



Fiscal Impact Statement Framework

**SB 263 Materials Management Rulemaking (“Recycling 2016”)
Advisory Committee Meeting #3
June 21, 2016**

Oregon Department of Environmental Quality
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This document provides an overview of DEQ’s approach for evaluating the fiscal impact of proposed draft rules to implement portions of Senate Bill 263 (2015). DEQ’s current rulemaking for SB 263 will require a fiscal impact statement under ORS 183.333. DEQ plans to prepare the fiscal impact statement and share it with the rulemaking Advisory Committee in advance of the final September 13, 2016 Advisory Committee meeting.

Overview of the Fiscal Impact Statement

ORS 183.335 and 183.534 require that, before adopting a rule, an agency in the State of Oregon must provide the public advance notice based on available information, which includes:

- A fiscal impact statement:
 - identifying state agencies, local government units, and the public
 - that may be economically affected by the adoption, amendment or repeal of the rule
 - and an estimate of that economic impact on state agencies, local government units, and the public.
- The fiscal statement must also include:
 - A projection of any significant economic effect of that action on businesses;
 - A cost of compliance effect on small businesses affected; and
 - A housing cost impact statement.

ORS 183.530(4) requires DEQ to include in a notice of rulemaking an estimate of the proposed rule’s impact on housing costs. A housing cost impact statement is an estimate of the effect of a proposed rule or ordinance on the cost of:

- (1) Development of a 6,000 square foot parcel; and
- (2) Construction of a 1,200 square foot detached single family dwelling on that parcel.

The Advisory Committee must provide recommendations on three issues:

- (1) Whether the rule will have a fiscal impact;
- (2) What the extent of that impact will be; and
- (3) Whether the rule will have a significant adverse impact on small businesses.

If the Advisory Committee indicates that the proposed rule would have a significant adverse impact on small businesses, then DEQ would seek the Committee's recommendations on how to reduce economic impacts on small business under ORS 183.540.

Overview of Fiscal Impact Analysis

The following summarizes DEQ's current plans to analyze costs and impacts of the proposed rules:

Marginal Costs, Not Total Costs

As described below, DEQ's analysis includes an evaluation of costs to comply with the proposed rules. These costs will then be evaluated for their likely impact on garbage collection rates, as this is one pathway by which rule implementation may affect Oregon businesses and households. For this reason, DEQ's analysis will focus on marginal as opposed to total costs of compliance.

Marginal costs are those cost *increases* that local communities may incur in the course of complying with proposed rules. This distinction is relevant because, while the number of required recycling elements has increased for many cities, for most cities this increase "locks in" previously-implemented programs. Such cities will not need to implement additional recycling program elements and as such are not expected to incur new costs. Similarly, there should be minimal impact on waste collection rates in these communities, as the cost of existing programs is presumably already reflected in collection rates. The same reasoning applies to waste prevention and reuse elements; while the requirement to implement elements is new, many cities will satisfy portions of these new requirements using existing services and programs. As such, the fiscal impact statement will focus on marginal costs: the new cost increases required to comply with the proposed rules, not including the costs of existing programs and services.

Model of Oregon Cities and Counties

DEQ will use a model of Oregon cities and counties. This model identifies each city and county subject to the draft rules. For each of these cities and counties, DEQ is in the process of reviewing their existing methods of complying with recycling requirements, and is also completing an analysis of applicable recent Wasteshed Programs for Two Percent Recovery Rate Credit programs ("2 percent recovery credit programs") that relate to proposed waste prevention and reuse element rules.¹

For each of these cities, DEQ's evaluation includes whether existing programs appear to fully or partially satisfy proposed new requirements. Where existing programs do not appear to fully satisfy proposed new requirements, a potential compliance gap between current services and post-SB 263 requirements is identified. For these cities, DEQ proceeds to the next step: estimating the cost of affected cities' compliance with post-SB 263 requirements.

¹ The to-be-amended Oregon Administrative Rules list the to-be-removed "Wasteshed Programs for Two Percent Recovery Rate Credit" at [OAR 340-090-0045](#).

It is assumed that in all cases, if a city has a potential compliance gap, the same gap applies to the unincorporated areas within the urban growth boundary of that city, where the county is responsible for compliance.

An important feature of this model is that it allows for identification of likely compliance costs at the level of individual communities. As such, the fiscal impact can be evaluated at a more granular scale. In a few communities, compliance cost may be considerably higher than the statewide average. Because those few cities affect the average, for most Oregon cities, compliance costs will be below the statewide average. But some cities will incur above-average costs, and this model allows for these types of outlier cities to be identified and reported separately.

Preliminary Model Results

Recovery Elements: DEQ's current analysis suggests that the following cities (and associated counties) may need to add or modify programs in order to meet the increased number of recycling program elements required by SB 263: Eugene, Springfield, Junction City, Woodburn, McMinnville, Newberg, and possibly King City. Some of these cities may need to implement an entirely new element from scratch, while others have programs in place that already partially satisfy elements, and so could satisfy the required number of elements by changing an existing program. This is discussed in further detail, below. It is important to note that this list is based on current review of information. DEQ will modify this list based on additional analysis or if new information becomes available.

Expanded Education and Promotion Elements: The current rulemaking modifies the requirements of the expanded education and promotion element (for recycling) to address contamination. DEQ's current analysis suggests that approximately 79 cities (and their associated counties) currently use the expanded education and promotion element to satisfy statutory requirements. Most of these cities use this element outright, while some have approved "alternative" recovery programs that depend in part on expanded education and promotion activities. All cities using the expanded education and promotion element, in whole or part, will be subject to the proposed new requirements for identifying and reducing contamination, unless they choose to drop this program element.

Waste Prevention and Reuse Elements: Sixteen cities (and their counties) outside of the Metro region are subject to new waste prevention and reuse elements, as are all cities within the Metro boundary. Given current draft rules for waste prevention and reuse elements, all of the cities (or their counties or metropolitan service district acting on their behalf) will be subject to a new planning and reporting burden. A few cities may need to expand current services or add (or in some cases, add back) programs to satisfy current elements, as proposed. These cities may include Medford, Albany, and possibly Fairview, Maywood Park, and Bend. As with recovery elements, DEQ will modify this list based on additional analysis or if new information becomes available.

Estimating Cost of Compliance

After identifying which cities may need to modify services to comply with the proposed rules, DEQ will then estimate the costs of compliance. These estimates will be organized into three separate modules, consistent with the scope of the rulemaking: adding recovery elements, addressing contamination in the "expanded education and promotion" element, and waste prevention & reuse elements.

Cities Adding Recovery Elements

As noted above, approximately seven cities will need to add one recovery element: Eugene, Springfield, Junction City, Woodburn, McMinnville, Newberg, and possibly King City.

For each of these cities, DEQ has evaluated the number of elements currently satisfied and the number of elements required. DEQ has also made some preliminary assumptions regarding which additional elements (for each city) that each city might draw from for the purpose of compliance. In some cases, these assumptions are based on consultation with city staff. The assumptions are made for the sole purpose of estimating fiscal impacts; they are not predictions or recommendations. Generally speaking, DEQ assumes that cities will satisfy requirements by choosing elements that are lower cost and/or easier to implement.

Preliminary assumptions include the following:

- Eugene will likely either adopt a multifamily ordinance (thereby satisfying element [d]) or implement a voluntary residential food waste collection program (thereby satisfying element [k]).
- Springfield will implement a voluntary residential food waste collection program (element [k]).
- Junction City will make some changes to education and promotion materials, thereby satisfying element (c).
- McMinnville and Newberg will formally commit to element (d), multifamily recycling, by requiring this service of their franchised waste collection companies through a formal process such as amending their franchise agreement. DEQ would work with the city and waste company representatives to estimate the costs of undertaking this formal process.
- Woodburn will either do the same as McMinnville/Newberg or will implement a voluntary residential food waste collection program (element [k]).

Where more than two elements are identified as assumed possible implementation choices, DEQ would evaluate the costs of both.

Cities Using the “Expanded Education and Promotion” Element

Approximately 79 cities (and their counties) use expanded education and promotion programs to comply with recycling requirements. If these communities continue to use expanded education and promotion, they must also identify and take action to reduce contamination. Alternatively, if reducing contamination is burdensome, some communities may drop this element and replace it with a less expensive one.

For purposes of this fiscal impact statement, DEQ will evaluate the cost of complying with proposed rules related to contamination. DEQ will evaluate the cost of the lowest cost sample implementation plan (for contamination) developed by DEQ. Selection of the least expensive option is a likely outcome for most communities. In addition, the selection of more expensive compliance pathways will be entirely voluntary, and not a requirement of the proposed rules. Cost estimates for this sample implementation plan will be derived from discussions with local programs and simplified projections.

Unlike the requirement for implementation of new program elements, DEQ will estimate costs of this implementation from a “zero baseline” perspective, assuming that communities are not currently conducting any evaluation of contamination or undertaking efforts to reduce contamination. While this will result in a higher estimate of fiscal impacts (a number of communities already have active

contamination reduction programs in place), this approach is considerably simpler than surveying seventy or more cities to evaluate the existing costs associated with managing contamination in each and every city.

DEQ will not make projections regarding which communities will choose to maintain this element (reduced contamination) vs. drop it in favor of a different element. Making such projections would not be appropriate for DEQ under SB 263, which was designed to let communities decide how to implement their recycling programs from 13 available program element options or through an alternative program. Cities may choose to drop this element if another element is less expensive. Applying the cost of addressing contamination to all communities currently using the expanded education and promotion element reflects an “upper bound” cost of compliance with this portion of the proposed rule.

New Waste Prevention and Reuse Elements

Sixteen cities (and their counties) outside of the Metro region, and all cities within the boundaries of Metro are subject to new requirements related to waste prevention and reuse.

One feature of these elements is that statute allows for counties to satisfy compliance requirements on behalf of their cities; and for a metropolitan service district to do the same for its local government jurisdictions. Historically, wastesheds claimed use of the 2 percent recovery credit programs county or region-wide, and sometimes funded or performed these programs using county staff. For those counties that are subject to this proposed rule, DEQ assumes that counties will continue to provide such services (since the counties remain subject to the same requirements as the cities, at least within the urban growth boundaries of those cities) and that such service delivery will satisfy compliance requirements for those cities.

DEQ has reviewed recent 2 percent credit documentation and determined that many communities will satisfy some or all of elements (a) through (d) using existing programs. However, because draft rules for elements (a) through (d) require development and submittal to DEQ of a plan, DEQ will include as part of the fiscal impact an estimate of monetized staff time required to satisfy planning and reporting requirements. The net, marginal impact of this – at least for counties - should be relatively small, since preparation of the plan will streamline subsequent reporting to demonstrate compliance; and counties were already spending some time reporting outcomes under the 2 percent credit program. In addition, DEQ will provide plan templates for elements (a) through (c).

In addition, for elements (a) through (d), many communities may need to make some small adjustment to outreach content or delivery mechanisms. Some estimates will be made to account for updating materials.

Even with those changes and associated costs, a few cities may not fully satisfy draft rule concepts:

- Fairview and Maywood Park may need to increase outreach to residents (to satisfy element [b]) or all waste generators (to satisfy element [a]) and DEQ will estimate these costs.
- DEQ assumes that the Jackson County Recycling Partnership will re-instate and maintain its reuse guide for Jackson County (the “Re-Directory”), in order to satisfy element (f). As this is a pre-existing service that was only recently discontinued, DEQ will treat the marginal costs of this as zero for purposes of the fiscal impact statement. Even after re-instating the reuse guide, Medford may only satisfy four waste prevention and reuse elements (five are required). DEQ will discuss with local program staff options to comply with these requirements, and estimate costs accordingly.

- Albany should be able to satisfy four elements with only small changes to existing programs. A fifth element, education programs in schools, is already partially satisfied. Increasing the number of students contacted would satisfy the required fifth element. DEQ will work with Albany’s franchisee to estimate the additional costs of this added school outreach.
- Bend appears to satisfy four elements with only small changes to existing programs. A fifth element, waste prevention campaign targeting nonresidential generators, may be within reach if Deschutes County makes some relatively small changes to existing programs. DEQ will discuss with the County and its contractor how they might expect to comply with these requirements, and estimate costs accordingly.

Impact on Small Businesses

State law specifically requires an evaluation of whether the proposed rules will have a “significant adverse impact” on small businesses. Small businesses are defined as those with 50 or fewer employees. For the purpose of this rule, DEQ will evaluate the potential for significant adverse impact on small businesses that are customers of waste collection companies. Small businesses that are also waste collection companies will be treated differently, as described below.

Small Waste Collection Companies

Waste collection companies (of all sizes) may incur higher costs associated with complying with the proposed rules, depending in part on which elements their communities choose to implement and who is assigned to implement them. However, in almost all Oregon cities, waste collection is franchised, with rates set by a local government and costs of complying with state law considered to be an allowable and cost-recoverable expense. DEQ is not prepared to make projections regarding which cities, if any, will force their franchisee to incur added regulatory cost without cost recovery. ORS 459A.007(9) requires local governments to establish rates that will cover all costs of the franchisee or licensee to implement all parts of the opportunity to recycle, or provide alternative funding sources. Cost recovery typically means that costs are fully recovered through rates and an operating margin (profit) is also earned on such costs. In these cases, the financial impact on waste collection companies could be positive (higher profit). For these reasons, DEQ will assume that the actual fiscal impact on small waste collection companies, if any, will be very small so DEQ will not quantify those impacts.

Customers of Waste Collection Companies

In contrast, DEQ assumes that any implementation cost incurred by the waste industry will eventually be passed on to customers through rate review. Implementation costs incurred by local governments may also be passed on to ratepayers through higher franchise fees. The small businesses that are customers of these franchised waste collection companies may incur higher costs through their garbage bills. To evaluate the magnitude of this possible rate impact, DEQ plans to contract with a third-party analyst with experience evaluating program costs and waste collection rates. Cost projections as described earlier will be entered into rate models for a cross-section of Oregon jurisdictions to generate a range of likely rate impacts. The results of this analysis will be included in the fiscal impact statement as a range.

Impacts on Local Governments

DEQ will evaluate the cost of implementation for local governments. In some communities, these costs will be limited to additional oversight of waste franchisees. In other cases, local governments may be the primary implementer. DEQ will also estimate added reporting burdens.

Impacts on the General Public

DEQ will assume that costs incurred by local governments or their implementing partners (such as waste franchisees) will be reflected in waste collection rates (either as an allowable operating cost, or through an increase in franchise fees). This will allow for an estimate of impacts on household waste collection rates, similar to the analysis of impact on small businesses.

Housing Cost Impact Analysis

As noted above, ORS 183.530(4) requires DEQ to estimate the impact of proposed rules on housing costs, specifically, the development of a 6,000 square foot parcel and the construction of a 1,200 square foot detached single family dwelling. Possible impacts of this rulemaking include higher garbage rates. DEQ will evaluate potential rate impacts on self-haul and drop-box services consistent with the methods outlined above.

Comments on this Overview of the Fiscal Impact Statement

To provide DEQ adequate time to potentially consider Advisory Committee members' comments as DEQ prepares its fiscal impact statement for this SB 263 Rulemaking, please provide comments to Matt Raeburn, Senior Policy Analyst, at raeburn.matthew@deq.state.or.us no later than Friday, July 8th.

The Advisory Committee will have an additional opportunity to comment on and respond to the statutorily required information requests about the final fiscal impact statement. DEQ will provide that final fiscal impact statement to the Advisory Committee in advance of the September 13th Advisory Committee meeting. Advisory Committee members will also have a third opportunity to comment on DEQ's fiscal impact statement process during the public notice-and-comment period later in 2016.