



Oregon Department of Environmental Quality

Producer Fees: Base and Graduated Fees

Checklist for Recycling Council program plan review – Revised April 23, 2024

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Focal plan section: Financing (base fees, graduated fees, alternative membership fee structure, adequacy of financing)

	DEQ feedback	Council feedback
Overall Feedback on Plan Section:	<p>With respect to the setting of base fees, the plan is on a decent trajectory in terms of approach to meeting the statutory criteria, although more detail is needed in some places in the second draft, and fee amounts and system cost projections will need to be updated with more accurate data.</p> <p>With respect to the requirement to ecomodulate fees, this is a gap in the plan that needs to be addressed in the second draft, as this is a statutory requirement.</p>	

Plan Component	Statute or Rule Citation	Is the requirement met? (yes, no, conditionally)	DEQ feedback	Council feedback
Description of how the prospective PRO will establish, calculate and charge membership fees to member producers, including	ORS 459A.875(2)(a)(E)			
the schedule of membership fees (base rates), accompanied by rationales for:	ORS 459A.875(2)(h)		A simplified version of a fee schedule with only eight material categories is provided as a starter schedule, but will be replaced with a more granular version in draft 2 that uses the speciation that will appear in the final version of the fee schedule.	
How the schedule ensures that higher fees are charged for non-recyclables than for recyclables on a weighted-ton average basis; and	ORS 459A.884(3)(a)		The plan outlines an approach, the "discretionary state-adjustment factor," to ensure that recyclables are charged less than non-recyclables, but will need to apply the method to an updated fee schedule in the second draft of the plan.	
How the schedule ensures, to the extent possible, that materials do not cross-subsidize one another.	ORS 459A.884(3)(b)		The plan, without the confidential Appendix G, does not provide adequate information to ascertain whether or not the requirement is met.	

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the product speciation for the membership fee schedule	ORS 459A.875(2)(h)		<p>The 62-material speciation effectively splits recyclables and non-recyclables from one another given current acceptance lists, but might require further subdivision if lists change.</p> <p>Some specific questions/comments:</p> <ul style="list-style-type: none"> - CAA might want to separate "polycoated paperboard" into "accepted" and "not accepted" in anticipation of a successful pilot project but DEQ not accepting polycoated paperboard food serviceware (esp. items that hold solid food) into the USCL. - Please define "small format" paper and explain how it is different/distinct from other categories. - Plastics (HDPE, PP): add "storage containers"? - In the "Plastic-Flexible" grouping, into which category do multi-material laminates fit in? 	

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the algorithms by which fees will be calculated	ORS 459A.875(2)(a)(E)		The plan, without the confidential Appendix G, does not provide adequate information to ascertain whether or not the requirement is met.	
any producer fee incentives other than graduated fee adjustments that will be offered;		n/a	None are described.	
Graduated fee algorithm and methods, including	ORS 459A.875(2)(a)(E-F)		The requirement to ecomodulate fees, which applies from the start date, is not met.	
the algorithm for the graduated fee approach, indicating the criteria and magnitude of modulation;	ORS 459A.884(4) and ORS 459A.875(2)(a)(E)		Relevant plan excerpts: "As of submission of this program plan, CAA does not have a specific eco-modulation proposal for review."	
Inclusion of both penalties and rewards in the approach to graduated fees	ORS 459A.884(4)		"The factors and criteria for bonus eligibility and penalties and their levels will be determined before implementation in the 2028 program year in consultation with DEQ and producers."	
accompanying descriptive text explaining how the algorithm will deliver continual reductions in the environmental and human health impacts of covered products	ORS 459A.884(4) & ORS 459A.875(2)(a)(F)			

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a description of the factors taken into consideration in development of the approach, and how their incorporation contributes to continual incentivization and disincentivizing of producer choices that actually correlate to meaningful environmental benefit. The following five factors must have been considered according to statute:	ORS 459A.884(4)(a)-(e)		Consideration of post-consumer recycled content and recycling rate is demonstrated, but not of the other three required factors.	
The post-consumer content of the material, if the use of post-consumer content in the covered product is not prohibited by federal law			The factor is taken into consideration (its use as an attribute for ecomodulation is contemplated).	
The product-to-package ratio			No mention of this.	
The producer's choice of material;			CAA's general philosophy of ecomodulation entails ecomodulating within material categories, but using material choice as an attribute for ecomodulating is not discussed.	

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Life cycle environmental impacts, as demonstrated by an evaluation performed in accordance with ORS 459A.944; and			<p>CAA could have picked up the rule concepts from rulemaking 2 and proposed approaches to their implementation in the plan, but does not do so. There are some mixed signals in terms of intent going forward --</p> <p>"CAA strongly recommends that LCA rules do not define how the graduated fees should be implemented in relation to LCA results beyond what is already required through the statute."</p> <p>vs.</p> <p>"CAA could consider providing producers with a limited bonus for disclosures of voluntary LCAs that would be available before the data necessary to develop more comprehensive eco-modulation fee structures was available."</p>	
The recycling rate of the material relative to the recycling rate of other covered products.			<p>The factor is taken into consideration (its use as an attribute for ecomodulation is contemplated).</p>	

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A description of how the PRO will maintain financial solvency (specifically, how loss of revenue due to ecomodulation rewards will be paid for).			This is not covered, as no concrete ecomodulation plan is presented.	
Alternative membership fee structure proposal (if applicable): Per, the PRO could propose an alternative fee structure that does not adhere to the requirements of ORS 459A.884(2)-(4) but still delivers cost-proportional product differentiation and incentivizes less impactful producer behavior. A proposal of an alternative membership fee structure could explain	ORS 459A.884(5)		CAA chose not to propose an alternative membership fee structure.	
How it will ensure that products don't cross-subsidize each other.	ORS 459A.884(5)			
How it will incentivize less impactful producer behavior.	ORS 459A.884(5)			
How it will not incentivize non-recyclable materials, which DEQ views as an		n/a		

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undesirable outcome (although an alternative membership fee structure would not be strictly held to charging more on average for non-recyclables than for recyclables, i.e., the requirement imposed by ORS 459A.884(3)).				
<u>Inclusion in the fees approach of uniform membership fees for members that had a gross revenue of less than \$10 million for the organization's most recent fiscal year, or sold in or into Oregon less than five metric tons of covered products for use in this state in the most recent calendar year.</u>	<u>ORS 459A.884(6)</u>		<p>A flat fee approach is outlined but it does not account for cases in which producers have revenue of less than \$10 million but more than 5 tons of supply, so the Tiered Flat Fee Structure needs to be amended to account for such cases.</p> <p>Furthermore it would be in line with the intent of the statute to provide a fee option that is not tied to reporting of a specific volume, to allow producers in this class to not go to the trouble of calculating their volumes.</p> <p>Also it's expected that the fee rates themselves will be updated</p>	

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			with more accurate data in the second draft.	
Adequacy of financing: this subsection could contain:	ORS 459A.875(2)(i)			
demonstration that the membership fees collected will provide adequate revenue to fund all costs associated with the producer responsibility program. A fee schedule that does not appear to generate sufficient revenue, meaning that program delivery would depend upon funding from other sources, could be cause for plan rejection. Included in this subsection could be:			The program plan demonstrates how the fee schedule is envisioned to cover all costs, but will update its system cost estimates and fee amounts in the second draft.	
a description of the prospective PRO's approach to reserve funds or other contingencies for responding to financial hardship. For example, a prospective PRO could set a minimum and a	ORS 459A.875(2)(m)		The plan identifies a reserve target amount but does not describe contingencies that the reserves are intended to address. This should be updated in the second draft. In addition, the proposed reserve is to fund "six months of variable operating expenses". Shouldn't there also	

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maximum reserve budget, defined as a proportion of the annual operating budget.			be reserve funds on hand to pay for fixed operating expenses?	

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