



State of Oregon Department of Environmental Quality

Rule Concepts: 5 - Other Concepts Regarding Producer Responsibility Organization Obligations

Plastic Pollution and Recycling Modernization Act (SB 582, 2001) Rulemaking
Advisory Committee Meeting 1 of 5, Rulemaking 1

Background

This document outlines four rule concepts for consideration by the Rulemaking Advisory Committee. They are all relevant to the obligations of Producer Responsibility Organizations but are grouped together separately from the four focal issue areas of this rulemaking meeting, either because they are of a procedural nature or because they fall outside the bounds of the issue areas.

Concepts for discussion at July 20, 2022 RAC meeting

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

Rule Concept for discussion: PROs with less than 10% market share

1. ORS 459A.869(12) establishes that a PRO must enroll producer members with a cumulative 10% market share minimum threshold (i.e., 10% of the total combined market share of all producers of covered products) in order to continue implementing a program plan in Oregon. ORS 459A.962(5)(c) indicates that a PRO program plan may be suspended or revoked if a PRO is beneath this threshold. This rule is intended to detail a process to issue such an order.

If DEQ finds that a PRO's market share has fallen below the 10% threshold, DEQ shall:

- a. Issue notification to the PRO of the intent to revoke their plan;
- b. Begin a 60-day review and appeal process, during which the PRO describes to DEQ how it has taken steps to likely exceed the 10% threshold;
- c. Issue either an order revoking the PRO's program plan or a notification that the plan will not be revoked; and
- d. If the plan is revoked, order the PRO to notify its producer members of a 60-day period during which they must transition to another PRO.

Rule Concept for discussion: reporting for plastic recycling goal

2. Under ORS 459A.926(3), DEQ shall annually determine whether or not the statewide plastic recycling goal has been met and may require PROs to submit aggregated information necessary for making this determination. This rule concept is intended to further clarify the information needs of DEQ to assess the statewide plastic recycling goal. Annual reporting of all plastic packaging and food serviceware sold in Oregon by member producers must use a product categorization that aligns with the uniform statewide collection list categorization of products, as required under ORS 459A.887(2)(c). This will enable DEQ's assessment of progress toward the statewide plastic recycling goal.

Rule Concept for discussion: program plan amendments and PRO fees

3. According to ORS 459A.881(1)(b), PROs must submit a program plan amendment when changing methods for calculating their fee structures. This rule concept is intended to clarify when an amendment is or is not needed for changes to fee structures, and grant PROs flexibility to change fee structures quickly when faced with financial urgency. Routine, annual updating of base fee rate amounts to align with the most recent sales information received from member producers does not constitute a method change and will not require an amendment. However, changes to fee structure product specification and/or fee structure graduation do constitute a method change and will require an amendment.

A PRO may request provisional approval of a plan amendment if it needs to implement a fee structure method change rapidly due to financial urgency. If such a request is made, DEQ will notify the PRO within 30 days of its response. If provisional approval is granted, the PRO may implement the fee schedule method change on a provisional basis while the review process to upgrade the provisional approval to full approval is ongoing, per the process outlined in ORS 459A.878. If the plan amendment is ultimately not approved, the applicant PRO must true up its member accounts to reverse the provisional change.

Rule Concept for discussion: housekeeping

4. There are three scrivener's errors in the PRO Program Plan section of Statute that result from a failure to correctly renumber cross-references in SB 582 following the removal (by amendment) of a portion of Section 13. This language regards a necessary section in the PRO program plans in which PROs must describe how they will accomplish local government compensation. We propose to point out the errors and indicate the correct cross-references in rule, which would restore the legislative intent of the section. The following section of Statute shows the incorrect cross-references struck through and the correct ones inserted in their place:

ORS 459A.875(2)(p): "(2) Using objective and measurable criteria whenever possible, a producer responsibility program plan must: ... (p) Describe how the producer responsibility organization will implement the requirements of ~~ORS 459A.890(6)~~ ORS 459A.890(5) by establishing: (A) A schedule for implementing collection program expansions and improvements throughout this state; (B) A method for determining funding or reimbursement amounts under ~~ORS 459A.890(6)~~ ORS 459A.890(5) of this 2021 Act, consistent with rules adopted by the commission by rule; and (C) The total amount of funds that will be made available to local governments under section ~~ORS 459A.890(6)~~ ORS 459A.890(5) of this 2021 Act each year."

Note: in the rule language itself, this fix may be accomplished by DEQ adding additional program plan requirements (i.e., explanatory content pertaining to ORS 459A.890(5) and section 13(5), something which DEQ can require for program plans on the basis of ORS 459A.875(q).

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