



Rules for OAR 340, Division 90
SB 263 Materials Management Rulemaking (“Recycling 2016”)
Advisory Committee Meeting #4
September 13, 2016

Oregon Department of Environmental Quality
811 SW Sixth Ave
Portland OR 97204

DISCLAIMER:

The Oregon Department of Environmental Quality (“DEQ”) makes these draft rules available to assist the Advisory Committee with its role in the SB 263 Materials Management Rulemaking (“Recycling 2016”).

These draft rules remain subject to change by DEQ based on: advice and comments offered to DEQ; or DEQ’s own initiative.

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 459A.025, ORS 459.045 & ORS 468.020

Stats. Implemented: ORS 459A.005, 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.

ADVISORY COMMITTEE DRAFT 8-29-16

- (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) "Compostable waste" means waste that is acceptable for composting at a composting facility.
- (7) "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.
- (8) "Consumer purchasing practice" 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.
- (9) "Consumer of newsprint" means a person who uses newsprint in a commercial or government printing or publishing operation.
- (10) "DEQ" means the Department of Environmental Quality.
- (11) "Depot" means a place for receiving source separated recyclable material.
- (12) "Director" means the Director of the Department of Environmental Quality.
- (13) "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.
- (14) "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.
- (15) "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.

ADVISORY COMMITTEE DRAFT 8-29-16

(16) "EQC" means the Environmental Quality Commission.

(17) "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.

(18) "Food waste" means waste from fruits, vegetables, meats, dairy products, fish, shellfish, nuts, seeds, and grains 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.

(19) "Franchise" includes a franchise, certificate, contract or license issued by a local government unit authorizing a person to provide solid waste management services.

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

(21) "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.

(22) "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.

(23) "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.

(24) "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.

(25) "Local government" means a political subdivision that regulates either solid waste collection, disposal, or both, including but not limited to incorporated cities, municipalities,

ADVISORY COMMITTEE DRAFT 8-29-16

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.

(26) "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.

(27) "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.

(28) "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.

(29) "Multi-family" means dwellings of five or more units.

(30) "Newsprint" means paper meeting the specifications for Standard Newsprint Paper and Roto Newsprint Paper as set forth in the current edition of the *Harmonized Tariff Schedule of the United States* for such products.

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

(32) "On-site collection" has the same meaning as on-route collection.

(33) "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.

(34) "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.

(35) "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.

ADVISORY COMMITTEE DRAFT 8-29-16

(36) "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.

(37) "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.

(38) "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.

(39) "Recycled-content newsprint" means newsprint that includes post-consumer waste paper.

(40) "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.

(41) "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.

(42) "Residential" means single family dwellings and multi-family dwellings having four or fewer units.

(43) "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.

(44) "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.

(45) "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.

ADVISORY COMMITTEE DRAFT 8-29-16

(46) "Source separate" means that the person who last uses recyclable material separates the recyclable material from solid waste.

(47) "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.

(48) "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."

(49) "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.

(50) "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.

(51) "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(2) or (3).

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

(53) "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.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

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 many industrial 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 459A.025, ORS 459.045 & 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 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

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.

ADVISORY COMMITTEE DRAFT 8-29-16

(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.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 340-060-0020 & 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, 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.

ADVISORY COMMITTEE DRAFT 8-29-16

(b) 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.

(c) 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.

(d) 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.

(e) 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.

(f) 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(1); and

ADVISORY COMMITTEE DRAFT 8-29-16

(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 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 such 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 such 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;

ADVISORY COMMITTEE DRAFT 8-29-16

(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;

ADVISORY COMMITTEE DRAFT 8-29-16

(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

(V)-(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.

ADVISORY COMMITTEE DRAFT 8-29-16

(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.

ADVISORY COMMITTEE DRAFT 8-29-16

(i) An on-going system to collect food waste and 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 other compostable materials is required from commercial generators on an appropriate schedule.

(C) Any composting facility to which collected compostable material 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;

ADVISORY COMMITTEE DRAFT 8-29-16

(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 and 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 two 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

ADVISORY COMMITTEE DRAFT 8-29-16

(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 generators 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 such 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.

Stat. Auth.: ORS 459.045, 459A.025, 459A.100 - 459A.120 & 468.020

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

Stats.Implemented:

Hist.:

340-090-0042

Waste Prevention and Reuse Programs

Effective January 1, 2018, and as required by ORS 459A.007, certain local governments must implement element (1) of the waste prevention education and reuse program elements in this rule and choose two or four additional elements from sections (2) through (7) 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 (1) and at least four additional elements from sections (2) through (7) 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

ADVISORY COMMITTEE DRAFT 8-29-16

prevention and reuse program element in section (1) and at least two additional elements from sections (2) through (7) 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).

(1) 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 (2) or (3) 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 (1)(a) and 1(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;

ADVISORY COMMITTEE DRAFT 8-29-16

(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.

(2) 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. 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 (2)(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:

ADVISORY COMMITTEE DRAFT 8-29-16

(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 (1) of this rule.

(3) 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. 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 (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

ADVISORY COMMITTEE DRAFT 8-29-16

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 (1) of this rule.

(4) 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;

ADVISORY COMMITTEE DRAFT 8-29-16

(E) Field trips to waste prevention or reuse facilities, 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 (4)(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(4) to demonstrate compliance with any other waste prevention and reuse program element in this rule.

(5) Funding or infrastructure support program. A program for the provision of city, county, or watershed funding or 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.

ADVISORY COMMITTEE DRAFT 8-29-16

(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 (5)(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) Annual funding must be no less than \$0.25 per local government unit resident, 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) Infrastructure 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 (5)(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 (6) 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.

(6) 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

ADVISORY COMMITTEE DRAFT 8-29-16

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(6) cannot also be used to demonstrate compliance with any other waste prevention and reuse program element.

(7) 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 \$0.25 per local government unit resident, 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 (7)(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 (7)(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 (7) 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:
Stats.Implemented:
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:

ADVISORY COMMITTEE DRAFT 8-29-16

- (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.

ADVISORY COMMITTEE DRAFT 8-29-16

(16) Josephine watershed 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 watershed 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 watershed 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 watershed 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 watershed 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 watershed 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 watershed 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 watershed 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 watershed 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 watershed 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 watershed 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 watershed 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 watershed 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 watershed 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.

ADVISORY COMMITTEE DRAFT 8-29-16

(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, 459.045 & 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 washed of origin for such materials delivered and reports the weight and appropriate washed 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, 459A.100 - 459A.120 & 468.020

Stats. Implemented: ORS 459A.010

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.

ADVISORY COMMITTEE DRAFT 8-29-16

(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:

Stats.Implemented:

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

ADVISORY COMMITTEE DRAFT 8-29-16

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 watershed 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.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 and other legitimate fuels 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;

ADVISORY COMMITTEE DRAFT 8-29-16

- (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;

ADVISORY COMMITTEE DRAFT 8-29-16

(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 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 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.

ADVISORY COMMITTEE DRAFT 8-29-16

(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 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. 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 wasteshed where the material was generated.

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

Stats. Implemented: 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:

ADVISORY COMMITTEE DRAFT 8-29-16

- (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 (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 459A550

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 en-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).

ADVISORY COMMITTEE DRAFT 8-29-16

- (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, 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 under 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*, or any 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.

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 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 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:

ADVISORY COMMITTEE DRAFT 8-29-16

(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.

[ED. NOTE: Formulas, tables and figures referenced are not included in rule text. Click here for PDF copy of those items.]

Stat. Auth.: 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:

ADVISORY COMMITTEE DRAFT 8-29-16

(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 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 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:

ADVISORY COMMITTEE DRAFT 8-29-16

(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.

NOTE: Stated as a formula, this is: [Formula not included. See ED. NOTE.]

(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.

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. 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.

NOTE: Stated as a formula, this is: [Formula not included. See ED. NOTE.]

(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.

[ED. NOTE: Formulas, tables and figures referenced are not included in rule text. Click here for PDF copy of those items.]

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 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 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:

(i) 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:

ADVISORY COMMITTEE DRAFT 8-29-16

(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.

ADVISORY COMMITTEE DRAFT 8-29-16

(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:

ADVISORY COMMITTEE DRAFT 8-29-16

(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 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 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.

ADVISORY COMMITTEE DRAFT 8-29-16

(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