



State of Oregon Department of Environmental Quality

Rule Concepts 2: Expansion of Recycling Collection Services

A memo on eligible expenses for recycling service expansion

Plastic Pollution and Recycling Modernization Act (SB 582, 2001) Rulemaking Advisory Committee Meeting 2 of 5, Rulemaking 1

Background

This memo provides background information about expansion and provision of residential and commercial (single-family, multifamily and businesses) recycling collection services for covered products, and introduces DEQ's proposed rule concepts on these topics.

The Plastic Pollution and Recycling Modernization Act (Act) requires that the Producer Responsibility Organization (PRO) fund or reimburse local governments or their service providers for eligible expenses associated with expanding and providing residential and commercial recycling services¹. The Department of Environmental Quality will conduct a Local Government Needs Assessment and survey local governments and their service providers about their interests in expanding collection services. The first report will be due to the PRO by July 1, 2023, prior to the PRO submitting their first program plan for review. Additional Local Government Needs Assessments will be conducted periodically thereafter. The PRO must fulfill all the eligible needs submitted as part of this assessment.

Concepts for discussion at the Sept. 28, 2022 RAC meeting

DEQ seeks feedback from Rulemaking Advisory Committee members on the following areas where rulemaking is needed to clarify the obligations related to service expansion reimbursement:

1. Clarification of expansion, and eligible expenses associated with the expansion and provision of residential and commercial (single-family, multi-family, and business) recycling collection services for covered materials.
2. Clarification on the program plan and expansion prioritization.
3. Clarification on timing of the Local Government Needs Assessment.
4. Clarification on returning unused funding.

I. Rule Concept for discussion: Eligible expenses for expansion of recycling collection services

For the PRO, the obligation applies to funding or reimbursing eligible expenses of a local government or the local government's service provider for the expansion and provision of residential and commercial (single-family, multifamily and businesses) recycling collection services.

¹ In this rule concept, the term "PRO" is used for the sake of simplicity. Depending on the specific activity, whether or not the system will have multiple PROs, and when things are occurring in the coordination timeline (see the [PRO Coordination background document](#) for more information), "PRO" may refer to a single PRO; multiple PROs; (during the interim coordination phase) a PRO assigned to fulfill invoicing obligations on behalf of the group of PROs, or a PRO assigned to fulfill depot expansion obligations on behalf of the group of PROs; or (during the long-term coordination phase) the PRO coordination body.

Expansion includes any covered products included on the recycling acceptance lists identified by the Environmental Quality Commission, including but not limited to materials on the universal statewide collection list that are not currently being collected by a local government or their service provider. Expansion can mean adding new services where none exist or adding to existing services that are inadequate, whether on-route or at depots.

Rule Concept for discussion: Eligible Expenses

1. Eligible expenses include new or expanded on-route programs' **start-up** costs including but not limited to:
 - Collection trucks
 - Containers or roll carts
 - Monitoring equipment
 - Promotional literature
 - A recycling reload facility for reloading recyclables, if necessary, when no other is available or existing facilities or equipment are inadequate. This includes equipment to move, compact, bale and load recyclables for shipment for the recycling reload facility.
2. Eligible expenses include new or expanded recycling depot programs' **start up and ongoing** costs including but not limited to:
 - Containers
 - Signage
 - On-site monitoring equipment
 - Equipment to move, compact, bale and load recyclables for shipment
 - Site preparation or other start-up costs
 - Ongoing operational costs — including providing staff with a living wage and supportive benefits
3. New recycling depots may be added in areas not already served by recycling depots or where depots are inadequate to serve the needs of the area and expansion of existing depots is not feasible.

II. Program Plan requirements for expansion prioritization

Per ORS 459A.875(2)(p), as part of the PRO plan, PROs must describe how they will implement the requirements to support expansion including:

- A schedule for implementing expansion within the upcoming program plan timeframe.
- A method for determining how to fully fund or reimburse reasonable eligible expenses.
- A method for paying local governments or their designated service provider(s).
- The total estimated amount of funds made available.

After the plan is approved, the PRO shall work with local governments who expressed interest in expanding recycling collections services in a Local Government Needs Assessment. PROs must determine the services the local government is requesting, a reasonable estimate of expenses necessary to

satisfy the PRO's obligation, and the schedule by which each new program will be implemented, and then begin implementation.

If there is a dispute, the PRO and Local Government will use the dispute resolution process required by ORS 459A.875(2)(e) and contained in the PRO's approved program plan.

Rule Concept for discussion: Program plan requirements for expansion prioritization

The PRO shall describe in their program plan how they will implement expansion according to the following order of priority:

1. Expansion of existing depots operated by local governments or their service providers and which choose to enter into a contract with the PRO in order to accommodate materials the PRO is responsible for collecting under ORS 459A.896(1):
 - Higher priority given to communities where such materials were formerly collected on-route to ensure continuation of service. Higher priority would also apply where on-route collection will cease because the material is not on the state's uniform statewide collection list.
 - Lower priority given to expansion of existing depots for materials that are not currently or formerly collected on-route.
2. Communities with populations less than 4,000.
3. Communities of any size that lack any service (on-route or a depot) and are looking to start service.
4. All other communities that have some services and are looking to expand existing on-route collection, recycling depots or both, by ascending population.

The PRO shall describe in their program plan the total estimated amount of funds available to *each* local government included in DEQ's needs assessment per year of the program plan.

III. Timing of needs assessments

Per ORS 459A.890(1), a PRO shall, upon request, fund in advance or reimburse, as appropriate, the eligible expenses of a local government or the local government's service provider for eligible costs.

Per ORS 459A.890(8)(a) The Department of Environmental Quality shall conduct a statewide needs assessment in partnership with local governments and local governments' service providers to determine local interest in expanding collection options and recycling depots in areas not served with those collection opportunities, provided that funds are made available to the local programs for expansion. A local government that commits to expanding recycling opportunities during the needs assessment is eligible for advanced funding or reimbursements, whichever method is requested by the local government during the following PRO program plan or after the program plan is amended.

The initial needs assessment will be made available to any prospective PRO by July 1, 2023.

Rule Concept for discussion: Timing of needs assessments

The initial PRO program plan covers the first three years, and implements needs identified during the 2023 local government needs assessment only.

For subsequent PRO program plans, which last five years each, DEQ may conduct up to two local government needs assessments for the PRO to respond to for each program plan:

- For preparing the upcoming program plan, DEQ will submit information from a local government needs assessment 18 months before the prior program plan is due expire.
- For a mid-program plan update, DEQ may submit information from a local government needs assessment at least four years before the current program plan is due to expire.

When the PRO receives a local government needs assessment within four years before the current program plan is due to expire, they must submit a program plan amendment to DEQ to address the needs within 180 days.

IV. Returning unused funding

Local governments may request advanced funding to implement expansion. If there are unused funds after implementation is completed or if implementation plans change, local governments or their service provider must return the funding according to standards established in rule.

Rule Concept for discussion: Returning unused funding

Local governments or their service provider(s) must return unused funding to the PRO within 60 days of completing implementation or if implementation has halted or has been canceled or according to other terms as agreed upon by the PRO and the local government or their service provider(s).

Appendix: Related Statute

459A.875 Producer responsibility program plan. (2) Using objective and measurable criteria whenever possible, a producer responsibility program plan must:

(e) Describe a process, including the process timeline, for how the producer responsibility organization will resolve any disputes involving compensation of local governments and local governments' service providers under ORS 459A.890 and disputes involving commingled recycling processing facilities under ORS 459A.920 and 459A.923.

(p) Describe how the producer responsibility organization will implement the requirements of ORS 459A.890(6) by establishing:

(A) A schedule for implementing collection program expansions and improvements throughout this state;

(B) A method for determining funding or reimbursement amounts under ORS 459A.890(6), consistent with rules adopted by the commission by rule; and

(C) The total amount of funds that will be made available to local governments under ORS 459A.890(6) each year.

Note: The amendments to 459A.878 by section 8, chapter 681, Oregon Laws 2021, become operative April 1, 2027. See section 9, chapter 681, Oregon Laws 2021. The text that is operative on and after April 1, 2027, is set forth for the user's convenience.

459A.878. Approval of producer responsibility program plan. (3) A plan approved by the department under this section is valid for five years. The department's rejection of a plan or plan amendment submitted for approval under this section does not relieve the producer responsibility organization from continuing to implement the producer responsibility program in compliance with the approved plan pending a final action by the department on the plan amendment.

(4) No less than 180 days before a plan approved under this section expires, a producer responsibility organization shall submit a plan to be approved under this section for an additional five years. A plan submitted for approval under this subsection must satisfy the requirements of ORS 459A.875 and describe any substantive changes from the previously approved plan. Until a plan submitted under this subsection is approved, the previously approved plan remains in effect.

459A.881 Producer responsibility program plan amendments. (1) A producer responsibility organization shall submit an amendment to a producer responsibility program plan:

(c) When changing methods of compensating local governments or local governments' service providers as required under ORS 459A.890.

(f) When required to do so by rules adopted by the Environmental Quality Commission.

459A.890 Compensation to local governments; needs assessment; rules. (1) A producer responsibility organization shall, upon request, fund in advance or reimburse, as appropriate, the eligible expenses of a local government or the local government's service provider for eligible costs as provided in this section.

(5)(a) Costs associated with the expansion and provision of recycling collection services for covered products as provided in this subsection are eligible costs for funding or reimbursement by a producer responsibility organization.

(b) A local government that commits to expanding recycling opportunities during the needs assessment conducted under subsection (8) of this section is eligible for funding or reimbursements under this subsection. A producer responsibility organization shall work with local governments to determine the services the local government is requesting and the schedule by which the new program will be implemented, and shall provide funding for the new programs in advance of or concurrent with implementation.

(c) A producer responsibility organization shall provide funding for activities requested by local governments through the periodic needs assessment conducted under subsection (8) of this section.

(d) Eligible costs under this subsection include:

(A) For on-route programs, start-up costs, including but not limited to trucks, containers, promotional literature and, if necessary and none other is available, a recycling reload facility for reloading recyclables, including any compaction equipment necessary for the recycling reload facility; and

(B) For recycling depots, containers, on-site monitoring equipment, site preparation or other start-up costs and operational costs, including staffing.

(8)(a) The Department of Environmental Quality shall conduct a statewide needs assessment in partnership with local governments and local governments' service providers to determine local interest in expanding collection options and recycling depots in areas not served with those collection opportunities, provided that funds are made available to the local programs for expansion.

(b) The needs assessment shall include a process for local governments to request services and commit to providing additional services.

(c) The department shall periodically repeat the assessment and may conform the timing of the assessment to coincide with the schedule for producer responsibility organizations to submit new producer responsibility program plans.

(11) (b) The department shall require a local government or a local government's service provider that receives advance funding under this subsection and does not use the moneys for the purposes for which the funding was provided to return the funding to the producer responsibility organization, according to standards established by the commission by rule.

Note: Section 61 (1), chapter 681, Oregon Laws 2021, provides:

Sec. 61. *(1) The Department of Environmental Quality shall complete the first statewide needs assessment required under section 13 of this 2021 Act [459A.890] no later than July 1, 2023. [2021 c.681 §61(1)]*

Note: *459A.875(2)(p) contains a transcription error. The scrivener incorrectly wrote ORS 459A.890(6) when it was ORS 459A.890(5) in earlier drafts. 459A.875(2)(p) is intended to describe local government expansion. Please refer to Rule Concept Memo #5, "Other" from the first RAC meeting (July 20, 2022) for more information about how DEQ proposes to address this.*

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