



State of Oregon Department of Environmental Quality

Background Paper: Oregon's Opportunity to Recycle Requirements Relative to Proposed Materials Acceptance Lists

Plastic Pollution and Recycling Modernization Act (SB 582, 2021)

Rulemaking Advisory Committee Meeting 3 of 5, Rulemaking 1

Oct. 27, 2022

Background

This document provides an overview of Oregon's Opportunity to Recycle requirements for local governments (ORS 459A.005 and .007). It describes how those requirements will be impacted by materials acceptance lists under the Plastic Pollution and Recycling Modernization Act (ORS 459A.914) that will be established by the Environmental Quality Commission and DEQ.

For reference during the Nov. 9, 2022 RAC meeting

Basic Requirements

ORS 459A.005 defines the "opportunity to recycle" by requiring that any city, county or metropolitan service district responsible for solid waste management provide either a "standard" opportunity or an "alternative method" that complies with rules established by the commission. The "standard" program includes **general requirements** and **program elements**:

General Requirements

- All communities must provide, "a place for collecting source separated recyclable material located either at a disposal site or at another location more convenient to the population being served" and a "public education and promotion program" that gives notice of the opportunity to recycle and encourages source separation of recyclable material.
- Cities with populations of 4,000 or more must provide "collection at least once a month of source separated recyclable material... from collection service customers within the city's urban growth boundary, or, where applicable, within the urban growth boundary established by a metropolitan service district."

Program Elements

The program element requirements in ORS 459A.007 supplement the general requirements and consist of a menu of elements. Examples include weekly on-route collection of recyclables from different categories of collection customers (residential, multifamily, commercial), expanded depots for recycling, variable collection rates to encourage waste reduction, food waste collection and composting systems, etc.

Cities with populations over 4,000 (and the counties representing the unincorporated areas within the cities) are required to select a set number of elements that vary this menu by population and location.

General Definition of “Recyclable Material”

The basic requirements of ORS 459A.005 apply to “recyclable material”, a term whose definition was changed by the Plastic Pollution and Recycling Modernization Act. Previously, “recyclable material” was defined in ORS 459.005(19) as “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.” Historically, this definition created confusion in recycling acceptance lists across communities.

To address that and other challenges, the Act changed the definition of “recyclable material.” The new definition (with revisions identified in italics) is found in ORS 459.005(20) and reads “*any material identified for recycling collection under ORS 459A.914* or any *other* 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.”

Recycling Acceptance Lists (ORS 459A.914)

ORS 459A.914, created by the 2021 Plastic Pollution and Recycling Modernization Act, establishes processes for creating several different lists of materials. Some lists impose obligations on local governments under ORS 459A.005 and 459A.007 and are the focus of this background paper. Separately, ORS 459A.914 allows the commission to identify materials that producer responsibility organizations (PROs) are required to provide collection of through recycling depot or mobile collection events (as required under ORS 459A.896), as well as convenience standards, collection targets, and performance standards for such collections.

ORS 459A.914 requires the commission, by rule, to “identify materials that are suitable for recycling collection in this state and the methods for collection of those materials”. When identifying materials collected to provide the opportunity to recycle, the same material may be collected via on-route collection or at depots in different geographic areas, as determined by local governments consistent with the requirements described above.

The commission may designate materials as suitable for commingled recycling collection, separate collection (e.g., keeping motor oil separate from other materials), on-route collection, depot collection, and/or PRO collection. Such attributes are not necessarily mutually exclusive. For example, materials could be designated as an opportunity to recycle obligation for separate (not commingled) collection both on-route *and* at depots (this is currently the standard for glass packaging in the Portland Metro area). ORS 459A.914 requires the commission to consider a list of factors when determining if and how materials should be collected. Please refer to [Rule Concept: Recycling Material Acceptance List, Part One](#) for information on the assessment DEQ has conducted to inform this consideration.

ORS 459A.914(4) requires DEQ to establish and maintain a “uniform statewide collection list” (USCL) of materials “that are appropriate to be collected through a commingled recycling program”. Materials can be added to this list via either of two methods: 1) any material can be added by administrative rule, or 2) if a producer responsibility organization proposes via a program plan or plan amendment, subject to consultation with the Oregon Recycling System Advisory Council and approval by DEQ, *covered products* (any type of packaging, food serviceware, and printing and writing paper, unless exempted) can be added to the USCL.

The USCL will provide for consistency in acceptance lists across the state, and provide commingled processing facilities with greater certainty regarding what materials they need to process.

The USCL identifies materials that *may* be collected commingled however, the Act does not require that materials on the USCL *must* be collected commingled. Rather, it prohibits any other materials (not on the USCL) from being collected as part of a commingled collection program.

All materials on the USCL must be collected as part of any collection service used to comply with the Opportunity to Recycle requirements, regardless of collection method. These materials may be collected commingled, but they can also be collected source segregated from each other, or any variation between those two extremes (such as all fibers in one cart and all containers in another), as long as collection of materials meets the requirements in statute, and the materials are not commingled with non-USCL materials.

Program Elements Relating to “Recyclable Material”

Not all program elements described in ORS 459A.007 relate directly to the definition of “recyclable material”. Those that do include the following (with emphasis added via *italics*), and some refer to all recyclable material, while others are limited to the USCL:

459A.007(1)(b) “On-route collection at least once each week of source separated *recyclable material* from residential collection service customers, provided on the same day that solid waste is collected from each customer.”

459A.007(1)(d) “A multifamily collection program that includes . . . Collection of materials *designated for recycling collection on the uniform statewide collection list* established under ORS 459A.914 from each multifamily dwelling complex that has five or more units . . .”

459A.007(1)(f) “A commercial recycling program that includes: . . . Weekly, or on a more appropriate regular schedule, onsite collection of source separated materials *designated for recycling collection on the uniform statewide collection list* established under ORS 459A.914 from, at a minimum, commercial generators of solid waste employing 10 or more persons and occupying 1,000 square feet or more in a single location . . .”

459A.007(1)(g) “Expanded depots for recycling of at least all materials *designated for collection at recycling depots on the uniform statewide collection list* established under ORS 459A.914 . . .”

459A.007(1)(j) “A commercial recycling program that requires commercial generators of solid waste that generate large amounts of *recyclable materials* to source separate *recyclable materials*.”

Additional Impact of Material Acceptance List Designation on Opportunity to Recycle Implementation

The general requirements of ORS 459A.005 include depot collection at a permitted disposal site or more convenient location, and at least monthly collection from collection service customers. The requirements will now include, at a minimum, all of the materials on the uniform statewide collection list, as well as any other materials designated by the commission as requirements of local governments under the Opportunity to Recycle standard. While the commission shall, by rule, identify those materials that are suitable for collection at local government/opportunity to recycle depots and on-route services, the basic services must include at least those materials on the uniform statewide collection list. The commission may require more, but it cannot require less.

Implications for all Local Governments

As implied by its name, the USCL is both “uniform” and “statewide”. That is, all local governments across the state must provide recycling opportunities for all materials on the list. In contrast, the statute allows for variability in any other lists established by the commission. Consequently, collection of items not on the list (please see separate background paper titled “[Overview of Material Acceptance Lists](#)”) are not required to be “uniform” or “statewide”.

Implications for “Standard” Opportunity to Recycle Programs

Local governments operating a standard opportunity to recycle program must collect all materials on the USCL as part of on-route recycling service. They cannot choose to collect only some materials on-route (even if the others are collected at depots) unless they apply and are approved for an “alternative method” under ORS 495A.005(1)(a)(B). Local governments seeking alternative program approval are subject to application requirements and standards contained in OAR 340-090-0080, which require a demonstration that the alternative program will be just as effective and convenient as the standard program.

When it comes to the program elements for the standard Opportunity to Recycle program, there are differences between program elements relating to on-route collection from single-family homes (ORS 459A.007(1)(b)) and on-route collection from multifamily ((1)(d)) and commercial ((1)(f)) generators, as well as expanded depots ((1)(g)). Specifically, statute requires local governments choosing element (b) (weekly on-route collection from residential collection service customers) to collect source separated “recyclable material”, while local governments can satisfy elements (d), (f), and (g) by collecting only those materials on the uniform statewide collection list. As an example, if the commission were to determine that glass or motor oil was suitable for on-route collection, but not the USCL, such a mandate would apply to weekly on-route collection from residential customers only, but not from multi-family or commercial sources, or at expanded depots.

However, at least for communities choosing the “standard” compliance pathway for complying with ORS 459A.005, this distinction in service standards for single-family vs. multi-family and commercial on-route collection might become less significant. While a distinction between “recyclable material” and “USCL” is made in the program elements of ORS 459A.007, no such distinction is made in the standard requirements of ORS 459A.005. ORS 459A.005 requires “collection at least once a month of source separated *recyclable material*, including the materials on the uniform statewide collection list . . . from collection service customers within the city’s urban growth boundary . . .” So even if glass or motor oil are not added to the USCL, a local government following the standard pathway for compliance with ORS 459A.005 would still need to provide at least monthly collection of these other, non-USCL “recyclable materials” if they are designated as suitable for on-route collection.

Implications for Depots

For those choosing to offer expanded depots under ORS 459A.007(1)(g) are required to “where feasible, collect additional recyclable materials” (in addition to those on the USCL). Separately, PROs required to provide for depot collection of other materials under ORS 459A.896(1) are required to “where possible, first contract . . . with existing recycling depots or drop off centers to provide for the collection of the covered product.” So, depots being used to satisfy opportunity to recycle obligations under ORS 459A.005 as well as 459A.007(1)(g) may be invited to expand their operations, under contract to a PRO, to expand the list of materials they accept for recycling.

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