Rulemaking Advisory Committee Meeting #2 Plastic Pollution and Recycling Modernization Act

Sept. 28, 2022 Zoom Webinar



Agenda

Time	Topic
9 a.m.	Welcome, overview of today's meeting
9:10 a.m.	Introductions
9:15 a.m.	Local Government Compensation and Engagement
10:20 a.m.	Additional information (Annual Administration Fees)
10:30 a.m.	BREAK
10:40 a.m.	Revised Rule Concepts (Responsible End Markets, Market Share and Modified Market Share)
12 a.m.	LUNCH BREAK
12:30 a.m.	Public Input Period*
1 a.m.	New rule concept: PRO Program Plan Timelines*
1:20 a.m.	Introduction to Materials Acceptance Lists*
2 a.m.	Review meeting schedule, next steps, and adjourn*

^{*} Note: Times subject to change and topics may begin earlier than listed



Webinar Tips

Join audio either by phone or computer, not both

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

This meeting is being recorded

For Zoom technical issues text 503-869-2884 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



Introductions - DEQ Staff



Cheryl Grabham, Program Manager, Materials Management Product Stewardship Team



David Allaway, Senior Policy Analyst



Michael Lee, Policy Analyst



Roxann Nayar, Recycling Program Analyst

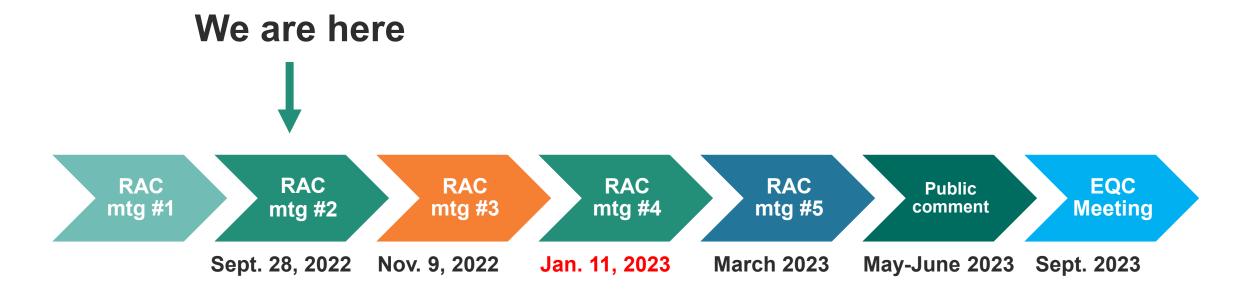


Alex Bertolucci, Natural Resource Specialist

Input and Engagement

- RAC input is welcome throughout the process
- Comments received within 10 days of RAC meetings will help staff prepare in advance of following meeting
- Formal comment period will be in May-June 2023
- DEQ will clarify and provide information when possible
- Comments and questions received will be considered during rule development

Rulemaking 1 Timeline

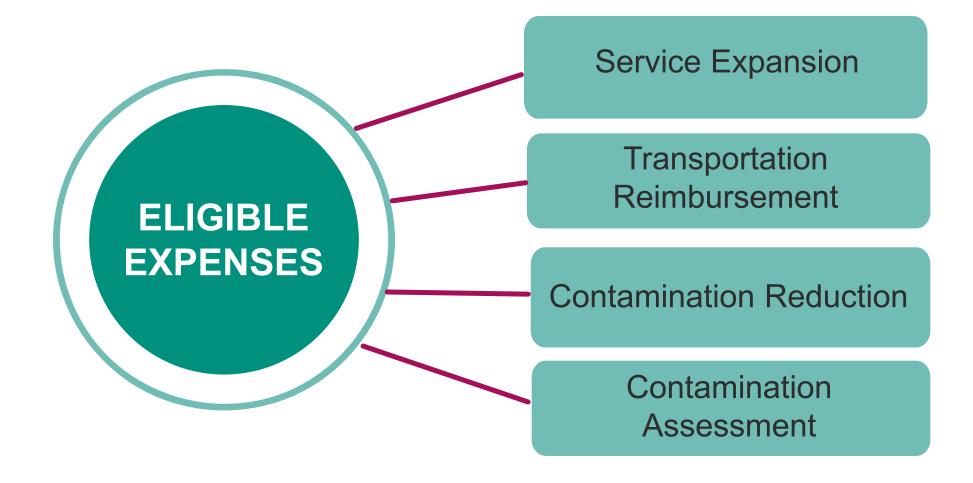


Local Government Engagement

DEQ will be engaging with local governments and service providers across the state to create awareness about the new opportunities and requirements.



Local Government Compensation



Local Government Compensation

Rulemaking 1 Topics:

- 1. Contamination Reduction Programming
- 2. Expansion of Recycling Services
- 3. Transportation Reimbursement (RAC meeting #3)

Compensation for Contamination Reduction



State of Oregon Department of Environmental Quality

Rule Concepts: PRO Compensation of Local Governments for Contamination Reduction Programming

Plastic Pollution and Recycling Modernization Act (SB 582, 2021) Rulemaking Advisory Committee Meeting 2 of 5, Rulemaking 1

Contact: Roxann Nayar 700 NE Multnomah St, Suite 600, Portland, OR 97232 roxy.nayar@deq.oregon.gov

Sept. 14, 2022

Background

This memo provides background information for the Rulemaking Advisory Committee on the topic of Producer Responsibility Organization (PRO) compensation to local governments and their service providers for contamination reduction <u>programming</u>, and introduces DEQ's proposed rule concepts on the topic. The topics include:

- Method(s) for determining population-based limits on funding or reimbursement associated with generator-facing contamination reduction efforts; and
- Standards for local governments and/or their service providers to document costs and procedures for them to request reimbursement from a PRO

The Plastic Pollution and Recycling Modernization Act ("Act") requires local governments to deliver generator-facing programming to reduce contamination in set-out recyclables, requires PROs to compensate local governments (both regulated and non-regulated) for such efforts, and includes a requirement that the Environmental Quality Commission establish a method for determining funding or reimbursement associated with generator-facing contamination reduction efforts.

ORS 459A.890(4)(b) states that "Rules adopted under this subsection may not require producer responsibility organizations to provide funding or reimbursement of more than \$3 per capita per year.

Contamination Reduction: population estimates

Funding or reimbursement for contamination reduction programming is limited to up to \$3 per capita, per year based on population.

DEQ proposes determining population-based limits on funding or reimbursement using:

- Most recent Population Estimate Reports published by Portland State University's Population Research Center to determine populations for each local government (city or county).
 - updated on an annual basis
 - preliminary estimates typically released around November 15 annually, and estimates are certified (i.e., finalized) by December 15 annually.

Contamination Reduction: population estimates

Allow reimbursement using the most current published population estimate at the time requested, provided that an estimate for a subsequent year is not used.

For example, for reimbursements requested:

For 2027 expenses prior to publication of 2027 population estimates would have expenses capped using 2026 estimates.

For 2027 expenses **following** publication of 2027 population estimates would have expenses capped using 2027 estimates.

For 2027 expenses in 2029 would have expenses capped using 2027 estimates.

Contamination Reduction: documenting costs

Standards for documenting costs and reimbursement procedures

- DEQ proposes local governments or service providers:
 - Must provide PRO with itemized invoice detailing the contamination reduction effort undertaken, such as resources, administrative costs, etc.
 - May submit reimbursement invoices as necessary (e.g., monthly, quarterly, end-of-project, etc.) but no more frequently than once per month.

Contamination Reduction: reimbursement

Standards for documenting costs and reimbursement procedures

- PRO shall remit payment expenses to a Local Government (LG) or the LG's service provider(s), or other person authorized by the LG, within 60 days of receiving a request for payment.
- Multiple LGs may submit joint funding requests in order to pool populations and reduce the number of reimbursements. All such LGs must sign/endorse the funding request.

Discussion



Expansion of Recycling Collection Services



State of Oregon Department of Environmental Quality

Rule Concepts: Expansion of Recycling Collection Services

A Memo on eligible expenses for recycling service expansion

Plastic Pollution and Recycling Modernization Act (SB 582, 2021) Rulemaking Advisory Committee Meeting 2 of 5, Rulemaking 1

Contact: Roxann Nayar 700 NE Multnomah St, Suite 600, Portland, OR 97232 roxy.nayar@deq.oregon.gov

Sept. 14, 2022

Background

This memo provides background information about expansion and provision of residential and commercial (single-family, multifamily and businesses) recycling collection services for covered <u>products, and</u> 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

Expansion of Collection Services

- 1 Fund in advance or reimburse for eligible expenses
- Expansion of residential/commercial collection of covered products at depots and on-route
- 3 All local governments, regardless of size
- Indicate interest during the Local Government Needs Assessment (Winter 2023)

Expansion of Recycling Collection Services

The concept clarifies 'service expansion' and eligible expenses:

- "Covered products" only
- Must be on the recycling acceptance lists
- New services
- Expansion of existing, inadequate services

Eligible Expenses: On-Route

Expansion expenses include:

- Collection trucks
- Containers or roll carts
- Monitoring equipment
- Promotional literature
- A recycling reload facility for reloading recyclables



Eligible Expenses: Depots

Expansion expenses include:

- 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

Expansion Prioritization

Program Plan Requirements:

- 1. Existing depots contracting with PRO:
 - a. Where materials formerly collected on-route or where on-route collection ceases due to material not being on the uniform statewide collection list
 - b. Where materials not currently or formerly collected on-route

Expansion Prioritization

Program Plan Requirements:

- 2. Communities with populations less than 4,000
- 3. Communities of any size that lack any service (on-route or a depot) looking to start up service
- 4. All other communities with some services and looking to expand existing on-route collection, recycling depots or both, by ascending population

Discussion



Timing of Needs Assessments

Initial needs assessment is the only one implemented during the first 3-year program plan

Each five-year program plan will address up to two needs assessments, at the beginning and near the mid-point

PRO must submit program plan amendment for assessment received within four years of expiration

Compensation & Expansion in Program Plan

PRO must describe in their program plan:

- Schedule for implementing expansion within the upcoming program plan timeframe
- Method for determining how to fully fund or reimburse reasonable eligible expenses
- Method for paying local governments or their designated service provider(s)
- Total estimated amount of funds made available to each local government per year

Returning Unused Funding

Unused funding must be returned within 60 days



+1



State of Oregon Department of Environmental Quality

Rule Concepts: Annual Administration Fee: Additional Details

Plastic Pollution and Recycling Modernization Act (SB 582, 2021) Rulemaking Advisory Committee Meeting 2 of 5, Rulemaking 1

Contact: Roxann Nayar 700 NE Multnomah St, Suite 600, Portland, OR 97232 roxy.nayar@deq.oregon.gov

Sept. 14, 2022

Background

This memo provides additional information to the Rulemaking Advisory Committee on budgeting for the annual administration fee. This fee, paid to DEQ by the producer responsibility organization(s), covers DEQ's expenses associated with the ongoing costs of administering, implementing, and enforcing provisions ORS 459A.860 to 459A.975. In our current rule concept, it is \$4,000,000 per year for the first four years of implementation (2025-2028), and then \$3,000,000 in subsequent years. These amounts represent the maximum projected expenditure and DEQ may adjust the fee downward in any given year to reflect actual operating costs. The first four annual fees are higher than the later annual fees, as they encompass reimbursement of DEQ's start-up costs incurred in 2021-2025.

Applicable statute regarding DEQ fees: ORS 459A.938.

Additional Detail

DEQ's budget for the annual administration fee consists of start-up costs including all costs for implementing the Act incurred prior to July 1, 2025, the date on which the PRO program plans begin to operate and operation costs incurred from July 1, 2025, onward. Per ORS 459A.938, DEQ can only begin charging the annual administration fee for 2025, the first year of program plan implementation. Start-up costs incurred prior to 2025 must be recouped in future years' fees, while annual operation costs are recovered in the fee for the year in which they are incurred.

Questions from RAC members:

- 1. How was the annual administration fee calculated?
- 2. Does the fee fund existing staff and work, or only new work?
- 3. Are the fees reduced in the case of one rather than multiple PROs?

Recap:

- One-time fee for plan review
 - Proposed fee amount: \$150,000

- Annual fee for administration
 - Proposed fee amount:
 - \$4 million per year in 2025-2028
 - \$3 million per year thereafter

1. How was the annual administration fee calculated?

A: Project start-up and operation costs for DEQ staff and contractor services

2. Does the fee fund existing staff and work, or only new work?

A: Personnel costs cover all staff time spent implementing the Act, including proportional costs for existing staff

3. Are the fees reduced in the case of one rather than multiple PROs?

A:The annual administration fee will be split between multiple PROs rather than charging this fee to only one prospective PRO

Discussion



Break



Revised Rule Concepts



State of Oregon Department of Environmental Quality

Revised Rule Concepts: Responsible End Markets

Plastic Pollution and Recycling Modernization Act (SB 582,2021) Rulemaking Advisory Committee Meeting 2 of 5, Rulemaking 1

Contact: Roxann Nayar 700 NE Multnomah St, Suite 600, Portland, OR 97232 roxy.nayar@deq.oregon.gov

Sept. 14, 2022

Summary

The Plastic Pollution and Recycling Modernization Act ("Act") requires that certain 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.

At the July 20, 2022 Rulemaking Advisory Committee meeting, DEQ presented four rule concept areas for consideration:

- 1. Specify which persons in the recycling supply chain are considered the "end market;"
- 2. Clarify standards for what would constitute a "responsible" end market under ORS 459A.863;
- Establish implementation, reporting, auditing and enforcement requirements and protocols for "responsible end markets;" and
- 4. Clarify actions that may be considered "practicable" for 459A.869(7) and ORS 459A.896(2), which require a Producer Responsibility Organization, "to the extent practicable," to ensure product delivery to responsible end markets with materials managed in an environmentally-protective manner and according to Oregon's hierarchy.

This document presents proposed updates to rule concepts in areas (2), (3), and (4) in response to feedback received from the committee during the July 20 meeting.

Responsible End Markets

Proposed updates:

- 1. Proposed Standard for "Responsible"
- 2. Implementation, Reporting, Auditing, and Enforcement
- 3. Definition of "Practicable" (and calculation of social benefits)

Responsible End Markets

- 1. Proposed Standard for "Responsible" Update the language for the definition of "Compliant"
 - Explicit inclusion of labor and public health law in compliance element of "responsible"

Responsible End Markets

2. Implementation Pathways, Reporting, Auditing, and Enforcement

- The concept proposes to include language in rule that provides examples of implementation approaches PROs could use to fulfill their responsibilities

Example Implementation Pathways

Two tracks for fulfillment of "responsible end market" obligation

Internal verification

Two-step process:

- Initial screening (attestations)
- 2. Detailed assessment

3rd Party Certification

using a certification program approved by the EQC

About Enforcement

The goals of enforcement are to:

- Protect public health and the environment;
- Obtain and maintain compliance with applicable environmental statutes and the department's permits, rules and orders;
- Deter future violators and violations; and
- Ensure an appropriate and consistent statewide enforcement program.

Discussion



Responsible End Markets

3. Practicability

PRO obligations are "to the extent practicable" (ORS 459A.896(2)):

- How to evaluate "cost" and "benefit"?
- DEQ proposes allowing the PRO to choose from two options, both subject to DEQ review and approval

Default analysis

Compare per-ton costs (from PRO) to per-ton benefits (benchmark in rule, adjusted for inflation)

Customized analysis

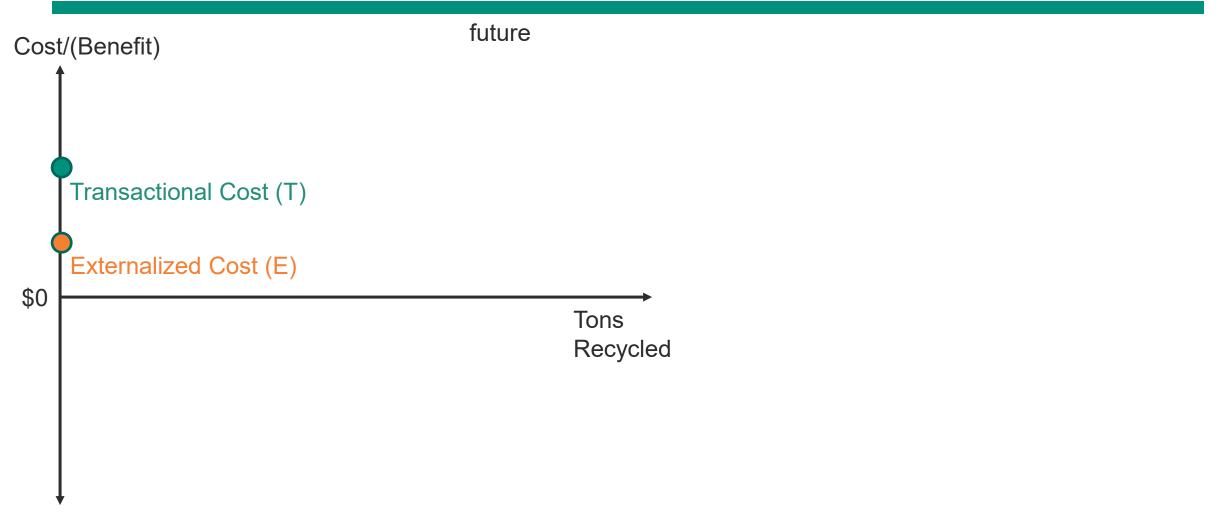
Subject to consultation with State Recycling Council

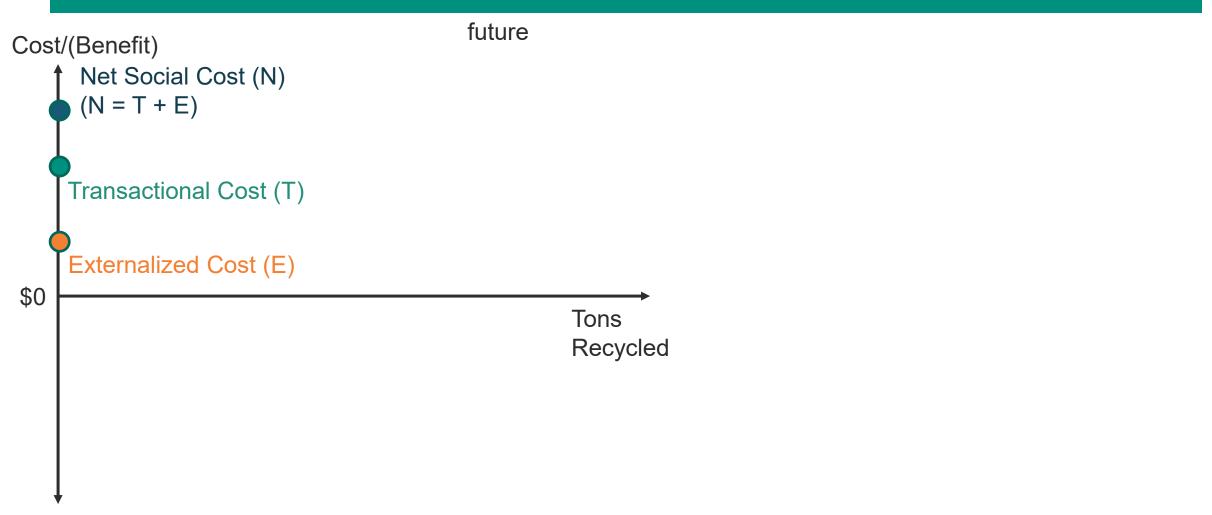
Recycling acceptance lists (ORS 459A.914)

- When naming materials to a recycling acceptance list, the Commission is required to consider ~15 different criteria
 - Including "economic factors" and "environmental factors from a life cycle perspective"
- DEQ analysis (with Cascadia Consulting Group) is evaluating multiple "whole system" scenarios
 - Material flows
 - Transactional (financial) costs
 - Environmental impacts
 - Social costs (externalities)

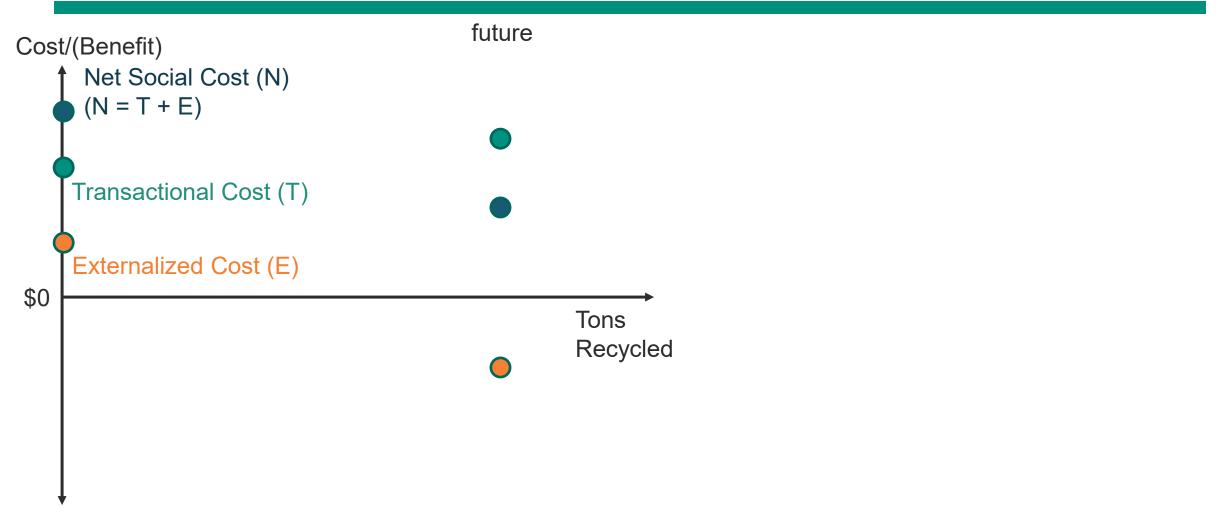


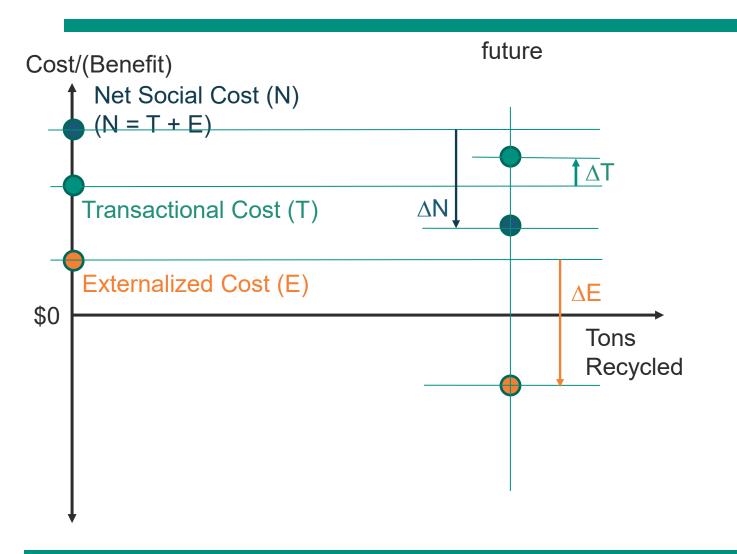


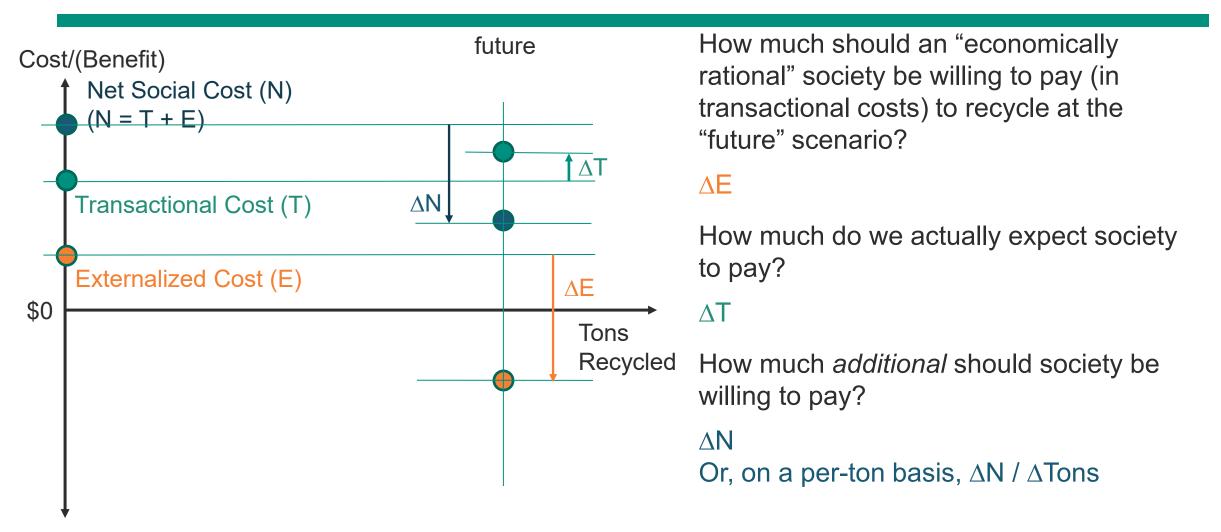














Discussion



5 Minute Review Break

Up next:

Market Share and Modified Market Share



Market Share and Modified Market Share



State of Oregon Department of Environmental Quality

Revised Rule Concepts: Market Share and Modified Market Share

Plastic Pollution and Recycling Modernization Act (SB 582, 2021) Rulemaking Advisory Committee Meeting 2 of 5, Rulemaking 1

Contact: Roxann Nayar 700 NE Multnomah St, Suite 600, Portland, OR 97232 roxy.nayar@deq.oregon.gov

Sept. 14, 2022

Summary

Statute directs the Environmental Quality Commission to establish a method for calculating "market share" in rule. Market share can be defined in many different ways. DEQ seeks additional feedback on proposed methods to calculate market share during the Sept. 28, 2022 Rulemaking Advisory Committee meeting.

DEQ proposes that a weight-based approach (either weight alone or weight multiplied by financial burden) is most feasible and a best match for "market share" as used in global Extended Producer Responsibility programs. After considering feedback from RAC members on July 20, DEQ proposes the following additional options for consideration:

- Establish a weight-based approach to calculate "market share" in rule. This would be used to
 identify the largest 25 producers and to establish the 10% Producer Responsibility Organization
 (PRO) market share threshold; and
- Establish in rule the term "modified market share," to be calculated using a financial burden approach. This would be used to allocate financial obligations among multiple PROs.

Market Share and Modified 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."
- Uses of "market share":
 - ORS 459A.863(8): definition of "large producer"
 - ORS 459A.869(12): minimum size for PROs

Market Share: Updated Proposal

- 1. Apply the weight method in rule for calculating market share. Use market share to determine
 - Whether PROs meet the 10% threshold for operating in Oregon
 - The identity of the largest 25 producers

Market Share: Updated Proposal

- 1. Apply the weight method in rule for calculating market share. Use market share to determine
 - Whether PROs meet the 10% threshold for operating in Oregon
 - The identity of the largest 25 producers
- 2. Define "modified market share" in rule and apply the financial burden method for calculating it.
 - Use modified market share to divide financial obligations among PROs

Calculating Modified Market Share

Options for financial burden unit factor:

- 1. Oregon PROs' own annual base rates
- 2. Recycle BC fee schedule
- 3. Factors fixed in rule
- 4. Independent consultant index

Possible hybrid approach:

- Year 2 and future years: Use Oregon PROs' own annual base rates from the preceding year.
- Year 1: Independent consultant index or other source.

Discussion



LUNCH BREAK



Public Input Period







State of Oregon Department of Environmental Quality

Rule Concepts 6: PRO Program Plan Timelines

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

Background

Statute directs the date for beginning implementation of the first set of approved Producer Responsibility Organization program plans. It also defines the duration of the first PRO program plan and subsequent, updated PRO program plans. The relevant citations and language are as follows:

- (Program start deadline) c. 681 §59 Oregon Laws 2021 (temporary statutory provision): "A
 producer responsibility organization shall first implement an approved producer responsibility
 program plan no later than July 1, 2025."
- (Duration of first PRO program plan) ORS 459A.878(3): "A plan approved by the department under this section is valid for three years."
- (Duration of updated PRO program plans) ORS 459A.878(3), amended version which takes
 effect on April 1, 2027: "A plan approved by the department under this section is valid for five
 years."
- (Deadline for submission of updated PRO program plans) ORS 459A.878(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 four 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."

Rule Concept to clarify:

- Initial plan valid until Dec. 31, 2027
- Updated plans due Jul. 4th of last program year

Why:

- More predictable plan timelines
- Better align plans if multiple PROs



Act states:

- Initial plans are "valid for three years"
- Initial plans must be implemented by Jul. 1, 2025
- After Apr. 1, 2027, plans are "valid for five years"
- Must submit updated plan 180 days before approval expires

Potential timelines based on Act:

- 1. Program plans are valid for three or five years from date of plan approval
- 2. Program plans are valid for three or five program years

Rule Concept: Plans are valid for program years

Initial Program Plan	Year 1	Year 2	Year 3
	2025	Jan. 1, 2026-Dec. 31, 2026	Jan. 1, 2027- Dec. 31, 2027

Second Program
Plan (due Jul. 4,
2027)

Year 4	Year 5	Year 6	Year 7	Year 8
Jan. 1, 2028 -	Jan. 1, 2029 -	Jan. 1, 2030 -	Jan. 1, 2031-	Jan. 1, 2032 –
Dec. 31, 2028	Dec. 31, 2029	Dec. 31, 2030	Dec. 31, 2031	Dec. 31, 2032

Benefits:

- Initial plan implemented through end of 2027
- More predictable timeline for submitting updated plan
- Better align plans if multiple PROs
- Fixed calendar for needs assessment

Discussion



Recycling Acceptance Lists



Topics

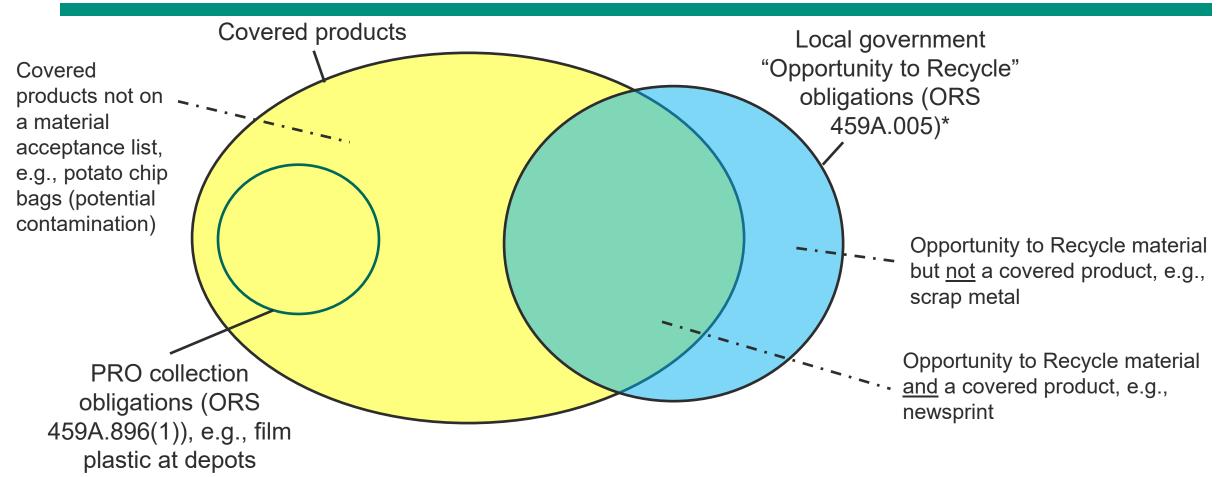
- Key terms and concepts
- Covered products vs. acceptance lists
- "Specifically identified materials"
- PRO obligations for different materials
- Local government obligations
- PRO depots
- Evaluation criteria and research program
- Next steps



Key terms and concepts

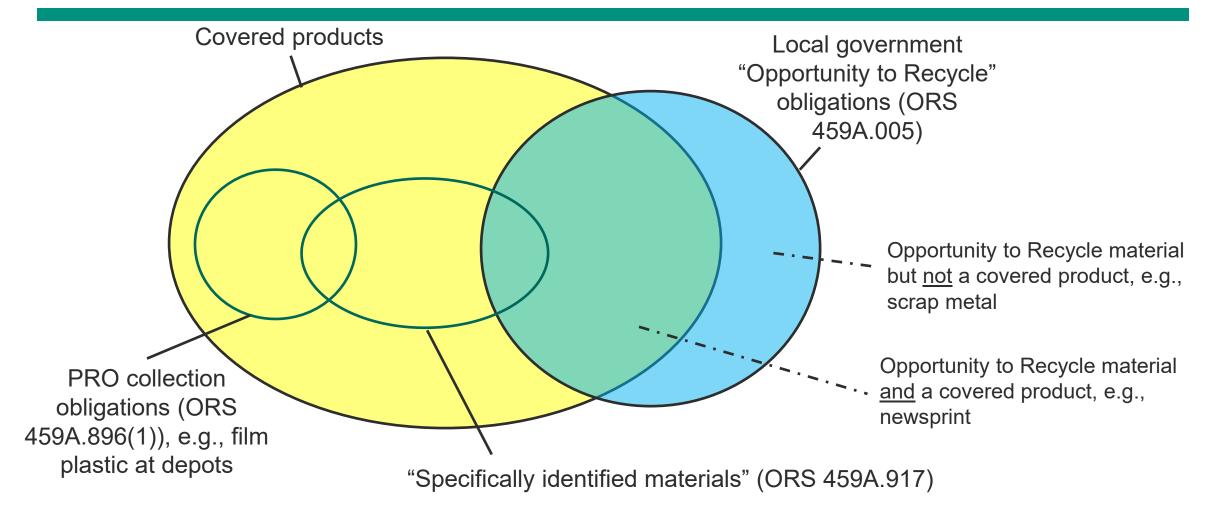
- On-route collection vs. depot collection
- Commingled (mixed) materials vs. source segregated materials
- Source separation
- Types of materials:
 - Covered products
 - Materials acceptance lists

Covered products vs. material acceptance lists

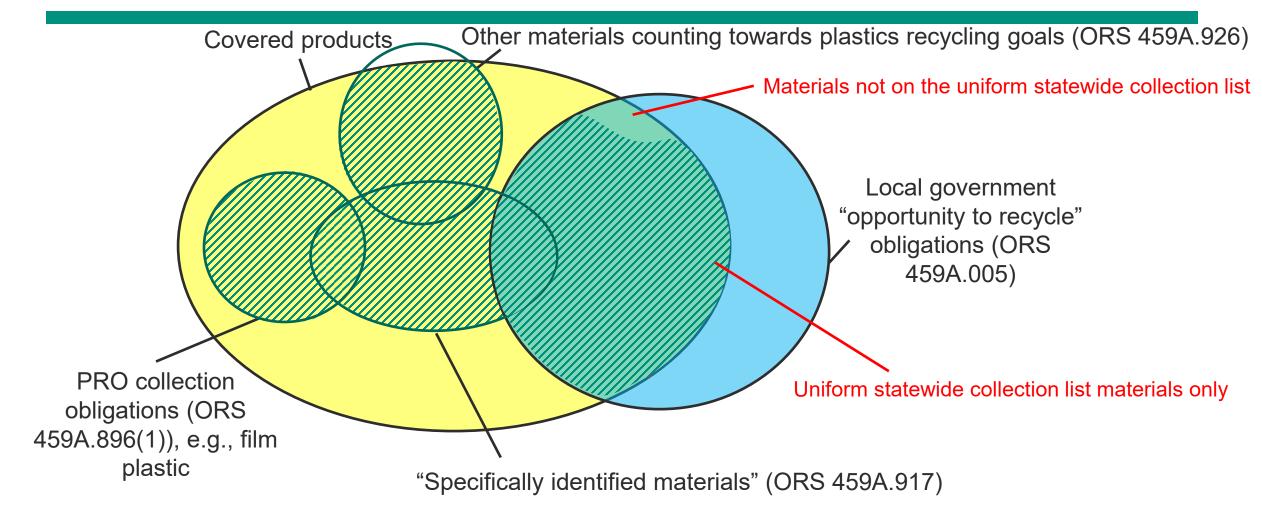


*Includes drop-off and on-route collection; includes but not necessarily limited to the uniform statewide collection list

Specifically identified materials



PRO obligations: responsible disposition (ORS 459A.896(2) and ORS 459A.869(7))



Summary of additional PRO obligations

Covered products:

- COMMUNICATE WHAT/WHERE/HOW TO RECYCLE
- PAY FOR PRO OVERHEAD, DEQ ADMIN. COSTS AND WASTE PREVENTION/REUSE FUND
- ACHIEVE PLASTICS RECYCLING GOALS

Covered products not on a material acceptance list, e.g., potato chip bags (potential contamination):

- COMPENSATE LOCAL GOVERNMENTS FOR CONTAMINATION-REDUCTION PROGRAMMING
- PAY CONTAMINATION MANAGEMENT FEE TO MRFs
- MAY CONTRIBUTE TO OTHER PRO COSTS

PRO collection obligations (ORS 459A.896(1)), e.g., film plastic:

MEET CONVENIENCE STANDARDS, COLLECTION TARGETS AND PERFORMANCE STANDARDS

Local government
"Opportunity to Recycle"
obligations (ORS
459A.005)

- COMPENSATE LOCAL GOVERNMENTS FOR SERVICE EXPANSION, TRANSPORTATION.
- PAY PROCESSOR COMMODITY RISK FEE TO MRFs (UNIFORM STATEWIDE COLLECTION LIST ONLY)



Local government obligations

- "Opportunity to Recycle Act" (1983, 1991, 2015)
- "Standard" and "alternative" methods
- Standard program:
 - General requirements
 - Depot at disposal site or more convenient location and recycling information
 - For cities over 4,000:
 - At least monthly collection of source separated recyclable material from garbage collection service customers
 - Additional services chosen from a menu of elements
- Definition of "recyclable material"

PRO Depots

- Primarily intended to supplement local government collections – for materials not readily commingled
- 4 types:

Existing Multi-Material Depots (expanded)

Return-to-Retail Single-Material Drop-Box

New Multi-Material Depot (PRO)









PRO Depots

- Materials collected source segregated, not commingled
- Convenient placement can encourage participation
- Convenience standards, collection targets and performance standards – to be developed

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).

Research approach

- 1. Request for Information
- 2. Conversations with producers, suppliers, processors, end markets, others
- 3. Evaluation matrix
- 4. Screening-level life cycle assessments
- 5. Surveys of depot users
- 6. Quantitative modeling of scenarios
- 7. Consultation with a Technical Workgroup

Next steps (materials acceptance lists)

RAC Meeting 3 (November 9)

Rule concepts: placement of most materials

RAC Meeting 4 (January 11)

Rule concepts:

- Placement of outstanding materials
- Convenience standards, collection targets and performance standards for PRO collections

Recycling Council (October 20th and later)

Next Steps - Meeting Schedule

Nov. 9, 2022

Topics: Transportation Reimbursement and Materials Acceptance Lists (part I)

Jan. 11, 2023

Topic: Materials Acceptance Lists (part II)

March 2023

Topics: Equity & Fiscal Impact Statements

More information

Rulemaking webpage

oregon.gov/deq/rulemaking/Pages/Recycling2023.aspx

Email input to recycling.2023@deq.oregon.gov

