

Plastic Pollution and Recycling Modernization Act

Rulemaking 1, Advisory Committee Meeting #1

July 20, 2022 9 a.m. - 2:30 p.m.



Welcome, overview of today's meeting

Time	Topic
9 a.m.	Welcome, Overview
9:10 a.m.	Introductions- DEQ staff, committee members
9:30 a.m.	Committee scope and operating procedures
10 a.m.	Overview: Plastic Pollution & Recycling Modernization Act overview and rulemaking issue areas
10:25 a.m.	Break
10:30 a.m.	Rule concept presentations followed by discussion
12 p.m.	Lunch break
12:30 p.m.	Discussion (continued): Proposed Rule Concepts
2 p.m.	Public input period
2:30 p.m.	Adjourn meeting 2 DEQ

Webinar tips

Thank you for joining us today!

Join audio by either phone or computer, not both.

For panelists discussion and comments, use the raise hand button to get in the queue; if joined by phone press *9

This meeting is being recorded.

For Zoom technical issues, send a message through the chat to Alex Bertolucci, or email alex.bertolucci@deq.oregon.gov





Meeting ground rules

- Listen and treat everyone with respect
- Allow one person to speak at a time raise hand
- Be prepared and set time aside for the meetings
- Provide a balance of speaking time
- Bring concerns and ideas up for discussion early in the process
- Comment constructively and avoid personal attacks
- Move around and take care of yourself as needed



Communications

- Substantive discussion by the committee will occur during public meetings, not offline.
- DEQ will post meeting materials and input received from RAC members on the rulemaking webpage: www.oregon.gov/deq/rulemaking/Pages/Recycling2023.aspx
- RAC members and the public may send input after a meeting to: <u>Recycling.2023@deq.oregon.gov</u>.



Introductions- DEQ staff



Cheryl Grabham, Program Manager, Materials Management Product Stewardship Team



Nicole Portley, Program Plan Lead



David Allaway, Senior Policy Analyst



Roxann Nayar, Recycling Program Analyst



Alex Bertolucci, Natural Resource Specialist



Introductions - RAC Members

Name	Organization
Trevor Beltz	Tillamook County Creamery Association
Udara (Abeysekera) Bickett	The Environmental Center
Rosalynn Greene	Metro
Sydney Harris	Product Stewardship Institute
Allen Langdon	Circular Materials
Michael R. McHenry	Pendleton Sanitary Service, Inc.
Katy Nesbitt	Wallowa County
Kristan Mitchell	Oregon Refuse and Recycling Association

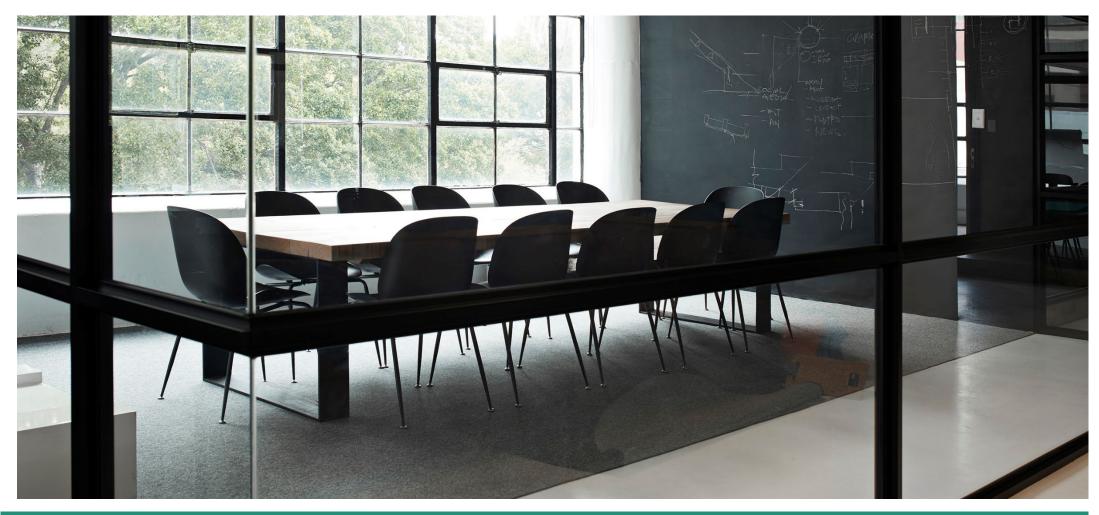


Introductions - RAC Members

Name	Organization
Jeff Murray	EFI Recycling, Inc.
Deveron Musgrave	City of Eugene
Jerry Powell	Residents
Mallorie Roberts	Association of Oregon Counties
Jared Rothstein	Consumer Brands Association
John Salvador	Georgia-Pacific Professional
Craig Smith	Food Northwest
Paloma Sparks	Oregon Business & Industry
Taylor Cass Talbott	Trash for Peace
Nicole Willett	Resource Recovery Alliance



Committee scope and operating procedures





About rules and the rulemaking process



Rules are agency regulations, carry the power of the law.



DEQ uses the rulemaking process to clarify and implement state law.



Rules are proposed by DEQ and are adopted by the Environmental Quality Commission.



Role of the rulemaking advisory committee

This is an advisory committee

Your ideas inform the proposed rulemaking

Meetings stay focused on proposed rule concepts

 State law guided DEQ's choice of issues to address in this rulemaking

RAC has particular responsibility to review and advise on:

- racial equity impacts of rules
- fiscal impacts of rules



Public involvement

Opportunities to stay engaged:

- Sign-up for email updates (Gov Delivery)
- Review meeting materials and agendas
- Provide brief input during or after each meeting
- Submit formal comments on draft rules in May 2023





Centering racial equity and environmental justice

DEQ is committed to serving all communities in Oregon by centering its work, including rulemaking, in racial equity and environmental justice.

 RAC will review a statement about rule's impact on racial equity (per House Bill 2993).

Other activities outside of this rulemaking:

- Study of equity in the recycling system (per Senate Bill 582)
- An EJ mapping tool will be developed, and agencies will report annually to Environmental Justice Council (per House Bill 4077)



Committee charter

Highlights:

- Objectives and scope
- Roles and expectations
- Alternates Process

Recycling Modernization Act Rulemaking Advisory Committee

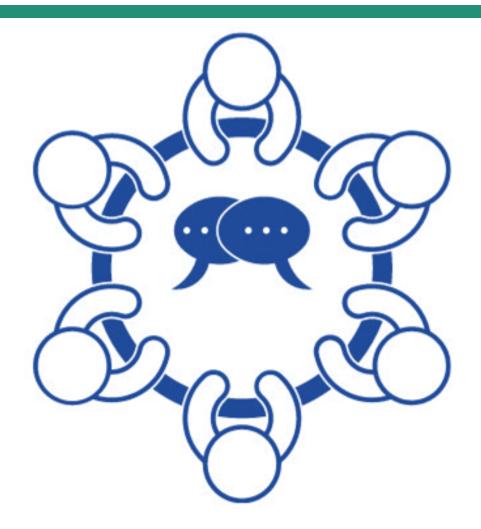
Advisory Committee Charter
July 5, 2022

Roxann Nayar





Q&A





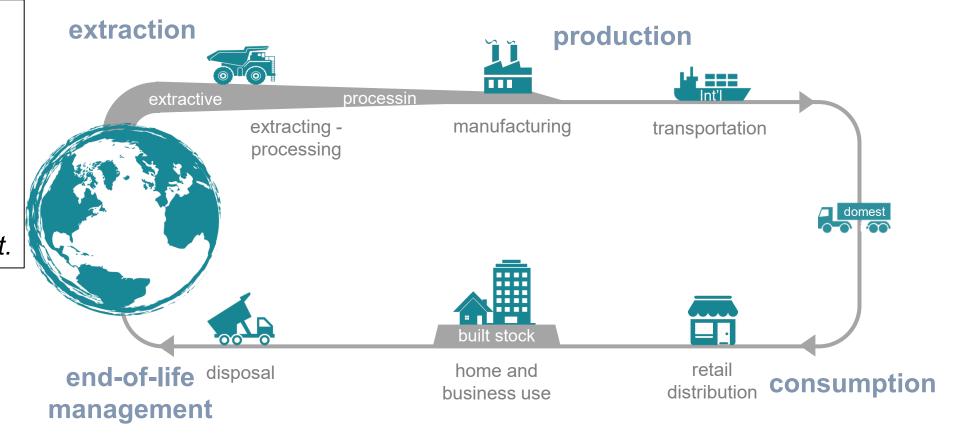
Overview of the Act and rulemaking issue areas

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What is Extended Producer Responsibility?

Solving problems
by extending
producer
responsibility for
products further in
the life cycle, from
production to endof-life management.





Oregon's Plastic Pollution and Recycling Modernization Act (Senate Bill 582, 2021)

- Shared responsibility
- New responsibilities on local governments, processing facilities, producers
- Comprehensive reform and modernization





Recycling

Challenges

Public confusion over what can be recycled.

Unstable markets and unfavorable economic signals

Inequities throughout the recycling system

No assurance of responsible recycling

More waste and less recycling over time

Solutions











Recycling increases as it becomes easier and more accessible

Plastic pollution

Challenges

Increasing production and consumption of single-use plastic

Increasing plastic pollution and waste

Lack of reduction goals, accountability

Solutions









How it will work















PRODUCERS

PRODUCER RESPONSIBILITY ORGANIZATION STATEWIDE COLLECTION LIST

LOCAL
EXPANSION OF
RECYCLING
SERVICES

EDUCATION
AND
CONTAMINATION
REDUCTION

MATERIAL PROCESSING

RESPONSIBLE END MARKETS

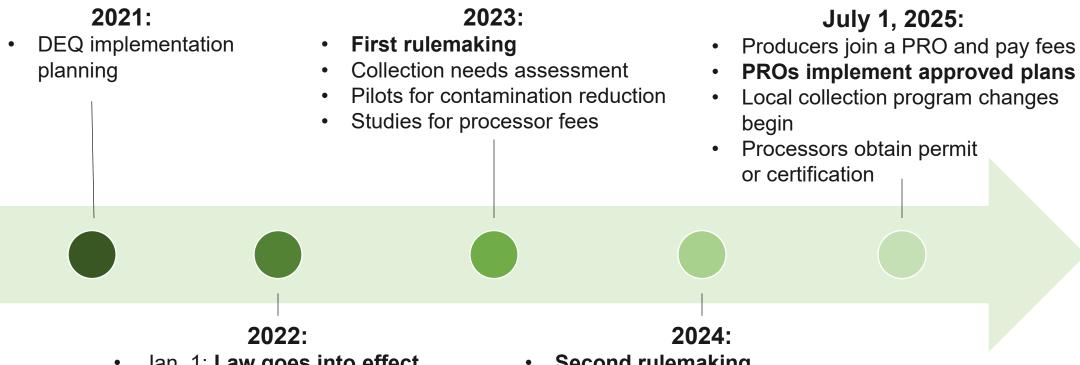


OVERSIGHT AND INTEGRATION



Start-up timeline

Stakeholder engagement, project planning and research extend throughout implementation.



- Jan. 1: Law goes into effect
- DEQ hiring
- Advisory Council appointed
- Labeling Task Force report due

Second rulemaking

- First PRO program plans due
- Purchasing assessment due
- First equity study due
- First multifamily study due



Key Obligations



PRODUCERS

- Join PRO
- Report annual sales
- Pay annual fees
- Evaluate life cycle impacts (large producers only)



LOCAL GOVERNMENTS

- Identify opportunities for service expansion via participation in the needs assessment
- Expand recycling services to encompass uniform statewide collection list materials





- Undergo permitting (processors)
- Send materials for recycling to responsible end markets (processors)



Key obligations of the PROs

1. Pay fees to /
compensate local
governments, service
providers, DEQ

Educate the public

Set up a depot system that meets standards and targets

3. Coordinate with other PROs

Develop a plan for implementing statewide collection program expansions and improvements

PRODUCER
RESPONSIBILITY
ORGANIZATION

Ensure that products do not cross-subsidize one another

2. Maintain membership that accounts for at least 10% of market share

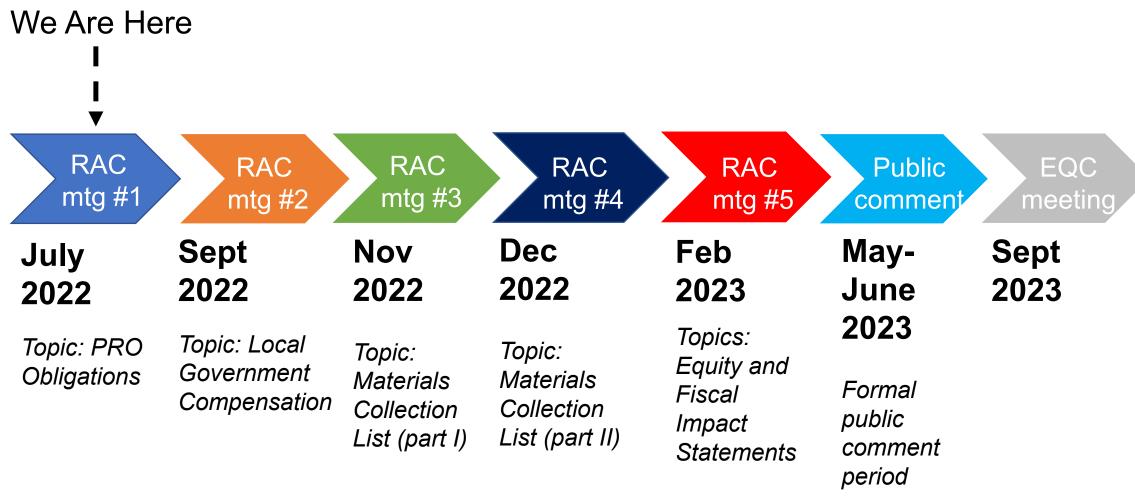
Meet statewide plastic recycling goals

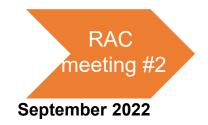
Establish graduated fee structure for members

4. Ensure recyclables go to responsible end markets



Rulemaking 1 timeline





Local government compensation

PROs will be providing funding and/or reimbursement to local governments for aspects of their recycling systems. (ORS 459A.890)

Key Topics:

- Transportation of covered recycling to commingled processing facilities and markets
- Assessing contamination from recycling route trucks
- Contamination reduction programming (may be deferred to the second rulemaking)
- Expansion of recycling collection on-route and at depots
- Returning unused funding



Material lists

All materials

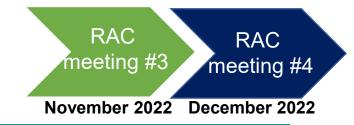
Covered products

Key Questions:

- 1. Which *materials* should regulated local governments (subject to Oregon's Opportunity to Recycle Act) collect for recycling?
- 2. Of those, which should be collected on-route? At depots? Which should be included in the state's Uniform Statewide Collection List?
- 3. Which *covered products* should PROs collect for recycling (at depots, mobile collection events)?
- 4. For those, what convenience standards, collection targets and performance standards should be required?
- 5. Are there additional requirements that should be mandated?



Material lists, continued



Evaluation criteria – ORS 459A.914(3)

- (a) The stability, maturity, accessibility and viability of responsible end markets;
- (b) Environmental health and safety considerations;
- (c) The anticipated yield loss for the material during the recycling process;
- (d) The material's compatibility with existing recycling infrastructure;
- (e) The amount of the material available;
- (f) The practicalities of sorting and storing the material;
- (g) Contamination;
- (h) The ability for waste generators to easily identify and properly prepare the material;
- (i) Economic factors;
- (j) Environmental factors from a life cycle perspective; and
- (k) The policy expressed in ORS 459.015 (2)(a) to (c).

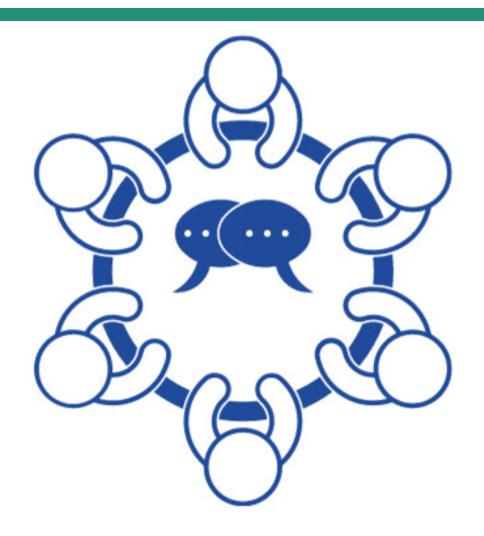


Rulemaking 2 (2023-2024) anticipated topics

- Processor permits and certification
- Standards for contamination reduction programming
- Fees paid to processors (contamination management, processor commodity risk fees)
- Waste prevention and reuse fee
- Standards for evaluation and disclosure of life cycle environmental impacts



Q & A





Break



Rule concept presentations

Time	Topic
9-10:30 a.m.	Welcome, Overview, Introductions, Break
10:30 a.m.	Rule concept presentations followed by discussion 1. Fees 2. Market Share 3. PRO Coordination
12 p.m.	Lunch break
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2 p.m.	Public input period
2:30 p.m.	Adjourn meeting

Rules topic #1: Fees



Refer to background document #1. Fees



State of Oregon Department of Environmental Quality

Rule Concepts: 1. Fees

Plastic Pollution and Recycling Modernization Act (SB 582, 2021)
Rulemaking Advisory Committee Meeting #1 of 5, Rulemaking 1
Contact: Michael Lee
700 NE Multnomah St, Suite 600, Portland, OR 97232
Michael lee@deq.oregon.gov

Background

The Plastic Pollution and Recycling Modernization Act ("Act") requires DEQ to establish a plan review fee and annual fees reasonably calculated to cover DEQ's administrative costs to be paid by the Producer Responsibility Organizations. Rule concepts for these two fees, including fee amounts, are listed below. (Not included are concepts related to the waste prevention and reuse fee, which will be discussed in Rulemaking 2).

Concepts for discussion at July 20, 2022 RAC meeting

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



Rules topic #1: Fees



Fees included in Rulemaking I:

- One-time fee for plan review
- Annual fee for administration

Who pays:

PROs







Rules topic #1: Fees



Statute (ORS 459A.938(1)) says:

The Environmental Quality Commission shall establish the following fees:

- (a) A fixed, one-time fee for reviewing a producer responsibility program plan submitted under ORS 459A.875.
- (b)(A) . . .an annual fee charged to each producer responsibility organization for the purpose of paying the costs to the Department of Environmental Quality of administering, implementing and enforcing the provisions of ORS 459A.860 to 459A.975.



Rule concept: program plan review fee



- 1. Plan review fee amount: \$150,000
- 2. This fee is due from each PRO with the initial submission of their program plan (March 31, 2024 deadline; subsequent plans in later years).

Rule concept: Annual Fee



1. Annual fee amount: \$4 million per year, in the first four years (2025-2028), \$3 million thereafter

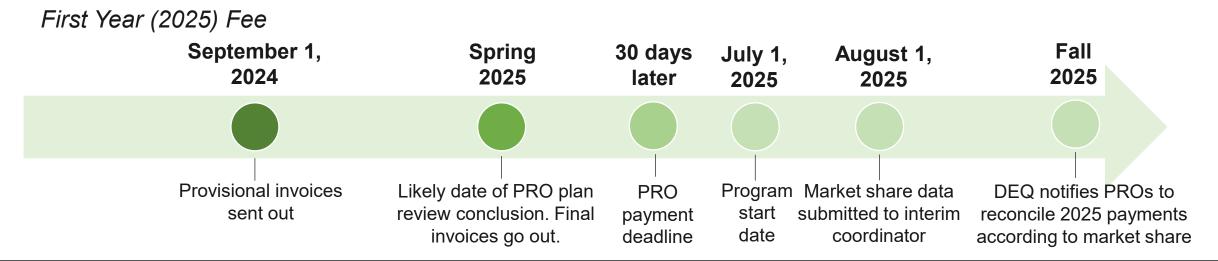
Annual fee features:

- Defines a cap in rule.
- First fee billed upon DEQ's approval of all plans.
- This fee is paid collectively by all approved PROs and divided among them according to market share.
- The fee amount is higher in the first four years because most (more than 90%) of the start-up costs are paid off in those years.

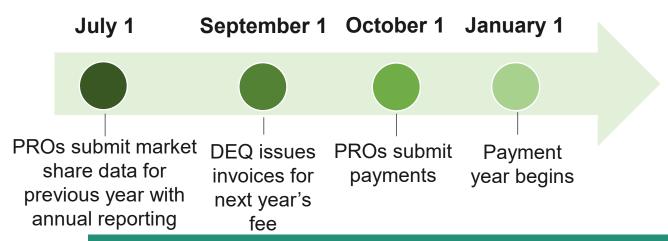


Annual fee billing





Long-Term Approach to Billing

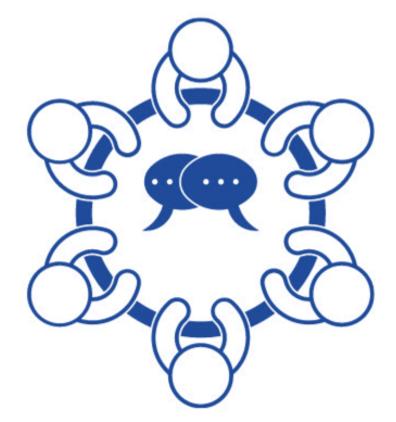




Fees rule concepts



Pause for questions and discussion









Refer to background document #2. Market Share



State of Oregon Department of Environmental Quality

Rule Concepts: 2. Market Share

A Memo on Options for Defining "Market Share"

Plastic Pollution and Recycling Modernization Act (SB 582, 2021)
Rulemaking Advisory Committee Meeting #1 of 5, Rulemaking 1
Contact: Michael Lee
700 NE Multnomah St, Suite 600, Portland, OR 97232
Michael lee@deq.oregon.gov

Background

DEQ has considered several options for defining market share. Two options (weight, financial burden) are described in this memo

The Plastic Pollution and Recycling Modernization Act ("Act") allows for multiple Producer Responsibility Organizations (see ORS 459A.869(9) and (12)). The same section of the Act requires the Environmental Quality Commission to establish by rule "methods for calculating market share".

The Act refers to the term "market share" in the following ways:



Rules topic #2: Market Share



ORS 459A.869(9) requires the Environmental Quality Commission to establish by rule "methods for calculating market share".

ORS 459A.863(13) defines "market share" to mean "a producer's percentage of all covered products sold in or into this state during a specified time period, as calculated in accordance with methods established by the commission by rule."



What is market share used for?



In Statute, market share is used to:

- set a 10% minimum threshold to ----- PRO Market Share operate as a PRO
- identify the 25 "large producers" ----- Producer Market Share

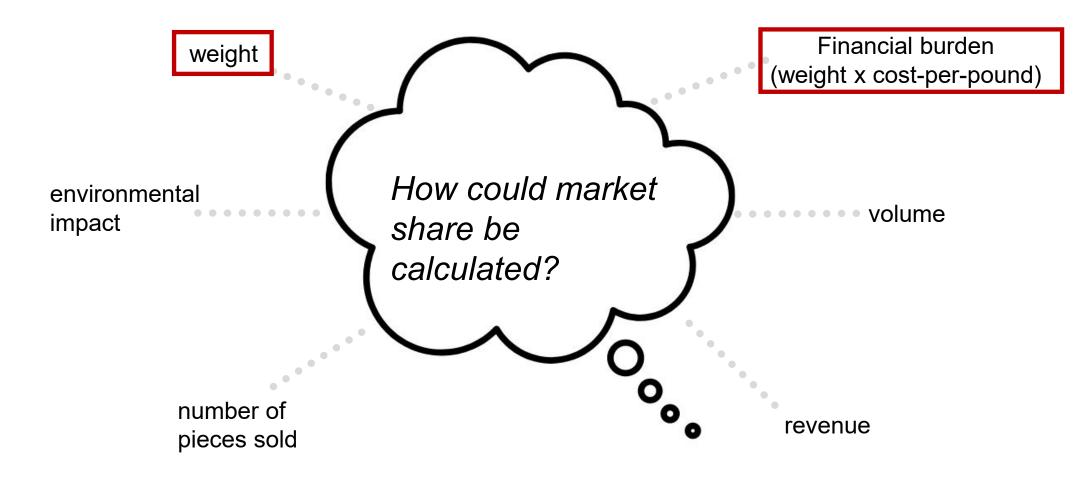
PRO Market Share is also relevant to:

 division of fees and other shared obligations among multiple PROs Materials should not subsidize other materials



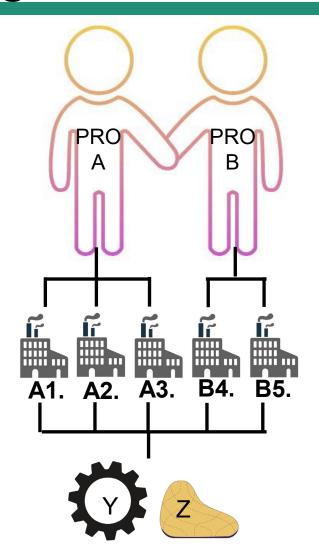
W.O.

Options for market share calculation



Weight vs financial burden: a hypothetical scenario





Two PROs have five total producer members (three in PRO A, two in PRO B) that produce two products, "widgets" and "beanbags".

The unit cost (cost per pound) of beanbags is 10x that of widgets.



Weight vs financial burden: a hypothetical scenario

4

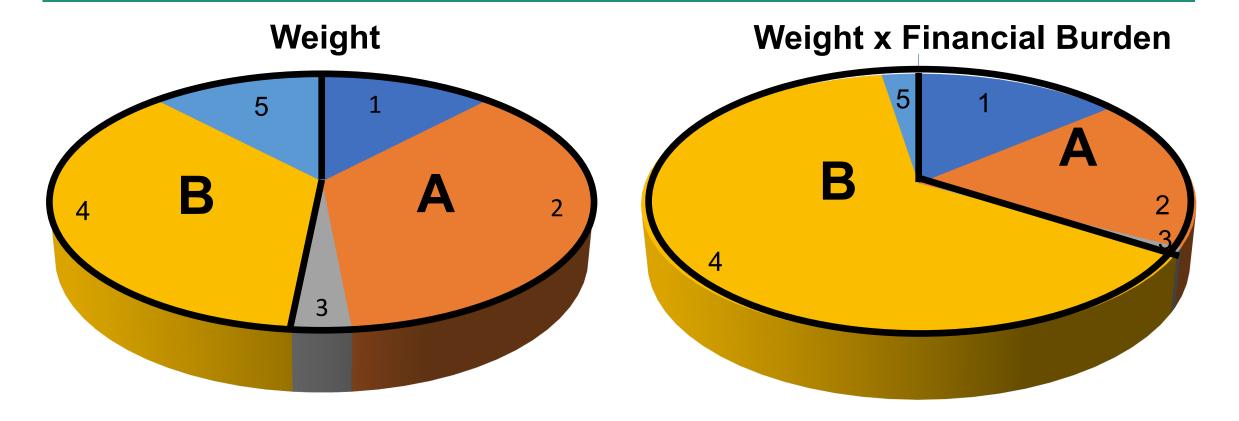
Data for Calculating Market Share

	A,1	A,2	A ,3	B,4	B,5	Total
Widgets (kg)	10	50	5	10	20	95
Beanbags (kg)	10	10	0	50	0	70
Subtotal (kg)	20	60	5	60	20	165
PRO total (kg)	85		80		165	

Note that PRO A's weightbased market share is slightly over 50% (85 kg divided by 165 kg) . . .

Weight vs financial burden: a hypothetical scenario





Market share: further considerations



If market share is calculated on the basis of financial burden:

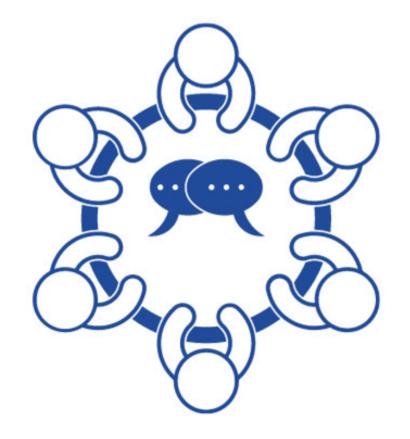
- How will market share estimates be generated in the first year of the program? What is the source of the financial burden unit factor? (Option: simple average of unit costs drawn from PRO fee schedules)
- In the event of multiple PROs, a common product speciation will be needed to apply the financial burden approach.



Market share rule concept



- Pause for questions and discussion
- Key question for the group: Which option for calculating market share do you recommend, and why?





Rules topic #3: PRO Coordination



Refer to two #3 background documents. PRO Coordination and Introductory FAQ



State of Oregon Department of Environmental Quality

Rule Concepts: 3. PRO Coordination

Plastic Pollution and Recycling Modernization Act (SB 582, 2021)
Rulemaking Advisory Committee Meeting #1 of 5, Rulemaking 1
Contact: Michael Lee
700 NE Multnomah St, Suite 600, Portland, OR 97232
Michael lee@deq.oregon.gov

Background

ORS 459A.869(9) addresses the need for coordination among producer responsibility organizations should DEQ approve multiple producer responsibility programs. Subparagraph (b) of subsection (9) directs the Environmental Quality Commission to establish standards and requirements for coordination plans and coordination between producer responsibility organizations; a process for submittal, review, approval or rejection and revocation of coordination plans; and a process for DEQ to issue an order requiring a coordination plan. The rule concepts laid out below are intended to address these requirements.



State of Oregon Department of Environmental Quality

Introductory FAQ on Producer Responsibility Organizations

Accompanying Material for the Rule Concept Discussion on Item #3 PRO Coordination

Plastic Pollution and Recycling Modernization Act (SB 582, 2021) Rulemaking Advisory Committee Meeting #1 of 5, Rulemaking 1 Contact: Michael Lee 700 NE Multnomah St, Suite 600, Portland, OR 97232 Michael lee@deq.oregon.gov

What is a Producer Responsibility Organization? As defined in ORS 459A.863, a Producer Responsibility Organization (PRO) is a nonprofit organization established to administer a producer responsibility program, which is a statewide program for the responsible management of covered products. Covered products (for the purposes of the Act) are non-exempted packaging, printing and writing paper, and food serviceware that become waste in Oregon.



Rules topic #3: PRO Coordination



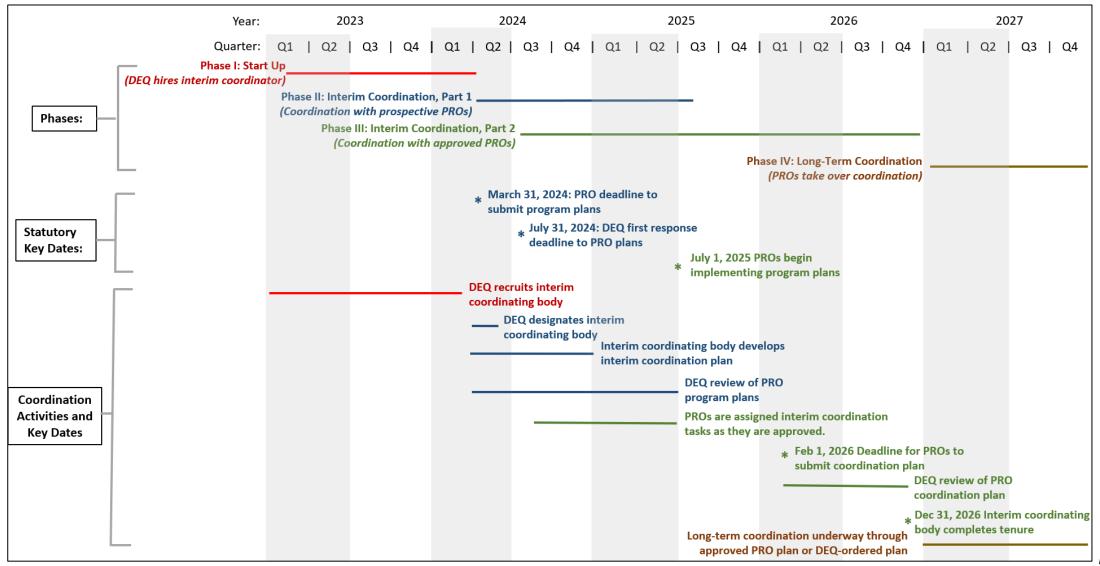
ORS 459A.869(9)(b) directs the Environmental Quality Commission to establish:

- standards and requirements for coordination plans and coordination between producer responsibility organizations;
- a process for submittal, review, approval or rejection and revocation of coordination plans; and
- a process for DEQ to issue an order requiring a coordination plan.



Rules topic #3: PRO Coordination





Interim coordination rule concepts



- 1) Enable creation of an interim coordination body
- 2) Enable the assigning of interim coordination tasks to individual PROs on the basis of fixed criteria applied to review of program plans

- 3) Set out the tasks to be assigned in the interim period
 - Single-point-of-service invoicing for various fees/compensation
 - Establishment of depot system
 - Setting up an education system
 - Establishment of an expense reconciliation system among the PROs



Interim and long-term coordination rule concepts



- Rule concept lays out standards and requirements for coordination plans
 - Standards and requirements mirror those for PRO program plans
- DEQ foresees collaboration among PROs on:
 - Fulfilling responsible end market obligations
 - Meeting the statewide plastic recycling goals
 - · Consistent messaging, branding, single website, etc.
 - Single point of contact for communications with DEQ, Recycling Council



Long-term coordination rule concepts

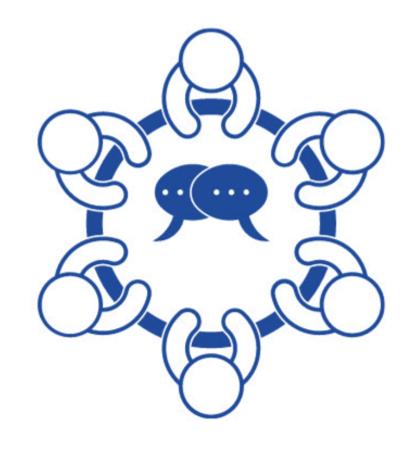


- 1) Establish processes for submittal, review, approval or rejection, amendment, and revocation of coordination plans
- 2) Establish a process for DEQ to order a coordination plan

PRO coordination rule concepts



- Pause for questions and discussion
- Key questions:
 - Do you support the interim coordination body/plan approach to ensuring adequate coordination is in place when the PRO programs begin?
 - Do you have any suggestions for how to improve coordination overall or for any particular timebound coordination activities?



Lunch, followed by continued rules discussion

Time	Topic			
9-10:30 a.m.	Welcome, Overview, Introductions, Break			
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12 p.m.	Lunch break			
12:30 p.m.	Discussion (continued): Proposed Rule Concepts 4. Responsible End Markets 5. Other Rule Concepts Regarding PROs			
2 p.m.	Public input period			
2:30 p.m.	Next steps, adjourn meeting			

Lunch



Rules topic #4: Responsible End Markets



Refer to background document #4. Responsible End Markets



State of Oregon Department of Environmental Quality

Rule Concepts: 4. Responsible End Markets

Plastic Pollution and Recycling Modernization Act (SB 582,2021) Rulemaking Advisory Committee Meeting #1 of 5, Rulemaking 1 Contact: Michael Lee 700 NE Multnomah St, Suite 600, Portland, OR 97232 Michael lee@deg.oregon.gov

Background

This memo provides background information intended to help the Rulemaking Advisory Committee understand the topic of responsible end markets and introduces DEQ's proposed rule concepts.

The Plastic Pollution and Recycling Modernization Act ("Act") includes a requirement that covered products collected for recycling are delivered to "responsible end markets" and managed in an environmentally-protective way according to Oregon's hierarchy of materials management options.

These statutory requirements were intended to address the negative environmental, social, economic and health impacts that can result from irresponsible recycling. In an interconnected world, irresponsible recycling can cause negative impacts Oregon's communities, even when the disposition of materials is taking place at an overseas location.



Rules topic #4: Responsible End Markets



- 1. Background and context
- 2. Rule concept: Definition of "end market"
- 3. Rule concept: Standards for "responsible" end markets
- 4. Rule concept: Reporting, auditing and enforcement
- 5. Rule concept: Definition of "practicable"

Responsible end markets definition



Per Statute (ORS 459A.863(29)):

"a materials market in which the recycling or recovery of materials or the disposal of contaminants is conducted in a way that benefits the environment and minimizes risks to public health and worker health and safety."

Commingled processor and PRO obligations

	Commingled Processors	Producer Responsibility Organizations
Scope of materials	All materials accepted (covered products and others)	 Covered products: Collected for recycling at PRO depots Included on the uniform statewide collection list and collected under the opportunity to recycle Identified as a "specifically identified material" Recycled in an effort to achieve statewide plastic recycling goal
Responsible end markets	 Market materials to responsible end markets Report all disposition 	 "To the extent practicable, ensure that covered products will be delivered to responsible end markets. Report all disposition
Follow the policy hierarchy	No obligation	"To the extent practicable, ensure that covered products will be Managed according to the hierarchy of materials management options under ORS 459.015(2)"



Rules topic #4: Responsible End Markets



- 1. Background and context
- 2. Rule concept: Definition of "end market"
- 3. Rule concept: Standards for "responsible" end markets
- 4. Rule concept: Reporting, auditing and enforcement
- 5. Rule concept: Definition of "practicable"



Defining "end market" by material





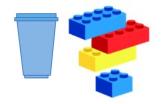
• Glass: user of the recyclate to make a new product



 Metal: producer of the recyclate, e.g. of ingots, sheet, coil etc. by smelting



Paper: facilities that re-pulp recycled material



 Plastic for food and beverage packaging and children's toys: user of the recyclate to make a new product



 Plastic for all other applications: last handler of the recyclate (typically flakes or pellets) before sold to a producer.

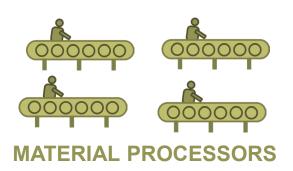
Standard for "responsible"

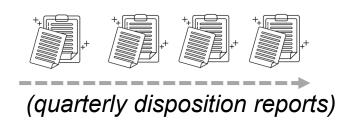


- Compliant
- Transparent
- Environmentally-sound
- Achieves adequate yields



How will reporting work?:process in statute













(PROs add their disposition Info)













(contacts if a non-responsible market identified)

Rule concepts: reporting and auditing

- 1. Required annual auditing by PROs and inclusion in annual reports
- 2. Required audit components:
 - a. Random bale tracking
 - b. Rationale for "end market" identification
 - c. List of relevant laws and treaties;
 - d. Documentation that supply chain entities meet the "responsible" standard
 - e. Documentation of any non-compliance with standards,
 - f. Documentation of the auditor's qualifications; and
 - g. Certification and signature from the auditor





PRO obligations are "to the extent practicable"



ORS 459A.896(2):

"A producer responsibility organization, shall, to the extent practicable, ensure that covered products collected in this state for the purpose of recovery and described in ORS 459A.869(7) will be:

- (a) Delivered to responsible end markets;
- (b) Managed according to the hierarchy of materials management options under ORS 459.015(2); and
- (c) Managed in an environmentally protective way through to final disposition."



Rule concepts: "practicable"

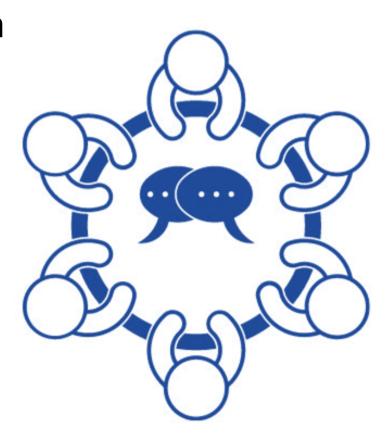


- 1. Provide examples:
 - i. Provide financial support to help a market change operations
 - ii. Provide financial support to redirect materials to a different end market
 - iii. Re-direct disposition (for materials under PRO's direct control)
 - iv. Offer to buy or take ownership of materials (to bring them into direct control)
 - v. Develop new markets
- 2. "Impracticable" requires technical barriers that cannot be overcome or transactional costs that aren't justified (given resulting societal benefits)
- 3. For all claims involving responsible end markets not being practicable, require critical review by DEQ . . . and initiate review of material acceptance lists if agreed



Responsible end market rule concepts

- Pause for questions and discussion
 - Rule concept: Definition of "end market"
 - 2. Rule concept: Standards for "responsible" end markets
 - 3. Rule concept: Reporting, auditing and enforcement
 - 4. Rule concept: Definition of "practicable"



Rules topic #5: Other Concepts

Refer to background document #5. Other concepts



State of Oregon Department of Environmental Quality

Rule Concepts: 5. Other Concepts Regarding PRO Obligations

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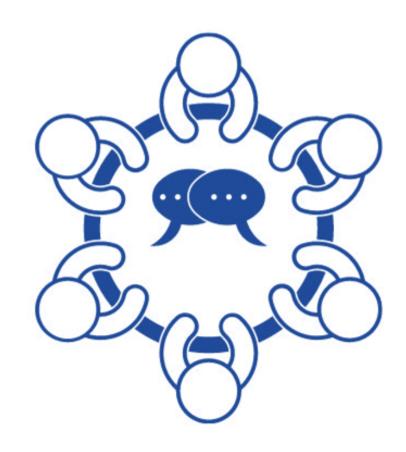
Background

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



Rules topic #5 (other concepts regarding PRO obligations)

- 1. Process for PROs with <10% market share
- 2. Plastic recycling goal reporting
- 3. When PROs need a plan amendment for fee changes
- 4. Housekeeping/numbering fix
- Pause for questions and discussion



Public input period

Time	Topic		
9-10:30 a.m.	Welcome, Overview, Introductions, Break		
10:30 a.m.	Rule concept presentations followed by discussion 1. Fees 2. Market Share 3. PRO Coordination		
12 p.m.	Lunch break		
12:30 p.m.	Discussion (continued): Proposed Rule Concepts 4. Responsible End Markets 5. Other Rule Concepts Regarding PROs		
2 p.m.	Public input period		
2:30 p.m.	Next steps, adjourn meeting		



Next steps: RAC meeting schedule

September 2022

Topic: Local Government Compensation

November 2022

Topic: Materials Collection Lists (part I)

December 2022

Topic: Materials Collection Lists (part II)

February 2023

Topics: Equity & Fiscal Impact Statements



More information



Rulemaking webpage - <u>oregon.gov/deq/rulemaking/Pages/Recycling2023.aspx</u>
Send input by July 29, 2022 to <u>recycling.2023@deq.oregon.gov</u>

