commercial collection service would average a 0.09 percent increase, with a range across communities from 0.03 to 0.23 percent. These communities include, as examples, Clatsop, Jefferson, Polk, and Wasco Counties.

Among communities that would also incur costs associated with waste prevention and reuse program elements, excluding multi-family, estimated rate impacts for commercial collection service would average a 0.15 percent increase. That increase would range across communities from 0.02 to 0.35 percent. These communities include, as examples, Marion County, Portland, and Jackson County. Excluded are outlier results from DEQ's rate model for small east Multnomah County cities, for reasons discussed previously under "Public."

DEQ assumes that Eugene, McMinnville, Newberg, and potentially Woodburn would meet minimum recycling program elements by adding multi-family service. Estimated impacts of commercial collection service rates in these communities would average a 0.55 percent increase and range from 0.10 to 0.99 percent.

Junction City has estimated commercial rate impacts of roughly 5.7 percent. This estimate is a result of city-wide implementation costs, primarily expanded education and promotion, allocated across a relatively small rate base.

Even with potential increases in collection service rates, DEQ can assume that impacts on businesses' overall operating costs from proposed rules would be relatively low. IMPLAN is a widely used software package for modeling economic impacts. According to IMPLAN, across 439 economic sectors in Oregon, "waste management and remediation" costs represent on average 0.19% of business operating costs for 2010. This estimate includes both primary indirect impacts for Oregon businesses that pay to have their waste removed, as well as secondary (i.e., supply chain) indirect impacts for Oregon businesses that purchase goods or services from other Oregon businesses that pay for waste removal service. These costs also include costs other than solid waste disposal, such as hazardous waste, spill control, and remediation.

In a worst case scenario, assuming the average Oregon business would spend 0.19% of its operating costs only on commercial garbage collection and disposal service, Table 1 in this section shows the projected net impact on total operating costs for such businesses located in each of the four classes of cities listed in this "Large businesses" section.

Projected Increase in Operating Costs for Businesses with Dumpster-Based Waste Collection Service

Class of Cities	Examples	Impacts
Increased reporting only	Clatsop, Jefferson, Polk and Wasco Counties	Min: 0.00006% Mean: 0.0002% Max: 0.0004%
Increased Reporting + Waste Prevention and Reuse	Marion and Jackson Counties, Portland	Min: 0.00004% Mean: 0.0003% Max: 0.0006%
Increased Reporting + Waste Prevention and Reuse + Multi-family Recycling	Eugene, McMinnville, Newberg, possibly Woodburn	Min: 0.0002% Mean: 0.001% Max: 0.002%
Increased Reporting + Expanded Education and Promotion	Junction City	0.01%

Small businesses – businesses with 50 or fewer employees

Direct Impacts

DEQ's proposed rules would have no direct fiscal impact on small businesses besides, potentially, small businesses in the collection service industry. For the same reasons previously discussed in the "Large businesses" section, DEQ concludes that the proposed rules would not directly impact small business except for a potential relatively minor impact on small collection service companies.

Indirect Impacts

For the same reasons described previously for potential fiscal impacts on large businesses, DEQ's proposed rules would have a relatively low impact on small businesses. Although collection service rates billed to small businesses could increase, DEQ concludes that impacts on those small businesses' overall operating costs from proposed rules would be relatively low.

Effect on Small Businesses

(A) Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed rule.

The proposed rules would not directly affect small businesses. For this FIS, DEQ's model predicts collection service rate impacts but does not distinguish between direct fiscal

impacts on local governments and indirect fiscal impacts on the collection service companies contracted to handle waste and recycling. So, fiscal impacts on collection service companies are considered direct fiscal impacts.

Oregon Employment Data for 2015 reports that the state's solid waste collection industry had 124 entities that employed 50 or fewer people. Collection service companies can recover increased costs through rate increases. So, although collection service companies could incur direct fiscal impacts, the companies' actual costs, after rate adjustments, would be relatively small and potentially as low as zero over the long term.

Every small business in Oregon that uses collection services could also experience some indirect fiscal impact as a result of these proposed rules. But that fiscal impact on businesses' overall operating costs would be relatively low.

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

DEQ expects that the proposed rules would result in little or no additional costs for reporting, recordkeeping, and other administrative activities, including the costs of professional services. To the extent the proposed rules could result in any such minor costs for small collection service companies, those collection service companies could recover increased costs through rate increases. So, although collection service companies could incur fiscal impacts, the companies' net costs, after rate adjustments, could be as low as zero over the long term.

(C) Projected equipment, supplies, labor and increased administration required for small businesses to comply with the proposed rule.

DEQ expects that the proposed rules would generally result in no additional costs for equipment, supplies, labor, or administration for most small businesses, other than potential garbage rate increases as discussed previously. In addition, small businesses that own or manage multifamily properties may incur a cost associated with notifying tenants of recycling services.

Again, to the extent the proposed rules could result in any costs for small collection service companies, those collection service companies could recover increased costs through rate changes. So, although collection service companies could incur fiscal impacts, the companies' net costs, after rate adjustments, should be close to zero over the long term.

(D) Describe how DEQ involved small businesses in developing this proposed rule.

DEQ included a representative of the Oregon Refuse and Recycling Association (ORRA), whose membership includes small businesses, on its SB 263 Rulemaking Advisory

Committee that advised DEQ on the cost of compliance for small businesses. DEQ also provided rulemaking notice to the public and opened meetings to the public.

Advisory Committee

DEQ appointed an advisory committee to review this FIS.

As ORS 183.333 requires, DEQ asked for the committee's recommendations on:

- Whether the proposed rules would have a fiscal impact,
- The extent of the impact, and
- Whether the proposed rules would have a significant impact on small businesses and, if so, whether DEQ has complied with ORS 183.540 by seeking ways to mitigate that impact.

The committee reviewed a nearly final draft FIS. The committee's findings are stated in the attached advisory committee Meeting Minutes dated September 13, 2016, and in the following summary:

- All twelve committee members who were present agreed that the proposed rules would have a fiscal impact.
- On the extent of that fiscal impact: nine committee members agreed with this FIS's assessment of the extent. Three committee members – Willie Tiffany of ORRA, Dave Larmouth of Recology Western Oregon, and Kim Kaminski of Waste Management – did not know whether this FIS reflected the extent of the proposed rules' fiscal impact.

Because DEQ assumes for this FIS that most local governments would choose the lowest-cost options when selecting program elements, Mr. Tiffany commented that DEQ's estimates might not match reality following implementation. Ms. Kaminski agreed with Mr. Tiffany. DEQ revised this fiscal impact to acknowledge these concerns. Mr. Larmouth commented that, without understanding DEQ's fiscal model or having access to it, he did not know whether this FIS reflected the extent of the proposed rules' fiscal impact.

- All but one committee member answered that DEQ's proposed rules would not have a significant adverse impact on small businesses. Pete Chism-Winfield of the City of Portland did not know whether the proposed rules would not have a significant impact on small businesses. Because the advisory committee determined that the proposed rules would not have a significant adverse impact on small businesses in Oregon, the committee was not asked how DEQ could mitigate the rules' impact on small business.

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.

The possible impact of the proposed rules would be relatively low. The proposed rules would add four new recycling program elements available to local governments, including a recovery program for construction and demolition debris. That new element, where implemented by a local government, could affect building costs for a new home.

That said, this construction and demolition debris recovery element is one of thirteen recycling program elements a local government may choose from. Although the proposed rules would increase the minimum number of recycling program elements certain local governments must implement, DEQ does not anticipate that any local government needing to implement a new element would choose the construction and demolition debris recycling element.

The proposed rules could also affect development and construction costs through increases in collection service fees, which could increase developers' and construction entities' collection service rates. Land development and construction may be served by drop box collection service. Per EPA estimates, in EPA's Characterization of Building-Related Construction and Demolition Debris in the United States, building a newly constructed 1,200-square-foot dwelling produces less than two tons of solid waste. That amount would fall below the weight capacity of a typical 20-yard drop box.

DEQ's evaluation shows the potential rate impacts on drop box services from the proposed rules would be relatively small for a cross-section of affected cities and counties. The estimated impacts on drop box rates would be, on average, a 0.05 percent rate increase across affected communities. The estimated rate increases range from 0.01 to 0.17 percent. For reasons previously explained in the "Public" section, these numbers exclude the outlier results from DEQ's rate model for small east Multnomah County cities.

DEQ has not estimated how much of a housing development and construction budget is spent on drop box service. But waste disposal is typically a small portion of total development costs, which include land, labor, materials and permits. As such, the estimated cost of the proposed rules on the example housing development and construction would cause even less of a percentage increase.

Thus, DEQ concludes that the proposed rules' 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 would be relatively low.

Documents relied on for fiscal and economic impact

Document title	Document location
Annual Employment Under 51; 2015 Accessed: August 18, 2016	Oregon Employment Department 875 Union Street NE Salem OR 97311 QualityInfo.org
Oregon Department of Environmental Quality Notice of Proposed Rulemaking Solid Waste Fee and Grants Oct. 15, 2015	DEQ Rulemaking Notice Solid Waste Fee
U.S. EPA Characterization of Building- Related Construction And Demolition Debris in the United States	EPA characterization of construction debris

Federal relationship

Relationship to federal requirements

ORS 183.332, 468A.327 and OAR 340-011-0029 require DEQ to attempt to adopt rules that correspond with existing equivalent federal laws and rules unless there are reasons not to do so. There are no related federal requirements for recycling and waste prevention programs. The proposed rules would address environmental, economic, and administrative issues by confirming existing recycling and waste prevention and reduction rules to the requirements of SB 263.

What alternatives did DEQ consider if any?

DEQ did not consider any alternatives to correspond with equivalent federal laws and rules because there are no equivalent federal requirements.

Land Use

In adopting new or amended rules, ORS 197.180 and OAR 340-018-0070 require DEQ to determine whether the proposed rules significantly affect land use. If so, DEQ must explain how the proposed rules comply with state wide land-use planning goals and local acknowledged comprehensive plans.

Under OAR 660-030-0005 and OAR 340 Division 18, DEQ considers that rules affect land use if:

- The statewide land use planning goals specifically refer to the rule or program, or
- The rule or program is reasonably expected to have significant effects on:
 - Resources, objectives or areas identified in the statewide planning goals, or
 - Present or future land uses identified in acknowledged comprehensive plans

To determine whether the proposed rules involve programs or actions that affect land use, DEQ reviewed its Statewide Agency Coordination plan, which describes the DEQ programs that have been determined to significantly affect land use. DEQ considers that its programs specifically relate to the following statewide goals:

Goal	Title
5	Open Spaces, Scenic and Historic Areas, and Natural Resources
6	Air, Water and Land Resources Quality
9	Ocean Resources
11	Public Facilities and Services
16	Estuarial Resources

Statewide goals also specifically reference the following DEQ programs:

- Nonpoint source discharge water quality program – Goal 16
- Water quality and sewage disposal systems – Goal 16
- Water quality permits and oil spill regulations – Goal 19

Determination

DEQ determined that these proposed rules do not affect land use under OAR 340-018-0030 or DEQ's State Agency Coordination Program.

Stakeholder and public involvement

Advisory committee

Background

DEQ convened the SB 263 Materials Management Rulemaking (“Recycling 2016”) advisory committee. The committee included representatives for local governments, including governments of large, small, urban, and rural government entities. The committee also included representatives from private companies engaged in the recycling industry and a recycling advocacy NGO. The committee met four times. The committee’s web page is located at: [Recycling 2016 Advisory Committee](#).

The committee members were:

Name	Representing
Matt Korot, Program Director, Resource Conservation & Recycling	Metro
Willie Tiffany, Governmental Affairs	ORRA
Mark Nystrom, Policy Manager	Association of Oregon Counties
Tracy Rutten, Intergovernmental Relations Associate	League of Oregon Cities
Mark Morgan, Assistant City Manager	City of Hermiston
Pete Chism-Winfield, Materials and Waste Specialist	City of Portland
Stephanie Scafa, Waste Prevention and Green Building Analyst	City of Eugene
Contracia (Traci) Carrier, Budget Analyst	Jackson County
Bailey Payne, Recycling Coordinator	Marion County
Sarah Grimm, Waste Diversion Specialist	Lane County
Mark Saelens, Solid Waste District Program Manager	Lincoln County
Vinod Singh, Operations Manager	Far West Recycling
Dave Larmouth, Rate Analyst	Recology Western Oregon
Kim Kaminski, Government Affairs	Waste Management
Rob Guttridge, Vice President	Recycling Advocates

Meeting notifications

To notify people about the advisory committee’s activities, DEQ:

- Sent GovDelivery bulletins, a free e-mail subscription service on March 31, 2016, to these lists with (number of subscribers):
 - Materials management grant information (2254)
 - Plastics recovery assessment project (696)
 - 2016 Solid waste permit fee rulemaking (529)
 - Beneficial use of solid waste (2538)
 - 2050 vision for materials management (1231)
 - Environmental impacts of food waste management (571)
 - Solid waste newsletter (2920)
 - Rulemaking (6849)
- On June 8, 2016: 2050 vision for materials management
- On Aug. 25, 2016: 2050 vision for materials management
- Issued press releases and posted announcements on social media
- Added advisory committee announcements to DEQ's calendar of public meetings at [DEQ Calendar](#).
- Provided notice of meetings and links to committee information through postings on Facebook and Twitter.

Committee discussions

In addition to the recommendations described under the Statement of Fiscal and Economic Impact section above, the committee included a representative of the Oregon Refuse and Recycling Association (ORRA), whose membership includes small businesses. In committee discussions, ORRA commented to DEQ on the cost of compliance for small businesses, particularly small collection service companies. DEQ also provided rulemaking notice to the public and opened meetings to the public.

EQC prior involvement

DEQ shares general rulemaking information with EQC through the monthly Director's Report.

DEQ did not present additional information specific to the proposed rule revisions.

Request for other options

During the public comment period, DEQ requested public comment on whether to consider other options for achieving the rules' substantive goals while reducing the rules' negative economic impact on business. This document includes a summary of comments and DEQ responses.

Public notice

DEQ provided notice of the proposed rulemaking and rulemaking hearing on October 14 by:

- Filing notice with the Oregon Secretary of State for publication in the Oregon Bulletin on November 1, 2016

- Notifying the EPA by email
- Posting the Notice, Invitation to Comment and draft rules on the web page for this rulemaking: [Recycling 2016 Proposed Rulemaking](#)
- Emailing interested parties on the following DEQ lists through GovDelivery:
 - 2050 Vision for Materials Management (1208 people)
 - DEQ Rulemaking (6795 people)
 - DEQ Public Notices (754 people)
- Emailing the following key legislators required under ORS 183.335:
 - Senator Chris Edwards, Chair, Interim Committee on Environment and Natural Resources
 - Representative Jessica Vega Pederson, Chair, Interim Committee on Energy and Environment
- Emailing advisory committee members
- Postings on Twitter and Facebook
- Posting on the DEQ event calendar: [DEQ Calendar](#)

Public hearings and comment

DEQ held one public hearing, preceded by a public information meeting about the proposed rules. None of the attendees at the public hearing presented testimony, but DEQ received five public comments during the public comment period. Later sections of this document include a summary of comments received, DEQ's responses, and a list of the commenters. Original comments are on file with DEQ.

Presiding Officers' Record

Meeting location:

Oregon Department of Environmental Quality
700 NE Multnomah Street, Conference Room 610
Portland, Oregon 97232

Meeting date and time: November 17, 2016, 6 p.m. to 8 p.m.
Presiding Officer: Holly Stirnkorb, DEQ Materials Management Section

Following an informational presentation by Peter Spendelow, DEQ Materials Management Section, the presiding officer convened the hearing, summarized procedures for the hearing, and explained that DEQ was recording the hearing. The presiding officer asked people who wanted to present verbal comments to sign the registration list, or if attending by phone, to indicate their intent to present comments. The presiding officer advised all attending parties interested in receiving future information about the rulemaking to sign up for GovDelivery email notices.

As OAR 137-001-0030 requires, the presiding officer summarized the content of the rulemaking notice.

Two members of the public attended in person, and one person identified herself as attending by phone, but none of the attendees chose to give public comment.

Summary of comments and DEQ responses

For public comments received by the close of the public comment period, the following table organizes comments into 7 categories with cross references to the commenter number. DEQ's response follows the summary. Original comments are on file with DEQ.

DEQ changed the some of the proposed rules in response to comments described in the response sections below.

Comment 1 Commenter believes that the proposed rules should be clear that when local governments implement programs that require customers to arrange for the collection of solid waste, that collection service must be authorized under a franchise where appropriate. Commenter has found that in many cases unauthorized solid waste collectors misinterpret local franchise agreements and Oregon state law regarding solid waste collection. Clarity on this point in the rule would send a clear signal that when collection service is required it must be legally authorized under local and state law. Commenter recommends that OAR 340-090-0040(3)(j)(C)(ii) be changed to say "Self-haul or arrange for collection as allowed pursuant to local government regulation of source separated recyclable materials" and that OAR 340-090-0040(3)(m)(C)(iii) should be changed to say "Self-haul or arrange for collection as allowed pursuant to local government regulation of food waste."

DEQ received one comment in this category from commenter 1.

Response DEQ believes that this change is not necessary and could lead to confusion. These rules are intended to tell local governments what sort of commercial recycling program or commercial food waste collection program requirements the local government needs to adopt to meet the program elements requirements. The businesses themselves are not directly regulated by this rule. They would be directly regulated by the local government and whatever program requirements the local government chooses to adopt. Since local governments are the direct subjects of the proposed rules here, they do not need to be told that a collection program must be "allowed pursuant to local government regulation." The confusion could stem from the fact that the local government may choose not to regulate the collection programs themselves or may not have the authority to regulate collection in certain cases.

Comment 2 Commenters requested that 340-090-0042(5)(b), pertaining to waste prevention and reuse education programs in schools, be amended to explicitly allow jurisdictions to comply using a broader educational outreach event, such as a field trip to the Public Works Department during National Public Works Week.

DEQ received two comments in this category from commenters 3 and 5.

Response DEQ agrees that jurisdictions could comply with waste prevention and reuse requirements using 340-090-0042(5) by conducting field trips to or holding other similar outreach events at sites other than facilities specifically dedicated to waste prevention and reuse, if the content of the field trip includes a substantial focus on reducing waste generation through prevention and/or reuse. Consequently, DEQ amended 340-090-0042(5)(b)(E) to clarify that such field trips may be used to comply with this element.

Comment 3 Commenter requested that the requirement for minimum annual funding for infrastructure support be removed from 340-090-0042(6)(c), arguing that it was unreasonable to require localities like the City of Springfield to spend \$15,000 on a one day event required to comply with infrastructure support requirements of this section.

DEQ received comments in this category from commenters 3 and 5.

Response 340-090-0042(6) offers two options for using the element to comply with waste prevention and reuse requirements, *either* funding support *or* infrastructure support to promote and sustain reuse, repair, leasing or sharing efforts. It was not DEQ's intent that the funding formula provided in the proposed rule define a minimum level of spending for infrastructure support. Rather, it was DEQ's intent to allow jurisdictions a choice in implementing this element. DEQ amended language in 340-090-0042(6) to make this choice clear.

Comment 4 Commenter argued that the funding formula provided in 340-090-0042(6)(c) was unfair to smaller jurisdictions because it resulted in smaller funding requirements for three cities with populations greater than 100,000 than for cities with populations between 70,000 and 100,000.

DEQ received comment in this category from commenter 4.

Response DEQ believes the commenter misunderstood the funding formula as proposed. Where a local jurisdiction chooses to use funding to comply with 340-090-0042(6)(c), the proposed formula required funding at a minimum level of \$0.25 per jurisdiction resident up to 100,000 in population for jurisdictions smaller than 100,000 and then specified, for jurisdictions with more than 100,000 in population, funding of \$0.25 per resident for the first 100,000 residents plus \$0.10 per resident for the number of residents greater than 100,000 in population. The effect of the proposed formula was to make the funding option more attractive to large cities that would have been subject to very high minimum requirements using a flat \$0.25 per resident. DEQ has amended the proposed rule language to clarify the applicability of the funding formula to smaller and larger jurisdictions. Note additional changes to the formula in response to Comment 4 below.

Comment 5 Commenter requested that the minimum funding levels specified by formula in 340-090-0042(6)(c) and (8)(b)(B) be eliminated, arguing that the required funding substantially exceeds what localities are likely to spend on reuse/repair or edible food rescue infrastructure required under this section and further, that the minimum funding levels are not reasonable for smaller jurisdictions and would pose an undue burden on small jurisdiction residents.

DEQ received comment in this category from commenter 4.

Response DEQ's proposed formula for funding support was derived from information available from one jurisdiction (Benton County) that is currently funding edible food rescue using non-allocated general funds (that is, not relying on federal block grants or other pass through funding provided by others) by providing \$24,000/year to the Linn-Benton Food Share. Dividing that \$24,000 by Benton County's population yielded a funding level of about \$0.26 per resident, which DEQ originally rounded down to \$0.25 per resident for the proposed rule.

DEQ has reconsidered its original analysis and believes that because Benton County has a higher per capita income than many of the jurisdictions subject to these rules, it may not have been appropriate to base the formula solely on data from Benton County and that an alternative formula should be developed that reduces the funding threshold. To develop a revised formula, DEQ considered the per capita incomes of the 11 counties that are required to implement waste prevention and reuse programs under 340-090-0042. Among these counties, Benton County ranked 5th, leaving 6 counties with lower per capita incomes. DEQ then reviewed the per capita incomes of the cities within those six counties and identified the jurisdiction, Woodburn, with the lowest per capita income among those six counties and the affected cities within them, reasoning that it was appropriate to base a reduced threshold on the per capita income of the jurisdiction with the lowest per capita income of the counties and cities subject to these rules. DEQ then made the following calculation:

Per capita income (Woodburn)/Per capita income (Benton County) = 0.64 (ratio of Woodburn's per capita income to Benton County's)

Multiplying the \$0.26 per resident spent by Benton County by the above ratio yielded a new per resident figure of \$0.17. DEQ has revised the proposed rules to incorporate this new per capita spending requirements for populations up to 100,000. It is retaining the proposed part of the formula for jurisdictions with more than 100,000 in population that requires funding of \$0.10 per resident for the number of residents greater than 100,000 in population.

In any event, it is important to note that the options requiring direct funding, according to this formula, of programs are sub options within two of seven waste prevention and reuse elements. Because the largest number of elements required is five, no local governments are required to choose either of these two elements. If they do, other sub options, not requiring provision of funding, are also available to them.

Comment 6 Commenter argued that it was inappropriate of DEQ to base the proposed funding formula on pass through grant funds that some cities and counties currently use to support program elements, as these funds may not be available in future.

DEQ received one comment in this category from commenter 4.

Response DEQ believes the commenter misunderstood the basis for the originally proposed formula. As noted above, DEQ derived its originally proposed formula using data from Benton County’s expenditure of non-allocated general funds (that is, not on federal block grants or other pass through funding provided by others) in the amount of \$24,000 to help fund the Linn-Benton Food Share. See response to Comment 6 above for further discussion of the funding formula.

Comment 7 Commenter was concerned that the proposed rules pertaining to non-residential generators of food waste might have the unintended impact of increased donation of inappropriate foods by generators seeking to minimize their food waste, and requested that DEQ include clarification in the rule of the types of food waste that are appropriate for donation to the charitable food sector.

DEQ received one comment in this category from commenter 2.

Response In a conversation with the commenter, it became clear that they had misread the rule. Once DEQ provided clarification, the commenter had no concerns with the draft rules, and no response is needed.

Commenters

Comments received by close of public comment period

The table below lists 5 people and organizations that submitted public comments about the proposed rules by the deadline. Original comments are on file with DEQ.

List of Commenters			
#	Name	Organization	Comment Category
1	Willie Tiffany	Oregon Refuse and Recycling Association	1
2	Anneliese Koehler	Oregon Food Bank	7
3	Aaron Donley	Sanipac Inc.	2, 3
4	Contracia Carrier	Jackson County	4, 5, 6
5	Anette Spickard	City of Springfield	2, 3

Implementation

The proposed rules would become effective upon filing on approximately January 20, 2017. However, some of the main requirements such as implementing the waste prevention and reuse program elements and additional recycling program elements do not become effective until January 2018. DEQ will work with local governments, recycling and waste reduction service providers, and other affected parties to implement the rules in the following ways:

- 1) DEQ will announce the passage of the new rules through the Materials Management Newsletter, scheduled to be published soon after their anticipated adoption in January 2017.
- 2) DEQ Technical Assistance staff have already let local governments know of the new requirements of the 2015 Senate Bill 263 to be implemented by these proposed rules, and have redesigned the annual watershed recycling reporting forms to gather information on the programs local governments will be implementing to meet the requirements of the law. In addition, DEQ Technical Assistance staff will be sending out a letter in late January 2017 to every local jurisdiction describing how the changes in rule will affect their programs specifically, and will follow up with a presentation and meeting if requested.

- 3) DEQ Technical Assistance staff will work closely with local governments when reviewing and approving the 2016 wasteshed recycling reports to make sure local governments are on track to implement new required programs by 2018.
- 4) To assist local governments with implementing the new contamination reduction requirements of the expanded recycling education program element, DEQ expects to develop at least two sample implementation plans that local governments can choose to implement if they do not want to develop and implement their own plan.
- 5) DEQ will develop and make available to local governments at least one residential and one non-residential waste prevention “campaign” that they can use to satisfy the waste prevention campaign elements. These will include ready-to-use media such as camera ready art, advertisements, web content, and radio public service announcements or advertisements. These campaign materials will be developed in consultation with effected local governments and should be finalized in the early fall of 2017.
- 6) DEQ is tentatively planning to conduct research in the summer of 2017 on cost-effective methods to reduce contamination of collected recyclables, and to publicize that information to allow local governments and collection service programs to be more efficient in reducing contamination.
- 7) DEQ is currently conducting a statewide waste composition study, and is planning to conduct waste composition studies in 2020 and 2025 to implement the revised statutory requirements for conducting such studies and to provide the information on disposal of food waste, plastic, and carpet needed to determine if the recovery rate for each of these three materials meets or exceeds the statutory recovery goal set for each by SB 263.
- 8) DEQ will be researching and working with programs to develop resources and standards to assist local governments in implementing the currently-existing multifamily recycling program element, and to assist implementing the more universal recycling multitenant recycling program element that becomes effective on July 1, 2022.
- 9) DEQ staff will work to ensure consistent implementation of program elements through the development of sample implementation plans and through periodic program meetings and technical assistance staff communication.
- 10) Compliance with the new rules will mainly be monitored through evaluations of annual wasteshed reports, which include information on the programs being implemented by affected local governments and service providers.

Requirement

Oregon law requires DEQ to review new rules within five years after EQC adopts them. The law also exempts some rules from review. DEQ determined whether the rules described in this report are subject to the five-year review based on its analysis on the law in effect when EQC adopted these rules.

Exemption from five-year rule review

The Administrative Procedures Act exempts all but the new proposed rules OAR 340-090-0041, 340-090-0042, and 340-90-0068, because the other proposed rules either amend or repeal an existing rule. ORS 183.405(4).

Five-year rule review required

No later than Jan. 18, 2022, DEQ will review the newly adopted rules for which ORS 183.405 (1) requires review to determine whether:

- The rule has had the intended effect
- The anticipated fiscal impact of the rule was underestimated or overestimated
- Subsequent changes in the law require that the rule be repealed or amended
- There is continued need for the rule.

DEQ will use “available information” to comply with the review requirement allowed under ORS 183.405 (2).

DEPARTMENT OF ENVIRONMENTAL QUALITY

DIVISION 90

RECYCLING AND WASTE REDUCTION

340-090-0005

Purpose

~~The purpose of these rules is to~~ These rules 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. ~~These rules describe the standards for local recycling programs, assure measurable recovery rates, and establish standards for used oil recycling signs.~~ The rules are adopted under ~~pursuant to~~ 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.

Stat. Auth.: ~~ORS 459A.025~~, ORS 459.045, 459A.025 & ORS 468.020

Stats. Implemented: ORS 459A.005, ORS 459A.007, ORS 459A.010, ORS 459A.025 & ORS 459A.575

Hist.: DEQ 26-1984, f. & ef. 12-26-84; DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93); Renumbered from 340-060-0005

340-090-0010

Definitions

The definitions in this rule apply to OAR Chapter 340, Divisions 90 and 91. As used in these Divisions 90 and 91 unless otherwise specified:

(1) "Affected-~~Person~~ 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~~ 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~~ 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, 2022, 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.

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

(54) "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. ~~but does not include manufacturing activities. Business, manufacturing or processing activities in residential dwellings are also not included.~~

~~(5) "Commission" means the Environmental Quality Commission.~~

(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~~ newsprint" means a person who uses newsprint in a commercial or government printing or publishing operation.

(8) ~~"Department"~~ "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~~ 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, composing 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~~12~~) "Energy-~~Recovery~~ 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~~13~~) "Franchise" includes a franchise, certificate, contract or license issued by a local government unit authorizing a person to provide solid waste management services.

(18~~14~~) "Generator" means a person who last uses a material and makes it available for disposal or recycling.

(19~~15~~) "Glass-~~Container Manufacturer~~ 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~~16~~) "Industrial-~~Waste~~ 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~~17~~) "Land-~~Disposal Site~~ 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.

(2418) "Local-~~Government Unit~~ 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, ~~Indian-tribal~~ tribal reservations, and ~~Metropolitan Service Districts~~ 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 ~~shall~~ must be considered as only those areas where the county directly regulates solid waste collection.

(2549) "Material-~~Recovery~~ recovery" means any process of obtaining from solid waste, by presegregation or otherwise, materials ~~which~~ that still have useful physical or chemical properties and can be reused, recycled or composted for some purpose.

(2620) "Metropolitan-~~Service District~~ 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.

(2724) "Multi-~~Family~~ family" means dwellings of five or more units.

(2822) "Newsprint" means paper meeting the specifications for Standard Newsprint Paper and Roto Newsprint Paper as set forth in the 2016 HTSA Supplement ~~current~~ edition of the *Harmonized Tariff Schedule of the United States* for such products. (See Figure 1.)

(2923) "On-route collection ~~Route Collection~~" means pick up of source separated recyclable material from the generator at the place of generation.

(3024) "On-site collection ~~Site Collection~~" has the same meaning as on-route collection.

(3125) "Opportunity to-~~Reeyele~~ recycle" means those activities described in OAR 340-090-0020, 340-090-0030, 340-090-0040, 340-090-0041, 340-090-0042, ~~and~~ 340-090-0050 and 340-090-0080.

(3226) "Permit" means a document issued by ~~the Department,~~ DEQ bearing the signature of the director or the director's ~~Director or the Director's~~ authorized representative ~~which~~ 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~~²⁷) "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 ~~any~~ other legal entity.

(~~34~~²⁸) "Post-~~consumer waste~~~~Consumer Waste~~" means a finished material ~~that~~^{which} 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~~²⁹) "Principal ~~recyclable material~~~~Recyclable Material~~" means material ~~that~~^{which} is a recyclable material at some place where the opportunity to recycle is required in a wasteshed and is identified by the ~~Commission~~^{EQC} in OAR 340-090-0070.

(~~36~~³⁰) "Recyclable ~~Material~~~~material~~" means any 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.

(~~37~~³¹) "Recycled-~~content newsprint~~~~Content Newsprint~~" means newsprint that includes post-consumer waste paper.

(~~38~~³²) "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.

(~~39~~³³) "Recycling-~~Setout~~^{setout}" means any amount of source-separated recyclable material set out at or near a residential dwelling for collection by the recycling collection service provider.

(~~40~~³⁴) "Residential" means single family dwellings and multi-family dwellings having four or ~~less~~^{fewer} units.

(~~41~~³⁵) "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.

(~~42~~³⁶) "Solid-~~Waste~~^{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 ~~the~~ growing or harvesting ~~of~~ crops and ~~the~~ raising ~~of~~ fowls or animals, provided the materials are used at or below agronomic application rates.

(~~43~~37) "Solid ~~Waste Management~~ waste management" means: preventing or reducing ~~prevention or reduction of~~ solid waste; managing ~~management of~~ 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.

(~~44~~38) "Source ~~Separate~~ separate" means that the person who last uses recyclable material separates the recyclable material from solid waste.

(45) "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.

(46) "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."

(~~47~~39) "Urbanized ~~Area~~ 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~~ 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.

(~~48~~40) "Waste ~~Prevention~~ prevention" means ~~to reduce~~ 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~~ prevention" does not include reuse, recycling or composting.

(49) "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).

(~~50~~41) "Wasteshed" means the areas of the state of Oregon as defined in ORS 459A.010 and OAR 340-090-0050.

(~~51~~42) "Yard ~~Debris~~ debris" means vegetative and woody material generated from residential property or from commercial landscaping activities. This includes ~~Includes~~ grass clippings, leaves, hedge trimmings and similar vegetative waste; but does not include stumps or similar bulky wood materials.

State of Oregon Department of Environmental Quality

OAR 340-090-0010 – Figure 1

Harmonized Tariff Schedule of the United States (2016) Supplement

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.

Statistical Note

1. The term "standard newsprint paper" covers printing papers of heading 4801 which conform to the following specifications:

Weight: Not less than 46.3 g/m² nor more than 57 g/m².

Size: Rolls not less than 33 cm wide and not less than 71 cm in diameter; sheets not less than 51 cm by 76 cm.

Thickness: Not more than 0.11 mm.

Sizing: Time of transudation of water shall be not more than 10 seconds by the ground glass method.

Ash Content: Not more than 6.5 percent.

Color and Finish: White; or tinted shades of pink, peach or green in rolls; not more than 50 percent gloss when tested with the Ingersoll glarimeter.

~~[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]~~ [\[ED. NOTE: Figures referenced are not included in rule text. Click here for PDF copy of Figure.\]](#)

Stat. Auth.: ORS 459.045, ORS 459A.100 - ORS 459A.120 & ORS 468.020

Stats. Implemented: ~~ORS 459A.005~~ & ORS 459A

Hist.: DEQ 26-1984, f. & ef. 12-26-84; DEQ 7-1987, f. & ef. 3-18-87; DEQ 5-1988, f. & cert. ef. 2-2-88; DEQ 1-1989, f. & cert. ef. 1-27-89; DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93); Renumbered from 340-60-010; DEQ 10-1994, f. & cert. ef. 5-4-94; DEQ 27-1998, f. & cert. ef. 11-13-98

340-090-0015

Scope and Applicability

(1) OAR Chapter 340, Division 90 describes the requirements for waste reduction and recycling programs for residential and commercial solid wastes but does not include industrial waste. ~~Division 90 also includes the requirements for oil recycling signs at retail establishments.~~

(2) The requirements in OAR Chapter 340, Division 90 apply to ~~cities, counties and metropolitan service districts~~ 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 ~~pursuant to~~ the authorities in ORS Chapter 459 and 459A and should be used in conjunction with ~~these~~ the laws of the State of Oregon.

Stat. Auth.: ~~ORS 459A.025~~, ORS 459.045, ORS 459A.025, & ORS 468.020

Stats. Implemented: ORS 459A.005, ORS 459A.010, ORS 459A.020, ORS 459A.025, ORS 459A.030, ORS 459A.035, ORS 459A.040, ORS 459A.050, ORS 459A.055, ORS 459A.060, ORS 459A.065, ORS 459A.070, ORS 459A.075, ORS 459A.080, ORS 459A.085, ORS 459A.100, ORS 459A.110, ORS 459A.115 & ORS 459A.120

Hist.: DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93)

340-090-0020

Opportunity to Recycle

The ~~Opportunity to Recycle~~ opportunity to recycle as set forth in ORS 459A.005, 459A.007, 459A.008 and 459A.010, includes at a minimum the requirements ~~as~~ described in OAR 340-090-0030, 340-090-0040, 340-090-0041, 340-090-0042, and 340-090-0050. The appropriate city, county, or metropolitan service district, may request approval of an alternative program ~~method~~

for meeting the requirements of the [opportunity to recycle under OAR 340-090-0080](#).
~~Opportunity to Recycle in accordance with the provisions of OAR 340-090-0080.~~

Stat. Auth.: ORS 459A.025, ORS 459.045 & ORS 468.020

Stats. Implemented: ORS 459A.005, [ORS 459A.007](#), & [ORS 459A.008](#).

Hist.: DEQ 26-1984, f. & ef. 12-26-84; DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93); Renumbered from 340-060-0020

340-090-0030

General Requirements

(1) The city, county, or metropolitan service district responsible for solid waste management ~~shall~~[must](#) insure that a place for collecting source separated recyclable materials 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.

(2) Each city with a population of 4,000 or more or, where applicable, within the urban growth boundary established by a metropolitan service district, ~~shall~~[must](#) provide on-route ~~collection service~~[collection service](#) for source-separated recyclable materials at least once a month for all collection service customers within the city limits and the county ~~shall~~[must](#) provide that service to the collection service customers within the urban growth boundary but outside of the city limits.

(3) The city or county responsible for solid waste management ~~shall~~[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 ~~shall~~[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 ~~ly~~ [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 to call for information about depot locations and ~~collection service~~ [collection service](#) as appropriate.

(b) Existing residential and commercial collection service customers ~~shall~~ 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 ~~shall~~ 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 ~~shall~~ 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.

Stat. Auth.: ORS 459.045, ORS 459A.100 - ORS 459A.120 & ORS 468.020

Stats. Implemented: ORS 459A.005 & ORS 459A.007~~10~~

Hist.: DEQ 26-1984, f. & ef. 12-26-84; DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93); Renumbered from 340-060-0020 & 340-060-0040; DEQ 10-1994, f. & cert. ef. 5-4-94

340-090-0040

Local Government Recycling Program Elements

~~In addition to the minimum requirements in OAR 340-090-0030 each city with a population of 4,000 or more and any county responsible for the area between the city limits and the urban growth boundary shall implement additional recycling program requirements selected from section (3) of this rule in accordance with the following requirements:~~

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

(a) For cities within a metropolitan service district:

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) For cities with a population of more than 10,000 that are located more than 150 miles from the City of Portland:

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

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

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

(f) For cities with a population of more than 50,000 that are located 150 miles or less from the City of Portland:

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

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

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

(g) A local government that is not subject to ORS 459.007(6) or (7) or OAR 340-090-0042 may substitute for one recycling program element set forth under section (3) of this rule:

(A) The waste prevention and reuse program element set forth under OAR 340-090-0042(2); and

(B) At least two additional waste prevention and reuse program elements set forth under OAR 340-090-0042.

(2)(a) For determining a city's distance in miles from the City of Portland under section (1) of this rule, DEQ must use the current mileage table or comparable current mileage statistics from the Oregon Department of Transportation.

(b) The effective date of section (1) of this rule is January 1, 2018. Until that date, in addition to the minimum requirements in OAR 340-090-0030, each city with a population of 4,000 or more and any county responsible for the area between the city limits and the urban growth boundary of that city must implement additional recycling program requirements selected from section (3) of this rule in accordance with the following criteria:

(A~~1~~) Each city with a population of at least 4,000 but not more than 10,000 that is not within a metropolitan service district ~~Metropolitan Service District~~ and any county responsible for the area between the city limits and the urban growth boundary of ~~such~~ that city ~~shall~~ must implement one of the following, except where otherwise indicated:

(i~~a~~) Implement subsections (3)(a), (b), and (c) of this rule; ~~or~~

(ii~~b~~) Select and implement at least three program elements listed in section (3) of this rule; or

(iii)e) Implement an alternative program ~~method~~ that is approved by ~~the Department~~ DEQ in ~~accordance with the requirements of~~ under OAR 340-090-0080.

(2B) Each city with a population of more than 10,000 or that is within a metropolitan service district ~~Metropolitan Service District~~ and any county responsible for the area within a metropolitan service district ~~Metropolitan Service District~~ or the area between the city limits and the urban growth boundary of ~~such~~ that city ~~shall~~ must implement one of the following, except where otherwise indicated:

(ia) Implement subsections (3)(a), (b), and (c) of this rule and one additional element in section (3) of this rule; ~~or~~

(iib) Select and implement at least five program elements listed in section (3) of this rule; or

(iii)e) Implement an alternative program ~~method~~ that is approved by ~~the Department~~ in ~~accordance with the requirements of~~ DEQ under OAR 340-090-0080.

(3) Program elements:

(a) Deliver to each residential collection service customer at least one durable recycling container. For purposes of this program element, a durable container ~~shall~~ 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; ~~is easily handled by the resident and the collector;~~

(b) Provide on-route collection at least once each week of source separated recyclable materials, excluding yard debris, to residential collection service customers provided on the same day that solid waste is collected from each customer;

(c) Provide a recycling education and promotion program that is expanded from the minimum requirements described in OAR 340-090-0030(3), and supports the management of solid waste in the following priority order: first preventing the generation of waste, then reusing materials, then recycling materials, then composting materials, then recovering energy, and finally safely disposing of solid waste that cannot be prevented, reused, recycled, composted or used for energy recovery.

(A) ~~The expanded program:~~ Each local government's expanded program must satisfy the applicable requirements of ORS 459A.008 and OAR 340-090-0041 and:

(i) ~~Shall~~ Must inform all solid waste generators of how to prevent waste; and how to reuse, recycle and compost material;

(ii) ~~Shall~~ Must inform all solid waste generators of the manner and benefits of preventing waste; and how to reuse, recycle, and compost materials; ~~reusing, recycling and composting materials;~~

(iii) ~~Shall~~ Must promote the use of ~~available~~ 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

(iv) ~~Shall~~ 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 ~~shall~~ must encourage each commercial generator of solid waste collection customer to ~~have a goal~~ strive to achieve ~~50-55~~ percent recovery from its solid waste stream by the year ~~2009~~ 2025.

(B) The expanded program ~~shall~~ must be provided in one of the two following ways:

(i) A "Specified Action" program, which ~~shall~~ must include at a minimum the following elements:

(I) All new residential and commercial collection service customers ~~shall~~ 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; ~~source separation of materials for recycling should be done;~~

(II) Existing residential and commercial collection service customers ~~shall~~ 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 ~~shall~~ must be provided directly to the collection service customer in written form and ~~shall~~ 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. ~~or~~

(ii) Development and implementation of an "Expanded Education and Promotion Plan." The Plan ~~shall~~ 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;~~which shall be implemented;~~

(IV) Include development and implementation of a contamination reduction education plan that satisfies the requirements of OAR 340-090-0041; and

~~(IV)~~ Be submitted to ~~the Department~~ DEQ:

(V)-(a)~~(i)~~ By February 28 of the first year that the Plan is to be in effect; or

(VI)-(b)~~(ii)~~ 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 ~~shall~~must meet the following requirements:

(A) Collect at least four principal recyclable materials or the number of materials required to be collected under the residential on-route collection program, whichever is less;

(B) Provide educational and promotional information directed toward the residents of multi-family dwelling units periodically as necessary to be effective in reaching new residents and reminding existing residents of the opportunity to recycle including the types of materials to be recycled and the method for properly preparing those materials.

(e) Establish and implement an effective residential yard debris program to collect and compost~~for the collection and composting of~~ residential yard debris. The program ~~shall~~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~~System~~ of residential yard debris collection depots, for producing~~the production of~~ 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, ~~and open to the public at least once a week.~~

(f) Taking into account material generation rates, establish and implement regular, on-site collection of source-separated principal recyclable materials from commercial generators entities, taking into consideration how the generator could achieve 50-55 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) ~~Shall~~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) ~~Shall~~Must include an education and promotion program ~~that~~which:

(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) ~~Shall~~Must be conducted to effectively promote the commercial recycling program to commercial generators of solid waste;

(D) ~~Shall~~Must encourage each commercial generators ~~of solid waste~~ to strive to achieve 50-55 percent recovery from ~~their~~its solid waste stream by the year ~~2009~~ 2025;

(E) Should provide other elements including but not limited to:

(i) Provision of waste assessments to businesses;

(ii) Provision of recycling receptacles to businesses at no or low cost;

(iii) Waste prevention and recycling recognition programs. Local governments are encouraged to involve local business organizations in publicly recognizing outstanding waste prevention and recycling efforts by commercial generators of solid waste. The recognition may include awards designed to provide additional incentives to increase waste prevention and recycling efforts.

(g) Establish depots for recycling collection of all principal recyclable materials listed in OAR 340-090-0070, and where feasible, additional materials, except that used oil need not be collected at the depot if another location within the local government unit will accept used oil for recycling. This program ~~shall~~must provide at least one (1) recycling depot in addition to the depot(s), if any, required by OAR 340-090-0030(1). ~~and shall result in at least one (1) conveniently located depot for every 25,000 population. 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 ~~shall~~must include promotion ~~and-or~~ education that maximizes the use of the expanded depot program. The depots ~~shall~~must operate as follows:

(A) Have regular and convenient hours for residential generators of solid waste; and

(B) Be open ~~Open-on the~~ at least one weekend days each week; and

(C) Be established in location(s) that are ~~such that it is~~ convenient for residential generators of solid waste to use ~~the depot(s)~~.

(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, ~~shall~~ 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; ~~and~~

(B) Rates ~~shall~~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; ~~and~~

(C) Rates, as calculated on a per pound disposed basis, ~~shall~~may not decrease per pound with the increasing size of the container or the number of containers; ~~and~~

(D) Rates per container service ~~shall~~must be established such that each additional container beyond the first container for each residential unit ~~shall~~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, ~~shall be established by~~ the city or county develops through ~~through development of~~ 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, ~~paper that is not recyclable because of contamination,~~ 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 ~~Department~~ 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) ~~To charity for human consumption~~ Through food rescue;

(ii) Or if charity channels are not available, to farmers for animal feed.

(B) A commercial composting program ~~shall~~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 ~~and institutional~~ generators within the local government unit, such as ~~(e.g.,~~ 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 ~~materials~~ wastes, is required from commercial ~~and institutional~~ generators on an appropriate schedule.

(C) Any composting facility to which collected compostable ~~material~~ waste is taken ~~shall~~must comply with ~~Department~~ DEQ composting facility rules;

(D) On-site commercial ~~and institutional~~ composting should be considered if the location is appropriate, space is available and the entity ~~is in compliance~~ complies with ~~Department~~ DEQ composting facility rules and local government regulations.

(j) A commercial recycling program that requires commercial generators of solid waste that generate large amounts of recyclable materials to source-separate recyclable materials.

(A) For subsection (3)(j) of this rule, “large amount commercial generator” means a commercial generator of solid waste that has a service level of four or more cubic yards of solid waste per week at a single site.

(B) A local government must require participation in its commercial recycling program by all large amount commercial generators except for generators exempted under paragraph (3)(j)(F) of this rule.

(C) The local government’s commercial recycling program must include requirements for large amount commercial generators to:

(i) Source-separate recyclable materials for reuse or recycling;

(ii) Self-haul or arrange for collection service of the source separated recyclable materials;

(iii) Provide recycling containers for internal areas where recyclable materials may be collected, stored, or both; and

(iv) Correctly label all interior and exterior containers and post signs where recyclable materials may be collected, stored, or both that identify the materials that the large amount commercial generator must source-separate for reuse or recycling and that provide recycling instructions.

(D) The local government must provide education and promotion that meets at least the minimum requirements described in OAR 340-090-0030(3) for all large amount commercial generators.

(E) To ensure compliance with the requirements in this subsection, the local government must establish a method for identification and monitoring of large amount commercial generators.

(i) If a large amount commercial generator is not in compliance with the requirements of this subsection, then the local government must, at a minimum, notify that large amount commercial generators that it is out of compliance.

(ii) For a noncomplying large amount commercial generator, the local government may also consider a penalty or fine structure that incorporates warning notices, civil injunctions, financial penalties, or criminal prosecutions.

(F) The local government may allow for limited exemptions from the requirements of this subsection for reasons that the local government deems appropriate, such as zoning requirements, lack of sufficient space to provide additional recycling containers, or non-generation of recyclable materials.

(G) The local government may consider certification requirements for self-haulers of source-separated recyclable materials. Those certification requirements may include, but are not limited to, requiring large amount commercial generators to maintain written records demonstrating that all self-hauling activities have been completed in compliance with the requirements of this subsection (3)(j).

(k) A program for monthly or more frequent on-route collection and composting for food waste and, optionally, other compostable waste from residential collection service customers.

(A) The local government must provide education or promotion that meets at least the minimum requirements described in OAR 340-090-0030(3) for all residential collection service customers.

(B) In addition to the requirements of subsection (3)(k)(A) of this rule, the local government's education or promotion to all residential collection service customers must include:

(i) Types of food waste collected;

(ii) The schedule for collection;

(iii) Methods of preparing food waste for collection;

(iv) Explanations of why separating food waste for recovery is necessary; and

(v) Explanations of how to reduce contamination of the food waste recovery stream set out for collection.

(L) A recovery program for construction and demolition debris.

(A) As used in subsection (3)(L) of this rule, "construction and demolition debris" means waste resulting from the construction, renovation, repair, or demolition of buildings or other structures

that contain recyclable material. “Construction and demolition debris” does not include putrescible wastes, hazardous waste, or asbestos.

(B) The recovery program for construction and demolition debris must:

(i) Require that construction and demolition debris be source-separated at the site of generation or be sent to a material recovery facility for processing and recovery; and

(ii) Include an education or promotion program for developers, contractors, and residential owners that provides strategies:

(I) To reduce waste during preconstruction planning and in building construction, renovation and demolition phases; and

(II) To direct waste to reuse and material recovery facilities.

(C) Generators subject to this program include any person who:

(i) Generates and self-hauls a minimum of six cubic yards of construction and demolition debris at any time; or

(ii) Generates and arranges for collection service of a minimum of ten cubic yards of construction and demolition debris at any time.

(D) The local government must provide education or promotion that meets at least the minimum requirements described in OAR 340-090-0030(3) for all generators of construction and demolition debris that are subject to the recovery program for that debris.

(m) A food waste collection program requiring nonresidential generators that generate large amounts of food waste to source-separate the food waste for recovery.

(A) For subsection (3)(m) of this rule:

(i) “Nonresidential generator” means a commercial generator or other generator but not a residential or multi-family generator; and

(ii) “Large amount nonresidential generator” means a nonresidential generator that disposes of more than fifty tons of food waste annually.

(B) The local government must require participation in its food waste collection program by all large amount nonresidential generators except for generators exempted under paragraph (3)(m)(F) of this rule.

(C) The local government’s food waste collection program must include requirements for large amount nonresidential generators to:

(i) Cover, at a minimum, food waste that is not packaged and for which final disposal by the large amount nonresidential generator is controlled by the nonresidential generator's employees or agents;

(ii) Source-separate food waste for donation or food waste collection;

(iii) Self-haul or arrange for collection service of the food waste;

(iv) Provide containers for internal areas where food waste may be collected, stored, or both; and

(v) Correctly label all interior and exterior containers and post signs and instructions where food waste is collected, stored, or both, that identifies the types of food waste the large amount nonresidential generator must source-separate for donation or food waste collection.

(D) The local government must provide education or promotion that meets at least the minimum requirements described in OAR 340-090-0030(3) for all large amount nonresidential generators.

(E) To ensure compliance with the requirements in this subsection, the local government must establish a method for identification and monitoring of large amount nonresidential generators.

(i) If a large amount nonresidential generator is not in compliance with the requirements of this subsection, then the local government must, at a minimum, notify that large amount nonresidential generator that it is out of compliance.

(ii) For a noncomplying large amount nonresidential generator, a local government may also consider a penalty or fine structure that incorporates warning notices, civil injunctions, financial penalties, or criminal prosecutions.

(F) The local government may allow for limited exemptions from the requirements of this subsection for reasons that the local government deems appropriate, such as zoning requirements or lack of sufficient space to provide additional food waste containers.

(G) The local government may consider certification requirements for self-haulers of food waste. Those certification requirements may include, but are not limited to, requiring large amount nonresidential generators of food waste to maintain written records demonstrating that all self-hauling activities have been completed in compliance with the requirements of this subsection (3)(m).

(4) In addition to the requirements in sections (1) and (2) of this rule, each city with a population of 4,000 or more and any county responsible for the area within a metropolitan service district ~~Metropolitan Service District~~ or the area between the city limits and the urban growth boundary of ~~such that~~ city in any of the following wastesheds ~~shall~~ 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.

~~(6) Each wasteshed shall prepare an individualized plan that identifies policies or programs specific to the wasteshed's local conditions to achieve the required recovery goals. The plan shall be available to the department upon the department's request. The plan shall be updated by December 31, 2006 and again by December 31, 2010. Clackamas, Multnomah and Washington Counties, in aggregate, may meet this requirement through the programs under ORS 459.340, 459.345, 459.350, and 459A.050.~~

~~(7) If a wasteshed does not achieve its 2005 or 2009 waste recovery goal, the wasteshed shall conduct a technical review of existing policies or programs and determine revisions to meet the recovery goal. The department shall, upon the request of the wasteshed, assist in the technical review. The wasteshed may request, and may assist the department in conducting, a technical review to determine whether the wasteshed goal is valid.~~

[ED. NOTE: Documents referenced in the rule are not published with this text. They are available from the agency.]

Stat. Auth.: ORS 459.045, [ORS 459A.025](#), [ORS 459A.100](#) - 459A.120 & [ORS 468.020](#)
Stats. Implemented: ORS 459A.005, [ORS 459A.007](#), [ORS 459A.008](#), [ORS 459A.010](#) & [ORS 459A.665](#)

Hist.: DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93); DEQ 10-1994, f. & cert. ef. 5-4-94; DEQ 9-1996, f. & cert. ef. 7-10-96; DEQ 27-1998, f. & cert. ef. 11-13-98; DEQ 8-2005, f. & cert. ef. 7-14-05

340-090-0041

Contamination Reduction Education Plan

(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.

Stat.Auth: ORS 459.045, ORS 459A.025, & 468.020

Stats.Implemented: ORS 459A.005, ORS 459A.007, ORS 459A.008, ORS 459A.010 & ORS 459A.050

Hist.:

340-090-0042

Waste Prevention and Reuse Programs

(1) Effective January 1, 2018, and 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 would 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 targeted groups or classes of students;

(B) Describes how the program will engage the targeted 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 targeted 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 targeted 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 watershed funding or for the provision of city, county, or watershed 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 watershed 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 watershed 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 watershed 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.

Stat.Auth: ORS 459.045, ORS 459A.025 & ORS 468.020.

Stats.Implemented: ORS 459A.007, ORS 459A.010 & ORS 459A.050

Hist.:

~~340-090-0045 Wasteshed Programs for Two Percent Recovery Rate Credit~~

~~A wasteshed may implement one or more of the three following programs. For each program implemented, the wasteshed shall receive a two percent credit on the wasteshed's recovery rate, pursuant to OAR 340-090-0060(3).~~

~~(1) Waste Prevention Program. This program shall include:~~

~~(a) A wasteshed wide program to provide general educational materials to residents about waste prevention and examples of things residents can do to prevent generation of waste; and~~

~~(b) Two of the following:~~

~~(A) Reduce the wasteshed annual per capita waste generation by two percent each year;~~

~~(B) Conduct a waste prevention media promotion campaign targeted at residential generators;~~

~~(C) Expand the education program in primary and secondary schools to include waste prevention and reuse;~~

~~(D) Household hazardous waste prevention education program;~~

~~(E) Local governments will conduct waste prevention assessments of their operations, or provide waste prevention assessments for businesses and institutions and document any waste prevention measures implemented;~~

~~(F) Conduct a material-specific waste prevention campaign for businesses throughout the watershed;~~

~~(G) Implement a Resource Efficiency Model City program;~~

~~(H) Conduct a material-specific waste prevention education campaign that focuses on a toxic or energy-intensive material;~~

~~(I) Local governments will implement programs to buy recycled-content products for their operations, consistent with procurement guidelines issued by the United States Environmental Protection Agency; or~~

~~(J) Local governments will implement programs for new construction and remodeling of local government buildings that incorporate recycled-content materials, energy conservation features, water conservation and stormwater management features and other elements to increase the resource efficiency and lower the environmental impact of these buildings.~~

~~(2) Reuse Program. This program shall include:~~

~~(a) A promotion and education campaign on the benefits and opportunities for reuse available to the public in the watershed; and~~

~~(b) Two of the following:~~

~~(A) Operate construction and demolition debris salvage programs with depots;~~

~~(B) Promote reuse programs offered by local resale businesses, thrift stores and equipment vendors, such as computer and photocopier refurbishers, to the public and businesses;~~

~~(C) Identify and promote local businesses that will take back white goods for refurbishing and resale to the public;~~

~~(D) Develop and promote use of waste exchange programs for the public and private sectors;~~

~~(E) Site accommodation for recovery of reusable material at transfer stations and landfills; or~~

~~(F) Sidewalk pickup or community fair program in cities over 4,000 population in the watershed.~~

~~(3) Residential Composting Program. This program shall include:~~

~~(a) Promotion of the residential composting program through public information and demonstration site or sites; and~~

~~(b) Two of the following:~~

~~(A) A program to encourage leaving grass clippings generated by lawn mowing on-site rather than bagging the clippings for disposal or composting;~~

~~(B) A composting program for local schools;~~

~~(C) An increase in availability of compost bins for residents; or~~

~~(D) Another program increasing a household's ability to manage yard trimmings or food wastes.~~

~~(4) A wasteshed may receive, upon application to the Department of Environmental Quality, a recovery credit greater than two percent for a residential composting program. To receive the recovery credit under this paragraph, the wasteshed must provide quantitatively verifiable documentation of residential composting tonnage to the department. The documentation must show that more than two percent of the wasteshed's generated tonnage of solid waste is diverted from the wastestream by residential composting.~~

Stat. Auth.: ~~ORS 459A.025 & 468.020~~

Stats. Implemented: ~~ORS 459A.010~~

Hist.: ~~DEQ 27-1998, f. & cert. ef. 11-13-98; DEQ 8-2005, f. & cert. ef. 7-14-05~~

340-090-0050

Wasteshed Designation and Recovery Goals ~~Rates~~

~~The purpose of this rule is to define the wastesheds as designated in ORS 459A.010, and state recovery rates that each wasteshed shall achieve and maintain.~~ This rule defines the wastesheds, as designated in ORS 459A.010, and states the recovery goal for each wasteshed to achieve and maintain:

(1) Baker wasteshed is all of the area within Baker County and ~~shall achieve~~ has a recovery rate goal for calendar year ~~2005-2025~~ and subsequent years of 25 percent.

(2) Benton wasteshed is all of the area within Benton County excluding the City of Albany and ~~shall achieve~~ has a recovery rate goal ~~of 45 percent for calendar years 2005 through 2008 and 50 percent~~ for calendar year ~~2009-2025~~ and subsequent years of 44 percent.

(3) Clatsop wasteshed is all of the area within Clatsop County and ~~shall achieve~~ has a recovery rate goal for calendar year ~~2005-2025~~ and subsequent years of ~~25-53~~ percent.

(4) Columbia wasteshed is all of the area within Columbia County and ~~shall achieve~~ has a recovery rate goal ~~of 28 percent for calendar years 2005 through 2008 and 32 percent~~ for calendar year ~~2009-2025~~ and subsequent years of 45 percent.

(5) Coos wasteshed is all of the area within Coos County and ~~shall achieve~~ has a recovery rate goal for calendar year ~~2005-2025~~ and subsequent years of 30 percent.

- (6) Crook wasteshed is all of the area within Crook County and ~~shall achieve~~ has a recovery rate goal for calendar year ~~2005-2025~~ and subsequent years of 20 percent.
- (7) Curry wasteshed is all of the area within Curry County and ~~shall achieve~~ has ~~and maintain~~ a recovery rate goal for calendar year ~~2005-2025~~ and subsequent years of 30 percent.
- (8) Deschutes wasteshed is all of the area within Deschutes County and ~~shall achieve~~ has a recovery rate goal ~~of 32 percent for calendar years 2005 through 2008 and 45 percent for~~ calendar year ~~2009-2025~~ and subsequent years of 45 percent.
- (9) Douglas wasteshed is all of the area within Douglas County and ~~shall achieve~~ has a recovery rate goal ~~of 35 percent for calendar years 2005 through 2008 and 40 percent for~~ calendar year ~~2009-2025~~ and subsequent years of 34 percent.
- (10) Gilliam wasteshed is all of the area within Gilliam County and ~~shall achieve~~ has a recovery rate goal for calendar year ~~2005-2025~~ and subsequent years of ~~20~~25 percent.
- (11) Grant wasteshed is all of the area within Grant County and ~~shall achieve~~ has a recovery rate goal for calendar year ~~2005-2025~~ and subsequent years of ~~19~~25 percent.
- (12) Harney wasteshed is all of the area within Harney County and ~~shall achieve~~ has a recovery rate goal ~~of 30 percent for calendar years 2005 through 2008 and 40 percent for~~ calendar year ~~2009-2025~~ and subsequent years of 25 percent.
- (13) Hood River wasteshed is all of the area within Hood River County and ~~shall achieve~~ has a recovery rate goal for calendar year ~~2005-2025~~ and subsequent years of ~~25~~35 percent.
- (14) Jackson wasteshed is all of the area within Jackson County and ~~shall achieve~~ has a recovery rate goal for calendar year ~~2005-2025~~ and subsequent years of ~~40~~25 percent.
- (15) Jefferson wasteshed is all of the area within Jefferson County and ~~shall achieve~~ has a recovery rate goal for calendar year ~~2005-2025~~ and subsequent years of ~~25~~32 percent.
- (16) Josephine wasteshed is all of the area within Josephine County and ~~shall achieve~~ has a recovery rate goal for calendar year ~~2005-2025~~ and subsequent years of ~~38~~20 percent.
- (17) Klamath wasteshed is all of the area within Klamath County and ~~shall achieve~~ has a recovery rate goal ~~of 15 percent for calendar years 2005 through 2008 and 20 percent for~~ calendar year ~~2009-2025~~ and subsequent years of 20 percent.
- (18) Lake wasteshed is all of the area within Lake County and ~~shall achieve~~ has a recovery rate goal ~~of 8 percent for calendar years 2005 through 2008 and 10 percent for~~ calendar year ~~2009-2025~~ and subsequent years of 15 percent.

(19) Lane watershed is all of the area within Lane County and ~~shall achieve~~ has a recovery rate goal of 45 percent for calendar years 2005 through 2008 and 54 percent for calendar year ~~2009~~2025 and subsequent years of 63 percent.

(20) Lincoln watershed is all of the area within Lincoln County and ~~shall achieve~~ has a recovery rate goal of 19 percent for calendar years 2005 through 2008 and 20 percent for calendar year ~~2009~~2025 and subsequent years of 37 percent.

(21) Linn watershed is all of the area within Linn County, including the cCities of Albany and Mill City, and excluding the area within the cCities of Gates and ~~the City of~~ Idanha, and ~~shall achieve~~ has a recovery rate goal of 40 percent for calendar year ~~2005~~2025 and subsequent years of 45 percent.

(22) Malheur watershed is all of the area within Malheur County and ~~shall achieve~~ has a recovery rate goal of 21 percent for calendar years 2005 through 2008 and 22 percent for calendar year ~~2009~~2025 and subsequent years of 25 percent.

(23) Marion watershed is all of the area within Marion County and all of the area within the cCities of Gates, Idanha, and the city of Salem excluding the area within West Salem and Mill City and ~~shall achieve~~ has a recovery rate goal of 37 percent for calendar years 2005 through 2008 and 54 percent for calendar year ~~2009~~2025 and subsequent years of 64 percent.

(24) Milton-Freewater watershed is all the area within the urban growth boundary of the City of Milton-Freewater and ~~shall achieve~~ has a recovery rate goal of 22 percent for calendar years 2005 through 2008 and 25 percent for calendar year ~~2009~~2025 and subsequent years of 25 percent.

(25) Morrow watershed is all of the area within Morrow County and ~~shall achieve~~ has a recovery rate goal of 18 percent for calendar years 2005 through 2008 and 20 percent for calendar year ~~2009~~2025 and subsequent years of 20 percent.

(26) Polk watershed is all the area within Polk County including the area within West Salem and excluding all the cCity of Willamina and ~~shall achieve~~ has a recovery rate goal of 30 percent for calendar years 2005 through 2008 and 35 percent for calendar year ~~2009~~2025 and subsequent years of 48 percent.

(27) Sherman watershed is all of the area within Sherman County and ~~shall achieve~~ has a recovery rate goal for calendar year ~~2005~~2025 and subsequent years of 20 percent.

(28) Tillamook watershed is all of the area within Tillamook County and ~~shall achieve~~ has a recovery rate goal for calendar year ~~2005~~2025 and subsequent years of ~~30~~37 percent.

(29) Umatilla watershed is all of the area within Umatilla County excluding the area within the urban growth boundary of the cCity of Milton-Freewater and ~~shall achieve~~ has a recovery rate goal for calendar year ~~2005~~2025 and subsequent years of 20 percent.

(30) Union watershed is all of the area within Union County and ~~shall achieve~~ has a recovery rate goal for calendar year ~~2005~~2025 and subsequent years of 25 percent.

(31) Wallowa watershed is all of the area within Wallowa County and ~~shall achieve~~ has a recovery rate goal for calendar year ~~2005~~2025 and subsequent years of ~~20~~25 percent.

(32) Wasco watershed is all of the area in Wasco County and ~~shall achieve~~ has a recovery rate goal for calendar year ~~2005~~2025 and subsequent years of 35 percent.

(33) Wheeler watershed is all of the area within Wheeler County and ~~shall achieve~~ has a recovery rate goal for calendar year ~~2005~~2025 and subsequent years of 20 percent.

(34) Yamhill watershed is all of the area within Yamhill County and all of the area within the cCity of Willamina and ~~shall achieve~~ has a recovery rate goal ~~of 39 percent for calendar years 2005 through 2008 and 45 percent~~ for calendar year ~~2009~~2025 and subsequent years ~~of 45 percent~~.

(35) Clackamas, Multnomah and Washington Counties, in aggregate, as a single watershed, ~~shall achieve~~ have a recovery rate goal ~~of 62 percent for calendar years 2005 through 2008 and 64 percent~~ for calendar year ~~2009~~2025 and subsequent years ~~of 64 percent~~.

Stat. Auth.: ORS 459A.025, ORS 459.045 & ORS 468.020

Stats. Implemented: ORS 459A.010

Hist.: DEQ 26-1984, f. & ef. 12-26-84; DEQ 1-1986, f. & ef. 2-12-86; DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93); Renumbered from 340-060-0025; DEQ 27-1998, f. & cert. ef. 11-13-98; DEQ 8-2005, f. & cert. ef. 7-14-05

340-090-0060

Determination of Watershed and Overall Statewide Recovery Rates

(1) DEQ may calculate recovery rates for the watersheds listed ~~Recovery rates required~~ in OAR 340-090-0050 ~~shall be determined by the Department~~ by dividing the total weight of material recovered by the sum of the total weight of the material recovered plus the total weight of municipal solid waste disposed that was generated in each respective watershed.

(2) Recovery rates ~~shall~~must include the following:

(a) All materials collected for recycling, both source separated or sorted from solid waste, including yard debris;

(b) Beverage containers collected under the requirements of ORS 459A.700 - 459A.740;

(c) Notwithstanding the foregoing, no material shall be counted toward the recovery rate if it is disposed of.

(3) As used in this rule, “viable market” means a person located within a wasteshed that will pay for the material or accept the material free of charge or a person located outside a wasteshed that will pay a price for the material that, at minimum, covers the cost of transportation of the material.

~~Recovery rates may include a credit for each program listed in OAR 340-090-0045 for a year for which a wasteshed certifies to the Department that the program or programs have been implemented. No credit shall be received for a calendar year prior to 1997. In order for the wasteshed to receive a credit:~~

~~(a) All required components of a program must be in place and implemented in the geographic area(s) required by OAR 340-090-0045 during the entire calendar year for which the credit is claimed. If the chosen program component is seasonal, the component must be provided during the appropriate season(s) of the subject calendar year;~~

~~(b) On behalf of a wasteshed the county shall submit a report to the Department summarizing how each chosen program was implemented in the wasteshed for the calendar year for which a credit is claimed. The information shall be submitted, on a form provided by the Department, by February 28 of the year subsequent to that calendar year. The report shall include a certification from the county that the chosen program(s) met the requirements in OAR 340-090-0045.~~

~~(c) The Metropolitan Service District on behalf of Multnomah, Clackamas, and Washington counties and the cities therein, shall submit a report to the Department summarizing how each chosen program was implemented in the wasteshed for the calendar year for which a credit is claimed. The information shall be submitted to the Department, on a form provided by the Department, by February 28 of the year subsequent to that calendar year. The report shall include a certification from the Metropolitan Service District that the chosen program(s) met the requirements in OAR 340-090-0045;~~

(4) Recovery rates may include the composting or burning for energy recovery of the material collected under sections (1) and (2) of this rule when there is not a viable market for recycling that material, provided that the following conditions are met:

(a) If the material is burned for energy recovery and then included in the recovery rate for Clackamas, Multnomah or Washington Counties in aggregate or for Benton, Lane, Linn, Marion, Polk or Yamhill County wastesheds, the same material, when burned as part of mixed solid waste, may be included in the recovery rate for a wasteshed that burns mixed solid waste for energy recovery. The amount of the material within the mixed solid waste that may be included in the recovery rate for energy recovery shall be determined by a waste composition study performed by the wasteshed at least every ~~four~~six years.

(b) Mixtures of materials that are composted or burned for energy recovery shall not be included in the recovery rate if more than half of the mixed materials by weight could have been recycled if properly source-separated; and

(c) A place does not exist within a wasteshed that will pay for the material or accept it for free or a place does not exist outside of the wasteshed that will pay a price for the material that, at minimum, covers the cost of transportation of the material to market; and

(d) The appropriate county or Metropolitan Service District in the report required under OAR 340-090-0100 provides data on the weight, type of material and method of material recovery for material to be counted in the recovery rate under this section and written explanation of the basis for determining that a viable market did not exist for the wasteshed, including markets available within and outside of the wasteshed, transportation distances and costs, and market prices for the material if it were to be recycled as source separated material.

(5) Recovery rates shall not include the following:

(a) Industrial and manufacturing wastes such as boxboard clippings and metal trim that are recycled before becoming part of a product that has entered the wholesale or retail market, or any pre-consumer waste;

(b) Metal demolition debris in which arrangements are made to sell or give the material to processors before demolition such that it does not enter the solid waste stream;

(c) Discarded vehicles or parts of vehicles that do not routinely enter the solid waste stream. Except that, discarded ~~Discarded~~ vehicle parts that are received at recycling drop-off ~~dropoff~~ facilities operated as part of the general solid waste management system are included in ~~not excluded from~~ the recovery rate calculation;

(d) Commercial, industrial and demolition scrap metal, vehicles, major equipment and home or industrial appliances that are handled or processed for use in manufacturing new products and that do not routinely enter the solid waste stream through land disposal facilities, transfer stations, recycling depots or on-route collection programs;

(e) Material recovered for composting or energy recovery from mixed solid waste, except as provided in subsection (2)(a) and section (4) of this rule;

(f) Mixed solid waste burned for energy recovery, except as provided by subsection (4)(a) of this rule.

(6) For the purposes of calculating the recovery rate DEQ may not include the following ~~the following shall not be included~~ in the total solid waste disposed:

(a) Sewage sludge or septic tank and cesspool pumpings;

(b) Solid waste disposed of at an industrial solid waste disposal site;

(c) Industrial waste, ash, inert rock, dirt, plaster, asphalt and similar material if delivered to a municipal solid waste disposal site and if the disposal site operator keeps a record of the weight and wasteshed of origin for such materials delivered and reports the weight and appropriate

wastashed in the reports required to be submitted to ~~DEQ the Department~~ under OAR 340-090-0100(3);

(d) Solid waste received at an ash monofill from an energy recovery facility; and

(e) Any solid waste not generated within the state of Oregon.

Stat. Auth.: ORS 459.045, [ORS 459A.100](#) - 459A.120 & [ORS 468.020](#)

Stats. Implemented: [ORS 459A.005](#), ORS 459A.010, [ORS 459A.025](#)

Hist.: DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93); DEQ 10-1994, f. & cert. ef. 5-4-94; DEQ 27-1998, f. & cert. ef. 11-13-98; DEQ 8-2005, f. & cert. ef. 7-14-05

340-090-0068

Determination of Material-Specific Recovery Rates

(1) DEQ must determine the recovery rate for each material specified in ORS 459A.010(1)(c) based on the amount of that material that is recovered from within Oregon each year, divided by the amount of that material that is generated within Oregon each year.

(a) The amount of material recovered from within Oregon must be determined based on surveying and reporting requirements specified in OAR 340-090-0100.

(b) The amount of material that is generated within Oregon each year means the combined amounts of material recovered and material disposed of, for material disposed or recovered from Oregon sources.

(c) Unless otherwise specified, determining the amount of material disposed of must be based on results from periodic waste composition studies specified in ORS 459A.035, when combined with data on the total amount of solid waste disposed as specified in ORS 459A.010(3)(d).

(2) For the purpose of determining the recovery rate of food waste under ORS 459A.010(1)(c) and this rule, food waste does not include:

(a) Crop residue or other agricultural waste;

(b) Waste from industrial-scale food processing facilities;

(c) Waste which is composted on the site of generation; and

(d) Waste that is disposed of directly by the generator to a sewage or septic system.

(3) As used in this section, “plastic” means a material composed of synthetic polymers such as polyethylene, polypropylene, polystyrene, polylactic acid, and other similar polymers, but does not include materials commonly referred to as rubber or materials that are naturally-produced

polymers, such as proteins or starches. For the purpose of determining the recovery rate of plastic waste under ORS 459A.010(1)(c) and this rule, plastic waste:

(a) Includes post-consumer plastic items that are entirely made of plastic or that contain small amounts of easily-removed non-plastic items, such as metal handles on five-gallon plastic buckets; and

(b) Does not include plastic in multi-material items, such as electronics, automobiles, appliances, mixed-material toys, or household goods.

(4) As used in this rule, “carpet” means a manufactured article that is used in commercial or residential buildings affixed or placed on the floor or building walking surface as a decorative or functional building interior feature and that is primarily constructed of a top visible surface of synthetic or natural face fibers or yarns or tufts attached to a backing system derived from synthetic or natural materials.

(a) Examples of carpet include, but are not limited to:

(i) Commercial or residential broadloom carpet;

(ii) Modular carpet tiles; and

(iii) Indoor/outdoor carpet used as a floor surfacing in exterior applications.

(b) Examples of materials that are not carpet include:

(i) Rugs or similar floor coverings that are either not affixed to the floor or not intended to cover the entire floor surface;

(ii) Pads, cushions, or underlayment used in conjunction with, or separately from, a carpet; and

(iii) Artificial turf.

(5) For the purpose of determining the recovery rate of carpet waste under ORS 459A.010(1)(d) and this rule:

(a) Any carpet that is collected and then discarded may not be considered as being recovered; and

(b) For carpet where, at a minimum, the face fiber is recovered and used, the entire carpet is considered as having been recovered.

(6) DEQ may determine the recovery rate for carpet under ORS 459A.010(1)(d) based on:

(a) The method described in section (1) of this rule; or

(b) A different method of estimating the generation of carpet based on Oregon carpet sales data and an estimate of how much of that carpet is used as replacement carpet rather than in new construction.

(7) If DEQ calculates carpet recovery under section (7)(b), then DEQ must report, in any reports the legislature requires, recovery rates of carpet using both methods in section (7).

Stat.Auth: ORS 459.045, ORS 459A.025 & ORS 468.020

Stats.Implemented: ORS 459A.010, ORS 459A.035 & ORS 459A.050

Hist.:

340-090-0070

Principal Recyclable Material

(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 ~~shall~~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 ~~which~~that a recycling report, as required in OAR 340-090-0100, and approved by the ~~Department~~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 ~~shall~~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 ~~method of program~~for providing the opportunity to recycle under ~~the requirements of~~ OAR 340-090-0080.

(15) Any affected person may ask the EQC to ~~request the Commission~~ modify the list of principal recyclable material identified by the EQC ~~Commission~~ or may request a variance under ORS 459A.055.

(16) ~~The Department~~ DEQ will review the principal recyclable material lists as needed, and will submit any proposed changes to the EQC ~~Commission~~.

Stat. Auth.: ORS 459A.025, ORS 459.045 & ORS 468.020

Stats. Implemented: ORS 459A.010 & ORS 459A.025

Hist.: DEQ 26-1984, f. & ef. 12-26-84; DEQ 1-1986, f. & ef. 2-12-86; DEQ 7-1987, f. & ef. 3-18-87; DEQ 5-1988, f. & cert. ef. 2-2-88; DEQ 27-1988, f. & cert. ef. 9-16-88; DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93); Renumbered from 340-060-0030

340-090-0080

~~Alternative Methods~~ Alternative Programs for Providing the Opportunity to Recycle

~~The purpose of this rule is to describe~~ 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~~ alternative program for meeting the requirements of OAR 340-090-0030, 340-090-0040, and 340-090-0042. ~~(1) and (2).~~

(1) The city, county or metropolitan service district responsible for solid waste management may apply for and request approval by DEQ ~~the Department~~ of an ~~alternative method~~ alternative program for providing the opportunity to recycle. Each request must be made in writing to DEQ on a form DEQ provides. ~~shall be made in writing to the Department on a form provided by the Department.~~ The request for an ~~alternative program~~ 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. The Department will review applications as they are received. Each proposed alternative method will be approved, approved with conditions, or rejected. 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 ~~request~~ application for approval of an ~~alternative method~~ alternative program for providing the opportunity to recycle must include ~~in writing~~ detailed written information and data on the following:

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

~~(b) How the alternative will increase recycling opportunities at least to the recovery rate required under OAR 340-090-0050;~~

~~(be)~~ The conditions and factors that ~~which~~ make the ~~alternative method~~ alternative program necessary;

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

~~(de)~~ How the ~~alternative method~~ alternative program is as effective in recovering recyclable materials from solid waste as the requirements in OAR 340-090-0020, 340-090-0030, 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 watershed 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~~disposal site permittee on behalf of an out-of-state person desires to make changes to the approved ~~alternative method~~alternative program, they ~~shall~~must submit an amended application for DEQ's approval ~~approval by the Department~~ following the same requirements in sections (3), (5) and (6) of this rule.

(5) In addition to any other standards or conditions, an ~~alternative method~~alternative program for providing the opportunity to recycle yard debris, where yard debris is a principal recyclable material as designated in OAR 340-090-0700, ~~shall~~must meet the following minimum standards:

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

(b) The ~~alternative method~~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 ~~which~~ is designed to inform all potential users about the availability and use of the method;

(d) The city, county or metropolitan service district ~~shall~~must individually or jointly, through intergovernmental agreement, choose from the following yard debris recycling program options as an ~~alternative method~~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; ~~or~~

(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 method~~alternative program is proposed by a metropolitan service district the ~~alternative program~~alternative program request ~~shall~~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 method~~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 method~~ alternative program must designate a watershed 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 watershed characteristics in Oregon including population density, and distance to recycling markets;

(b) For persons other than local government units the request for ~~alternative method~~ alternative program approval ~~shall~~ must provide information explaining how the ~~alternative method~~ 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 ~~method~~ 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 be 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.

Stat. Auth.: ORS 459A.025, ORS 459.045 & ORS 468.020

Stats. Implemented: ORS 459A.005, [ORS 459A.007](#), [ORS 459A.008](#), ORS 459A.010, ORS 459A.025 & ORS 459A.055

Hist.: DEQ 26-1984, f. & ef. 12-26-84; DEQ 27-1988, f. & cert. ef. 9-16-88; DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93); Renumbered from 340-060-0035 and 340-060-0125

340-090-0090

Collection of Recyclable Materials

(1) ~~No-DEQ may not require any~~ city, county, or ~~Metropolitan Service District~~ [metropolitan service district](#), or agent thereof, ~~shall be required~~ 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 ~~shall~~[must](#) have been publicized by the appropriate city, county or ~~Metropolitan Service District~~ [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 for used oil and wood waste which may be collected and burned for energy recovery.

(3) Commercial and residential recyclable materials ~~which~~ [that](#) are ~~source-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 Metropolitan Service District in accordance with](#) section (1) of this rule ~~shall~~[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 ~~shall~~ [may](#) not be disposed [of](#) by the collector. The generator of the material ~~shall~~[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 ~~shall~~ [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 ~~shall~~ [must](#) be managed in an appropriate manner otherwise required by law.

Stat. Auth.: ORS 459A.025, ORS 459.045, ORS 459A.005 – ORS 459A.085 & ORS 468.020

Stats. Implemented: ORS 459A.080

Hist.: DEQ 26-1984, f. & ef. 12-26-84; DEQ 27-1988, f. & cert. ef. 9-16-88; DEQ 1-1989, f. & cert. ef. 1-27-89; DEQ 9-1991, f. & cert. ef. 6-20-91; DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93); Renumbered from 340-060-0075 and 340-060-0080; DEQ 27-1998, f. & cert. ef. 11-13-98

340-090-0100

Reporting Requirements

The information in this rule is reported in order to determine statewide and local wasteshed recovery rates, to determine compliance with the opportunity to recycle requirements and to provide accurate and comprehensive information on the type and amounts of residential and commercial solid waste generated, disposed and recovered in Oregon.

(1) General requirements. The information in subsection (2)(b) and sections (3), (4), and (5) of this rule ~~shall~~must be reported on a form provided ~~by the Department~~ DEQ and ~~shall~~must be reported to ~~the Department~~ DEQ no later than February 28 of each calendar year for the previous calendar year. The information to be reported under section (6) of this rule is optional.

(2) County requirements. ~~On Each county, on~~ behalf of ~~each-its~~ wasteshed and the cities within ~~each-its~~ wasteshed, ~~the county shall~~ must submit the following information to ~~the Department~~ DEQ. The information required below that relates to collection programs within each city jurisdiction ~~shall~~must be reported by the city to the county so that the county can provide the required information in a timely manner to ~~the Department~~ DEQ.

(a) The following information ~~shall~~must be reported periodically as DEQ requires. ~~required by the Department~~. This information constitutes the "opportunity to recycle" report. ~~The Department~~ DEQ will notify counties by November 1 of a year if an opportunity to recycle report is required for that year. When required, this report ~~shall~~must be submitted on the schedule specified in section (1) of this rule. In any case examples of all materials listed under paragraph (D) below ~~shall~~must be kept on file by the county for future reports or inspection by ~~the Department~~ DEQ:

(A) The materials that ~~which~~ are accepted for recycling at each disposal site in the wasteshed;

(B) If a recycling depot has been designated in place of a disposal site as a more convenient location for recycling under the opportunity to recycle requirements, the location of that recycling depot and the materials accepted for recycling at that depot;

(C) Description of all education and promotion activities conducted by or on behalf of each applicable city and the county;

(D) For each city of 4,000 or more population in the wasteshed and for each city located within a ~~Metropolitan Service District~~ metropolitan service district in the wasteshed, the following information:

(i) A list of materials accepted for recycling in each on-route residential collection program that is offered to all residential collection service customers;

(ii) A list of materials accepted for recycling in multi-family collection programs;

(iii) A list of materials accepted for recycling in on-site commercial collection programs;

(iv) Listing of each program element under OAR 340-090-0040(3) that has been chosen and implemented by each city within a metropolitan service district or with 4,000 population or more in the wasteshed, including appropriate documentation of implementation of collection service rates, multi-family collection programs and commercial collection programs if applicable; or, as applicable, a description of the approved ~~alternative method~~ alternative program being implemented and the status of implementation.

(E) A summary of activities in an ~~Expanded Education and Promotion Plan~~ expanded education and promotion plan, if a city or county has chosen to provide the expanded education and promotion program element through implementation of a ~~Plan pursuant to~~ under OAR 340-090-0040(3)(c)(B)(ii). The summary ~~shall~~ must include education and promotion activities planned for implementation in the coming two years unless DEQ requires otherwise. ~~required by the Department.~~ The summary should also include:

(i) Plan activities actually implemented since the wasteshed last reported to ~~the Department~~ DEQ on activities in the ~~Education and Promotion Plan~~ expanded education and promotion plan; and

(ii) Any changes in activities implemented from those in the ~~Plan~~ plan originally submitted to ~~the Department~~ DEQ, or from the previous summary submitted to ~~the Department pursuant to~~ DEQ under paragraph (2)(a)(E) of this rule, with explanations for the changes.

(F) For each city or county that is implementing the expanded education and promotion program element under OAR 340-090-0040(3)(c), the contamination reduction education plan described in OAR 340-090-0041.

(G) For each city or county that is subject to the requirements of OAR 340-090-0042, the plans required for the city's or county's compliance with that rule.

(H) A city or county that has evaluated the effectiveness of one or more program elements is encouraged to include the evaluation(s) in the wasteshed "opportunity to recycle" report.

(b) The following information ~~shall~~ must be reported annually, and constitutes the "recovery rate report":

(A) The type and corresponding weight of each material collected for the purpose of recycling during the previous calendar year for the following sources in the wasteshed:

(i) On-route residential collection;

(ii) Multi-family residential collection;

(iii) On-site commercial collection;

(iv) Collection at disposal site recycling depots or designated more convenient locations under the opportunity to recycle requirements;

(v) Collection from ~~alternatively approved methods~~ approved alternative programs under OAR 340-090-0080 if applicable.

(B) The information required in paragraph (2)(b)(A) of this rule ~~shall~~must be reported in the following manner:

(i) The weight of material reported ~~shall~~must exclude recovery of wastes as described in OAR 340-090-0060(5);

(ii) The weight of material collected ~~shall~~must be determined either by direct measurement or by determining the weight of material sold or otherwise sent off-site or used on-site for recycling during the calendar year, adjusted by the difference in weight of material held in inventory on the first day and last day of the calendar year;

(iii) Unless ~~the Department~~ DEQ and the county have agreed in writing on an alternative reporting method, the weight of material collected ~~shall~~must be reported separately for each collection service provider or other recycler, on forms DEQ provides; ~~d by the Department;~~

(iv) The type and corresponding weight of material reported ~~shall~~must be broken down by each of the following collection sources:

(I) On-route residential collection;

(II) On-site commercial collection;

(III) Multi-family residential collection;

(IV) Disposal site recycling depots or depots designated as more convenient locations under the opportunity to recycle requirements; and

(V) Material collected by an ~~alternative method~~ alternative program for providing the opportunity to recycle requirements.

(v) In cases where a collection service provider is unable to provide exact weight information for the categories identified in subparagraph (2)(b)(B)(iv) of this rule, reasonable estimates allocating the weight of material collected by collection source and by watershed may be made.

(C) Information on participation in on-site residential collection programs should be provided if available, either by exact participation data or by a reasonable estimate;

(D) Information on participation in on-site commercial collection programs and multi-family collection programs should be provided if available, either by exact participation data or by a reasonable estimate;

(E) Total weight of all solid waste generated in the wasteshed disposed of outside of the state of Oregon. The following waste is excluded from this reporting requirement:

(i) Sewage sludge or septic tank and cesspool pumpings;

(ii) Industrial solid waste disposed of at an out-of-state industrial solid waste disposal site;

(iii) Industrial waste, ash, inert rock, dirt, plaster, asphalt and similar material if delivered to an out-of-state municipal solid waste disposal site and if the disposal site operator keeps a record of the weight and wasteshed of origin of such materials delivered;

(iv) Solid waste received at an out-of-state ash monofill from an energy recovery facility.

(F) A copy of any new city or county collection service franchise, or any amendment to franchise, including rates under the franchise, which relates to recycling;

(G) If a county determines that the conditions in OAR 340-090-0060(4) exist and specific materials or mixtures that are composted or burned for energy recovery may be included in the calculation of the recovery rate for the wasteshed, the county ~~shall~~must report the following information:

(i) Weight and type of material composted or burned for energy recovery;

(ii) For mixtures of materials, the percent by weight and description of each type of material composted or burned for energy recovery that, if properly source separated, could have been recycled;

(iii) Where markets exist for such materials in the wasteshed and outside the wasteshed;

(iv) Charge or price paid for each material at each location;

(v) Transportation distances to market at each location and the per-mile transportation cost to market by the most economical means of transportation available.

(3) Solid waste disposal facility requirements. Except as provided in section (4) of this rule, and excluding the material listed in OAR 340-090-0060(5), each solid waste disposal site that receives solid waste for disposal, except transfer stations, ~~shall~~must report to DEQ ~~the Department~~ the weight of solid waste disposed of by each wasteshed in Oregon. The disposal site ~~shall~~must report this waste as either "not counting" in determining the recovery rate in OAR 340-090-0050 [wastes specified in OAR 340-090-0060(5)] or as "counting" towards the rate (all other wastes generated in Oregon). This information ~~shall~~must be reported by the disposal site permittee on forms DEQ provides ~~ed by the Department~~ and ~~shall~~must be a condition of the solid

waste permit. If a disposal site is unable to determine the exact weight of waste disposed for each watershed in which it was generated, a reasonable estimate allocating the weight of waste to the appropriate watersheds may be made.

(4) The metropolitan service district ~~Metropolitan Service District~~ on behalf of Multnomah, Clackamas, and Washington counties and the cities therein, ~~shall~~must report the following information:

(a) Information in subsection (2)(b) of this rule for all counties in aggregate for said district;

(b) Weight of solid waste disposed of through facilities owned or operated by the metropolitan service district ~~Metropolitan Service District~~, or operated under contract to the metropolitan service district ~~Metropolitan Service District~~, excluding the wastes listed in OAR 340-090-0060(5); and

(c) Weight of solid waste sent to out-of-state facilities.

(5) Privately operated recycling, ~~and~~ material recovery, and energy recovery facility requirements. This section applies to buy-back centers, drop-off centers, manufacturers, distributors, pyrolysis facilities, facilities burning recovered material as a fuel, collection service providers who collect or otherwise handle materials other than those required to be reported under subsection (2)(b) of this rule, and other private recycling operations and material recovery facilities who collect, otherwise acquire, use ~~recycled~~ recovered material in manufacturing or as a fuel, or recycle material that is not included in the reporting requirements of subsection (2)(b) and section (6) of this rule. These facilities ~~shall~~must accurately report to ~~the Department~~ DEQ the type and corresponding weight of each category of material recycled, processed, recovered as a fuel, or used in a new product containing recycled content in a calendar year as follows:

(a) Weight of each material recovered ~~shall~~must be reported, broken down by watershed of origin and by source as provided on the data form DEQ supplies; ~~supplied by the Department~~;

(b) Weight of materials reported ~~shall~~must exclude recycling of wastes described in OAR 340-090-0060(5);

(c) Weight of material collected ~~shall~~must be determined either by direct measurement of the material collected, purchased, or generated; or by determining the weight sold or otherwise sent off-site or used on-site for recycling during the year, adjusted by the difference in weight of material in inventory on the first day and last day of the calendar year;

(d) To avoid double counting of materials, entities reporting under this section ~~shall~~must identify weight and sources of material they collected from other recyclers, subsequent recyclers and end users that directly receive their material and the weight of material sold or delivered to each directly subsequent recycler or end user. This applies to all materials collected for recycling, including materials delivered to subsequent recyclers or end users or collected and reported to the county under subsection (2)(b) of this rule;

(e) Private recyclers ~~shall~~must report the final status of each material sold, delivered or utilized. The report ~~shall~~must indicate whether the material was recycled, composted, or burned for energy recovery in order to determine which materials will count toward the recovery rate in OAR 340-090-0050;

(f) Total weight of material recovered by each private recycler ~~shall~~must be reported based on actual measurement. In cases where determining the actual weight of material recovered by wasteshed or by collection source is not possible, reasonable estimates allocating the weight of material collected by wasteshed and collection source may be made.

(6) Scrap metal industry requirements. ~~The Department shall~~DEQ must survey the scrap metal industry annually. The scrap metal industry may report the following information to ~~the Department~~DEQ on a form DEQ provides~~d by the Department in accordance with the requirements of~~ as section (1) of this rule requires:

(a) Weight of post-consumer residential scrap metal, including appliances processed for use in manufacturing new products that do not routinely enter the solid waste stream;

(b) Source or wasteshed where the material was generated.

Stat. Auth.: ORS 459.045, ORS 459A.025, ~~ORS 459.045~~ & ORS 468.020

Stats. Implemented: ORS 459A.007, ORS 459A.008, ORS 459A.010 & ORS 459A.050

Hist.: DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93); DEQ 27-1998, f. & cert. ef. 11-13-98

340-090-0110

Minimum Content Reporting Requirements

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

(1) Each consumer of newsprint in Oregon ~~shall~~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) ~~For calendar year 1995 and every year thereafter, if~~ If a consumer cannot obtain the required amount of recycled content newsprint for the reasons listed in ORS 459A.505, the report ~~shall~~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) ~~Beginning on February 28, 1995 for calendar year 1994 and every year thereafter, publishers~~ Publishers of directories distributed in Oregon ~~shall~~ must provide the following information on a form ~~DEQ provides~~ provided by the Department. 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 ~~cannot be met~~, the publisher must provide an explanation ~~is required~~;

(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, ~~shall~~ 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) ~~Beginning with calendar year 2000, p~~ Post-consumer recycled glass generated in Oregon and used in "secondary end uses" ~~shall~~ 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" ~~shall~~ must be determined annually ~~beginning in 2002~~ as follows:

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

(B) DEQ must ~~The Department shall~~ then determine the percentage of post-consumer glass generated in Oregon that was used for secondary end uses that year. DEQ must use Aa composition study of solid waste disposed of in Oregon ~~shall must be used~~ 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 shall~~ 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](#) ~~It shall be the responsibility of a glass manufacturer to identify to the Department~~ all secondary end users of post-consumer recycled glass generated in Oregon of which it is aware. "Secondary end uses" ~~shall~~ [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](#) ~~the Department~~.

(e) Upon request from a glass container manufacturer, ~~the Department shall~~ [DEQ may](#) not enforce the requirement that a minimum percentage of recycled glass be used in the manufacturing of glass containers if ~~the Department~~ [DEQ](#) determines that a glass container manufacturer cannot meet the minimum percentage requirements because of a lack of available glass cullet within Oregon wastesheds where container glass is a principal recyclable material, and that meets reasonable specifications ~~the manufacturer establishes~~ [established by the manufacturer](#). However, lack of availability of appropriate cullet to fully comply with the glass recycled content requirement ~~shall~~ [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 ~~shall~~ [must](#) include sufficient detail for ~~the Department~~ [DEQ](#) to be able to reasonably make a determination as to the availability of appropriate cullet, and ~~shall~~ [must](#):

- (A) Be made to [DEQ](#) ~~the Department~~ 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 ~~shall~~ [must](#) demonstrate to [DEQ](#) ~~the Department~~ why such restrictions are necessary;
- (C) Include the tonnage of the shortfall of available cullet.

Stat. Auth.: ORS 459A.025, ORS 459.045 & ORS 468.020

Stats. Implemented: ORS 459A.515, ORS 459A.520 & ORS 459A.550

Hist.: DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93); DEQ 27-1998, f. & cert. ef. 11-13-98

340-090-0120

Confidential Information

This rule describes and clarifies which information submitted to ~~DEQ the department~~ under the requirements of OAR 340-090-0100 DEQ must ~~is required to be handled~~ as confidential and the procedures for maintaining confidentiality.÷

(1) DEQ must maintain as confidential ~~I~~ information collected under OAR 340-090-0100(5) and (6) as it relates to customer lists or names and specific weights and types of materials collected or processed ~~shall must be maintained as confidential by the Department~~.

(2) Upon the provider's request, DEQ must maintain as confidential information the information specifically relating to customer lists or specific types and amounts of materials marketed for materials collected on-route that ~~Where~~ a collection service provider voluntarily submits to DEQ under a survey, ~~the Department, pursuant to a survey, information relating specifically to customer lists or specific types and amounts of materials marketed for materials collected on-route, that information shall be maintained as confidential by the Department upon request by the collection service provider.~~

(3) ~~DEQ The Department~~ shall must designate a Documents Control Officer for purposes of receiving confidential information and for secure storage and management of such information.

(4) DEQ must limit A access to information submitted as confidential under OAR 340-090-0100(5) and (6) ~~shall be limited~~ to employees and representatives of ~~DEQ the Department~~ involved in carrying out the requirements of ORS Chapter 459 and 459A.

(5) ~~DEQ The Department~~ may use and disclose the information submitted under OAR 340-090-0100(5) and (6) in aggregate form.

Stat. Auth.: ORS 459A.025, ORS 459.045 & ORS 468.020

Stats. Implemented: ORS 459A.010

Hist.: DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93)

340-090-0130

Fair Market Value Exemption

(1) To qualify for exemption under ORS 459A.075 a source-separated recyclable material must be:

(a) Source-separated by the generator; and

(b) Purchased from or exchanged by the generator for fair market value for recycling or reuse.

(2) If, as part of the opportunity to recycle, a city or county requires by franchise that residential collection service of recyclable material be provided and identifies a group of two or more materials as the recyclable material for which the residential collection service must be provided, then:

(a) "Fair market value" of any material within the identified group ~~shall~~ must include the provisions of collection service for all material in the identified group; and

(b) "Recyclable material" means the group identified by the city or county.

(3) Local government may designate classes of residential dwellings to which specific types or levels of collection service are to be provided.

Stat. Auth.: ORS 459A.025, ORS 459.045 & ORS 468.020

Stats. Implemented: ORS 459A.075

Hist.: DEQ 26-1984, f. & ef. 12-26-84; DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93); Renumbered from 340-060-0050; DEQ 27-1998, f. & cert. ef. 11-13-98

340-090-0140

Recyclable Material

~~The purpose of this rule is to describe~~ This rule describes the factors that ~~shall~~ DEQ must be considered in determining if a material meets the definition of recyclable material. In determining what materials are recyclable materials.

(1) DEQ must calculate ~~The~~ the cost of collection and sale of a recyclable material ~~shall be calculated~~ 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~~ All costs and savings associated with collection of a recyclable material ~~shall be considered~~ in the calculation.

(2) DEQ must consider ~~A~~ Any measurable savings to the collector resulting from making a material available for recycling as opposed to disposal ~~shall be considered~~ the same as income from sale.

(3) DEQ must calculate ~~The~~ the cost of collection and disposal of material as solid waste ~~shall be calculated~~ by using the total costs of collection and disposal. Costs ~~shall~~ must include fees charged, taxes levies or subsidy to collect and to dispose of solid waste. Costs ~~shall~~ 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 ~~T~~he 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 ~~may be used~~ in determining whether remaining material meets the definition of recyclable material.

Stat. Auth.: ORS 459A.025, ORS 459.045 & ORS 468.020

Stats. Implemented: ORS 459A.010

Hist.: DEQ 26-1984, f. & ef. 12-26-84; DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93); Renumbered from 340-060-0055; DEQ 27-1998, f. & cert. ef. 11-13-98

340-090-0150

Due Consideration

(1) In determining who ~~shall~~ must provide the opportunity to recycle, a city or county ~~shall~~ must first give due consideration to any person lawfully providing recycling or collection service on June 1, 1983, if the person continues to provide the service until the date the determination is made and the person has not discontinued the service for a period of 90 days or more between June 1, 1983, and the date the city or county makes the determination.

(2) "Due consideration" includes at a minimum:

(a) A general notice announcing that the city or county intends to franchise recycling collection service and describing the requirements for the franchise;

(b) A timely written notice announcing that the city or county intends to franchise recycling collection service and describing the requirements for the franchise sent to persons entitled by ORS 459A.085(6)(c) to due consideration where such persons are known to the city or county or where such person has filed a timely written request for such notices with the city or county;

(c) An opportunity for public comment on the proposed franchise; and

(d) Consideration of, and response to, a timely application for a recycling collection franchise from a person entitled to ~~"due consideration"~~ and response.

Stat. Auth.: ORS 459A.025, ORS 459.045 & ORS 468.020

Stats. Implemented: ORS 459A.085

Hist.: DEQ 26-1984, f. & ef. 12-26-84; DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93); Renumbered from 340-060-0085

340-090-0180

Used Oil Recycling Signs

(1) Retail sellers of more than 500 gallons of lubrication or other oil annually in containers for use off premises ~~shall~~ must post and maintain durable and legible signs.

(2) Retail sellers ~~shall~~must print and provide their own signs. The signs ~~shall~~must contain the following information:

- (a) Information on the energy and environmental benefits gained by recycling used motor oil;
- (b) Telephone number where people can call to obtain more information on oil recycling depots and other oil recycling opportunities;
- (c) Information on how to recycle used oil;
- (d) Information on at least one conveniently located used oil recycling depot, or other oil recycling opportunity, i.e., name, location, and hours of operation;

(3e) The signs this rule requires must ~~Sign size which shall~~ be no smaller than 11 inches in width and 14 inches in height.

(43) ~~The Department~~DEQ suggests that the following appear on the sign "**Conserve Energy -- Recycle Used Motor Oil**", in at least inch-high letters.

Stat. Auth.: ORS 459A.025, ORS 459.045 & ORS 468.020

Stats. Implemented: ORS 459A.575

Hist.: DEQ 4-1979, f. & ef. 2-2-79; DEQ 7-1987, f. & ef. 3-18-87; DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93); Renumbered from 340-061-0062

340-090-0190

Yard Debris Recycling Charges

(1) The EQC's ~~Commission'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 ~~less~~ fewer units is equivalent to service provided 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 where yard debris is a principal recyclable material, 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 ~~shall~~must assure that yard debris service is provided at a level equivalent to service provided single-family dwellings. Local governments ~~shall~~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 ~~shall~~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, where yard debris is not a principal recyclable material.

Stat. Auth.: ORS 459A.025, ORS 459.045, ORS 459A.005 – ORS 459A.085 & ORS 468.020

Stats. Implemented: ORS 459.015, ORS 459.250, ORS 459A.005 & ORS 459A.010

Hist.: DEQ 9-1991, f. & cert. ef. 6-20-91; DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93); Renumbered from 340-060-0130; DEQ 9-1993, f. & cert. ef. 6-16-93; DEQ 27-1998, f. & cert. ef. 11-13-98

340-090-0310

Rigid Plastic Containers: Purpose

The following administrative rules, OAR 340-090-0320 - 0430, are intended to establish the minimum requirements for ~~the implementing on of~~ the Oregon Rigid Plastic Container Recycling Law, ORS 459A.650 through 680. The Commission's purposes in adopting these rules are to:

- (1) Reduce the amount of rigid plastic containers being disposed of in Oregon;
- (2) Increase the reuse or recycling of rigid plastic containers that would otherwise be disposed of;
- (3) Increase the use of recycled material in the manufacture of rigid plastic containers.

Stat. Auth.: ORS 459A.025

Stats. Implemented: ORS 459A.650 – ORS 459A.665

Hist.: DEQ 26-1994, f. & cert. ef. 11-2-94; DEQ 27-1998, f. & cert. ef. 11-13-98

340-090-0320

Definitions

As used in OAR 340-090-0310 through 430 and in OAR 340-012-0042 unless otherwise specified:

- (1) "Container manufacturer" means the producer or generator of a rigid plastic container for a packaged product that is sold or offered for sale in Oregon. A "container manufacturer" is the same as a "package manufacturer" as defined in ORS 459A.650(2).
- (2) "Container Manufacturer's Certificate of Compliance" means the certificate provided by the container manufacturer to a product manufacturer which describes the records which the container manufacturer has available to document that a rigid plastic container or containers ~~are in compliance~~ with OAR 340-090-0350(1)(a), (1)(b)(A), or (1)(b)(B).
- (3) "Container/product ratio" means the ratio of the weight of a rigid plastic container to the units of product in the container.
- (4) "~~DEQ~~Department" means the Department of Environmental Quality.
- (5) "Drug" has the meaning given by the federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) and pertinent regulations, ~~including the following:~~
 - ~~(a) Articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and~~
 - ~~(b) Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and~~
 - ~~(c) Articles (other than food) intended to affect the structure or any function of the body of man or other animals; and~~

~~(d) Articles intended for use as a component of any article specified in subsections (a), (b), or (c) of this section. Drugs include nonprescription or over-the-counter drugs regulated pursuant to the federal Food, Drug and Cosmetic Act (21 U.S.C. 321).~~

(6) "FDA" means federal Food and Drug Administration.

(7) "FD&C Act" means federal Food, Drug and Cosmetic Act (21 U.S.C. 321).

(8) "Infant formula" has the meaning given by the federal Food, Drug and Cosmetic Act (21 U.S.C. 321(f)), and is food which purports to be for special dietary use solely as food for infants because it simulates human milk or is suitable as a complete or partial substitute for human milk.

(9) "Medical device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including a component, part or accessory, which is:

(a) Recognized in the *National Formulary, United States Pharmacopoeia*, [USP 39-NF 34 \(2016\)](#) or any [existing](#) supplement thereto, and intended:

(A) For use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or

(B) To affect the structure or any function of the body of man or other animals which does not achieve its primary intended purpose through chemical action within or on the body of man or other animals; and is

(b) Not dependent upon being metabolized for the achievement of any of its principal intended purposes.

(10) "Medical food" has the meaning given by the federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) and pertinent regulations and includes the following:

(a) A product formulated to be consumed or administered internally under the supervision of a physician; and

(b) A product intended for specific dietary management of a disease or condition for which distinctive nutritional requirements, based on recognized scientific principles, are established by medical evaluation. For purposes of these rules, medical food is food that is consumed or directly placed in the stomach or intestine through a tube, or other food which is used to manage a disease or medical condition, or food labeled "may be used as the sole source of nutrition" or "may be used as the sole item of the diet". Food for which popular dietary claims are made, such as "low fat" or "low sodium," is not medical food.

(11) "Post-consumer rigid plastic container" means a rigid plastic container that would otherwise be destined for solid waste disposal, having completed its intended end-use and product lifecycle. Rigid plastic containers which held obsolete or unsold products ~~shall~~[must](#) be

considered post-consumer rigid plastic containers when used as a feedstock for new products other than fuel or energy.

(12) "Product-associated container" means a brand-specific rigid plastic container line, which may have one or more sizes, shapes or designs and which is used in conjunction with a particular, generic product line. A "product-associated container" is the same as a "product-associated package" as defined in ORS 459A.650(3).

(13) "Product manufacturer" means the producer or generator of a packaged product that is offered for sale in Oregon in a rigid plastic container:

(a) For purposes of these rules "product manufacturer" includes all subsidiaries and affiliates;

(b) Identification of the product manufacturer, for purposes of these rules, ~~shall~~must be determined by the following hierarchy:

(A) When the name of the entity that manufactured the product held by the container is stated on the container label, then that entity ~~shall~~must be considered the product manufacturer;

(B) When the container label does not state the entity that manufactured the product held by the container, but the container label does state the distributor of the container, then the distributor ~~shall~~must be considered the product manufacturer;

(C) When the container label does not state either the entity that manufactured the product held by the container or the distributor of the container, but the container label states the importer of the container, then the importer ~~shall~~must be considered the product manufacturer;

(D) When the container does not have a label or the label does not state the entity that manufactured the product held by the container, or the distributor of the container, or the importer of the container, or the container is filled at the point of sale and no other manufacturer distributor or importer is identified on the label, then the store that sells the product held by the container ~~shall~~must be considered the product manufacturer.

(14) "Product manufacturer's Report of Compliance" means the report a product manufacturer provides ~~ed by a product manufacturer~~ to DEQ ~~the Department~~ that ~~which~~ documents compliance of a rigid plastic container or containers with requirements of OAR 340-090-0350 or exemption from those requirements as set out in OAR 340-090-0330.

(15) "Recycled content" means that portion of a package's weight that is composed of recycled material, as determined by a material balance approach that calculates total recycled material input as a percentage of total material input in the manufacture of the package.

(16) "Recycled in Oregon" means generated in Oregon as plastic from post-consumer rigid plastic containers and collected, processed and eventually manufactured into another product, other than fuel or energy, either in Oregon or outside the state.

(17) "Recycled material" means a material that would otherwise be destined for solid waste disposal, having completed its intended end use or product life cycle. Recycled material does not include materials and by-products generated from, and commonly reused within, an original manufacturing and fabrication process.

(18) "Recycling rate" means the level, stated as a percentage, at which post-consumer rigid plastic containers are recycled in Oregon. The rigid plastic container recycling rate is determined by dividing the weight of plastic from post-consumer rigid plastic containers recycled in Oregon by the combined weight of plastic from both post-consumer rigid plastic containers recycled and those disposed of in Oregon.

(19) "Reduced container" means a rigid plastic container which has a container/product ratio which is at least ten percent less than the container/product ratio for the same product by the same product manufacturer five years earlier, as provided in OAR 340-090-0330(5).

(20) "Replacement product" means a product which is used to refill a rigid plastic container. Replacement product must be the same as or similar to the original product in the container.

(21) "Reused container" means either a refillable or reusable container which is refilled by the product manufacturer or reused by the consumer and is used at least five times with the same or a similar product.

(22) "Rigid plastic bottle" means a container that has a mouth narrower than its base.

[\[ED. NOTE: Documents referenced in the rule are not published with the text. They are available from the agency.\]](#)

Stat. Auth.: ORS 459A.025 & ORS 468.020

Stats. Implemented: ORS 459A.650 & ORS 459A.660

Hist.: DEQ 26-1994, f. & cert. ef. 11-2-94; DEQ 9-1996, f. & cert. ef. 7-10-96

340-090-0330

Rigid Plastic Containers

(1) A rigid plastic container is a plastic bottle, jar, cup, tub, pail, "clamshell" container, or other plastic container which meets the following criteria:

(a) Is designed to hold a product for sale;

(b) Has a volume of not less than eight fluid ounces and not more than five gallons. The volume of the container ~~shall~~[must](#) be determined using one of the following methods:

(A) For a container which is labeled in liquid measure, the labeled volume; or

(B) The measured liquid volume of the container; and

(C) For containers which have a labeled product liquid volume of five gallons or less and a measured container liquid volume of more than five gallons the labeled product volume ~~shall~~must be used.

(c) Is composed predominantly of plastic resin;

(d) Is able to maintain its shape, whether empty or full, under normal usage, independent of any product which it contains or other external support.

Comment: Plastic tubes and blister packs are excluded from the definition of a rigid plastic container.

(2) The following containers are also rigid plastic containers if they meet the criteria set forth in section (1) of this rule:

(a) Plastic boxes, baskets, crates, and flower pots ~~that~~which are sold containing a product;

(b) Plastic trays ~~that~~which have sidewalls designed to contain a product in the tray.

(3) The determination of whether a container meets the definition of rigid plastic container ~~shall~~must be based solely upon the characteristics of the plastic container itself at the time of determination and not upon any material used as packaging for a rigid plastic container or for packaging of individual products within a rigid plastic container.

(4) Lids and caps are not considered to be part of a rigid plastic container except when they meet one of the following criteria:

(a) Are designed to be permanently attached to a rigid plastic container; or

(b) Independently meet the criteria set forth in section (1) of this rule.

(5) The following packaging items ~~shall~~may not be considered part of a rigid plastic container:

(a) Labels;

(b) Those parts of the whole package or of the rigid plastic container for which the principal purpose is to provide a tamper resistant seal. This does not include portions of a rigid plastic container ~~that~~which have a principal purpose other than providing a tamper resistant seal; and

(c) A bag, film, or flexible inner or outer wrap ~~that~~which is used to cover or contain a product or a rigid plastic container.

Stat. Auth.: ORS 459.995, ORS 459A.025, ORS 459A.650 - ORS 459A.685, ~~ORS 459.995~~ & ORS 468.020

Stats. Implemented: ORS 459A.650, ORS 459A.655 & ORS 459A.675

Hist.: DEQ 26-1994, f. & cert. ef. 11-2-94

340-090-0340

Exempt Rigid Plastic Containers

(1) Rigid plastic containers ~~that~~~~which~~ meet one of the sets of criteria in sections (2) through (7) of this rule are exempt from the requirements of OAR 340-090-0350 through -0370.

(2) The product in the rigid plastic container is one of the following:

(a) A "drug" as defined in OAR 340-090-0320(5);

(b) A "medical device" as defined in OAR 340-090-0320(9);

(c) "Medical food" as defined in OAR 340-090-0320(10); or,

(d) "Infant formula" as defined in OAR 340-090-0320(8).

(3) The rigid plastic container and product are shipped out of Oregon before they are sold to the final consumer.

(4) The packaging is necessary to provide a tamper-resistant seal for public health purposes:

(a) For the purposes of OAR 340-090-0310 through 0430, packaging ~~that~~~~which~~ provides a tamper-resistant seal is one of the following:

(A) A separate device associated with a rigid plastic container ~~that~~~~which~~ resists tampering with the product in the container or exposes when an attempt to tamper with a product has occurred. Such devices include but are not limited to tape, film, foil, and tamper-resistant caps and lids; or

(B) A portion of a rigid plastic package ~~that~~~~which~~ is designed to work with a device described in paragraph (A) of this subsection or which independently resists tampering with the product in the container or exposes when an attempt to tamper with a product has occurred.

(b) A complete rigid plastic container ~~shall~~~~may~~ not be considered "necessary to provide a tamper-resistant seal" and ~~shall~~~~may~~ not be exempt under the provisions of this rule.

(5) The container is a reduced container:

(a) A container is a reduced container when the container/product ratio has been reduced by at least ten percent when compared with the container used for the same product by the same product manufacturer five years earlier:

(A) For a container ~~that~~~~which~~ has been changed to a reduced container after January 1, 1990 and before January 1, 1995:

(i) Comparison ~~shall~~must be made to the container/product ratio of the equivalent container sold five years earlier;

(ii) The exemption ~~shall~~must start on January 1, 1995; and ~~shall~~must run until January 1, 2000.

(B) For a container which has been changed to a reduced container on or after January 1, 1995:

(i) Comparison ~~shall~~must be made to the container/product ratio of the equivalent container sold five years earlier;

(ii) The exemption ~~shall~~must start on the date the reduced container was first used by the product manufacturer and ~~shall~~must run for five years.

(b) A reduction in container/product ratio may not be achieved by substituting plastic for a different material for a substantial part of the container;

(A) Different material means a material other than plastic, including but not limited to glass, metal, wood, or paper;

(B) Use of different plastic resins or combinations of plastic resins is not use of a different material.

(c) For the purposes of calculating the container/product ratio, a unit of product is one of the following:

(A) A unit of weight of product;

(B) A unit of volume of product; or

(C) A unit of product use:

(i) To qualify as a "unit of product," a "unit of product use" must be clearly stated on the container or in other product use instructions;

(ii) Some examples of units of product use include the number of "standard applications," "servings," or other generally accepted units of product use.

(d) A reduced container is not exempt from OAR 340-090-0350 through -0370 if ~~DEQ~~the Department finds that changes made in the original container adversely impact the potential for the container to be recycled or to contain recycled content;

(e) A reduced container is not exempt from OAR 340-090-0350 through -0370 if the container/product ratio for the original container was increased after January 1, 1990;

(f) For purposes of receiving an exemption under this section, a concentrated form of a product ~~shall~~must be considered to be the "same product by the same product manufacturer" if it:

(A) Has the same product line name; and

(B) Is intended for the same use.

(6)-(a) There has been a substantial investment in achieving the recycling rate. To meet the "substantial investment" exemption, all of the following provisions must be met:

(A) A substantial investment has been made in achieving the recycling rate;

(B) There is a demonstrated viable market for the material from which the container is made;

(C) The 1995 recycling rate for compliance purposes is at least 20%;

(D) The recycling rates for the rigid plastic containers for the previous two years show evidence of increasing; and

(E) Reasonable projections indicate that the rigid plastic containers will meet the 25 percent recycling rate by January 1, 1997.

(b) The exemption provided under the provisions of ORS 459A.660(5)(e) ~~shall~~must be a one-time exemption with an effective date of January 1, 1995 to December 31, 1996;

(c) ~~DEQ The Department~~ ~~shall~~must, before January 1, 1995, determine if the conditions for the "substantial investment exemption" for rigid plastic containers, in the aggregate, have been met.

(7) The container contains food:

(a) A container ~~shall~~must be considered to "contain food" if it contains an article used, or intended to be used, for food, ice, confection or condiment, whether simple or compound, or any part or ingredient thereof or in the preparation thereof, and for human consumption.

(b) A container ~~shall~~may not be considered to "contain food" if it contains a drinkable liquid and is a rigid plastic bottle.

Stat. Auth.: ORS 459A.025 & ORS 468.020

Stats. Implemented: ORS 459A.660

Hist.: DEQ 26-1994, f. & cert. ef. 11-2-94; DEQ 9-1996, f. & cert. ef. 7-10-96

340-090-0350

Compliance Standards

(1) Except as provided in OAR 340-090-0340, by January 1, 1995, any rigid plastic container sold, offered for sale, or used in association with the sale or offer for sale of products in Oregon ~~shall~~must comply with one of the following:

- (a) Have at least 25 percent recycled content;
 - (b) Be made of plastic that is being recycled in Oregon at a rate of at least 25 percent by meeting one of the following criteria:
 - (A) It is a rigid plastic container and rigid plastic containers, in the aggregate, are being recycled in Oregon at a rate of at least 25 percent by January 1, 1995;
 - (B) It is a specified type of rigid plastic container and that specified type of rigid plastic container, in the aggregate, is being recycled in Oregon at a rate of at least 25 percent by January 1, 1995; or
 - (C) It is a product-associated container and that class of containers, in the aggregate, is being recycled in Oregon at a rate of at least 25 percent by January 1, 1995.
 - (c) Be used at least five times for the same or a substantially similar use.
- (2) Individual rigid plastic containers sold in Oregon after January 1, 1995 but manufactured by a container manufacturer or filled by a product manufacturer prior to January 1, 1995 are not required to meet the compliance standards listed above. A product manufacturer must be able to document that the containers were filled prior to January 1, 1995.
- (3) For any calendar year for which ~~DEQ~~~~the Department~~ determines that the aggregate recycling rate for compliance purposes is at least 25 percent, all product and container manufacturers ~~shall~~must be deemed to be in compliance with OAR 340-090-0340, 340-090-0350, 340-090-0400 and 340-090-0410 without any further action on their part.

Stat. Auth.: ORS 459A.025 & ORS 468.020

Stats. Implemented: ORS 459A.655 & ORS 459A.660

Hist.: DEQ 26-1994, f. & cert. ef. 11-2-94; DEQ 9-1996, f. & cert. ef. 7-10-96

340-090-0360

Recycled Content Compliance

- (1) A rigid plastic container ~~shall~~must have at least 25% recycled content by January 1, 1995 to comply with OAR 340-090-0350(1)(a).
- (2)(a) A container manufacturer ~~shall~~must determine the recycled content of an individual rigid plastic container as being the same as the calculated recycled content for all the same type of rigid plastic containers manufactured during the same time period, within a one-year period, as determined by the container manufacturer, with the same input ratio of recycled material to total plastic;
- (b) The recycled content of a rigid plastic container is calculated by dividing the weight of recycled material used in the production of the container by the total weight of plastic material

used to produce the container. The result of that calculation is a percentage, which is the recycled content.

~~[NOTE: Formula not included: See ED. NOTE.] [ED. NOTE: The Formulas referenced in this rule are not printed in the OAR Compilation. Copies are available from the agency.]~~ Stat. Auth.: [ORS 459.995](#), ORS 459A.025, ORS 459A.650 - ORS 459A.685, ~~ORS 459.995~~ & ORS 468.020

Stats. Implemented: ORS 459A.655

Hist.: DEQ 26-1994, f. & cert. ef. 11-2-94

340-090-0370

Recycling Rate Compliance

A rigid plastic container may comply with OAR 340-090-0350(1)(b) by meeting one of the following criteria:

- (1) The aggregate recycling rate for compliance purposes in Oregon for all rigid plastic containers, as calculated pursuant to OAR 340-090-0380(2), is at least 25%.
- (2) It is a specified type of rigid plastic container and the recycling rate in Oregon for that type of container, in the aggregate, is at least 25%:
 - (a) A manufacturer using this recycling rate option may designate the type of rigid plastic containers on which the recycling rate will be based. This becomes the specified-type. A specified-type may be designated using any one or combination of the following characteristics:
 - (A) Type of plastic resin used to manufacture the container, for example HDPE, natural HDPE, colored HDPE, PETE, PVC;
 - (B) Shape and design of the container, for example all bottles, all tubs, all gallon jugs, all buckets;
 - (C) Use of the container, for example milk bottles, non-milk dairy containers, household chemical containers, or other generic product lines;
 - (D) Other specified characteristics of the container.
 - (b) The characteristics used to identify a specified type of rigid plastic container ~~shall~~[may](#) not exclude or limit it to an individual product-associated container.
- (3)(a) It is a product-associated rigid plastic container and the recycling rate in Oregon for that type of container, in the aggregate, is at least 25%;
- (b) A product manufacturer using this recycling rate option may designate the product-associated rigid plastic container on which the recycling rate will be based. This becomes the product-

associated rigid plastic container. A product-associated rigid plastic container may be designated by the following single or combination of characteristics but must be limited to a specific brand and generic product line:

- (A) The brand of product in the container (Example: all Brand X products or all Brand Y products);
- (B) The brand and type of product in the container (Example: Brand X dish soap or Brand Y cooking oil);
- (C) The brand and type of container (Example: all Brand X gallon jugs or all Brand Y jars);
- (D) The brand and resin type of the container (Example: all Brand X PETE containers, or all Brand Y HDPE containers);
- (E) Other specific characteristics or combination of characteristics which are brand specific.

(4) A manufacturer choosing the options described in sections (2) or (3) of this rule may rely upon disposal or recycling data DEQ generates~~d by the Department~~, where available. Manufacturers using other data to calculate a recycling rate must be able to document that such data was generated by a methodology acceptable to DEQ~~the Department~~ and are verifiable.

Stat. Auth.: ORS 459.995, ORS 459A.025, ORS 459A.650 - ORS 459A.685, ~~ORS 459.995~~ & ORS 468.020

Stats. Implemented: ORS 459A.655, 459A.657 & 459A.665

Hist.: DEQ 26-1994, f. & cert. ef. 11-2-94

340-090-0380

Recycling Rate Calculation

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

(B) DEQ must base the ~~The~~ aggregate recycling rate for compliance purposes ~~shall be based 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~~~~the Department~~ 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~~~~the Department~~ ~~shall~~must determine a specified resin type recycling rate for compliance purposes for rigid plastic containers made from each of the plastic resin types identified in ORS 459A.680. The specified resin type recycling rate for compliance purposes ~~shall~~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 ~~The~~ specified resin type recycling rate for compliance purposes ~~shall be based 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~~~~the Department~~ 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~~ the calendar year aggregate recycling rate for rigid plastic containers ~~shall be calculated by the Department~~ and must includes 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~~ the calendar year recycling rate for rigid plastic containers in the aggregate ~~shall be determined~~ as a percentage by dividing the aggregate numerator by the aggregate denominator. DEQ must collect or adjust, or both, the ~~The~~ numbers in both the numerator and denominator of this calculation ~~shall be collected and/or adjusted~~ 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 ~~The numerator shall~~ be calculated as the total weight of post-consumer rigid plastic containers recycled in Oregon;

(ii) In addition to DEQ's ~~the Department~~ census of material recovery rates, DEQ ~~the Department~~ 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 may be provided by the Department~~ 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 ~~the Department~~ may require to accurately determine the recycling tonnages.

(iii) DEQ must design and implement procedures ~~Procedures~~ to conduct the census ~~shall be designed and implemented~~ 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 ~~The Department shall~~ 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 ~~The denominator shall be calculated~~ 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 ~~T~~ the total weight of post-consumer rigid plastic containers disposed of in Oregon

~~shall must be calculated~~ 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 (4)(g) and 459A.050 (3) and (4);

(iii) DEQ must use a ~~A~~-composition study of solid waste disposed of in Oregon ~~shall be used~~ 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.

~~NOTE: Stated as a formula, this is: [Formula not included. See ED. NOTE.]~~ (d) DEQ will determine the ~~The~~ calendar year aggregate rigid plastic container recycling rate ~~will be determined by the Department~~, when ~~the Department~~ 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 ~~When a calendar year aggregate rate is determined, it will be published in a report which~~ 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 ~~The~~ recycling rate for a specified type of rigid plastic container ~~as calculated by the Department shall be determined~~ as a percentage by dividing the specified type numerator by the specified type denominator. DEQ must collect or adjust, or both, the ~~The~~ numbers in both the numerator and denominator of this calculation ~~shall be collected and/or adjusted~~ 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~~ the specified type of post-consumer rigid plastic container numerator ~~shall must be calculated~~ 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 ~~The denominator shall be calculated~~ 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 ~~is used~~ to calculate the denominator, DEQ must use a composition study of solid waste disposed of in Oregon ~~shall be used~~ as the basis for determining the weight disposed of.

NOTE: ~~Stated as a formula, this is: [Formula not included. See ED. NOTE.]~~ (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 ~~s. d by the Department~~. 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 ~~the Department~~ 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 ~~shall~~ must be made only by use of a methodology DEQ accepts ~~acceptable to the Department~~;

(d) DEQ may use ~~D~~ data collected on a national basis ~~may be used~~ 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 ~~T~~ the recycling rate for a product-associated rigid plastic container as ~~calculated by the Department shall be determined as~~ a percentage by dividing the product-associated numerator by the product-associated denominator. DEQ must collect or adjust, or both, ~~T~~ the numbers in both the numerator and denominator of this calculation ~~shall be collected and/or adjusted~~ 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 ~~The numerator shall be calculated~~ 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 ~~shall~~ must be the total weight of the product-associated rigid plastic containers sold in Oregon.

NOTE: ~~Stated as a formula, this is: [Formula not included. See ED. NOTE.]~~ (6) A product manufacturer or container manufacturer ~~shall~~ must rely on DEQ's ~~the Department~~ 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 ~~the Department~~ 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 ~~the Department~~ 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 ~~generated by the Department~~, 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 ~~acceptable to the Department~~ and are verifiable.

(8) Calculation of a recycling rate ~~shall~~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 ~~shall~~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. ~~[ED. NOTE: The Formulas referenced in this rule are not printed in the OAR Compilation. Copies are available from the agency.]~~

Stat. Auth.: ORS 459A.025

Stats. Implemented: ORS 459A.650 – ORS 459A.657

Hist.: DEQ 26-1994, f. & cert. ef. 11-2-94; DEQ 9-1996, f. & cert. ef. 7-10-96; DEQ 27-1998, f. & cert. ef. 11-13-98

340-090-0390

Waste Composition

(1) A waste composition study DEQ undertakes ~~on by the Department~~ ~~shall~~must consist of a representative, statistically valid sampling of Oregon's municipal solid waste. DEQ must design ~~A~~a protocol of standards and procedures ~~shall must be designed~~ which relate to:

- (a) Develop~~ingment of~~ a representative sampling plan;
- (b) Apply~~ingication of~~ the definition of a rigid plastic container in OAR 340-090-0330 when identifying and categorizing rigid plastic containers in the field;
- (c) Maint~~ainingenance of~~ quality control, including training and auditing;
- (d) Performing sampling, including but not limited to sample selection, sorting, weighing; and
- (e) Field data adjustments for contamination including moisture, food and other non-plastic materials.

(2) DEQ~~The Department~~ ~~shall~~must report the findings of the waste composition study, the methodologies used and information regarding potential error.

Stat. Auth.: ORS 459.995, ORS 459A.025, ORS 459A.650 - ORS 459A.685, ~~ORS 459.995~~ & ORS 468.020

Stats. Implemented: ORS 459A.035

Hist.: DEQ 26-1994, f. & cert. ef. 11-2-94

340-090-0400

Responsibilities of a Product Manufacturer

(1)(a) A product manufacturer ~~shall~~must be able to document that a rigid plastic container or containers comply ~~are in compliance~~ with either the requirements of OAR 340-090-0350 or with one of the exemptions set out in OAR 340-090-0340;

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

(2) A product manufacturer's documentation that a rigid plastic container or containers comply ~~are in compliance~~ with the provisions of OAR 340-090-0350 ~~shall~~must include, at a minimum, the following information:

(a) Recycled content. For each container which is complies ~~in compliance~~ with OAR 340-090-0350(1)(a):

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

(B) A copy of the container manufacturer's Certificate of Compliance from each manufacturer who supplied that container.

(b) Aggregate recycling rate. The aggregate recycling rate for compliance purposes ~~DEQ~~establishes ~~d by the Department~~ ~~shall~~must serve as the only acceptable documentation that a product manufacturer's containers comply with OAR 340-090-0350(1)(b)(A);

(c) Other recycling rates. For containers ~~that~~which comply ~~are in compliance~~ with the specified type container recycling rate requirement, OAR 340-090-0350(1)(b)(B) or the product-associated container recycling rate requirement, OAR 340-090-0050(1)(b)(C):

(A) A description of the container and product;

(B) Identification of the specified-type or product-associated criteria;

(C) Documentation of the recycling rate for the type of container pursuant to OAR 340-090-0380(4) or (5);

(D) Where ~~DEQ~~the Department or the container manufacturer has calculated a recycling rate for a specified type or product-associated rigid plastic container, the product manufacturer may rely upon that rate to show that the container complies with the recycling rate requirements.

(d) Reuse and refill. For containers which comply ~~are in compliance~~ with the reuse requirements, OAR 340-090-0350(1)(c):

(A) A description of the container and product; and

(B) Documentation of the number of times the containers are refilled or reused:

(i) The number of times a refillable container is reused is determined by review of the product manufacturer's records which show the following information for a uniform period of time:

(I) The number of returned containers actually refilled;

(II) The number of new containers added to the total number of containers used in the product manufacturer's refillable container program; and

(III) The total number of containers filled as first-use containers.

(ii) The number of times a reusable container is reused is determined by review of the product manufacturer's records which show the following information for a uniform period of time:

(I) The amount of product sold in the original container or the number of original containers sold; and

(II) The amount of replacement product sold or the number of refill units of replacement product sold.

(iii) A container ~~shall~~must be considered to be used at least five times if it is part of a refillable system or reusable container system which has an average refill or reuse rate for that container of at least four.

(3) A product manufacturer's records ~~that~~which document that a rigid plastic container or containers are exempt from the requirements of OAR 340-090-0350 through -0370 ~~shall~~must include the following information:

(a) Drugs, medical devices, medical food, and infant formula. For containers which are exempt under the provisions of OAR 340-090-0340 (2):

(A) A description ~~that~~which clearly identifies the container;

(B) An identification of which of the four product types will be placed in the container;

(C) For drugs:

(i) An FDA letter of approval;

(ii) Documentation of consistency between the over-the-counter drug claims and FDA requirements, (e.g., appropriate references to the FDA Final Monograph or Tentative Final Monograph under which the drug is marketed); or

(iii) Other definitive evidence that the product meets the FDA definition of a drug.

(D) For medical devices:

(+) Documentation that the device is intended to be used for diagnosis, cure, or prevention of disease or other definitive evidence that the product meets the FDA definition of a medical device under the FD&C Act (21 U.S.C. 321 (h) and following).

(E) For medical food:

(i) Documentation that the product meets the definition of medical food as defined in the FD&C Act, 1988, and is intended to be used as a medical food;

(ii) Other definitive evidence that the product meets the FDA definition of medical food; or

(iii) Documentation that the product may be labeled "may be used as the sole source of nutrition" or "may be used as the sole item of the diet."

(F) For infant formula:

(i) Documentation that the product meets the definition of infant formula as set forth in the FD&C Act and is being sold for use as infant formula; or

(ii) Other definitive evidence that the product meets the FDA definition of infant formula.

(b) Shipment out of Oregon. No documentation is required for containers ~~that~~which are exempt under the provisions of OAR 340-090-0340(3);

(c) Reduced containers. For containers ~~that~~which are exempt under the provisions of OAR 340-090-0340(5):

(A) Descriptions, including container resin type, which clearly identify:

(i) The original container before reduction; and

(ii) The reduced container.

(B) An identification of the "unit of product" pursuant to OAR 340-090-0340(5)(c) being used to develop the container/product ratio;

(C) A statement of the container/product ratio and description of how it was calculated for:

(i) The original container before reduction; and

(ii) The reduced container.

(d) Substantial Investment. For containers ~~that~~which are exempt under the provisions of OAR 340-090-0340(6):

(A) Identification of the class of containers and the type of recycling rate for which the exemption is being claimed;

(B) Documentation of the following:

(i) A substantial investment has been made in achieving the recycling rate;

(ii) There is a demonstrated viable market for the material from which the container is made;

(iii) The 1995 recycling rate for compliance purposes is at least 20%;

(iv) The recycling rates for the rigid plastic containers for the previous two years show evidence of increasing; and

(v) Reasonable projections indicate that the rigid plastic containers will meet the 25 percent recycling rate by January 1, 1997.

(C) A product manufacturer may rely upon DEQ's~~the Department~~ determination of compliance with the requirements of this exemption for rigid plastic containers in the aggregate or for rigid plastic containers of specified resin type.

(e) Food containers. For containers that~~which~~ are exempt under the provisions of OAR 340-090-0340(7):

(A) Documentation that the container contains an article used, or intended to be used, for food, ice, confection or condiment, whether simple or compound, or any part or ingredient thereof or in the preparation thereof, and is for human consumption; and

(B) If the container is a rigid plastic bottle, documentation that the container does not contain a drinkable liquid.

(4) Product Manufacturer's Report of Compliance:

(a) Upon DEQ's request~~the request of the Department~~, a product manufacturer ~~shall~~must make a Report of Compliance available to DEQ~~the Department~~;

(b) A product manufacturer's Report of Compliance ~~shall~~must be submitted on forms DEQ provides ~~d by the Department~~ and ~~shall~~ must contain the following specific information:

(A) The product manufacturer's:

(i) Name;

(ii) Address; and

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

- (B) A description of the container for which compliance or exemption is claimed; and
- (C) A description of the product manufacturer's records documenting compliance or exemption.

(c) A product manufacturer ~~shall~~must comply with the following procedure and time schedule when it provides information DEQ request~~sed by the Department in accordance with the following procedure and time schedule:~~

(A) The product manufacturer ~~shall~~must provide a Report of Compliance to DEQ~~the Department~~ within 60 days of the date of receipt of a DEQ~~Department~~ request for the report;

(B) If DEQ~~the Department~~ finds the Report to be incomplete, DEQ~~the Department~~ may request the missing materials from the official company representative. The product manufacturer ~~shall~~must provide missing materials from a Report of Compliance to DEQ~~the Department~~ within 30 days of the date of receipt of a DEQ~~Department~~ request for the missing materials;

(C) After it has reviewed the Report of Compliance, DEQ~~the Department~~ may request that the product manufacturer provide all or part of the documentation described in a Report of Compliance, other records, additional information kept by the product manufacturer which is the basis for those records or any other information deemed necessary to determine compliance with the law. The product manufacturer ~~shall~~must provide the records or other material requested to DEQ~~the Department~~ within 45 days of the date of receipt of a DEQ~~Department~~ request for the records.

(5)(a) A product manufacturer may request an extension of the time period to submit materials DEQ request~~sed by the Department~~. Such a request for extension must be in writing and received by DEQ~~the Department~~ prior to the due date of the original DEQ~~Department~~ request. The request for extension ~~shall~~must:

- (A) Provide the product 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~~the Department~~ may grant the extension, deny the extension or grant an extension for a lesser period of time.

(6) Records ~~that~~which document compliance with the requirements of OAR 340-090-0350 or exemption under the provisions of OAR 340-090-0340 ~~shall~~must be maintained and available for audit by DEQ~~the Department~~ for a period of at least three years after the year for which compliance is documented.

(7) The Report of Compliance for a product manufacturer ~~that~~which can demonstrate that it sells less than 500 rigid plastic containers per day ~~shall~~must consist of the quantity, brand name, product number, if any, and source of purchase of rigid plastic containers. These small product manufacturers are not required to keep other records of container compliance.

(8) DEQ shall consider a product manufacturer's failure ~~Failure of a product manufacturer~~ to provide a Report of Compliance or additional materials DEQ requests ~~ed by the Department and~~ within the schedule set out in this rule ~~shall be considered~~ a violation of these rules.

Stat. Auth.: ORS 459A.025 & ORS 468.020

Stats. Implemented: ORS 459A.65 & ORS 459A.660

Hist.: DEQ 26-1994, f. & cert. ef. 11-2-94; DEQ 9-1996, f. & cert. ef. 7-10-96

340-090-0410

Responsibilities of a Container Manufacturer

(1)(a) A container manufacturer ~~shall~~must be able to document that a rigid plastic container or containers comply ~~are in compliance~~ 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 ~~the Department~~ 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 ~~are in compliance~~ with the provisions of OAR 340-090-0350(1)(a), (1)(b)(A) or (1)(b)(B) ~~shall~~must include, at a minimum, the following information:

(a) Recycled content. For each container that ~~which~~ complies ~~is in compliance~~ 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~~ ~~ed by the Department~~ ~~shall~~must serve 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~~which comply~~are in compliance~~ 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~~the Department has calculated a recycling rate for a specified type of container, the container manufacturer may rely upon ~~DEQ's~~the Department rate to show that the container complies with the rate requirements.

(3) Container manufacturer's Certificate of Compliance:

(a) A container manufacturer ~~shall~~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~~The Department, upon request, only if not otherwise available from the product manufacturer.

(b) A container manufacturer's Certificate of Compliance ~~shall~~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~~the Department determines that the information provided in the Certificate is not adequate to document that a container or containers comply~~are in compliance~~ with OAR 340-090-0350 through 0370, ~~DEQ~~the Department 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 ~~kept by~~ the container manufacturer ~~keeps that~~ which 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 ~~shall~~ must notify ~~DEQ the Department~~ whether it will provide the requested information or if ~~DEQ the Department~~ shall must request it directly from the container manufacturer. If the product manufacturer notifies ~~DEQ the Department~~ it will satisfy the request, the manufacturer must provide the records or other material requested ~~shall be provided to~~ ~~DEQ the Department~~ within 45 days of the date of the product manufacturer's notification;

~~[COMMENT: The Department, at its discretion, may audit the container manufacturer directly for purposes of determining compliance with these rules.]~~

(B) If the product manufacturer cannot provide adequate documentation or other information ~~DEQ request~~ ~~sed by the Department~~ within the time frame in (A) above, then ~~DEQ the Department~~ 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 ~~shall provide~~ information ~~DEQ requests~~ ~~requested by the Department in accordance with the following procedure and time schedule:~~

(A) The container manufacturer ~~shall~~ must provide a Certificate of Compliance to ~~DEQ the Department~~ within 60 days of the date of receipt of a ~~DEQ Department~~ request for the Certificate;

(B) If ~~the Department~~ ~~DEQ~~ finds the Certificate to be incomplete, ~~DEQ the Department~~ may request the missing materials from the official company representative. The container manufacturer ~~shall~~ must provide missing materials from a Certificate of Compliance to ~~DEQ the Department~~ within 30 days of the date of receipt of a ~~DEQ Department~~ request for the Certificate;

(C) After it has reviewed the Certificate of Compliance, ~~DEQ the Department~~ 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~~ which is the basis for those records and any other information deemed necessary to determine compliance with the law. The container manufacturer ~~shall~~ must provide the records or other material requested to ~~DEQ the Department~~ 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 request~~ ~~sed by the Department~~. Such a request for extension must be in writing and be received by ~~DEQ the Department~~ ~~before~~ prior to the due date of ~~DEQ's the Department~~ original request. The request for extension ~~shall~~ 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 ~~the Department~~ may grant the extension, deny the extension, or grant an extension for a lesser period of time.

(5) Records ~~that~~which document compliance with the requirements of OAR 340-090-0350 or exemption under the provisions of OAR 340-090-0340 ~~shall~~must be maintained and available for audit by DEQ ~~the Department~~ 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 ~~Failure of a container manufacturer~~ to provide the following ~~shall be considered~~ 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 ~~the Department~~ 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.

Stat. Auth.: ORS 459A.025 & ORS 468.020

Stats. Implemented: ORS 459A.65 & ORS 459A.660

Hist.: DEQ 26-1994, f. & cert. ef. 11-2-94; DEQ 9-1996, f. & cert. ef. 7-10-96

340-090-0420

Confidential Information Procedure

(1) DEQ may not disclose to the public ~~Records provided to DEQ the Department shall not be disclosed to the public by the Department~~ if:

(a) The records contain trade secrets as defined in ORS 192.501(2) or 646.461(2);

(b) The records, or the applicable portions thereof, are clearly identified as trade secrets; and

(c) The person claiming trade secret status for specific information has provided substantiation as to why the material is a trade secret.

(2)(a) DEQ ~~The Department shall~~must notify the person who requests confidentiality if a request is received to disclose those records. The notice ~~shall~~must:

(A) ~~b~~Be delivered at least 15 days before DEQ ~~the Department~~ discloses any of the records;

(B) ~~shall~~ include a copy of any written request or a summary of any oral request for disclosure; and

(C) ~~s~~ State how ~~DEQ the Department~~ intends to respond to the request;

(b) If a product or container manufacturer wishes to defend their trade secret claim, the ~~manufacturer~~ ~~y~~ must respond with a written justification for the basis of their trade secrets claim. Such justification ~~shall~~ must be delivered to ~~DEQ the Department~~ within 15 days of ~~DEQ's the Department~~ notice of a request to disclose those records.

(3)(a) ~~DEQ The Department~~ will notify the product manufacturer of any information requested directly from the container manufacturer;

(b) Upon request from the product manufacturer, ~~DEQ the Department~~ will make available to the product manufacturer copies of records received from the container manufacturer concerning that product manufacturer, except as provided in section (2) of this rule, so that the product manufacturer may identify which of the records, if any, contain trade secrets of the product manufacturer;

(c) If the product manufacturer complies with section (1) of this rule with respect to the records of a container manufacturer, ~~DEQ the Department shall~~ must follow the provisions in section (2) of this rule if it receives any request to disclose those records.

Stat. Auth.: ORS 459.995, ORS 459A.025, ORS 459A.650 - ORS 459A.685, ~~ORS 459.995~~ & ORS 468.020

Stats. Implemented: ORS 459A.010

Hist.: DEQ 26-1994, f. & cert. ef. 11-2-94

340-090-0430

Violations

(1) Violations of these rules are ~~shall be~~ punishable as provided in ORS Chapter 459.955(1)(a) and pursuant to OAR 340-012-0042 and -0065.

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

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

Stat. Auth.: ORS 459A.025 & ORS 468.020

Stats. Implemented: ORS 459A.660 & Ch. 584 OL 1995

Hist.: DEQ 26-1994, f. & cert. ef. 11-2-94; DEQ 9-1996, f. & cert. ef. 7-10-96

340-090-0510

Mercury Thermostat Labeling

The following administrative rule establishes standards for ~~the~~ labeling ~~of~~ mercury-containing thermostats as ~~required by~~ ORS 459.045(3)(b) requires relating to the implementation of ORS 646.608(1)(y). The purpose of this rule is to provide sufficient information to purchasers of thermostats to ensure that the mercury contained in the thermostats does not become part of the solid waste stream or wastewater.

(1) As used in this rule, "thermostat" and "mercury-containing thermostat" mean a device commonly used to sense and, through electrical communication with heating, cooling, or ventilation equipment, control room temperature.

(2) All mercury-containing thermostats sold in Oregon must meet the following labeling requirements:

(a) The mercury-containing thermostat must have a label that contains the following information:

(A) The wording "Contains Mercury. Manage Properly."

(B) An icon containing the symbol of a person dropping an object into a trashcan with a circle and slash overprinted on the image, indicating "Do not dispose in trash".

(b) The label must be affixed to the product so that the label is clearly visible and legible. The font size for print on the label must be no smaller than 10 point.

(c) The label affixed to the product must be printed, mounted, molded, engraved or otherwise affixed, using materials that are sufficiently durable to remain legible for the useful life of the product.

(d) If the product is sold in packaging that obscures the label on the product, then the packaging also must have a label meeting the same standards as the product label. If, prior to the sale, a retailer re-packages the product, then the retailer must label the new packaging in accordance with this rule.

(3) Failure to meet the provisions of this rule may result in enforcement under the provisions of the Unlawful Trade Practices Act, ORS 646.605 to 625.

Stat.Auth: ORS 459.045

Stats.Implemented: ORS 646.608(1)(y)

Hist.: DEQ 7-2002, f. & cert. ef. 6-11-02

DEPARTMENT OF ENVIRONMENTAL QUALITY

DIVISION 90

RECYCLING AND WASTE REDUCTION

340-090-0005

Purpose

These rules 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.

Stat. Auth.: ORS 459.045, 459A.025 & ORS 468.020

Stats. Implemented: ORS 459A.005, ORS 459A.007, ORS 459A.010, ORS 459A.025 & ORS 459A.575

Hist.: DEQ 26-1984, f. & ef. 12-26-84; DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93); Renumbered from 340-060-0005

340-090-0010

Definitions

The definitions in this rule apply to OAR Chapter 340, Divisions 90 and 91. As used in these Divisions 90 and 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, 2022, 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 2016 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) "Principal recyclable material" means material that is a recyclable material at some place where the opportunity to recycle is required in a watershed and is identified by the EQC in OAR 340-090-0070.

(36) "Recyclable material" means any 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.

(37) "Recycled-content newsprint" means newsprint that includes post-consumer waste paper.

(38) "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.

(39) "Recycling setout" means any amount of source-separated recyclable material set out at or near a residential dwelling for collection by the recycling collection service provider.

(40) "Residential" means single family dwellings and multi-family dwellings having four or fewer units.

(41) "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.

(42) "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.

(43) "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.

(44) "Source separate" means that the person who last uses recyclable material separates the recyclable material from solid waste.

(45) "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.

(46) "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."

(47) "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.

(48) "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.

(49) "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).

(50) "Wasteshed" means the areas of the state of Oregon as defined in ORS 459A.010 and OAR 340-090-0050.

(51) "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.

State of Oregon Department of Environmental Quality

OAR 340-090-0010 – Figure 1

Harmonized Tariff Schedule of the United States (2016) Supplement

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.

Statistical Note

1. The term "standard newsprint paper" covers printing papers of heading 4801 which conform to the following specifications:

Weight: Not less than 46.3 g/m² nor more than 57 g/m².

Size: Rolls not less than 33 cm wide and not less than 71 cm in diameter; sheets not less than 51 cm by 76 cm.

Thickness: Not more than 0.11 mm.

Sizing: Time of transudation of water shall be not more than 10 seconds by the ground glass method.

Ash Content: Not more than 6.5 percent.

Color and Finish: White; or tinted shades of pink, peach or green in rolls; not more than 50 percent gloss when tested with the Ingersoll glarimeter.

[ED. NOTE: Figures referenced are not included in rule text. Click here for PDF copy of Figure.]

Stat. Auth.: ORS 459.045, ORS 459A.100 - ORS 459A.120 & ORS 468.020

Stats. Implemented: ORS 459A

Hist.: DEQ 26-1984, f. & ef. 12-26-84; DEQ 7-1987, f. & ef. 3-18-87; DEQ 5-1988, f. & cert. ef. 2-2-88; DEQ 1-1989, f. & cert. ef. 1-27-89; DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93); Renumbered from 340-60-010; DEQ 10-1994, f. & cert. ef. 5-4-94; DEQ 27-1998, f. & cert. ef. 11-13-98

340-090-0015

Scope and Applicability

(1) OAR Chapter 340, Division 90 describes the requirements for waste reduction and recycling programs for residential and commercial solid wastes.

(2) The requirements in OAR Chapter 340, Division 90 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.

Stat. Auth.: ORS 459.045, ORS 459A.025, & ORS 468.020

Stats. Implemented: ORS 459A.005, ORS 459A.010, ORS 459A.020, ORS 459A.025, ORS 459A.030, ORS 459A.035, ORS 459A.040, ORS 459A.050, ORS 459A.055, ORS 459A.060, ORS 459A.065, ORS 459A.070, ORS 459A.075, ORS 459A.080, ORS 459A.085, ORS 459A.100, ORS 459A.110, ORS 459A.115 & ORS 459A.120

Hist.: DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93)

340-090-0020

Opportunity to Recycle

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, 340-090-0041, 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.

Stat. Auth.: ORS 459A.025, ORS 459.045 & ORS 468.020

Stats. Implemented: ORS 459A.005, ORS 459A.007, & ORS 459A.008.

Hist.: DEQ 26-1984, f. & ef. 12-26-84; DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93); Renumbered from 340-060-0020

340-090-0030

General Requirements

(1) The city, county, or metropolitan service district responsible for solid waste management must insure that a place for collecting source separated recyclable materials 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.

(2) Each city with a population of 4,000 or more or, where applicable, within the urban growth boundary established by a metropolitan service district, must provide on-route collection service for source-separated recyclable materials at least once a month for all collection service customers within the city limits and the county must provide that service to the collection service customers within the urban growth boundary but outside of the city limits.

(3) 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 to call for 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.

Stat. Auth.: ORS 459.045, ORS 459A.100 - ORS 459A.120 & ORS 468.020

Stats. Implemented: ORS 459A.005 & ORS 459A.007

Hist.: DEQ 26-1984, f. & ef. 12-26-84; DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93); Renumbered from 340-060-0020 & 340-060-0040; DEQ 10-1994, f. & cert. ef. 5-4-94

340-090-0040

Local Government Recycling Program Elements

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

(a) For cities within a metropolitan service district:

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) For cities with a population of more than 10,000 that are located more than 150 miles from the City of Portland:

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

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

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

(f) For cities with a population of more than 50,000 that are located 150 miles or less from the City of Portland:

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

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

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

(g) A local government that is not subject to ORS 459.007(6) or (7) or OAR 340-090-0042 may substitute for one recycling program element set forth under section (3) of this rule:

(A) The waste prevention and reuse program element set forth under OAR 340-090-0042(2); and

(B) At least two additional waste prevention and reuse program elements set forth under OAR 340-090-0042.

(2)(a) For determining a city's distance in miles from the City of Portland under section (1) of this rule, DEQ must use the current mileage table or comparable current mileage statistics from the Oregon Department of Transportation.

(b) The effective date of section (1) of this rule is January 1, 2018. Until that date, in addition to the minimum requirements in OAR 340-090-0030, each city with a population of 4,000 or more and any county responsible for the area between the city limits and the urban growth boundary of that city must implement additional recycling program requirements selected from section (3) of this rule in accordance with the following criteria:

(A) Each city with a population of at least 4,000 but not more than 10,000 that is not within a metropolitan service district and any county responsible for the area between the city limits and the urban growth boundary of that city must implement one of the following, except where otherwise indicated:

(i) Implement subsections (3)(a), (b), and (c) of this rule;

(ii) Select and implement at least three program elements listed in section (3) of this rule; or

(iii) Implement an alternative program that is approved by DEQ under OAR 340-090-0080.

(B) Each city with a population of more than 10,000 or that is within a metropolitan service district and any county responsible for the area within a metropolitan service district or the area between the city limits and the urban growth boundary of that city must implement one of the following, except where otherwise indicated:

(i) Implement subsections (3)(a), (b), and (c) of this rule and one additional element in section (3) of this rule;

- (ii) Select and implement at least five program elements listed in section (3) of this rule; or
- (iii) Implement an alternative program that is approved by DEQ under OAR 340-090-0080.

(3) Program elements:

(a) Deliver to each residential collection service customer at least one durable recycling container. For purposes of this program element, a durable container must be a rigid box or bucket with a volume of at least 12 gallons made of material that holds up under all weather conditions for at least five years and that the resident and the collector can easily handle;

(b) Provide on-route collection at least once each week of source separated recyclable materials, excluding yard debris, to residential collection service customers provided on the same day that solid waste is collected from each customer;

(c) Provide a recycling education and promotion program that is expanded from the minimum requirements described in OAR 340-090-0030(3), and supports the management of solid waste in the following priority order: first preventing the generation of waste, then reusing materials, then recycling materials, then composting materials, then recovering energy, and finally safely disposing of solid waste that cannot be prevented, reused, recycled, composted or used for energy recovery.

(A) Each local government's expanded program must satisfy the applicable requirements of ORS 459A.008 and OAR 340-090-0041 and:

(i) Must inform all solid waste generators of how to prevent waste and how to reuse, recycle and compost material;

(ii) Must inform all solid waste generators of the manner and benefits of preventing waste and how to reuse, recycle, and compost materials;

(iii) Must promote the use of recycling services;

(iv) Must determine the levels of contamination of materials set out for collection and take action to reduce contamination in collected recyclables; and

(v) Must target educational and promotional materials provided to commercial customers to meet the needs of various types of businesses and should include reasons to recycle, including economic benefits, common barriers to recycling and solutions, additional resources for commercial generators of solid waste, and other information designed to assist and encourage recycling efforts. These materials must encourage each commercial generator of solid waste to strive to achieve 55 percent recovery from its solid waste stream by the year 2025.

(B) The expanded program must be provided in one of the two following ways:

(i) A "Specified Action" program, which must include at a minimum the following elements:

(I) All new residential and commercial collection service customers must each receive a packet of educational materials that contain information listing the materials collected, the schedule for collection, proper method of preparing materials for collection and an explanation of the reasons why customers should source separate materials for recycling;

(II) Existing residential and commercial collection service customers must be provided information identified in OAR 340-090-0040(3)(c)(B)(i)(I) at least four times a calendar year through a written notice or effective alternative to reach various solid waste generators, or combination of both;

(III) At least annually information regarding the benefits of recycling and the type and amount of materials recycled during the past year must be provided directly to the collection service customer in written form and must include additional information including the procedure for preparing materials for collection;

(IV) Targeting of at least one community or media event per year to promote waste prevention, reuse, recycling and composting, although not every media event needs to promote all of those activities;

(V) Utilizing a variety of materials and media formats to disseminate the information in the expanded program in order to reach the maximum number of collection service customers and residential and commercial generators of solid waste; and

(VI) Development and implementation of a contamination reduction education plan that satisfies the requirements of OAR 340-090-0041.

(ii) Development and implementation of an "Expanded Education and Promotion Plan." The Plan must:

(I) Include actions to effectively reach solid waste generators and all new and existing collection service customers;

(II) Include such actions as necessary to fulfill the intent of this subsection;

(III) Include a timetable for implementation, and the local government must implement that timetable;

(IV) Include development and implementation of a contamination reduction education plan that satisfies the requirements of OAR 340-090-0041; and

(V) Be submitted to DEQ:

(V)-(a) By February 28 of the first year that the Plan is to be in effect; or

(VI)-(b) Within 30 days of the beginning of the local government's fiscal year in which the Plan is first put into effect.

(d) Establish and implement a recycling collection program through local ordinance, contract or any other means enforceable by the appropriate city or county for each multi-family dwelling complex having five or more units. The collection program must meet the following requirements:

(A) Collect at least four principal recyclable materials or the number of materials required to be collected under the residential on-route collection program, whichever is less;

(B) Provide educational and promotional information directed toward the residents of multi-family dwelling units periodically as necessary to be effective in reaching new residents and reminding existing residents of the opportunity to recycle including the types of materials to be recycled and the method for properly preparing those materials.

(e) Establish and implement an effective residential yard debris program to collect and compost residential yard debris. The program must include the following elements:

(A) Promotion of home composting of yard debris through written material or some other effective media form that is directed at the residential generator of yard debris; and either

(B) At least monthly on-route collection of yard debris from residences for production of compost or other marketable products; or

(C) A system of residential yard debris collection depots, for producing compost or other marketable products, located such that there is at least one conveniently located depot, open to the public at least once a week, for every 25,000 population.

(f) Taking into account material generation rates, establish and implement regular, on-site collection of source-separated principal recyclable materials from commercial generators, taking into consideration how the generator could achieve 55 percent recovery from its solid waste stream by the year 2025. This program element does not apply to manufacturing, business or processing activities in residential dwellings or to the generation of industrial solid waste. At a minimum the commercial recycling program:

(A) Must be provided to commercial entities that employ 10 or more persons and occupy 1,000 square feet or more in a single location;

(B) Must include an education and promotion program that:

(i) Uses materials and messages specifically designed for commercial generators of solid waste; and

(ii) Informs all commercial generators of solid waste of the benefits of recycling, the recycling opportunities available to them and how to recycle; and

(iii) If the local government is providing the expanded education and promotion program element, includes any additional requirements needed to meet OAR 340-090-0040(3)(c); and

(iv) Includes information on the benefits of waste prevention to commercial generators.

(C) Must be conducted to effectively promote the commercial recycling program to commercial generators of solid waste;

(D) Must encourage each commercial generator of solid waste to strive to achieve 55 percent recovery from its solid waste stream by the year 2025;

(E) Should provide other elements including but not limited to:

(i) Provision of waste assessments to businesses;

(ii) Provision of recycling receptacles to businesses at no or low cost;

(iii) Waste prevention and recycling recognition programs. Local governments are encouraged to involve local business organizations in publicly recognizing outstanding waste prevention and recycling efforts by commercial generators of solid waste. The recognition may include awards designed to provide additional incentives to increase waste prevention and recycling efforts.

(g) Establish depots for recycling collection of all principal recyclable materials listed in OAR 340-090-0070, and where feasible, additional materials, except that used oil need not be collected at the depot if another location within the local government unit will accept used oil for recycling. This program must provide at least one (1) recycling depot in addition to the depot(s), if any, required by OAR 340-090-0030(1). For any city with a population of 50,000 or more, the minimum number of additional depots must be equal to the city's population, divided by 25,000, and rounded down to the nearest whole number. The expanded depot program must include promotion or education that maximizes the use of the expanded depot program. The depots must operate as follows:

(A) Have regular and convenient hours for residential generators of solid waste; and

(B) Be open on at least one weekend day each week; and

(C) Be established in location(s) that are convenient for residential generators of solid waste to use.

(h) Establish collection rates for residential solid waste from single family residences and single residential units, in complexes of less than five units that encourage waste prevention, reuse and recycling. The rates must, at a minimum, include the following elements:

(A) At least one rate for a container that is 21 gallons or less in size and costs less than larger containers;

(B) Rates must be based on the average weight, as determined in paragraph (E) of this subsection, of solid waste disposed per container for various sizes of containers;

(C) Rates, as calculated on a per pound disposed basis, may not decrease per pound with the increasing size of the container or the number of containers;

(D) Rates per container service must be established such that each additional container beyond the first container for each residential unit must have a fee charged that is at least the same fee and no less than the first container; and

(E) Rates, calculated on a per pound disposed basis, the city or county develops through their own per pound average weights for various container sizes by sampling and calculating the average weights for a cross section of containers within their residential service area.

(i) An on-going system to collect food waste and, optionally, other compostable waste, from commercial and institutional entities that generate large amounts of such wastes, and compost it at facilities in compliance with DEQ composting facility rules and local government regulations:

(A) Before diverting edible (unwanted) foods to be composted, a local government should consider how to encourage making them available:

(i) Through food rescue;

(ii) Or if charity channels are not available, to farmers for animal feed.

(B) A commercial composting program must include the following elements:

(i) On-going promotion of the commercial compost program through written material or other effective formats directed to targeted commercial generators within the local government unit, such as grocery stores, restaurants, wholesale flower warehouses, hotels, businesses and institutions with food service;

(ii) To avoid problems relating to human health and the environment, periodic collection of food wastes and, optionally, other compostable wastes, is required from commercial generators on an appropriate schedule.

(C) Any composting facility to which collected compostable waste is taken must comply with DEQ composting facility rules;

(D) On-site commercial composting should be considered if the location is appropriate, space is available and the entity complies with DEQ composting facility rules and local government regulations.

(j) A commercial recycling program that requires commercial generators of solid waste that generate large amounts of recyclable materials to source-separate recyclable materials.

(A) For subsection (3)(j) of this rule, “large amount commercial generator” means a commercial generator of solid waste that has a service level of four or more cubic yards of solid waste per week at a single site.

(B) A local government must require participation in its commercial recycling program by all large amount commercial generators except for generators exempted under paragraph (3)(j)(F) of this rule.

(C) The local government's commercial recycling program must include requirements for large amount commercial generators to:

- (i) Source-separate recyclable materials for reuse or recycling;
- (ii) Self-haul or arrange for collection service of the source separated recyclable materials;
- (iii) Provide recycling containers for internal areas where recyclable materials may be collected, stored, or both; and
- (iv) Correctly label all interior and exterior containers and post signs where recyclable materials may be collected, stored, or both that identify the materials that the large amount commercial generator must source-separate for reuse or recycling and that provide recycling instructions.

(D) The local government must provide education and promotion that meets at least the minimum requirements described in OAR 340-090-0030(3) for all large amount commercial generators.

(E) To ensure compliance with the requirements in this subsection, the local government must establish a method for identification and monitoring of large amount commercial generators.

(i) If a large amount commercial generator is not in compliance with the requirements of this subsection, then the local government must, at a minimum, notify that large amount commercial generators that it is out of compliance.

(ii) For a noncomplying large amount commercial generator, the local government may also consider a penalty or fine structure that incorporates warning notices, civil injunctions, financial penalties, or criminal prosecutions.

(F) The local government may allow for limited exemptions from the requirements of this subsection for reasons that the local government deems appropriate, such as zoning requirements, lack of sufficient space to provide additional recycling containers, or non-generation of recyclable materials.

(G) The local government may consider certification requirements for self-haulers of source-separated recyclable materials. Those certification requirements may include, but are not limited to, requiring large amount commercial generators to maintain written records demonstrating that all self-hauling activities have been completed in compliance with the requirements of this subsection (3)(j).

(k) A program for monthly or more frequent on-route collection and composting for food waste and, optionally, other compostable waste from residential collection service customers.

(A) The local government must provide education or promotion that meets at least the minimum requirements described in OAR 340-090-0030(3) for all residential collection service customers.

(B) In addition to the requirements of subsection (3)(k)(A) of this rule, the local government's education or promotion to all residential collection service customers must include:

(i) Types of food waste collected;

(ii) The schedule for collection;

(iii) Methods of preparing food waste for collection;

(iv) Explanations of why separating food waste for recovery is necessary; and

(v) Explanations of how to reduce contamination of the food waste recovery stream set out for collection.

(L) A recovery program for construction and demolition debris.

(A) As used in subsection (3)(L) of this rule, "construction and demolition debris" means waste resulting from the construction, renovation, repair, or demolition of buildings or other structures that contain recyclable material. "Construction and demolition debris" does not include putrescible wastes, hazardous waste, or asbestos.

(B) The recovery program for construction and demolition debris must:

(i) Require that construction and demolition debris be source-separated at the site of generation or be sent to a material recovery facility for processing and recovery; and

(ii) Include an education or promotion program for developers, contractors, and residential owners that provides strategies:

(I) To reduce waste during preconstruction planning and in building construction, renovation and demolition phases; and

(II) To direct waste to reuse and material recovery facilities.

(C) Generators subject to this program include any person who:

(i) Generates and self-hauls a minimum of six cubic yards of construction and demolition debris at any time; or

(ii) Generates and arranges for collection service of a minimum of ten cubic yards of construction and demolition debris at any time.

(D) The local government must provide education or promotion that meets at least the minimum requirements described in OAR 340-090-0030(3) for all generators of construction and demolition debris that are subject to the recovery program for that debris.

(m) A food waste collection program requiring nonresidential generators that generate large amounts of food waste to source-separate the food waste for recovery.

(A) For subsection (3)(m) of this rule:

(i) “Nonresidential generator” means a commercial generator or other generator but not a residential or multi-family generator; and

(ii) “Large amount nonresidential generator” means a nonresidential generator that disposes of more than fifty tons of food waste annually.

(B) The local government must require participation in its food waste collection program by all large amount nonresidential generators except for generators exempted under paragraph (3)(m)(F) of this rule.

(C) The local government’s food waste collection program must include requirements for large amount nonresidential generators to:

(i) Cover, at a minimum, food waste that is not packaged and for which final disposal by the large amount nonresidential generator is controlled by the nonresidential generator’s employees or agents;

(ii) Source-separate food waste for donation or food waste collection;

(iii) Self-haul or arrange for collection service of the food waste;

(iv) Provide containers for internal areas where food waste may be collected, stored, or both; and

(v) Correctly label all interior and exterior containers and post signs and instructions where food waste is collected, stored, or both, that identifies the types of food waste the large amount nonresidential generator must source-separate for donation or food waste collection.

(D) The local government must provide education or promotion that meets at least the minimum requirements described in OAR 340-090-0030(3) for all large amount nonresidential generators.

(E) To ensure compliance with the requirements in this subsection, the local government must establish a method for identification and monitoring of large amount nonresidential generators.

(i) If a large amount nonresidential generator is not in compliance with the requirements of this subsection, then the local government must, at a minimum, notify that large amount nonresidential generator that it is out of compliance.

(ii) For a noncomplying large amount nonresidential generator, a local government may also consider a penalty or fine structure that incorporates warning notices, civil injunctions, financial penalties, or criminal prosecutions.

(F) The local government may allow for limited exemptions from the requirements of this subsection for reasons that the local government deems appropriate, such as zoning requirements or lack of sufficient space to provide additional food waste containers.

(G) The local government may consider certification requirements for self-haulers of food waste. Those certification requirements may include, but are not limited to, requiring large amount nonresidential generators of food waste to maintain written records demonstrating that all self-hauling activities have been completed in compliance with the requirements of this subsection (3)(m).

(4) In addition to the requirements in sections (1) and (2) of this rule, each city with a population of 4,000 or more and any county responsible for the area within a metropolitan service district or the area between the city limits and the urban growth boundary of that city in any of the following wastesheds must provide the opportunity to recycle rigid plastic containers if the conditions set forth in section (5) of this rule are met:

(a) Clackamas, Multnomah and Washington Counties, in aggregate, as a single wasteshed;

(b) Benton wasteshed;

(c) Clatsop wasteshed;

(d) Columbia wasteshed;

(e) Deschutes wasteshed;

(f) Douglas wasteshed;

(g) Hood River wasteshed;

(h) Jackson wasteshed;

(i) Josephine wasteshed;

(j) Lane wasteshed;

(k) Linn wasteshed;

(l) Marion wasteshed;

(m) Polk wasteshed;

(n) Wasco wasteshed; and

(o) Yamhill wasteshed.

(5) The opportunity to recycle rigid plastic containers is required within a wasteshed when a stable market price for rigid plastic containers, that equals or exceeds 75 percent of the necessary and reasonable collection costs for those containers, exists for such wasteshed.

[ED. NOTE: Documents referenced in the rule are not published with this text. They are available from the agency.]

Stat. Auth.: ORS 459.045, ORS 459A.025, ORS 459A.100 - 459A.120 & ORS 468.020
Stats. Implemented: ORS 459A.005, ORS 459A.007, ORS 459A.008, ORS 459A.010 & ORS 459A.665

Hist.: DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93); DEQ 10-1994, f. & cert. ef. 5-4-94; DEQ 9-1996, f. & cert. ef. 7-10-96; DEQ 27-1998, f. & cert. ef. 11-13-98; DEQ 8-2005, f. & cert. ef. 7-14-05

340-090-0041

Contamination Reduction Education Plan

(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.

Stat.Auth: ORS 459.045, ORS 459A.025, & 468.020

Stats.Implemented: ORS 459A.005, ORS 459A.007, ORS 459A.008, ORS 459A.010 & ORS 459A.050

Hist.:

340-090-0042

Waste Prevention and Reuse Programs

(1) Effective January 1, 2018, and 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 would 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 targeted groups or classes of students;

(B) Describes how the program will engage the targeted 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 targeted 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 targeted 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 watershed funding or for the provision of city, county, or watershed 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 watershed 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 watershed 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 watershed 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.

Stat.Auth: ORS 459.045, ORS 459A.025 & ORS 468.020.

Stats.Implemented: ORS 459A.007, ORS 459A.010 & ORS 459A.050

Hist.:

340-090-0050

Wasteshed Designation and Recovery Goals

This rule defines the wastesheds, as designated in ORS 459A.010, and states the recovery goal for each wasteshed to achieve and maintain:

(1) Baker wasteshed is all of the area within Baker County and has a recovery rate goal for calendar year 2025 and subsequent years of 25 percent.

(2) Benton wasteshed is all of the area within Benton County excluding the City of Albany and has a recovery rate goal for calendar year 2025 and subsequent years of 44 percent.

(3) Clatsop wasteshed is all of the area within Clatsop County and has a recovery rate goal for calendar year 2025 and subsequent years of 53 percent.

- (4) Columbia wasteshed is all of the area within Columbia County and has a recovery rate goal for calendar year 2025 and subsequent years of 45 percent.
- (5) Coos wasteshed is all of the area within Coos County and has a recovery rate goal for calendar year 2025 and subsequent years of 30 percent.
- (6) Crook wasteshed is all of the area within Crook County and has a recovery rate goal for calendar year 2025 and subsequent years of 20 percent.
- (7) Curry wasteshed is all of the area within Curry County and has a recovery rate goal for calendar year 2025 and subsequent years of 30 percent.
- (8) Deschutes wasteshed is all of the area within Deschutes County and has a recovery rate goal for calendar year 2025 and subsequent years of 45 percent.
- (9) Douglas wasteshed is all of the area within Douglas County and has a recovery rate goal for calendar year 2025 and subsequent years of 34 percent.
- (10) Gilliam wasteshed is all of the area within Gilliam County and has a recovery rate goal for calendar year 2025 and subsequent years of 25 percent.
- (11) Grant wasteshed is all of the area within Grant County and has a recovery rate goal for calendar year 2025 and subsequent years of 25 percent.
- (12) Harney wasteshed is all of the area within Harney County and has a recovery rate goal for calendar year 2025 and subsequent years of 25 percent.
- (13) Hood River wasteshed is all of the area within Hood River County and has a recovery rate goal for calendar year 2025 and subsequent years of 35 percent.
- (14) Jackson wasteshed is all of the area within Jackson County and has a recovery rate goal for calendar year 2025 and subsequent years of 25 percent.
- (15) Jefferson wasteshed is all of the area within Jefferson County and has a recovery rate goal for calendar year 2025 and subsequent years of 32 percent.
- (16) Josephine wasteshed is all of the area within Josephine County and has a recovery rate goal for calendar year 2025 and subsequent years of 20 percent.
- (17) Klamath wasteshed is all of the area within Klamath County and has a recovery rate goal for calendar year 2025 and subsequent years of 20 percent.
- (18) Lake wasteshed is all of the area within Lake County and has a recovery rate goal for calendar year 2025 and subsequent years of 15 percent.

(19) Lane wasteshed is all of the area within Lane County and has a recovery rate goal for calendar year 2025 and subsequent years of 63 percent.

(20) Lincoln wasteshed is all of the area within Lincoln County and has a recovery rate goal for calendar year 2025 and subsequent years of 37 percent.

(21) Linn wasteshed is all of the area within Linn County, including the cities of Albany and Mill City, and excluding the area within the cities of Gates and Idanha, and has a recovery rate goal for calendar year 2025 and subsequent years of 45 percent.

(22) Malheur wasteshed is all of the area within Malheur County and has a recovery rate goal for calendar year 2025 and subsequent years of 25 percent.

(23) Marion wasteshed is all of the area within Marion County and all of the area within the cities of Gates, Idanha, and the city of Salem excluding the area within West Salem and Mill city and has a recovery rate goal for calendar year 2025 and subsequent years of 64 percent.

(24) Milton-Freewater wasteshed is all the area within the urban growth boundary of the city of Milton-Freewater and has a recovery rate goal for calendar year 2025 and subsequent years of 25 percent.

(25) Morrow wasteshed is all of the area within Morrow County and has a recovery rate goal for calendar year 2025 and subsequent years of 20 percent.

(26) Polk wasteshed is all the area within Polk County including the area within West Salem and excluding all the city of Willamina and has a recovery rate goal for calendar year 2025 and subsequent years of 48 percent.

(27) Sherman wasteshed is all of the area within Sherman County and has a recovery rate goal for calendar year 2025 and subsequent years of 20 percent.

(28) Tillamook wasteshed is all of the area within Tillamook County and has a recovery rate goal for calendar year 2025 and subsequent years of 37 percent.

(29) Umatilla wasteshed is all of the area within Umatilla County excluding the area within the urban growth boundary of the city of Milton-Freewater and has a recovery rate goal for calendar year 2025 and subsequent years of 20 percent.

(30) Union wasteshed is all of the area within Union County and has a recovery rate goal for calendar year 2025 and subsequent years of 25 percent.

(31) Wallowa wasteshed is all of the area within Wallowa County and has a recovery rate goal for calendar year 2025 and subsequent years of 25 percent.

(32) Wasco wasteshed is all of the area in Wasco County and has a recovery rate goal for calendar year 2025 and subsequent years of 35 percent.

(33) Wheeler wasteshed is all of the area within Wheeler County and has a recovery rate goal for calendar year 2025 and subsequent years of 20 percent.

(34) Yamhill wasteshed is all of the area within Yamhill County and all of the area within the city of Willamina and has a recovery rate goal for calendar year 2025 and subsequent years of 45 percent.

(35) Clackamas, Multnomah and Washington Counties, in aggregate, as a single wasteshed, have a recovery rate goal for calendar year 2025 and subsequent years of 64 percent.

Stat. Auth.: ORS 459A.025, ORS 459.045 & ORS 468.020

Stats. Implemented: ORS 459A.010

Hist.: DEQ 26-1984, f. & ef. 12-26-84; DEQ 1-1986, f. & ef. 2-12-86; DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93); Renumbered from 340-060-0025; DEQ 27-1998, f. & cert. ef. 11-13-98; DEQ 8-2005, f. & cert. ef. 7-14-05

340-090-0060

Determination of Wasteshed and Overall Statewide Recovery Rates

(1) DEQ may calculate recovery rates for the wastesheds listed in OAR 340-090-0050 by dividing the total weight of material recovered by the sum of the total weight of the material recovered plus the total weight of municipal solid waste disposed that was generated in each respective wasteshed.

(2) Recovery rates must include the following:

(a) All materials collected for recycling, both source separated or sorted from solid waste, including yard debris;

(b) Beverage containers collected under the requirements of ORS 459A.700 - 459A.740;

(c) Notwithstanding the foregoing, no material shall be counted toward the recovery rate if it is disposed of.

(3) As used in this rule, "viable market" means a person located within a wasteshed that will pay for the material or accept the material free of charge or a person located outside a wasteshed that will pay a price for the material that, at minimum, covers the cost of transportation of the material.

(4) Recovery rates may include the composting or burning for energy recovery of the material collected under sections (1) and (2) of this rule when there is not a viable market for recycling that material, provided that the following conditions are met:

(a) If the material is burned for energy recovery and then included in the recovery rate for Clackamas, Multnomah or Washington Counties in aggregate or for Benton, Lane, Linn, Marion,

Polk or Yamhill County wastesheds, the same material, when burned as part of mixed solid waste, may be included in the recovery rate for a wasteshed that burns mixed solid waste for energy recovery. The amount of the material within the mixed solid waste that may be included in the recovery rate for energy recovery shall be determined by a waste composition study performed by the wasteshed at least every six years.

(b) Mixtures of materials that are composted or burned for energy recovery shall not be included in the recovery rate if more than half of the mixed materials by weight could have been recycled if properly source-separated; and

(c) A place does not exist within a wasteshed that will pay for the material or accept it for free or a place does not exist outside of the wasteshed that will pay a price for the material that, at minimum, covers the cost of transportation of the material to market; and

(d) The appropriate county or Metropolitan Service District in the report required under OAR 340-090-0100 provides data on the weight, type of material and method of material recovery for material to be counted in the recovery rate under this section and written explanation of the basis for determining that a viable market did not exist for the wasteshed, including markets available within and outside of the wasteshed, transportation distances and costs, and market prices for the material if it were to be recycled as source separated material.

(5) Recovery rates shall not include the following:

(a) Industrial and manufacturing wastes such as boxboard clippings and metal trim that are recycled before becoming part of a product that has entered the wholesale or retail market, or any pre-consumer waste;

(b) Metal demolition debris in which arrangements are made to sell or give the material to processors before demolition such that it does not enter the solid waste stream;

(c) Discarded vehicles or parts of vehicles that do not routinely enter the solid waste stream. Except that, discarded vehicle parts that are received at recycling drop-off facilities operated as part of the general solid waste management system are included in the recovery rate calculation;

(d) Commercial, industrial and demolition scrap metal, vehicles, major equipment and home or industrial appliances that are handled or processed for use in manufacturing new products and that do not routinely enter the solid waste stream through land disposal facilities, transfer stations, recycling depots or on-route collection programs;

(e) Material recovered for composting or energy recovery from mixed solid waste, except as provided in subsection (2)(a) and section (4) of this rule;

(f) Mixed solid waste burned for energy recovery, except as provided by subsection (4)(a) of this rule.

(6) For the purposes of calculating the recovery rate DEQ may not include the following in the total solid waste disposed:

- (a) Sewage sludge or septic tank and cesspool pumpings;
- (b) Solid waste disposed of at an industrial solid waste disposal site;
- (c) Industrial waste, ash, inert rock, dirt, plaster, asphalt and similar material if delivered to a municipal solid waste disposal site and if the disposal site operator keeps a record of the weight and wasteshed of origin for such materials delivered and reports the weight and appropriate wasteshed in the reports required to be submitted to DEQ under OAR 340-090-0100(3);
- (d) Solid waste received at an ash monofill from an energy recovery facility; and
- (e) Any solid waste not generated within the state of Oregon.

Stat. Auth.: ORS 459.045, ORS 459A.100 - 459A.120 & ORS 468.020

Stats. Implemented: ORS 459A.005, ORS 459A.010, ORS 459A.025

Hist.: DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93); DEQ 10-1994, f. & cert. ef. 5-4-94; DEQ 27-1998, f. & cert. ef. 11-13-98; DEQ 8-2005, f. & cert. ef. 7-14-05

340-090-0068

Determination of Material-Specific Recovery Rates

(1) DEQ must determine the recovery rate for each material specified in ORS 459A.010(1)(c) based on the amount of that material that is recovered from within Oregon each year, divided by the amount of that material that is generated within Oregon each year.

- (a) The amount of material recovered from within Oregon must be determined based on surveying and reporting requirements specified in OAR 340-090-0100.
 - (b) The amount of material that is generated within Oregon each year means the combined amounts of material recovered and material disposed of, for material disposed or recovered from Oregon sources.
 - (c) Unless otherwise specified, determining the amount of material disposed of must be based on results from periodic waste composition studies specified in ORS 459A.035, when combined with data on the total amount of solid waste disposed as specified in ORS 459A.010(3)(d).
- (2) For the purpose of determining the recovery rate of food waste under ORS 459A.010(1)(c) and this rule, food waste does not include:
- (a) Crop residue or other agricultural waste;
 - (b) Waste from industrial-scale food processing facilities;

(c) Waste which is composted on the site of generation; and

(d) Waste that is disposed of directly by the generator to a sewage or septic system.

(3) As used in this section, “plastic” means a material composed of synthetic polymers such as polyethylene, polypropylene, polystyrene, polylactic acid, and other similar polymers, but does not include materials commonly referred to as rubber or materials that are naturally-produced polymers, such as proteins or starches. For the purpose of determining the recovery rate of plastic waste under ORS 459A.010(1)(c) and this rule, plastic waste:

(a) Includes post-consumer plastic items that are entirely made of plastic or that contain small amounts of easily-removed non-plastic items, such as metal handles on five-gallon plastic buckets; and

(b) Does not include plastic in multi-material items, such as electronics, automobiles, appliances, mixed-material toys, or household goods.

(4) As used in this rule, “carpet” means a manufactured article that is used in commercial or residential buildings affixed or placed on the floor or building walking surface as a decorative or functional building interior feature and that is primarily constructed of a top visible surface of synthetic or natural face fibers or yarns or tufts attached to a backing system derived from synthetic or natural materials.

(a) Examples of carpet include, but are not limited to:

(i) Commercial or residential broadloom carpet;

(ii) Modular carpet tiles; and

(iii) Indoor/outdoor carpet used as a floor surfacing in exterior applications.

(b) Examples of materials that are not carpet include:

(i) Rugs or similar floor coverings that are either not affixed to the floor or not intended to cover the entire floor surface;

(ii) Pads, cushions, or underlayment used in conjunction with, or separately from, a carpet; and

(iii) Artificial turf.

(5) For the purpose of determining the recovery rate of carpet waste under ORS 459A.010(1)(d) and this rule:

(a) Any carpet that is collected and then discarded may not be considered as being recovered; and

(b) For carpet where, at a minimum, the face fiber is recovered and used, the entire carpet is considered as having been recovered.

(6) DEQ may determine the recovery rate for carpet under ORS 459A.010(1)(d) based on:

(a) The method described in section (1) of this rule; or

(b) A different method of estimating the generation of carpet based on Oregon carpet sales data and an estimate of how much of that carpet is used as replacement carpet rather than in new construction.

(7) If DEQ calculates carpet recovery under section (7)(b), then DEQ must report, in any reports the legislature requires, recovery rates of carpet using both methods in section (7).

Stat.Auth: ORS 459.045, ORS 459A.025 & ORS 468.020

Stats.Implemented: ORS 459A.010, ORS 459A.035 & ORS 459A.050

Hist.:

340-090-0070

Principal Recyclable Material

(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.

Stat. Auth.: ORS 459A.025, ORS 459.045 & ORS 468.020

Stats. Implemented: ORS 459A.010 & ORS 459A.025

Hist.: DEQ 26-1984, f. & ef. 12-26-84; DEQ 1-1986, f. & ef. 2-12-86; DEQ 7-1987, f. & ef. 3-18-87; DEQ 5-1988, f. & cert. ef. 2-2-88; DEQ 27-1988, f. & cert. ef. 9-16-88; DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93); Renumbered from 340-060-0030

340-090-0080

Alternative Programs for Providing the Opportunity to Recycle

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, 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, 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, where yard debris is a principal recyclable material as designated in OAR 340-090-0700, 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 watershed 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 be 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.

Stat. Auth.: ORS 459A.025, ORS 459.045 & ORS 468.020

Stats. Implemented: ORS 459A.005, ORS 459A.007, ORS 459A.008, ORS 459A.010, ORS 459A.025 & ORS 459A.055

Hist.: DEQ 26-1984, f. & ef. 12-26-84; DEQ 27-1988, f. & cert. ef. 9-16-88; DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93); Renumbered from 340-060-0035 and 340-060-0125

340-090-0090

Collection of Recyclable Materials

(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 for used oil and wood waste which may be collected and burned for energy recovery.

(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.

Stat. Auth.: ORS 459A.025, ORS 459.045, ORS 459A.005 – ORS 459A.085 & ORS 468.020

Stats. Implemented: ORS 459A.080

Hist.: DEQ 26-1984, f. & ef. 12-26-84; DEQ 27-1988, f. & cert. ef. 9-16-88; DEQ 1-1989, f. & cert. ef. 1-27-89; DEQ 9-1991, f. & cert. ef. 6-20-91; DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93); Renumbered from 340-060-0075 and 340-060-0080; DEQ 27-1998, f. & cert. ef. 11-13-98

340-090-0100

Reporting Requirements

The information in this rule is reported in order to determine statewide and local wasteshed recovery rates, to determine compliance with the opportunity to recycle requirements and to provide accurate and comprehensive information on the type and amounts of residential and commercial solid waste generated, disposed and recovered in Oregon.

(1) General requirements. The information in subsection (2)(b) and sections (3), (4), and (5) of this rule must be reported on a form provided DEQ and must be reported to DEQ no later than February 28 of each calendar year for the previous calendar year. The information to be reported under section (6) of this rule is optional.

(2) County requirements. Each county, on behalf of its wasteshed and the cities within its wasteshed, must submit the following information to DEQ. The information required below that relates to collection programs within each city jurisdiction must be reported by the city to the county so that the county can provide the required information in a timely manner to DEQ.

(a) The following information must be reported periodically as DEQ requires. This information constitutes the "opportunity to recycle" report. DEQ will notify counties by November 1 of a year if an opportunity to recycle report is required for that year. When required, this report must be submitted on the schedule specified in section (1) of this rule. In any case examples of all materials listed under paragraph (D) below must be kept on file by the county for future reports or inspection by DEQ:

(A) The materials that are accepted for recycling at each disposal site in the wasteshed;

(B) If a recycling depot has been designated in place of a disposal site as a more convenient location for recycling under the opportunity to recycle requirements, the location of that recycling depot and the materials accepted for recycling at that depot;

(C) Description of all education and promotion activities conducted by or on behalf of each applicable city and the county;

(D) For each city of 4,000 or more population in the wasteshed and for each city located within a metropolitan service district in the wasteshed, the following information:

(i) A list of materials accepted for recycling in each on-route residential collection program that is offered to all residential collection service customers;

(ii) A list of materials accepted for recycling in multi-family collection programs;

(iii) A list of materials accepted for recycling in on-site commercial collection programs;

(iv) Listing of each program element under OAR 340-090-0040(3) that has been chosen and implemented by each city within a metropolitan service district or with 4,000 population or more in the wasteshed, including appropriate documentation of implementation of collection service

rates, multi-family collection programs and commercial collection programs if applicable; or, as applicable, a description of the approved alternative program being implemented and the status of implementation.

(E) A summary of activities in an expanded education and promotion plan, if a city or county has chosen to provide the expanded education and promotion program element through implementation of a under OAR 340-090-0040(3)(c)(B)(ii). The summary must include education and promotion activities planned for implementation in the coming two years unless DEQ requires otherwise. The summary should also include:

(i) Plan activities actually implemented since the wasteshed last reported to DEQ on activities in the expanded education and promotion plan; and

(ii) Any changes in activities implemented from those in the plan originally submitted to DEQ, or from the previous summary submitted to DEQ under paragraph (2)(a)(E) of this rule, with explanations for the changes.

(F) For each city or county that is implementing the expanded education and promotion program element under OAR 340-090-0040(3)(c), the contamination reduction education plan described in OAR 340-090-0041.

(G) For each city or county that is subject to the requirements of OAR 340-090-0042, the plans required for the city's or county's compliance with that rule.

(H) A city or county that has evaluated the effectiveness of one or more program elements is encouraged to include the evaluation(s) in the wasteshed "opportunity to recycle" report.

(b) The following information must be reported annually, and constitutes the "recovery rate report":

(A) The type and corresponding weight of each material collected for the purpose of recycling during the previous calendar year for the following sources in the wasteshed:

(i) On-route residential collection;

(ii) Multi-family residential collection;

(iii) On-site commercial collection;

(iv) Collection at disposal site recycling depots or designated more convenient locations under the opportunity to recycle requirements;

(v) Collection from approved alternative programs under OAR 340-090-0080 if applicable.

(B) The information required in paragraph (2)(b)(A) of this rule must be reported in the following manner:

(i) The weight of material reported must exclude recovery of wastes as described in OAR 340-090-0060(5);

(ii) The weight of material collected must be determined either by direct measurement or by determining the weight of material sold or otherwise sent off-site or used on-site for recycling during the calendar year, adjusted by the difference in weight of material held in inventory on the first day and last day of the calendar year;

(iii) Unless DEQ and the county have agreed in writing on an alternative reporting method, the weight of material collected must be reported separately for each collection service provider or other recycler, on forms DEQ provides;

(iv) The type and corresponding weight of material reported must be broken down by each of the following collection sources:

(I) On-route residential collection;

(II) On-site commercial collection;

(III) Multi-family residential collection;

(IV) Disposal site recycling depots or depots designated as more convenient locations under the opportunity to recycle requirements; and

(V) Material collected by an alternative program for providing the opportunity to recycle requirements.

(v) In cases where a collection service provider is unable to provide exact weight information for the categories identified in subparagraph (2)(b)(B)(iv) of this rule, reasonable estimates allocating the weight of material collected by collection source and by wasteshed may be made.

(C) Information on participation in on-site residential collection programs should be provided if available, either by exact participation data or by a reasonable estimate;

(D) Information on participation in on-site commercial collection programs and multi-family collection programs should be provided if available, either by exact participation data or by a reasonable estimate;

(E) Total weight of all solid waste generated in the wasteshed disposed of outside of the state of Oregon. The following waste is excluded from this reporting requirement:

(i) Sewage sludge or septic tank and cesspool pumpings;

(ii) Industrial solid waste disposed of at an out-of-state industrial solid waste disposal site;

(iii) Industrial waste, ash, inert rock, dirt, plaster, asphalt and similar material if delivered to an out-of-state municipal solid waste disposal site and if the disposal site operator keeps a record of the weight and wasteshed of origin of such materials delivered;

(iv) Solid waste received at an out-of-state ash monofill from an energy recovery facility.

(F) A copy of any new city or county collection service franchise, or any amendment to franchise, including rates under the franchise, which relates to recycling;

(G) If a county determines that the conditions in OAR 340-090-0060(4) exist and specific materials or mixtures that are composted or burned for energy recovery may be included in the calculation of the recovery rate for the wasteshed, the county must report the following information:

(i) Weight and type of material composted or burned for energy recovery;

(ii) For mixtures of materials, the percent by weight and description of each type of material composted or burned for energy recovery that, if properly source separated, could have been recycled;

(iii) Where markets exist for such materials in the wasteshed and outside the wasteshed;

(iv) Charge or price paid for each material at each location;

(v) Transportation distances to market at each location and the per-mile transportation cost to market by the most economical means of transportation available.

(3) Solid waste disposal facility requirements. Except as provided in section (4) of this rule, and excluding the material listed in OAR 340-090-0060(5), each solid waste disposal site that receives solid waste for disposal, except transfer stations, must report to DEQ the weight of solid waste disposed of by each wasteshed in Oregon. The disposal site must report this waste as either "not counting" in determining the recovery rate in OAR 340-090-0050 [wastes specified in OAR 340-090-0060(5)] or as "counting" towards the rate (all other wastes generated in Oregon). This information must be reported by the disposal site permittee on forms DEQ provides and must be a condition of the solid waste permit. If a disposal site is unable to determine the exact weight of waste disposed for each wasteshed in which it was generated, a reasonable estimate allocating the weight of waste to the appropriate wastesheds may be made.

(4) The metropolitan service district on behalf of Multnomah, Clackamas, and Washington counties and the cities therein, must report the following information:

(a) Information in subsection (2)(b) of this rule for all counties in aggregate for said district;

(b) Weight of solid waste disposed of through facilities owned or operated by the metropolitan service district, or operated under contract to the metropolitan service district, excluding the wastes listed in OAR 340-090-0060(5); and

(c) Weight of solid waste sent to out-of-state facilities.

(5) Privately operated recycling, material recovery, and energy recovery facility requirements. This section applies to buy-back centers, drop-off centers, manufacturers, distributors, pyrolysis facilities, facilities burning recovered material as a fuel, collection service providers who collect or otherwise handle materials other than those required to be reported under subsection (2)(b) of this rule, and other private recycling operations and material recovery facilities who collect, otherwise acquire, use recovered material in manufacturing or as a fuel, or recycle material that is not included in the reporting requirements of subsection (2)(b) and section (6) of this rule. These facilities must accurately report to DEQ the type and corresponding weight of each category of material recycled, processed, recovered as a fuel, or used in a new product containing recycled content in a calendar year as follows:

(a) Weight of each material recovered must be reported, broken down by watershed of origin and by source as provided on the data form DEQ supplies;

(b) Weight of materials reported must exclude recycling of wastes described in OAR 340-090-0060(5);

(c) Weight of material collected must be determined either by direct measurement of the material collected, purchased, or generated; or by determining the weight sold or otherwise sent off-site or used on-site for recycling during the year, adjusted by the difference in weight of material in inventory on the first day and last day of the calendar year;

(d) To avoid double counting of materials, entities reporting under this section must identify weight and sources of material they collected from other recyclers, subsequent recyclers and end users that directly receive their material and the weight of material sold or delivered to each directly subsequent recycler or end user. This applies to all materials collected for recycling, including materials delivered to subsequent recyclers or end users or collected and reported to the county under subsection (2)(b) of this rule;

(e) Private recyclers must report the final status of each material sold, delivered or utilized. The report must indicate whether the material was recycled, composted, or burned for energy recovery in order to determine which materials will count toward the recovery rate in OAR 340-090-0050;

(f) Total weight of material recovered by each private recycler must be reported based on actual measurement. In cases where determining the actual weight of material recovered by watershed or by collection source is not possible, reasonable estimates allocating the weight of material collected by watershed and collection source may be made.

(6) Scrap metal industry requirements. DEQ must survey the scrap metal industry annually. The scrap metal industry may report the following information to DEQ on a form DEQ provides as section (1) of this rule requires:

(a) Weight of post-consumer residential scrap metal, including appliances processed for use in manufacturing new products that do not routinely enter the solid waste stream;

(b) Source or watershed where the material was generated.

Stat. Auth.: ORS 459.045, ORS 459A.025 & ORS 468.020

Stats. Implemented: ORS 459A.007, ORS 459A.008, ORS 459A.010 & ORS 459A.050

Hist.: DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93); DEQ 27-1998, f. & cert. ef. 11-13-98

340-090-0110

Minimum Content Reporting Requirements

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 within Oregon wastesheds where container glass is a principal recyclable material, 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.

Stat. Auth.: ORS 459A.025, ORS 459.045 & ORS 468.020

Stats. Implemented: ORS 459A.515, ORS 459A.520 & ORS 459A.550

Hist.: DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93); DEQ 27-1998, f. & cert. ef. 11-13-98

340-090-0120

Confidential Information

This rule describes and clarifies which information submitted to DEQ under the requirements of OAR 340-090-0100 DEQ must handle as confidential and the procedures for maintaining confidentiality.

(1) DEQ must maintain as confidential information collected under OAR 340-090-0100(5) and (6) as it relates to customer lists or names and specific weights and types of materials collected or processed.

(2) Upon the provider's request, DEQ must maintain as confidential information the information specifically relating to customer lists or specific types and amounts of materials marketed for materials collected on-route that a collection service provider voluntarily submits to DEQ under a survey.

(3) DEQ must designate a Documents Control Officer for purposes of receiving confidential information and for secure storage and management of such information.

(4) DEQ must limit access to information submitted as confidential under OAR 340-090-0100(5) and (6) to employees and representatives of DEQ involved in carrying out the requirements of ORS Chapter 459 and 459A.

(5) DEQ may use and disclose the information submitted under OAR 340-090-0100(5) and (6) in aggregate form.

Stat. Auth.: ORS 459A.025, ORS 459.045 & ORS 468.020

Stats. Implemented: ORS 459A.010

Hist.: DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93)

340-090-0130

Fair Market Value Exemption

(1) To qualify for exemption under ORS 459A.075 a source-separated recyclable material must be:

(a) Source-separated by the generator; and

(b) Purchased from or exchanged by the generator for fair market value for recycling or reuse.

(2) If, as part of the opportunity to recycle, a city or county requires by franchise that residential collection service of recyclable material be provided and identifies a group of two or more materials as the recyclable material for which the residential collection service must be provided, then:

(a) "Fair market value" of any material within the identified group must include the provisions of collection service for all material in the identified group; and

(b) "Recyclable material" means the group identified by the city or county.

(3) Local government may designate classes of residential dwellings to which specific types or levels of collection service are to be provided.

Stat. Auth.: ORS 459A.025, ORS 459.045 & ORS 468.020

Stats. Implemented: ORS 459A.075

Hist.: DEQ 26-1984, f. & ef. 12-26-84; DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93); Renumbered from 340-060-0050; DEQ 27-1998, f. & cert. ef. 11-13-98

340-090-0140

Recyclable Material

This rule describes the factors that DEQ must consider in determining if a material meets the definition of recyclable material. In determining what materials are recyclable materials.

- (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.

Stat. Auth.: ORS 459A.025, ORS 459.045 & ORS 468.020

Stats. Implemented: ORS 459A.010

Hist.: DEQ 26-1984, f. & ef. 12-26-84; DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93); Renumbered from 340-060-0055; DEQ 27-1998, f. & cert. ef. 11-13-98

340-090-0150

Due Consideration

- (1) In determining who must provide the opportunity to recycle, a city or county must first give due consideration to any person lawfully providing recycling or collection service on June 1, 1983, if the person continues to provide the service until the date the determination is made and the person has not discontinued the service for a period of 90 days or more between June 1, 1983, and the date the city or county makes the determination.
- (2) "Due consideration" includes at a minimum:
 - (a) A general notice announcing that the city or county intends to franchise recycling collection service and describing the requirements for the franchise;
 - (b) A timely written notice announcing that the city or county intends to franchise recycling collection service and describing the requirements for the franchise sent to persons entitled by ORS 459A.085(6)(c) to due consideration where such persons are known to the city or county or where such person has filed a timely written request for such notices with the city or county;
 - (c) An opportunity for public comment on the proposed franchise; and

(d) Consideration of, and response to, a timely application for a recycling collection franchise from a person entitled to due consideration and response.

Stat. Auth.: ORS 459A.025, ORS 459.045 & ORS 468.020

Stats. Implemented: ORS 459A.085

Hist.: DEQ 26-1984, f. & ef. 12-26-84; DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93); Renumbered from 340-060-0085

340-090-0180

Used Oil Recycling Signs

(1) Retail sellers of more than 500 gallons of lubrication or other oil annually in containers for use off premises must post and maintain durable and legible signs.

(2) Retail sellers must print and provide their own signs. The signs must contain the following information:

(a) Information on the energy and environmental benefits gained by recycling used motor oil;

(b) Telephone number where people can call to obtain more information on oil recycling depots and other oil recycling opportunities;

(c) Information on how to recycle used oil;

(d) Information on at least one conveniently located used oil recycling depot, or other oil recycling opportunity, i.e., name, location, and hours of operation;

(3) The signs this rule requires must be no smaller than 11 inches in width and 14 inches in height.

(4) DEQ suggests that the following appear on the sign "**Conserve Energy -- Recycle Used Motor Oil**", in at least inch-high letters.

Stat. Auth.: ORS 459A.025, ORS 459.045 & ORS 468.020

Stats. Implemented: ORS 459A.575

Hist.: DEQ 4-1979, f. & ef. 2-2-79; DEQ 7-1987, f. & ef. 3-18-87; DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93); Renumbered from 340-061-0062

340-090-0190

Yard Debris Recycling Charges

(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 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 where yard debris is a principal recyclable material, 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, where yard debris is not a principal recyclable material.

Stat. Auth.: ORS 459A.025, ORS 459.045, ORS 459A.005 – ORS 459A.085 & ORS 468.020
Stats. Implemented: ORS 459.015, ORS 459.250, ORS 459A.005 & ORS 459A.010
Hist.: DEQ 9-1991, f. & cert. ef. 6-20-91; DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93); Renumbered from 340-060-0130; DEQ 9-1993, f. & cert. ef. 6-16-93; DEQ 27-1998, f. & cert. ef. 11-13-98

340-090-0310

Rigid Plastic Containers: Purpose

The following administrative rules, OAR 340-090-0320 - 0430, are intended to establish the minimum requirements for implementing the Oregon Rigid Plastic Container Recycling Law, ORS 459A.650 through 680. The Commission's purposes in adopting these rules are to:

- (1) Reduce the amount of rigid plastic containers being disposed of in Oregon;
- (2) Increase the reuse or recycling of rigid plastic containers that would otherwise be disposed of;
- (3) Increase the use of recycled material in the manufacture of rigid plastic containers.

Stat. Auth.: ORS 459A.025
Stats. Implemented: ORS 459A.650 – ORS 459A.665
Hist.: DEQ 26-1994, f. & cert. ef. 11-2-94; DEQ 27-1998, f. & cert. ef. 11-13-98

340-090-0320

Definitions

As used in OAR 340-090-0310 through 430 and in OAR 340-012-0042 unless otherwise specified:

(1) "Container manufacturer" means the producer or generator of a rigid plastic container for a packaged product that is sold or offered for sale in Oregon. A "container manufacturer" is the same as a "package manufacturer" as defined in ORS 459A.650(2).

(2) "Container Manufacturer's Certificate of Compliance" means the certificate provided by the container manufacturer to a product manufacturer which describes the records which the container manufacturer has available to document that a rigid plastic container or containers comply with OAR 340-090-0350(1)(a), (1)(b)(A), or (1)(b)(B).

(3) "Container/product ratio" means the ratio of the weight of a rigid plastic container to the units of product in the container.

(4) "DEQ" means the Department of Environmental Quality.

(5) "Drug" has the meaning given by the federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) and pertinent regulations.

(6) "FDA" means federal Food and Drug Administration.

(7) "FD&C Act" means federal Food, Drug and Cosmetic Act (21 U.S.C. 321).

(8) "Infant formula" has the meaning given by the federal Food, Drug and Cosmetic Act (21 U.S.C. 321(f)), and is food which purports to be for special dietary use solely as food for infants because it simulates human milk or is suitable as a complete or partial substitute for human milk.

(9) "Medical device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including a component, part or accessory, which is:

(a) Recognized in the *National Formulary, United States Pharmacopoeia*, USP 39-NF 34 (2016) or any existing supplement thereto, and intended:

(A) For use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or

(B) To affect the structure or any function of the body of man or other animals which does not achieve its primary intended purpose through chemical action within or on the body of man or other animals; and is

(b) Not dependent upon being metabolized for the achievement of any of its principal intended purposes.

(10) "Medical food" has the meaning given by the federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) and pertinent regulations and includes the following:

(a) A product formulated to be consumed or administered internally under the supervision of a physician; and

(b) A product intended for specific dietary management of a disease or condition for which distinctive nutritional requirements, based on recognized scientific principles, are established by medical evaluation. For purposes of these rules, medical food is food that is consumed or directly placed in the stomach or intestine through a tube, or other food which is used to manage a disease or medical condition, or food labeled "may be used as the sole source of nutrition" or "may be used as the sole item of the diet". Food for which popular dietary claims are made, such as "low fat" or "low sodium," is not medical food.

(11) "Post-consumer rigid plastic container" means a rigid plastic container that would otherwise be destined for solid waste disposal, having completed its intended end-use and product lifecycle. Rigid plastic containers which held obsolete or unsold products must be considered post-consumer rigid plastic containers when used as a feedstock for new products other than fuel or energy.

(12) "Product-associated container" means a brand-specific rigid plastic container line, which may have one or more sizes, shapes or designs and which is used in conjunction with a particular, generic product line. A "product-associated container" is the same as a "product-associated package" as defined in ORS 459A.650(3).

(13) "Product manufacturer" means the producer or generator of a packaged product that is offered for sale in Oregon in a rigid plastic container:

(a) For purposes of these rules "product manufacturer" includes all subsidiaries and affiliates;

(b) Identification of the product manufacturer, for purposes of these rules, must be determined by the following hierarchy:

(A) When the name of the entity that manufactured the product held by the container is stated on the container label, then that entity must be considered the product manufacturer;

(B) When the container label does not state the entity that manufactured the product held by the container, but the container label does state the distributor of the container, then the distributor must be considered the product manufacturer;

(C) When the container label does not state either the entity that manufactured the product held by the container or the distributor of the container, but the container label states the importer of the container, then the importer must be considered the product manufacturer;

(D) When the container does not have a label or the label does not state the entity that manufactured the product held by the container, or the distributor of the container, or the importer of the container, or the container is filled at the point of sale and no other manufacturer distributor or importer is identified on the label, then the store that sells the product held by the container must be considered the product manufacturer.

(14) "Product manufacturer's Report of Compliance" means the report a product manufacturer provides to DEQ that documents compliance of a rigid plastic container or containers with requirements of OAR 340-090-0350 or exemption from those requirements as set out in OAR 340-090-0330.

(15) "Recycled content" means that portion of a package's weight that is composed of recycled material, as determined by a material balance approach that calculates total recycled material input as a percentage of total material input in the manufacture of the package.

(16) "Recycled in Oregon" means generated in Oregon as plastic from post-consumer rigid plastic containers and collected, processed and eventually manufactured into another product, other than fuel or energy, either in Oregon or outside the state.

(17) "Recycled material" means a material that would otherwise be destined for solid waste disposal, having completed its intended end use or product life cycle. Recycled material does not include materials and by-products generated from, and commonly reused within, an original manufacturing and fabrication process.

(18) "Recycling rate" means the level, stated as a percentage, at which post-consumer rigid plastic containers are recycled in Oregon. The rigid plastic container recycling rate is determined by dividing the weight of plastic from post-consumer rigid plastic containers recycled in Oregon by the combined weight of plastic from both post-consumer rigid plastic containers recycled and those disposed of in Oregon.

(19) "Reduced container" means a rigid plastic container which has a container/product ratio which is at least ten percent less than the container/product ratio for the same product by the same product manufacturer five years earlier, as provided in OAR 340-090-0330(5).

(20) "Replacement product" means a product which is used to refill a rigid plastic container. Replacement product must be the same as or similar to the original product in the container.

(21) "Reused container" means either a refillable or reusable container which is refilled by the product manufacturer or reused by the consumer and is used at least five times with the same or a similar product.

(22) "Rigid plastic bottle" means a container that has a mouth narrower than its base.

[ED. NOTE: Documents referenced in the rule are not published with the text. They are available from the agency.]

Stat. Auth.: ORS 459A.025 & ORS 468.020

Stats. Implemented: ORS 459A.650 & ORS 459A.660

Hist.: DEQ 26-1994, f. & cert. ef. 11-2-94; DEQ 9-1996, f. & cert. ef. 7-10-96

340-090-0330

Rigid Plastic Containers

(1) A rigid plastic container is a plastic bottle, jar, cup, tub, pail, "clamshell" container, or other plastic container which meets the following criteria:

(a) Is designed to hold a product for sale;

(b) Has a volume of not less than eight fluid ounces and not more than five gallons. The volume of the container must be determined using one of the following methods:

- (A) For a container which is labeled in liquid measure, the labeled volume; or
- (B) The measured liquid volume of the container; and
- (C) For containers which have a labeled product liquid volume of five gallons or less and a measured container liquid volume of more than five gallons the labeled product volume must be used.

- (c) Is composed predominantly of plastic resin;
- (d) Is able to maintain its shape, whether empty or full, under normal usage, independent of any product which it contains or other external support.

Comment: Plastic tubes and blister packs are excluded from the definition of a rigid plastic container.

(2) The following containers are also rigid plastic containers if they meet the criteria set forth in section (1) of this rule:

- (a) Plastic boxes, baskets, crates, and flower pots that are sold containing a product;
- (b) Plastic trays that have sidewalls designed to contain a product in the tray.
- (3) The determination of whether a container meets the definition of rigid plastic container must be based solely upon the characteristics of the plastic container itself at the time of determination and not upon any material used as packaging for a rigid plastic container or for packaging of individual products within a rigid plastic container.
- (4) Lids and caps are not considered to be part of a rigid plastic container except when they meet one of the following criteria:

- (a) Are designed to be permanently attached to a rigid plastic container; or
- (b) Independently meet the criteria set forth in section (1) of this rule.

(5) The following packaging items may not be considered part of a rigid plastic container:

- (a) Labels;
- (b) Those parts of the whole package or of the rigid plastic container for which the principal purpose is to provide a tamper resistant seal. This does not include portions of a rigid plastic container that have a principal purpose other than providing a tamper resistant seal; and
- (c) A bag, film, or flexible inner or outer wrap that is used to cover or contain a product or a rigid plastic container.

Stat. Auth.: ORS 459.995, ORS 459A.025, ORS 459A.650 - ORS 459A.685 & ORS 468.020
Stats. Implemented: ORS 459A.650, ORS 459A.655 & ORS 459A.675
Hist.: DEQ 26-1994, f. & cert. ef. 11-2-94

340-090-0340

Exempt Rigid Plastic Containers

(1) Rigid plastic containers that meet one of the sets of criteria in sections (2) through (7) of this rule are exempt from the requirements of OAR 340-090-0350 through -0370.

(2) The product in the rigid plastic container is one of the following:

- (a) A "drug" as defined in OAR 340-090-0320(5);
- (b) A "medical device" as defined in OAR 340-090-0320(9);
- (c) "Medical food" as defined in OAR 340-090-0320(10); or,
- (d) "Infant formula" as defined in OAR 340-090-0320(8).

(3) The rigid plastic container and product are shipped out of Oregon before they are sold to the final consumer.

(4) The packaging is necessary to provide a tamper-resistant seal for public health purposes:

(a) For the purposes of OAR 340-090-0310 through 0430, packaging that provides a tamper-resistant seal is one of the following:

(A) A separate device associated with a rigid plastic container that resists tampering with the product in the container or exposes when an attempt to tamper with a product has occurred. Such devices include but are not limited to tape, film, foil, and tamper-resistant caps and lids; or

(B) A portion of a rigid plastic package that is designed to work with a device described in paragraph (A) of this subsection or which independently resists tampering with the product in the container or exposes when an attempt to tamper with a product has occurred.

(b) A complete rigid plastic container may not be considered "necessary to provide a tamper-resistant seal" and may not be exempt under the provisions of this rule.

(5) The container is a reduced container:

(a) A container is a reduced container when the container/product ratio has been reduced by at least ten percent when compared with the container used for the same product by the same product manufacturer five years earlier:

(A) For a container that has been changed to a reduced container after January 1, 1990 and before January 1, 1995:

(i) Comparison must be made to the container/product ratio of the equivalent container sold five years earlier;

(ii) The exemption must start on January 1, 1995; and must run until January 1, 2000.

(B) For a container which has been changed to a reduced container on or after January 1, 1995:

(i) Comparison must be made to the container/product ratio of the equivalent container sold five years earlier;

(ii) The exemption must start on the date the reduced container was first used by the product manufacturer and must run for five years.

(b) A reduction in container/product ratio may not be achieved by substituting plastic for a different material for a substantial part of the container;

(A) Different material means a material other than plastic, including but not limited to glass, metal, wood, or paper;

(B) Use of different plastic resins or combinations of plastic resins is not use of a different material.

(c) For the purposes of calculating the container/product ratio, a unit of product is one of the following:

(A) A unit of weight of product;

(B) A unit of volume of product; or

(C) A unit of product use:

(i) To qualify as a "unit of product," a "unit of product use" must be clearly stated on the container or in other product use instructions;

(ii) Some examples of units of product use include the number of "standard applications," "servings," or other generally accepted units of product use.

(d) A reduced container is not exempt from OAR 340-090-0350 through -0370 if DEQ finds that changes made in the original container adversely impact the potential for the container to be recycled or to contain recycled content;

(e) A reduced container is not exempt from OAR 340-090-0350 through -0370 if the container/product ratio for the original container was increased after January 1, 1990;

(f) For purposes of receiving an exemption under this section, a concentrated form of a product must be considered to be the "same product by the same product manufacturer" if it:

(A) Has the same product line name; and

(B) Is intended for the same use.

(6)(a) There has been a substantial investment in achieving the recycling rate. To meet the "substantial investment" exemption, all of the following provisions must be met:

(A) A substantial investment has been made in achieving the recycling rate;

(B) There is a demonstrated viable market for the material from which the container is made;

(C) The 1995 recycling rate for compliance purposes is at least 20%;

(D) The recycling rates for the rigid plastic containers for the previous two years show evidence of increasing; and

(E) Reasonable projections indicate that the rigid plastic containers will meet the 25 percent recycling rate by January 1, 1997.

(b) The exemption provided under the provisions of ORS 459A.660(5)(e) must be a one-time exemption with an effective date of January 1, 1995 to December 31, 1996;

(c) DEQ must, before January 1, 1995, determine if the conditions for the "substantial investment exemption" for rigid plastic containers, in the aggregate, have been met.

(7) The container contains food:

(a) A container must be considered to "contain food" if it contains an article used, or intended to be used, for food, ice, confection or condiment, whether simple or compound, or any part or ingredient thereof or in the preparation thereof, and for human consumption.

(b) A container may not be considered to "contain food" if it contains a drinkable liquid and is a rigid plastic bottle.

Stat. Auth.: ORS 459A.025 & ORS 468.020

Stats. Implemented: ORS 459A.660

Hist.: DEQ 26-1994, f. & cert. ef. 11-2-94; DEQ 9-1996, f. & cert. ef. 7-10-96

340-090-0350

Compliance Standards

(1) Except as provided in OAR 340-090-0340, by January 1, 1995, any rigid plastic container sold, offered for sale, or used in association with the sale or offer for sale of products in Oregon must comply with one of the following:

(a) Have at least 25 percent recycled content;

(b) Be made of plastic that is being recycled in Oregon at a rate of at least 25 percent by meeting one of the following criteria:

(A) It is a rigid plastic container and rigid plastic containers, in the aggregate, are being recycled in Oregon at a rate of at least 25 percent by January 1, 1995;

(B) It is a specified type of rigid plastic container and that specified type of rigid plastic container, in the aggregate, is being recycled in Oregon at a rate of at least 25 percent by January 1, 1995; or

(C) It is a product-associated container and that class of containers, in the aggregate, is being recycled in Oregon at a rate of at least 25 percent by January 1, 1995.

(c) Be used at least five times for the same or a substantially similar use.

(2) Individual rigid plastic containers sold in Oregon after January 1, 1995 but manufactured by a container manufacturer or filled by a product manufacturer prior to January 1, 1995 are not required to meet the compliance standards listed above. A product manufacturer must be able to document that the containers were filled prior to January 1, 1995.

(3) For any calendar year for which DEQ determines that the aggregate recycling rate for compliance purposes is at least 25 percent, all product and container manufacturers must be deemed to be in compliance with OAR 340-090-0340, 340-090-0350, 340-090-0400 and 340-090-0410 without any further action on their part.

Stat. Auth.: ORS 459A.025 & ORS 468.020

Stats. Implemented: ORS 459A.655 & ORS 459A.660

Hist.: DEQ 26-1994, f. & cert. ef. 11-2-94; DEQ 9-1996, f. & cert. ef. 7-10-96

340-090-0360

Recycled Content Compliance

(1) A rigid plastic container must have at least 25% recycled content by January 1, 1995 to comply with OAR 340-090-0350(1)(a).

(2)(a) A container manufacturer must determine the recycled content of an individual rigid plastic container as being the same as the calculated recycled content for all the same type of rigid plastic containers manufactured during the same time period, within a one-year period, as

determined by the container manufacturer, with the same input ratio of recycled material to total plastic;

(b) The recycled content of a rigid plastic container is calculated by dividing the weight of recycled material used in the production of the container by the total weight of plastic material used to produce the container. The result of that calculation is a percentage, which is the recycled content.

Stat. Auth.: ORS 459.995, ORS 459A.025, ORS 459A.650 - ORS 459A.685 & ORS 468.020
Stats. Implemented: ORS 459A.655
Hist.: DEQ 26-1994, f. & cert. ef. 11-2-94

340-090-0370

Recycling Rate Compliance

A rigid plastic container may comply with OAR 340-090-0350(1)(b) by meeting one of the following criteria:

(1) The aggregate recycling rate for compliance purposes in Oregon for all rigid plastic containers, as calculated pursuant to OAR 340-090-0380(2), is at least 25%.

(2) It is a specified type of rigid plastic container and the recycling rate in Oregon for that type of container, in the aggregate, is at least 25%:

(a) A manufacturer using this recycling rate option may designate the type of rigid plastic containers on which the recycling rate will be based. This becomes the specified-type. A specified-type may be designated using any one or combination of the following characteristics:

(A) Type of plastic resin used to manufacture the container, for example HDPE, natural HDPE, colored HDPE, PETE, PVC;

(B) Shape and design of the container, for example all bottles, all tubs, all gallon jugs, all buckets;

(C) Use of the container, for example milk bottles, non-milk dairy containers, household chemical containers, or other generic product lines;

(D) Other specified characteristics of the container.

(b) The characteristics used to identify a specified type of rigid plastic container may not exclude or limit it to an individual product-associated container.

(3)(a) It is a product-associated rigid plastic container and the recycling rate in Oregon for that type of container, in the aggregate, is at least 25%;

(b) A product manufacturer using this recycling rate option may designate the product-associated rigid plastic container on which the recycling rate will be based. This becomes the product-associated rigid plastic container. A product-associated rigid plastic container may be designated by the following single or combination of characteristics but must be limited to a specific brand and generic product line:

(A) The brand of product in the container (Example: all Brand X products or all Brand Y products);

(B) The brand and type of product in the container (Example: Brand X dish soap or Brand Y cooking oil);

(C) The brand and type of container (Example: all Brand X gallon jugs or all Brand Y jars);

(D) The brand and resin type of the container (Example: all Brand X PETE containers, or all Brand Y HDPE containers);

(E) Other specific characteristics or combination of characteristics which are brand specific.

(4) A manufacturer choosing the options described in sections (2) or (3) of this rule 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 was generated by a methodology acceptable to DEQ and are verifiable.

Stat. Auth.: ORS 459.995, ORS 459A.025, ORS 459A.650 - ORS 459A.685 & ORS 468.020
Stats. Implemented: ORS 459A.655, 459A.657 & 459A.665
Hist.: DEQ 26-1994, f. & cert. ef. 11-2-94

340-090-0380

Recycling Rate Calculation

(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 plastic resin types identified in ORS 459A.680. 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 (4)(g) 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.

Stat. Auth.: ORS 459A.025

Stats. Implemented: ORS 459A.650 – ORS 459A.657

Hist.: DEQ 26-1994, f. & cert. ef. 11-2-94; DEQ 9-1996, f. & cert. ef. 7-10-96; DEQ 27-1998, f. & cert. ef. 11-13-98

340-090-0390

Waste Composition

(1) A waste composition study DEQ undertakes must consist of a representative, statistically valid sampling of Oregon's municipal solid waste. DEQ must design a protocol of standards and procedures which relate to:

- (a) Developing a representative sampling plan;
- (b) Applying the definition of a rigid plastic container in OAR 340-090-0330 when identifying and categorizing rigid plastic containers in the field;
- (c) Maintaining quality control, including training and auditing;
- (d) Performing sampling, including but not limited to sample selection, sorting, weighing; and
- (e) Field data adjustments for contamination including moisture, food and other non-plastic materials.

(2) DEQ must report the findings of the waste composition study, the methodologies used and information regarding potential error.

Stat. Auth.: ORS 459.995, ORS 459A.025, ORS 459A.650 - ORS 459A.685 & ORS 468.020
Stats. Implemented: ORS 459A.035
Hist.: DEQ 26-1994, f. & cert. ef. 11-2-94

340-090-0400

Responsibilities of a Product Manufacturer

(1)(a) A product manufacturer must be able to document that a rigid plastic container or containers comply with either the requirements of OAR 340-090-0350 or with one of the exemptions set out in OAR 340-090-0340;

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

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

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

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

(B) A copy of the container manufacturer's Certificate of Compliance from each manufacturer who supplied that container.

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

(c) Other recycling rates. For containers that comply with the specified type container recycling rate requirement, OAR 340-090-0350(1)(b)(B) or the product-associated container recycling rate requirement, OAR 340-090-0050(1)(b)(C):

(A) A description of the container and product;

(B) Identification of the specified-type or product-associated criteria;

(C) Documentation of the recycling rate for the type of container pursuant to OAR 340-090-0380(4) or (5);

(D) Where DEQ or the container manufacturer has calculated a recycling rate for a specified type or product-associated rigid plastic container, the product manufacturer may rely upon that rate to show that the container complies with the recycling rate requirements.

(d) Reuse and refill. For containers which comply with the reuse requirements, OAR 340-090-0350(1)(c):

(A) A description of the container and product; and

(B) Documentation of the number of times the containers are refilled or reused:

(i) The number of times a refillable container is reused is determined by review of the product manufacturer's records which show the following information for a uniform period of time:

(I) The number of returned containers actually refilled;

(II) The number of new containers added to the total number of containers used in the product manufacturer's refillable container program; and

(III) The total number of containers filled as first-use containers.

(ii) The number of times a reusable container is reused is determined by review of the product manufacturer's records which show the following information for a uniform period of time:

(I) The amount of product sold in the original container or the number of original containers sold; and

(II) The amount of replacement product sold or the number of refill units of replacement product sold.

(iii) A container must be considered to be used at least five times if it is part of a refillable system or reusable container system which has an average refill or reuse rate for that container of at least four.

(3) A product manufacturer's records that document that a rigid plastic container or containers are exempt from the requirements of OAR 340-090-0350 through -0370 must include the following information:

(a) Drugs, medical devices, medical food, and infant formula. For containers which are exempt under the provisions of OAR 340-090-0340 (2):

(A) A description that clearly identifies the container;

(B) An identification of which of the four product types will be placed in the container;

(C) For drugs:

(i) An FDA letter of approval;

(ii) Documentation of consistency between the over-the-counter drug claims and FDA requirements, (e.g., appropriate references to the FDA Final Monograph or Tentative Final Monograph under which the drug is marketed); or

(iii) Other definitive evidence that the product meets the FDA definition of a drug.

(D) For medical devices: Documentation that the device is intended to be used for diagnosis, cure, or prevention of disease or other definitive evidence that the product meets the FDA definition of a medical device under the FD&C Act (21 U.S.C. 321 (h) and following).

(E) For medical food:

(i) Documentation that the product meets the definition of medical food as defined in the FD&C Act, 1988, and is intended to be used as a medical food;

(ii) Other definitive evidence that the product meets the FDA definition of medical food; or

(iii) Documentation that the product may be labeled "may be used as the sole source of nutrition" or "may be used as the sole item of the diet."

(F) For infant formula:

(i) Documentation that the product meets the definition of infant formula as set forth in the FD&C Act and is being sold for use as infant formula; or

(ii) Other definitive evidence that the product meets the FDA definition of infant formula.

(b) Shipment out of Oregon. No documentation is required for containers that are exempt under the provisions of OAR 340-090-0340(3);

(c) Reduced containers. For containers that are exempt under the provisions of OAR 340-090-0340(5):

(A) Descriptions, including container resin type, which clearly identify:

(i) The original container before reduction; and

(ii) The reduced container.

(B) An identification of the "unit of product" pursuant to OAR 340-090-0340(5)(c) being used to develop the container/product ratio;

(C) A statement of the container/product ratio and description of how it was calculated for:

(i) The original container before reduction; and

(ii) The reduced container.

(d) Substantial Investment. For containers that are exempt under the provisions of OAR 340-090-0340(6):

(A) Identification of the class of containers and the type of recycling rate for which the exemption is being claimed;

(B) Documentation of the following:

(i) A substantial investment has been made in achieving the recycling rate;

(ii) There is a demonstrated viable market for the material from which the container is made;

(iii) The 1995 recycling rate for compliance purposes is at least 20%;

(iv) The recycling rates for the rigid plastic containers for the previous two years show evidence of increasing; and

(v) Reasonable projections indicate that the rigid plastic containers will meet the 25 percent recycling rate by January 1, 1997.

(C) A product manufacturer may rely upon DEQ's determination of compliance with the requirements of this exemption for rigid plastic containers in the aggregate or for rigid plastic containers of specified resin type.

(e) Food containers. For containers that are exempt under the provisions of OAR 340-090-0340(7):

(A) Documentation that the container contains an article used, or intended to be used, for food, ice, confection or condiment, whether simple or compound, or any part or ingredient thereof or in the preparation thereof, and is for human consumption; and

(B) If the container is a rigid plastic bottle, documentation that the container does not contain a drinkable liquid.

(4) Product Manufacturer's Report of Compliance:

(a) Upon DEQ's request, a product manufacturer must make a Report of Compliance available to DEQ;

(b) A product manufacturer's Report of Compliance must be submitted on forms DEQ provides and must contain the following specific information:

(A) The product manufacturer's:

(i) Name;

(ii) Address; and

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

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

(C) A description of the product manufacturer's records documenting compliance or exemption.

(c) A product manufacturer must comply with the following procedure and time schedule when it provides information DEQ requests:

(A) The product manufacturer must provide a Report of Compliance to DEQ within 60 days of the date of receipt of a DEQ request for the report;

(B) If DEQ finds the Report to be incomplete, DEQ may request the missing materials from the official company representative. The product manufacturer must provide missing materials from a Report of Compliance to DEQ within 30 days of the date of receipt of a DEQ request for the missing materials;

(C) After it has reviewed the Report of Compliance, DEQ may request that the product manufacturer provide all or part of the documentation described in a Report of Compliance, other records, additional information kept by the product manufacturer which is the basis for those records or any other information deemed necessary to determine compliance with the law.

The product manufacturer must provide the records or other material requested to DEQ within 45 days of the date of receipt of a DEQ request for the records.

(5)(a) A product manufacturer may request an extension of the time period to submit materials DEQ requests. Such a request for extension must be in writing and received by DEQ prior to the due date of the original DEQ request. The request for extension must:

- (A) Provide the product 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.

(6) 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.

(7) The Report of Compliance for a product manufacturer that can demonstrate that it sells less than 500 rigid plastic containers per day must consist of the quantity, brand name, product number, if any, and source of purchase of rigid plastic containers. These small product manufacturers are not required to keep other records of container compliance.

(8) DEQ shall consider a product manufacturer's failure to provide a Report of Compliance or additional materials DEQ requests within the schedule set out in this rule a violation of these rules.

Stat. Auth.: ORS 459A.025 & ORS 468.020

Stats. Implemented: ORS 459A.65 & ORS 459A.660

Hist.: DEQ 26-1994, f. & cert. ef. 11-2-94; DEQ 9-1996, f. & cert. ef. 7-10-96

340-090-0410

Responsibilities of a Container Manufacturer

(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.

Stat. Auth.: ORS 459A.025 & ORS 468.020

Stats. Implemented: ORS 459A.65 & ORS 459A.660

Hist.: DEQ 26-1994, f. & cert. ef. 11-2-94; DEQ 9-1996, f. & cert. ef. 7-10-96

340-090-0420

Confidential Information Procedure

(1) DEQ may not disclose to the public records provided to DEQ if:

- (a) The records contain trade secrets as defined in ORS 192.501(2) or 646.461(2);

- (b) The records, or the applicable portions thereof, are clearly identified as trade secrets; and
 - (c) The person claiming trade secret status for specific information has provided substantiation as to why the material is a trade secret.
- (2)(a) DEQ must notify the person who requests confidentiality if a request is received to disclose those records. The notice must:
- (A) Be delivered at least 15 days before DEQ discloses any of the records;
 - (B) Include a copy of any written request or a summary of any oral request for disclosure; and
 - (C) State how DEQ intends to respond to the request.
- (b) If a product or container manufacturer wishes to defend their trade secret claim, the manufacturer must respond with a written justification for the basis of their trade secrets claim. Such justification must be delivered to DEQ within 15 days of DEQ's notice of a request to disclose those records.
- (3)(a) DEQ will notify the product manufacturer of any information requested directly from the container manufacturer;
- (b) Upon request from the product manufacturer, DEQ will make available to the product manufacturer copies of records received from the container manufacturer concerning that product manufacturer, except as provided in section (2) of this rule, so that the product manufacturer may identify which of the records, if any, contain trade secrets of the product manufacturer;
- (c) If the product manufacturer complies with section (1) of this rule with respect to the records of a container manufacturer, DEQ must follow the provisions in section (2) of this rule if it receives any request to disclose those records.

Stat. Auth.: ORS 459.995, ORS 459A.025, ORS 459A.650 - ORS 459A.685 & ORS 468.020

Stats. Implemented: ORS 459A.010

Hist.: DEQ 26-1994, f. & cert. ef. 11-2-94

340-090-0430

Violations

- (1) Violations of these rules are punishable as provided in ORS Chapter 459.955(1)(a) 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.

Stat. Auth.: ORS 459A.025 & ORS 468.020

Stats. Implemented: ORS 459A.660 & Ch. 584 OL 1995

Hist.: DEQ 26-1994, f. & cert. ef. 11-2-94; DEQ 9-1996, f. & cert. ef. 7-10-96

340-090-0510

Mercury Thermostat Labeling

The following administrative rule establishes standards for labeling mercury-containing thermostats as ORS 459.045(3)(b) requires relating to the implementation of ORS 646.608(1)(y). The purpose of this rule is to provide sufficient information to purchasers of thermostats to ensure that the mercury contained in the thermostats does not become part of the solid waste stream or wastewater.

(1) As used in this rule, "thermostat" and "mercury-containing thermostat" mean a device commonly used to sense and, through electrical communication with heating, cooling, or ventilation equipment, control room temperature.

(2) All mercury-containing thermostats sold in Oregon must meet the following labeling requirements:

(a) The mercury-containing thermostat must have a label that contains the following information:

(A) The wording "Contains Mercury. Manage Properly."

(B) An icon containing the symbol of a person dropping an object into a trashcan with a circle and slash overprinted on the image, indicating "Do not dispose in trash".

(b) The label must be affixed to the product so that the label is clearly visible and legible. The font size for print on the label must be no smaller than 10 point.

(c) The label affixed to the product must be printed, mounted, molded, engraved or otherwise affixed, using materials that are sufficiently durable to remain legible for the useful life of the product.

(d) If the product is sold in packaging that obscures the label on the product, then the packaging also must have a label meeting the same standards as the product label. If, prior to the sale, a retailer re-packages the product, then the retailer must label the new packaging in accordance with this rule.

(3) Failure to meet the provisions of this rule may result in enforcement under the provisions of the Unlawful Trade Practices Act, ORS 646.605 to 625.

Stat.Auth: ORS 459.045
Stats.Implemented: ORS 646.608(1)(y)
Hist.: DEQ 7-2002, f. & cert. ef. 6-11-02

SB 263 Materials Management Rulemaking

Advisory Committee Meeting Minutes

Tuesday, September 13, 2016
Oregon Department of Environmental Quality, HQ
811 SW 6th Ave
Portland, OR 97204



State of Oregon
Department of
Environmental
Quality

List of Advisory Committee Members

Attending?	Name	Title	Affiliation
Y	Matt Korot	Program Director, Resource Conservation & Recycling	Metro
Y	Willie Tiffany	Governmental Affairs	ORRA
Y	Mark Nystrom	Policy Manager	Association of Oregon Counties
N	Tracy Rutten	Intergovernmental Relations Associate	League of Oregon Cities
N	Mark Morgan	Assistant City Manager	City of Hermiston
Y	Pete Chism-Winfield	Materials and Waste Specialist	City of Portland
Y	Stephanie Scafa	Waste Prevention and Green Building Analyst	City of Eugene
Y	Contracia (Traci) Carrier	Budget Analyst	Jackson County
Y	Bailey Payne	Recycling Coordinator	Marion County
Y	Sarah Grimm	Waste Diversion Specialist	Lane County
N (For some, by phone, but not during FIS questions)	Mark Saelens	Solid Waste District Program Manager	Lincoln County
Y	Vinod Singh	Operations Manager	Far West Recycling
Y	Dave Larmouth	Rate Analyst	Recology Western Oregon
Y	Kim Kaminski	Government Affairs	Waste Management
Y	Rob Guttridge	Vice President	Recycling Advocates

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DEQ is a leader in restoring, maintaining and enhancing the quality of Oregon's air, land and water.

Members of the Public Attending in person:

- Kristan Mitchell, ORRA
- Laura Leebrick, Rogue Disposal
- Mike Dewey, Waste Management
- Dean Kampfer, Waste Management

Members of the Public Attending via webinar:

- Kathy Boutin-Pasterz
- Rick Hlavka
- Shannon Martin
- Tim Shestek
- Chip Canty

List of Handouts and Presentation Notes

- Meeting Agenda
- Draft Rules Redline
- Draft Rules Clean
- Draft Fiscal Impact Statement

Time	Presentation and Discussion Topic
10:00 a.m.	<p>Welcome & Introduction</p> <p><u>Notes:</u> David Allaway, DEQ, went over meeting logistics.</p>
10:05 a.m.	<p>Food Waste Recovery Goal – Follow up from Meeting #3</p> <p><u>Notes:</u> Peter Spendelow, DEQ, presented.</p> <p><u>Pete C-W.:</u> New technology can track on-site generation of food waste (e.g., WISerg).</p> <p>Peter S. responded: If we can measure it, we can include it. Wiser would need to share its data, would be counted at point of collection.</p> <p><u>Pete C-W.:</u> Tons of food from wholesalers going to farms is quite significant – nearly half of all food waste generated in Portland.</p> <p>Holly Stinrkorb, DEQ, responded: Good point, DEQ plans to address gaps like this in development of our food waste recovery strategy.</p> <p><u>Matt K.:</u> Following up on Holly’s point – any immediate implication for this data?</p> <p>Peter S. responded: No, not yet.</p> <p>David A. added: If materials need to be added for counting, they can be. Peter S. added: Yes, if any of you know of food waste that is going to recovery that we don’t know about, please let us know.</p> <p><u>Willy T.:</u> How will you handle exempt uses, such as through the Agriculture Use Exclusion?</p> <p>Peter S. responded: We do not intend to include those uses as they are generally classified as industrial waste and are excluded from counting by statute.</p>
10:15 a.m.	<p>Draft Proposed Rules – Overview of Changes Since Meeting #3</p> <p><u>Notes:</u> Matt Raeburn, DEQ, presented. He went over housekeeping changes and stylistic changes (“shall” to “must,” etc.). He also provided an overview of sections containing substantive changes (slides 9 and 10), including pending changes, citing the example on page 17 of the latest draft of the rules regarding voluntary food waste collection from commercial and institutional generators. As currently written, the rule implies that “other compostable waste” must also be</p>

	<p>collected, which is not the intent. He also pointed out a requirement to assess recycling depots that had been placed into new contamination prevention section of the Expanded Education and Promotion program rules which, upon reconsideration, will be removed.</p> <p><u>Matt K.</u>: If something in the draft rules was previously discussed, input was taken and the issue is still there unchanged, are such issues still up for discussion?</p> <p>David A. responded: Yes.</p>
10:20 a.m.	<p>Draft Proposed Rules – Advisory Committee Comments</p> <p><u>Notes:</u></p> <p><u>Willie T.</u>: The definition of “Compostable waste” states “waste that is acceptable for composting at a composting facility.” This seems restrictive. Is the intent for such waste to be compostable at <i>any</i> facility?</p> <p>David A. responded: Yes, thanks for pointing this out. That is an easy fix.</p> <p><u>Steph S.</u>: Under the Waste Prevention & Reuse programs, we talked last time about the contribution level per resident for implementing repair and reuse or food rescue programs. Is the level indicated, \$0.25 per local government unit resident, going to remain?</p> <p>Elaine Blatt, DEQ, responded: Initially, there were two different cost-levels per head, \$0.50 and \$0.25. This was later changed to \$0.25 for both types of programs. In working the numbers, we found the existing costs cities were spending on such programs, from which this figure was derived, appeared to have very little impact on cities.</p> <p><u>Sarah G.</u>: In counting these numbers at \$0.25 per head, does it refer to county population, city population, UGB population or what?</p> <p>David A. responded: The Intent is to indicate population of the local government unit subject to this rule, but, but we will clarify the language.</p> <p><u>Pete C-W.</u>: The findings in the fiscal impact statement vs. the \$0.25 per head funding level – the math doesn’t seem to work.</p> <p>David A. responded: Let’s use element five of the WP&R programs as an example. Local governments may provide funding (at \$0.25 per capita) or provide infrastructure support. In the case of PDX we feel existing infrastructure support would qualify, meaning no additional costs. Likely all local gov’ts in Metro would also qualify because of Metro programs.</p> <p><u>Mark N.</u>: So those other pathways are for entities that don’t already have such programs, unlike Portland?</p> <p>David A. responded: no, they’re for anyone.</p> <p>Mark N., following up: So the bar is still set pretty high for this element.</p> <p>David A. responded: Local gov’t s have several choices. No one will be required to use this financial pathway. Because this requirement is in statute, we needed to define funding support in some way have proposed this formula.</p> <p><u>Kim K.</u>: At OAR 340-090-0015(1), DEQ added the word “many” in front of the phrase “industrial wastes.” Why? What other such wastes does this not include?</p> <p>Matt R. responded: This is in the applicability section. If you look at definition of “industrial waste,” you’ll see several examples listed. Maybe removing some wording will clarify this.</p> <p>Peter S. responded: An example might be food waste coming from a processor or manufacturer could be interpreted as industrial waste; however, if it came from other sources it would not be</p>

classified that way. This would either require rewriting the definition or taking out some of the confusing words (p. 8).

Kim K.: There are lots of plans that need to be submitted to DEQ for approval – what is the time frame for approval? Would there be any written approval?

David A. responded: No, nothing firm.

Cathie Rhodes, DEQ, responded: That depends. Some TAs will get 2 plans, others will get 20. Maybe 60 days?

David A. added: It is our intent to put together templates for such plans to help streamline their preparation and review.

Matt K.: \$0.25 per capita contribution for food rescue – liking where Stephanie S. was going with a funding cap. This would amount to around \$370K per year for Metro. A lower cap would incentivize use of this program element and encourage others to use it, as opposed to being a barrier.

Steph S. added: Thinking of it in terms of reuse and repair, e.g. a tool library, one just started up in Eugene with its own space. Under this formula, we'd have to give them \$40k annually, which we can't see doing.

Matt K. added: Maybe more doable on a multi-year basis. Steph S. agreed.

Matt K.: On page 10 of the clean version of the draft rules, at (1)(a)(A) is this missing the word "or"?

Matt R. clarified by explaining the rule structure.

Matt K. acknowledged he was misreading this section.

Matt K.: On page 19 of the clean version of the draft rules, at (L)(C)(i), where it says this applies to C&D generators of 2 yd³ minimum. This threshold, practically speaking, will be very challenging to assure separation or MRF delivery. Most such loads come in pickup trucks, and are often pretty mixed with other materials, which can add to the problem. It is challenging to enforce this requirement for such small quantities. Metro is now working to focus on various vehicle types in. Strongly urge considering a larger minimum quantity, say a 6 yd³ minimum load to distinguish homeowner from contractor loads.

Peter S. responded: No particular objections.

Matt K.: On page 34 of the clean version of the draft rules (page 38 of the redline) at OAR 340-090-0060(3), "Determination of Wasteshed and Overall Statewide Recovery Rates," a viable market definition was added, which suggests recovery may include material recovery or burning for energy if no viable market. Now says okay if someone accepts this material free of charge. If Vinod is charging for this, then Metro can get recovery credit if this material goes for energy recovery at a lower cost.

Peter S. responded: This definition is in statute and we don't have the ability change it, despite such potential unintended consequences.

Sarah G.: The threshold of 2 yd³ of C&D would also be difficult for Lane Co. to implement, and propose 10 yd³ instead of 6 yd³.

Sarah G.: Re: funding and infrastructure, if we were to choose it, could we put in, say \$4K for infrastructure, and maybe \$12K for advertising and count this mix of funding for different purposes together?

David A. responded: Yes. Some examples are listed in the draft rules. Remember that funding and outreach for this element cannot also be used to satisfy element (6).

Sarah G.: If a larger entity were doing something, the city could take advantage of that as part of their commitments under the requirements. Does this require a formal arrangement between these entities for this to count? Is that only in the TA section and is it applicable to other sections, such as funding and infrastructure?

Elaine B. responded: Summarized the thinking behind the TA component. Funding thought to be a direct contribution.

David A. added: No formal written commitment was intended, and is not explicitly required. Asked Elaine B. to find language about this (found in statute – ORS 459A.007(8)(a): “For a city using waste prevention and reuse elements set forth under subsection (2) of this section to satisfy requirements set forth in subsection (6) or (7) of this section, waste prevention and reuse elements may be provided by the county or metropolitan service district where the city is located, provided that implementation or provisions [sic] of such elements are made available throughout the city.”

Willie T.: On page 18 of the redline version of the draft rules, under the mandatory commercial recycling program at OAR 340-090-0040(j)(C)(ii) “Self-haul or arrange for collection service...” This language was apparently changed based on comments. Suggest inclusion of the word “legal” before “collection service,” or wording to require governmentally authorized collection service.

Pete C-W., objecting: If you are an independent recycler, may not have formal governmental approval for your service, but could still be legal.

David A. clarifying: Your concern is that it needs to be legal, yes?

Willie T.: Yes.

Peter S. responded: If your only intent is that such service is legal, there are lots of hauling that is not covered under franchise agreements or is otherwise exempted, and is still legitimate. It not necessary to add this legal requirement.

Willie T.: Disagrees.

David A., clarifying: Adding such language does not make illegal collection less illegal, but could put local gov’ts in jeopardy for not checking or enforcing such a requirement.

Willie T.: Re plans, if a local gov’t submits a plan, wants a clause added stating that it won’t be disapproved or considered non-compliant until a new one is approved. David A. responded: Not necessary to specify in rule, but more appropriately as a policy.

Dave L.: At OAR 340-090-0090, re: collection of improperly prepared materials – this is old language, but the concern is in section 3, where the choices are to leave with the generator or collect and sort but cannot dispose of such material. Recommend the ability to dispose of heavily contaminated loads. Asked for clarification of intent of this language – we see lots of contamination at multifamily dwellings.

Peter S. responded: Yes, old rules intended for material set out at the curb at a time when recyclables and garbage were collected together on same truck. He concurs that very contaminated recycling is not reasonable to sort. Acknowledged that leaving with the landlord is also not necessarily a reasonable option. Will take this recommendation under advisement.

Dave L. added: We usually have to switch out a full container, but then what do we do with the full one?

	<p><u>Dave L.</u>: On page 55 of the redline version of the draft rules, re: scrap metal survey – DEQ <i>must</i> survey, but industry <i>may</i> report. David A & Peter S. responded: This change would require legislative action.</p> <p><u>Pete C-W.</u>: Said he would send an email re: minimum content rules.</p> <p><u>Dave L.</u>: Re: scrap metal again, mentioned some recent identification requirements for scrap metal dealers to discourage metal theft that might impact reporting.</p> <p><u>Dave L.</u>: On page 51 of the redline version of the rules, at oar 340-090-100(2)(E), there is a requirement for wastesheds to summarize “education and promotion activities planned for implementation in the coming two years...” What is the intent of this requirement? David A. responded that will provide clarification.</p> <p>UPDATE: Cathie Rhodes later observed that this section of rule applies only to Expanded Education and Promotion Plans, of which there appears to be only one county in the state (Polk) which implements this option.</p> <p>Matt R.: Reminded group of final AC comment deadline – 9/16/16 at 5 p.m. Will have another opportunity during public comment after rules are published.</p>
11:20 a.m.	<p>Fiscal Impact Statement – Methodology & Conclusions</p> <p><u>Notes</u>: David A presented a summary.</p>
11:35 a.m.	<p>Fiscal Impact Statement – Questions & Answers</p> <p><u>Notes</u>: Holly S. facilitated.</p> <p><u>Willie T.</u>: Were costs for local gov’t enforcement of these rules included in the model? Implementation plus enforcement, not just implementation:</p> <p>David A. responded: Are there examples you’d like to discuss?</p> <p><u>Willie T.</u>: Expanded Ed. & Promo was his concern, with respect to contamination prevention.</p> <p>David A. responded: Using the multifamily recycling program element and the new landlord notification requirement as an example, these additional costs were included. All costs were averaged over 5 years, assuming costs in the first year of program implementation would be higher and lower in subsequent years when such programs go into more of a maintenance mode.</p> <p>Holly S. added: For contamination prevention we modeled what we thought cities would actually do.</p> <p><u>Willie T.</u>: What about cost factors for the WP&R program elements?</p> <p>David A. responded: In all cases we assumed cities would choose the lowest cost option and modeled only those to answer the question: What is the financial impact to implement these rules? Cities can choose other, more expensive options, but that becomes very hard to predict.</p> <p><u>Willie T.</u>: Fiscal analyses he’s seen have low, medium and high estimates to show the possible range of impacts. It may be necessary from a messaging standpoint to stress that this analysis was based on lowest cost assumptions.</p> <p><u>Kim K.</u>: Following up on Willie’s first question re: enforcement, using program elements (j) and (m) as an examples (which require local gov’ts to id large generators of certain materials) – were these costs modelled?</p> <p>David A. responded: No, because only 6 cities have to implement additional recycling programs and we consulted with staff to ascertain which elements they would likely implement. In some cases, such as Junction City, they told us what they intended to do. Because program elements (j)</p>

	<p>and (m) would likely be more expensive to implement than other elements it did not seem reasonable to model them given our baseline assumption. We explicitly went with the lowest cost assumption because over the past 5 years we've heard local gov'ts express a lot of concern over program costs.</p> <p><u>Dave L.</u>: Referring to the fiscal impact statement summary table on p. 18, it might be useful to have examples as opposed to minute percentages.</p> <p>David A. responded: This results of this analysis were portrayed in dollars per unit time in but percentage change. If rate goes up 0.1 %, and operating costs are 0.2 %, the overall impact equals 0.02 %.</p> <p><u>Dave L.</u>: Expressed understanding, but suggested that it might be useful to have more concrete examples using dollars, especially if haulers are going to have to explain this to city councils, etc., which would require them to essentially recreate this work to frame the impacts in this way.</p> <p>David A. replied: Because we did take that approach we don't have such information. He suggested asking some of their business customers for their cost numbers and apply these percentages to them.</p> <p><u>Pete C-W.</u>: Is there a small business definition?</p> <p>Matt R. responded: Yes: 50 full-time equivalent employees or less.</p>
11:50 p.m.	<p>Fiscal Impact Statement – Questions for the Advisory Committee: Matt explained the questions and terms and facilitated the polling. See the separate tally sheet for voting results.</p> <p><u>Dave L.</u>: How are we are to consider impacts to small business vs large businesses engaged in the same activity? How do we know the difference?</p> <p>David A. responded: We could not find sufficient to answer this question. The best we could do is what we reflected in the rate changes for the cities profiled.</p> <p>(1) Will the proposed rules would have a fiscal impact?</p> <p><u>Notes:</u> What is the extent of that fiscal impact?</p> <p>All advisory committee members voted YES.</p> <p>(2) What is the extent of that fiscal impact? In other words, do you agree with DEQ's assessment in its Fiscal Impact Statement of the extent of the proposed rules' fiscal impact?</p> <p><u>Notes:</u></p> <p>DON'T KNOW: Willie T., Dave L., Kim K.</p> <p>YES: All other attendees.</p> <p><u>Willie T.</u>: The analysis based on least cost options, not the most likely options. Concerned that estimates might not match reality following implementation.</p> <p><u>Kim K.</u>: Agrees with Willie.</p> <p><u>Dave L.</u>: Remember answers given during data gathering for this process (the input), but don't understand the black box that produced the output as represented by these small percentages. No access to the model used. Familiar with similar models, but can be flawed.</p> <p>(3) Will the proposed rules have a significant adverse impact on small businesses?</p> <p><u>Notes:</u></p> <p>DON'T KNOW: Pete C-W</p>

	<p>NO: All other attendees.</p> <p>No questions or comments.</p>
12:20 p.m.	<p>Fiscal Impact Statement – Summarize Committee’s Findings</p> <p><u>Notes:</u></p> <p>Pete C-W.: Looking at total numbers distributed among three areas (slide 14), WP&R program elements represent the least amount of money. More than half would be going toward implementing the contamination prevention component of Expanded Ed. & Promo. Wouldn’t it be better, over time, to have more money flow towards implementation of WP&R program elements?</p> <p>David A. responded: The costs modeled are for compliance with the proposed rule. There are lots of ways for communities to go above and beyond the minimum requirements. We are helping with our grants program, through focus points. There are ways to make waste prevention and reuse happen without strictly necessarily complying with these rules.</p> <p>Matt R. added: DEQ hopes to reduce the cost of compliance through design of templates, campaigns, etc.</p> <p>David A. added: We hope to reconnect with AC members to review these materials and seek comments to improve them after they’ve been developed, so stay tuned.</p>
12:25 p.m.	<p>Draft Proposed Rules – Advisory Committee Comments, Continued</p> <p><u>Notes:</u> Matt prefaced this portion of the meeting by reading written comments from Mark Morgan and a local mayor generally opposing SB 263.</p> <p>David A.: Asked about public comment later in the meeting – asked for a show of hands from the audience and on the webinar. There were none. He reminded folks about the 9/16, 5 p.m. deadline for AC comments.</p> <p><u>Final thoughts:</u></p> <p><u>Matt K.:</u> Great job, great responsiveness. On a practical note,;it is hard to track rules that implicitly include statutory requirements, as opposed to those that explicitly include statutory requirements in the rule language.</p> <p><u>Willie K.:</u> Commend DEQ on its flexibility, e.g., contamination, agricultural use exemption. Thinks DEQ handled the process really well.</p> <p><u>Mark N.:</u> No comment.</p> <p><u>Pete C-W.:</u> The rules process is very complicated; appreciate the involvement and help with its creation and look forward to building programs around the rules.</p> <p><u>Steph S.:</u> Question on process – the notes taken from today, will we hear back about them?</p> <p>Matt R. responded: Meeting notes will be provided, along with voting results.</p> <p>Cathie Rhodes following up: On changes to the rules discussed today, we’ll get back to them no those too?</p> <p>Matt R. responded: Yes, I will highlight and distribute these changes to everyone before it goes to public comment.</p>

	<p><u>Traci C.</u>: Thanks to staff.</p> <p><u>Sarah G.</u>: Thanks to commitment of staff, depth, detail and attention to questions and comments.</p> <p><u>Vinod S.</u>: Agree with Matt and Willie.</p> <p><u>Dave L.</u>: Wish all gov't agencies ran like DEQ.</p> <p><u>Kim K.</u>: Lots of great folks on work group, appreciate staff responsiveness.</p> <p><u>Rob G.</u>: Excellent process, compliment AC members on congeniality, cooperation. Chose a good group of people to participate.</p> <p>Matt R. reviewed the schedule for the remainder of the rules process.</p> <p>David A.: Reiterated grant round, implementing the rules in 2017 and working with TAs on rule implementation. Reminder – some sections of SB 263 that were not part of this rulemaking (e.g., outcome based measures) stay tuned, there will be another rulemaking in the near future.</p>
12:55 p.m.	<p>Public Comment Opportunity</p> <p><u>Notes:</u> None</p>
1:00 p.m.	<p>Adjourn</p> <p><u>Notes:</u> 12:17 p.m.</p>

Next meeting scheduled: N/A

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