



State of Oregon Department of Environmental Quality

Rule Concepts: 3 - Producer Responsibility Organization Coordination

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

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.

In developing these concepts, DEQ considered calendaring and sequencing issues, which impact the feasibility of coordination—to highlight these issues, a chart depicting this timeline is located at the end of this document. Due to the statutory timeline for the program plan review process and the necessary coordination between PROs to ensure implementation by July 1, 2025, DEQ proposes to establish a process for appointing an interim coordinating body as part of this rulemaking. The rulemaking on this issue will consist of rules falling into three broad categories: those rules that are relevant to the interim coordination process (i.e., phases 1-3 of the timeline), those that are relevant to the long-term coordination process (phase 4 of the timeline), and those that apply to both.

Concepts for discussion at July 20, 2022 RAC meeting

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

I. Interim Coordination Rule Concepts

Rules for appointing an interim coordinating body

1. If DEQ receives program plans from multiple prospective producer responsibility organizations, DEQ may appoint an interim coordinating body to coordinate among the PROs through the development of an interim coordination plan. The interim coordinating body will serve in its role until December 31, 2026, or until a coordination plan proposed by the PRO(s) (phase 4, below) has been approved, whichever comes sooner.

During the interim period, before PROs propose their own coordination plan and that plan has been approved, DEQ may assign interim coordination tasks to PROs by applying the following criteria during the program plan review:

- a. Qualifications
- b. Access to financial resources
- c. Initial producer membership
- d. Quality of the program plan

2. The following timebound interim tasks, which must be partially or fully undertaken by July 1, 2025, may be among those assigned to approved PROs, or to willing applicant producer responsibility organizations, during the interim coordination period:
 - a. Set up single accounting points of contact and invoice processing system for various types of required PRO compensation, including:
 - i. Payment of contamination management fees (ORS 459A.920) and processor commodity risk fees (ORS 459A.923) to commingled recycling processing facilities;
 - ii. Compensation to (and associated negotiation with) local governments for service expansion on the basis of the needs assessment (ORS 459A.890(5) and (8));
 - iii. Compensation to local governments for expenses besides service expansion (ORS 459A.890 besides subsection (5)); and
 - iv. Compensation to existing depots for service expansion to accommodate products on the PRO depot list (ORS 459A.896(1)(a)).
 - b. Set up a system through which expenses paid by multiple PROs can be reconciled among those PROs in a manner that is proportional to market share, avoids cross-subsidization between products, and incentivizes reduction of environmental and human health impacts of covered products.
 - c. Establish a depot collection system (per ORS 459A.896(1) that meets collection targets, convenience standards and performance standards established by the Environmental Quality Commission.
 - d. Develop and issue education materials that promote the uniform statewide collection list.
3. The interim coordinator will conduct the following interim tasks in consultation with DEQ and the PROs:
 - a. Calculate market share of each PRO using an interim method and data for 2025 submitted by each PRO (see the market share memo for more on this).
 - b. Define a minimum specification of product categories to be used in PRO membership fee structures. This consistent specification of product categories is necessary to provide for consistent calculations of market share.
4. The interim coordinator will also develop an interim coordination plan meeting the standards and requirements for coordination plans listed below. The interim coordinator will review the draft plan with all prospective PROs and with DEQ, and then produce an updated version for review and approval by DEQ. Each PRO is obligated to follow the interim plan until it is replaced with a long-term coordination plan.
5. DEQ may include its costs of appointing and overseeing an interim coordinating body within the annual fees charged to PROs, which cover DEQ's costs of administering the provisions ORS 459A.860 to 459A.975.

II. Interim and Long-Term Coordination Rule Concepts

Rules establishing standards and requirements for coordination plans

1. Each producer responsibility organization is responsible for ensuring implementation of an approved coordination plan. This includes implementing an approved coordination plan submitted by an interim or long-term coordinating body.
2. A coordination plan must include:

- a. Identification of the PRO coordinating body;
 - b. A process for designating a new coordinating body and giving DEQ advance notice;
 - c. A process for resolving disputes;
 - d. A process by which a PRO or multiple PROs will assume responsibilities to implement a coordination plan should the coordinating body be unable to implement the coordination plan; and
 - e. A process to address coordination in the event of a PRO ceasing implementation of a producer responsibility program.
3. In reviewing a coordination plan submitted for approval, DEQ will consider whether the coordination plan will ensure coordination that provides:
- a. Achievement of the statewide plastics recycling goal established under ORS 459A.869(9), including development of combined plastic recycling rate projections across all PROs;
 - b. Education that promotes the unified statewide collection list as provided under ORS 459A.893;
 - c. Single-point-of-contact accounting that provides timely funding, reimbursement, and payments required under ORS 459A.860 to 459A.975, including funding, reimbursement and payments related to ORS 459A.890, ORS 459A.920, and 459A.923;
 - d. Processes to allocate costs among PROs that is proportional to market share, avoids cross-subsidization between products, and incentivizes reduction of environmental and human health impacts of covered products;
 - e. A consistent statewide system to ensure all Oregon residents can easily identify, understand, and access services provided through the Act, including through consistent messaging and branding, and through a single website listing the services provided by all PROs under ORS 459A.896;
 - f. Assurance that all covered products collected for recycling are delivered to responsible end markets and managed according to Oregon’s materials management hierarchy, as required by ORS 459A.896(2);
 - g. A single point of contact for communicating with the Recycling Council and DEQ, including Council recommendations and material lists;
 - h. Establishment of a recycling depot system that meets collection targets, convenience standards, and performance standards established by the Environment Quality Commission under ORS 459A.914(7);
 - i. A process for aggregating data submitted by PROs in order to calculate and publish aggregated data on all covered products sold in or into Oregon during a calendar year to allow calculation of market share; and
 - j. A common list of covered product types, materials, and formats that the PROs will use to establish their membership fees pursuant to ORS 459A.884.

III. Long-Term Coordination Rule Concepts

Rules establishing processes for submittal, review, approval or rejection, amendment, and revocation of coordination plans

1. Producer responsibility organizations must jointly submit a coordination plan to DEQ by February 1, 2026. Once approved, this plan would replace the interim coordination plan.

2. DEQ will approve a coordination plan if DEQ determines that the plan adequately meets all standards and requirements described above.
3. The coordination plan review period of up to 270 days will consist of the following phases:
 - a. DEQ shall approve, approve with conditions, or reject the first draft within 90 days of receiving it.
 - b. If DEQ rejects a coordination plan, the PROs must jointly submit a revised plan no later than 60 days from the date of rejection.
 - c. DEQ shall approve, approve with conditions, or reject the revised draft within 90 days of receiving it. If it rejects the revised plan, DEQ may request further revisions at the PROs' discretion, may direct particular revisions to the plan, or may issue an order to direct implementation of an alternative coordination plan (see below).
 - d. If further revisions are required, the PROs must jointly submit their second revised plan no later than 30 days from the date of second rejection.
 - e. If the second revision is not timely or does not adequately meet all coordination plan requirements or adequately address the standards to DEQ's satisfaction, DEQ may direct particular revisions or bring an enforcement action including an order to direct implementation of an alternative coordination plan. If revisions are directed, they must either be implemented or the PROs may request a hearing under ORS chapter 183.
4. Changes to coordination plans will be accomplished through plan amendments. PROs must submit a coordination plan amendment for DEQ approval at least 45 days before the change is to take effect. DEQ shall approve or reject the request within 45 days of receiving the amendment request. If PROs intend to make a proposed change to coordination but, for good cause as determined by DEQ, are unable to make a request 45 days in advance, the PROs shall notify DEQ of the proposed change as far in advance of the proposed change as practicable
5. DEQ's rejection of a coordination plan or plan amendment does not relieve the PROs or the coordination body from continuing to implement an approved coordination plan pending a final action by DEQ.
6. In accordance with the applicable provisions of ORS chapter 183 relating to contested case proceedings, DEQ may issue an order to suspend or revoke a coordination plan in whole or in part if it determines that implementation of the coordination plan would:
 - a. Present a risk to the environment or public health, or
 - b. Have a material impact on the ability of a PRO to implement its producer responsibility program in compliance with ORS 459A.860 to 459A.975.

IV. Rules establishing a process for DEQ to issue an order requiring a coordination plan

1. If no draft coordination plan is submitted to DEQ by the required deadline, or if the revised coordination plan submitted to DEQ by the PROs is rejected following rejection of the initial plan, DEQ may require the implementation of a coordination plan by order.
2. The order would indicate a start date and would direct a specific PRO to take on the role of coordinating body and coordinate its implementation. It would also require all other PROs to collaborate with the coordinating body on implementation of the plan.
3. DEQ may bring an enforcement action if compliance with the order is inadequate.

4. If a PRO requests a hearing under ORS chapter 183 or is subject to enforcement pursuant to clause (3), the PROs shall continue to implement the plan as ordered by DEQ while legal proceedings are underway.

Applicable statute for PRO coordination topic: ORS 459A.869(9)

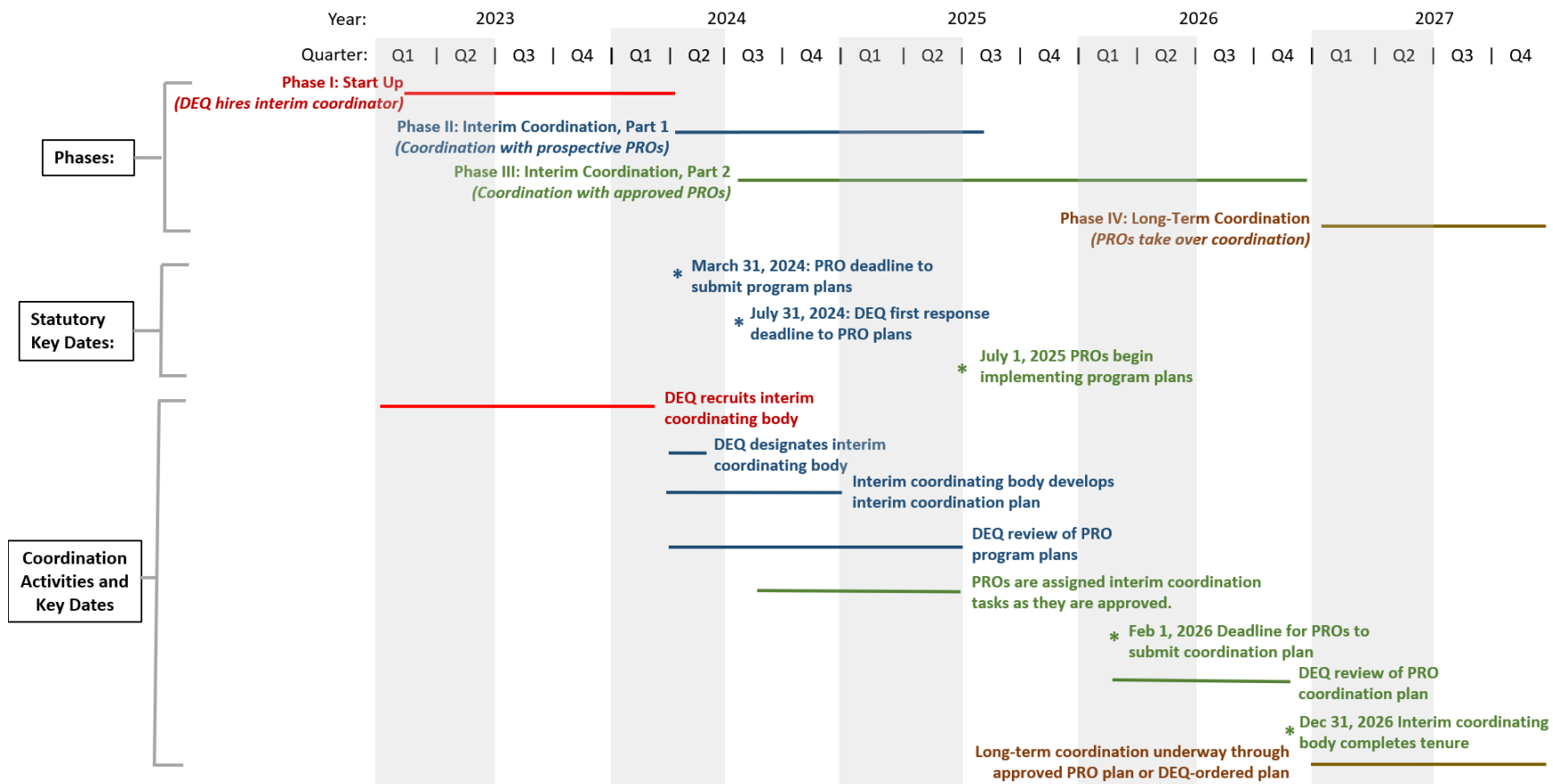
Interim coordination and PRO plan review timeline

In developing the PRO Coordination rule concepts, DEQ considered calendaring and sequencing issues, which impact the feasibility of coordination. The coordination timeline illustrates DEQ's proposal for addressing these issues. It indicates both the statutory deadlines ("Statutory Key Dates") and the timeline and approach that DEQ is proposing to establish by rule ("Coordination Activities and Key Dates").

The timeline is also broken into four phases, depicted in the following chart:

1. Coordination Start Up: the time before PRO submission of program plans during which DEQ recruits an interim coordinating body.
2. Interim Coordination, Part I: the interim coordinating body works with prospective PROs that have submitted their program plans for review.
3. Interim Coordination, Part II: the interim coordinating body coordinates among approved PROs.
4. Long-Term Coordination: long-term coordination gets underway, either through an approved PRO plan or through a plan ordered by DEQ.

Interim Coordination Scenario and PRO Plan Review Timeline



Alternative formats

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El DEQ puede proporcionar los documentos en un formato alternativo o en un idioma distinto al inglés si así lo solicita. Llame al DEQ al 800-452-4011 o envíe un correo electrónico a deqinfo@deq.oregon.gov

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