



State of Oregon Department of Environmental Quality

# Draft Rules – Division 90

Plastic Pollution and Recycling Modernization Act 2023, Rulemaking 1  
Rulemaking Advisory Committee Meeting 6 of 6

March 29, 2023

## Division 90 Plastic Pollution and Recycling Modernization Act

### **Purpose and Applicability** **OAR-340-090-0610**

These rules implement the requirements for the Plastic Pollution and Recycling Modernization Act. These rules also described Producer Responsibility Organization obligations, standards and methods for local government compensation, and the materials acceptance lists. The rules relate to the requirements of ORS 459A.869, 459A.872, 459A.875, 459A.878, 459A.881, 459A.884, 459A.890, 459A.896, 459A.914, and 459A.926.

**Statutory/Other Authority:**

**Statutes/Other Implemented:**

## **Producer Responsibility Organization Obligations**

### **OAR 340-090-0630**

#### **Responsible End Markets**

(1) Definition of end market. For purposes of ORS459A.869(7) and ORS 459A.896(2)(a), end markets are defined by material as follows:

(a) For glass the end market is the entity that first use the glass in lieu of a virgin material downstream of the beneficiation plant, if any, where bottles are crushed, for example a bottle manufacturer, fiberglass manufacturer or pozzolan (used to make cement and concrete) producer.

(b) For metal the end market is the entity that smelts the recycled material and produces ingots, sheet, coil, or other materials that are subsequently refabricated into packaging or product.

(c) For paper the end market is the entity that re-pulps the recycled material either into a pulp product that is sold to paper manufacturers or used to produce paper or paperboard products. If paper is recycled in a manner that does not involve repulping (for example, used to produce a wallboard product), the end market is the entity that uses the waste paper to produce a product that is sold without further transformation or manufacturing.

(d) For plastic, except for plastic that is recycled to produce packaging for food or beverage applications or for production of children's products, the end market is the entity (typically a reclaimer) that last handles flake or pellet containing recycled plastic prior to sale or transfer to another person that creates a new product either by placing it into a mold or through extrusion or thermoforming.

(e) For plastic that is recycled to produce packaging for food and beverage applications or for production of children's products, the end market is the entity that place it into a mold for the manufacturer of such packaging or product.

(2) Standard for responsible end markets.

(a) For an end market to be a responsible end market, the end market and all entities in the supply chain leading to the end market must meet the following standards:

(A) Compliant. Meaning the entity follows its own local, state, and national laws (including relevant environmental, labor, and public health laws) and treaty obligations, and is registered and permitted as required by local, state, and national authorities.

(B) Transparent. Meaning the entity is willing to be named and audited, provides chain of custody documentation tracking materials (originating in Oregon) to disposition, maintains record keeping relevant to chain of custody and material disposition in accordance with ORS 459A.962(7), and promptly documents within the chain of custody any penalties, violations or regulatory orders received.

(C) Environmentally-sound. Meaning the entity is willing to be audited and monitored for outdoor air, water and land emissions and disposal; stores and manages waste and recyclables in a way that avoids release into the environment; and manages inputs sustainably. This includes demonstrating adequate emergency response and environmental health, safety, and management plans; and

(D) Achieving adequate recycling yields. Meaning the recycling supply chain recycles or causes to be recycled at least 60% of each material listed in the material lists (if applicable, consisting of the local government recycling acceptance list, the producer responsibility organization acceptance list, and the list of specifically identified materials), even if multiple materials are mixed together, with the remaining material managed in a responsible manner and in alignment with Oregon's hierarchy of materials management (ORS 459.015).

(b) The responsible standard described in subsection (a) applies to all entities in the supply chain after the commingled recycling processing facility or producer responsibility organization collection point (or post-collection in a supply chain without either facility) up to, and including, the end market.

(c) Recycling yield, as stated in section 2(a)(D), will be determined as follows:

(A) For all materials except for paper cans, the recycling yield is the amount of the material that was successfully processed by the end market divided by the amount of the material that entered the recycling supply chain initially.

(B) For paper cans, the recycling yield is the amount of the metal fraction or paper fraction of the material that was successfully processed by the end market, divided by the amount of that fraction that entered the recycling supply chain initially. If the yield of either the metal fraction or of the paper fraction exceeds 60%, the composite material is achieving adequate yields.

(C) Calculation of recycling yield shall exclude any contaminants that are included in the bale of received material, as well as incidental materials that are adhered to the received material but are not targeted for recovery, such as tape and staples on corrugated boxes, or inks and labels on most types of packages.

(3) Implementation of the responsibility standard by a producer responsibility organization.

(a) A producer responsibility organization must ensure that materials collected for recycling go to responsible end markets as detailed in ORS 459A.896(2) and this rule by completing the following two steps successively:

(A) First, producer responsibility organization must conduct an initial screening assessment, and receive written verification, using a form provided by the department, from each end market and intermediary supply chain entity that it meets the responsible standard provided by section 2 of this rule.

(B) Next a producer responsibility organization must conduct a more detailed assessment of whether each end market and intermediary supply chain entity meets the responsible

standard provided by section 2 of this rule, either through a verification by the producer responsibility organization as provided by subsection (e) of this rule or through third-party certification from a commission-approved program.

(b) For materials described under ORS 459A.869(7)(a) and any other materials collected by a producer responsibility organization (including collected through contract with a producer responsibility organization), a producer responsibility organization must complete the step provided by paragraph (a)(A) by the start date of the program, and the step provided by paragraph (a)(B) within one year of the start date of the program. For such materials added after the start date of the program a producer responsibility organization must complete the step provided by paragraph (a)(A) prior to delivery of the materials to the end market, and the step provided by paragraph (a)(B) within six months of first delivery to the end market.

(c) For materials described under ORS 459A.869(7)(b) and any other materials not collected by the producer responsibility organization, a producer responsibility organization must complete the step provided by paragraph (a)(A) within six months of the program start date, and the step provided by paragraph (a)(B) within 15 months of the start date of the program. For such materials added after the start date of the program a producer responsibility organization must complete the step provided by paragraph (a)(A) within six months of delivery of the materials to the end market, and the step provided by paragraph (a)(B) within 15 months of first delivery to the end market.

(d) If a producer responsibility organization completes the step provided by paragraph (a)(B) prior to and within the timeline of the step provided by paragraph (a)(A), the producer responsibility organization is not required to perform the step provided by paragraph (a)(A).

(e) The producer responsibility verification required by paragraph (a)(B) of this section must contain the following:

(A) A description of how a producer responsibility organization determined that the indicated entity or entities (if final disposition occurred at multiple sites) was the end market;

(B) A list of local, state and national laws and international treaties applicable to the entity as required by section 2(a)(A) of this rule;

(C) Documentation that the end market and intermediary supply chain entities meet all requirements of section 2 of this rule;

(D) Documentation of any noncompliance with the requirements section 2 of this rule.

(E) Documentation of the qualification of the auditor required by section 4 of this rules; and

(F) Certification and signature from the auditor required by section 4 of this rule that the end market meets the requirements of section 2 of this rule.

(f) The producer responsibility verification required by paragraph (a)(B) of this rule and certification audits required by section 4 of this rule must occur on an annual basis, with the first of these renewal audits occurring within a year of initial certification.

(4) Auditing. To demonstrate compliance with the requirement that materials collected for recycling go to responsible end markets as required by ORS 459A.896(2) and this rule, a producer responsibility organization must conduct auditing and provide audit results in annual reporting to DEQ. These audits must include results of random bale tracking to verify chain of custody and must demonstrate and certify that end markets meet the requirements of section 2 and 3 of this rule. For the purposes of enforcement, DEQ may conduct its own random bale tracking.

(5) Definition of practicable. For purposes of ORS 459A.869(7) and ORS 459A.896(2), practicable actions that may be undertaken by a producer responsibility organization must be determined in accordance with this rule.

(a) Practicable actions may include, but are not limited to, the following:

(A) Providing financial support to help an existing end market that does not meet the standard for responsible under section 2 of this rule or an existing market that is not in alignment with the hierarchy of materials management, to upgrade or change operations to become responsible or aligned with the hierarchy of materials management.

(B) Providing financial support to divert materials to a different end market that is responsible under section 2 of this rule or in alignment with the hierarchy of materials management.

(C) Directing materials to an alternative end market if materials are directly under producer responsibility organization control.

(D) Offering to buy or take ownership of materials to directly control their flow if materials are not already directly under the control of the producer responsibility organization.

(E) Developing a new market for a material.

(b) If the results of an audit under section 4 of this rule show that an end market does not meet the responsible end market standards in section 2 of this rule, the producer responsibility organization must carry out practicable actions to meet the responsible end market standards in section 2 of this rule.

(c) A producer responsibility organization may not claim that an action is not practicable simply because it results in higher costs by the producer responsibility organization. A claim that an action is not practicable must demonstrate costs that are not justified given the resulting societal benefits. A producer responsibility organization must choose one of the following two methods for showing that costs are not justified given resulting societal benefits:

(A) Evaluate the per-ton transactional costs of a proposed solution against the benchmark for average societal benefit of recycling. The benchmark for average societal benefit of recycling at the start of the program is \$2,017 per ton and will be adjusted for inflation no more frequently than once per year. Any adjustment shall be limited to an adjustment using the CPI - U as published by the Bureau of Labor Statistics, using calendar year 2021 as the base

year which corresponds to the benchmark value. A per-ton cost lower than the societal benefit benchmark is cost effective and potentially practicable. A per-ton cost higher than the per-ton societal benefit value is not practicable.

(B) Perform an analysis of financial costs and societal benefits customized to the particular materials and practices at hand. A customized approach could be warranted under several circumstances, such as if the material in question has a societal benefit well below the system-wide average.

(d) The department will review and evaluate a producer responsibility organization claim that an action is not practicable due to costs. If the Department agrees with the claim, the Department will then review the material in question and its inclusion in a material acceptance list. If the department's review determines that an action is practicable, then the producer responsibility organization must immediately undertake that action.

(e) The department will consult with the Oregon Recycling System Advisory Council prior to deciding if an action is practicable.

(6) Reporting.

(a) A producer responsibility organization must report all audits undertaken, self-attestations received, and certification reports under this rule that are completed in the prior quarter in an appendix to quarterly disposition reporting.

(7) Application of Oregon's Material Management Hierarchy.

(a) In cases of conflict between the elements of Oregon's material management hierarchy under ORS 459.015(2)(c)(C)(i) (preference for recycling pathways that displace more impactful materials) and ORS 459.015(2)(c)(C)(ii) (preference for recycling pathways that best preserve value and molecular structure), the Department may identify the environmentally preferable option among pathways under consideration.

## **OAR 340-090-0640**

### **Producer Responsibility Organization Coordination**

(1) Interim coordination.

(a) For the initial program period, if the department receives program plans from multiple prospective producer responsibility organizations, the Department may appoint an interim coordinator to coordinate among the prospective producer responsibility organizations. The interim coordinator will develop an interim coordination plan that meets the criteria of section 2 of this rule. The interim coordinator will serve in its role until December 31, 2026, or until a coordination plan proposed by the producer responsibility organizations has been approved, whichever comes sooner.

(b) From March 31, 2024, onward and prior to the approval by the department of a coordination plan developed by the producer responsibility organizations, The Department may assign interim coordination tasks including but not limited to those listed in sub-section (c)(A) of this rule to a producer responsibility organization. When assigning tasks to a producer responsibility organization the department will consider the following criteria during the program plan review:

- (A) The qualifications of the producer responsibility organization;
- (B) The producer responsibility organization's access to financial resources;
- (C) The initial producer membership of the producer responsibility organization; and
- (D) The quality of the program plan submitted by the producer responsibility organization.

(c) The department may assign interim coordination tasks to approved producer responsibility organizations, or to willing applicant producer responsibility organizations. Approved producer responsibility organizations must begin the interim coordination tasks upon the department assigning the task. The tasks required by this subsection include the following:

(A) Setting up single accounting points of contact and invoice processing system for required producer responsibility organization compensation payments, 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 producer responsibility organization depot list (ORS 459A.896(1)(a)).

(B) Setting up a system to reconcile expenses amongst producer responsibility organizations, in proportion to modified market share as required by [OAR 340-090-XXXX].

(C) Establishing 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) Developing and issuing educational materials that promote the uniform statewide collection list.

(d) The interim coordinator will conduct the following tasks in consultation with the department and the producer responsibility organizations:

(A) Calculate the modified market share of each producer responsibility organization as required by [rule 340-090-XXXX].

(B) Define the standard product categorization to be used in producer responsibility organization membership fee structures.

(e) The interim coordinator will develop an interim coordination plan meeting the requirements of section 2 of this rule. The interim coordinator will review the draft plan with all prospective producer responsibility organizations and with the department, and then produce an updated version for review and approval by the department. Once approved by the department, producer responsibility organizations must follow the interim plan until it is replaced with a final coordination plan.

(f) The department's costs in appointing and overseeing an interim coordinator are costs of administering the provisions ORS 459A.860 to 459A.975.

(2) Standards and requirements for coordination plans.

(a) A producer responsibility organization is responsible for the implementation of an approved coordination plan.

(b) A coordination plan must include:

(A) Identification of the producer responsibility organization coordinating body;

(B) A process for designating a new coordinating body and notifying the department in advance;

(C) A process for resolving disputes between producer responsibility organizations and between producer responsibility organizations and local governments and their service providers;

(D) A process by which a producer responsibility organization or multiple producer responsibility organizations will assume responsibilities to implement a coordination plan should the coordinating body be unable to implement the coordination plan;

(E) A process to address coordination in the event a producer responsibility organization ceases implementation of a producer responsibility program; and

(F) A plan for how the producer responsibility organizations will coordinate to ensure that their obligations under provisions ORS 459A.860 to 459A.975 are met.

(c) In reviewing a coordination plan submitted for approval, the Department will consider whether the coordination plan will ensure:

(A) Achievement of the statewide plastics recycling goal established under ORS 459A.869(9), including development of combined plastic recycling rate projections across all producer responsibility organizations;

(B) Education that promotes the unified statewide collection list as provided under ORS 459A.893;

(C) A 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.896, ORS 459A.920, and 459A.923;

(D) Processes to allocate costs among producer responsibility organizations that are proportional to modified market share as required by [340-090-XXXX];

(E) A consistent statewide system to ensure all Oregon residents can easily identify, understand, and access services provided through ORS 459A.860 to 975, including through consistent messaging and branding, and through a single website listing the services provided by all producer responsibility organizations 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 the department, including Recycling Council recommendations and material lists;

(H) Establishment of a recycling depot system that meets collection targets, convenience standards, and performance standards established in rule [340-090-XXXX];

(I) A process for aggregating data submitted by producer responsibility organizations to calculate and publish modified market shares, identify and publish a list of large producers, and report market share data to the department; and

(J) A list of standard product categories that the producer responsibility organizations will use to establish their membership fees pursuant to ORS 459A.884.

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

(a) Producer responsibility organizations must jointly submit a coordination plan to the department by February 1, 2026. Once approved, this plan will replace the interim coordination plan described in section 1 of this rule.

(b) The department will approve a coordination plan if it determines that the plan adequately meets all requirements of section 2 of this rule.

(c) The coordination plan review period of up to 270 days will consist of the following phases:

(A) The department shall approve, approve with conditions, or reject the submittal within 90 days of receiving it. If the department rejects the submittal, the department will provide comments that discuss the reasons for the rejection.

(B) If the department rejects the submittal, the producer responsibility organizations must jointly submit a revised plan no later than 60 days from the date of rejection. The revised submittal must address the comments of the department under paragraph A of this subsection.

(C) The department shall approve, approve with conditions, or reject the revised submittal within 90 days of receiving it. If the department rejects the revised submittal, the department may do the following:

(i) Request that the producer responsibility organizations make further revisions to the plan;

(ii) Direct the producer responsibility organization to make specific revisions to the plan; or

(iii) issue an order to direct implementation of an alternative coordination plan pursuant to section 4 of this rule.

(D) The producer responsibility organizations must jointly submit a second revised plan, pursuant to paragraph (c)(C)(i) or (ii) of this section, no later than 30 days from the date of second rejection.

(E) If the second revision is not timely or does not meet the coordination plan requirements of section 2 of this rule to the department's satisfaction, the Department may direct specific revisions or issue an order to direct implementation of an alternative coordination plan pursuant to section 4 of this rule. Failure to submit an approvable plan under paragraph D of this subsection is a violation of these rules for purposes of enforcement. If the Department directs revisions, the producer responsibility organizations must implement the revisions or request a hearing under ORS chapter 183 related to contested case proceedings.

(d) Producer responsibility organizations will only change an approved coordination plans through plan amendments. Producer responsibility organizations must submit a coordination plan amendment to the Department for approval at least 45 days before the change is to take effect. The Department will approve or reject the amendment request within 45 days of receiving the request. The Department may, for good cause, allow the producer responsibility organizations to submit an amendment requires less than 45-days before the change is to take effect.

(e) The Department's rejection of a coordination plan or plan amendment does not relieve the producer responsibility organizations or the coordination body from continuing to implement an approved coordination plan.

(f) In accordance with the applicable provisions of ORS chapter 183 relating to contested case proceedings, the department may issue an order to suspend, amend, 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 producer responsibility organization to implement its producer responsibility program plan in compliance with ORS 459A.860 to 459A.975.

(4) Department issuance of an order requiring a coordination plan.

(a) If no coordination plan is submitted within the timelines specified in section 3 of this rule to, or if the department rejects a revised coordination plan pursuant to section 3 of this rule, the department may require the producer responsibility organizations to implement a coordination plan by order.

(b) The order will provide a start date and include any requirements the department determines are necessary to implement ORS 459A.860 to 459A.975 and related rules. The order may direct a producer responsibility organization to undertake the role of coordinating body and coordinate the implementation of the order and require that all other producer responsibility organizations collaborate with the coordinating body on implementation of the plan.

(c) Failure to adequately implement or comply with an order issued under this section is a violation of these rules.

(d) Within 20 days of the issuance of an order under this section a producer responsibility organization may request a hearing under ORS chapter 183 related to contested case proceedings. If a producer responsibility organization requests such a hearing under ORS chapter 183 the producer responsibility organizations shall continue to implement the order pending the outcome of legal proceedings.

(5) Coordination rules for the entry of new producer responsibility organizations.

(a) If a new producer responsibility organization enters the program in 2026 or later, the approved producer responsibility organizations coordination plan must be updated by plan amendment. If no producer responsibility organization coordination plan has been approved by the department, one must be submitted and finalized within one year, subject to the review process outlined in rule OAR 340-090-XXXX(3). The timelines and procedures provided in section 1 for interim coordination will apply to a new producer responsibility organization before 2026.

(b) If an updated producer responsibility coordination plan is not approved within the one year the department may require the implementation of a coordination plan by order pursuant to section 4 of this rule.

(c) During the plan development and review phase under subsection (a), the department may revoke the existing coordination plan and reinstate interim coordination pursuant to section 1.

#### **OAR 340-090-0650**

#### **Producer Responsibility Organization Fees**

(1) Program Plan Review Fee. Each producer responsibility organization that submits a plan under ORS 459A.875 will pay a fee of \$150,000 for the department's review of the plan. A producer responsibility organization will pay the fee when it submits the plan to the department. A plan will not be considered submitted to the department until the fee is paid.

(2) Annual Administration Fee. The department will assess an annual administration fee each calendar year in the amount of \$4,000,000 for the first four years of the program (2025-2028) and \$3,000,000 for all subsequent years of the program.

(a) The department will invoice and a producer responsibility organization will pay the annual administration fee as follows:

(A) In the first program year (covering 2025) the department will send a producer responsibility organization a provisional invoice on or before September 1, 2024. The department will send a producer responsibility organization a final invoice upon completion of the producer responsibility program plan approval process under ORS 459A.878. A producer responsibility organization will pay the first program year's fee within 30-days of the department sending it a final invoice.

(B) In each year after the first program year the department will invoice a producer responsibility organization on or before September 1 of the proceeding program year for payment within 30-days of invoicing.

(b) The department may at its discretion reduce the fee in a given year if it determines that the full amount is not required to pay the costs of administering, implementing and enforcing the provisions of ORS 459A.860 to 459A.975 in that year.

(c) If the department has approved only one producer responsibility organization plan under ORS 459A.878 for a given year that producer responsibility organization will pay the entirety of the annual administration fee.

(d) If the department has approved more than one producer responsibility organization plan under ORS 459A.878 for a given year the annual administration fee will be divided among the producer responsibility organizations as follows:

(A) In the first program year the producer responsibility organizations will pay to the department equal shares of the annual administration fee. On or before September 1, 2025, the department will notify the producer responsibility organizations of the interim modified market share calculations pursuant to OAR 340-090-0730(3). The producer responsibility organizations will reconcile payment with each other such that each producer responsibility organization pays a total amount of the annual administration fee that is proportional to its modified market share.

(B) In each year after the first program year the fee will be divided between the producer responsibility organizations in proportion to their modified market share as determined by OAR 340-090-xxxx.

## **OAR 340-090-0660**

### **Market Share**

Market share as used in ORS 459A.860-968 and related rules is a producer's percentage of all covered products sold in or into this state, as calculated in accordance with this rule.

(1) Methods for Calculating Market Share. Market share will be calculated as follows:

(a) Market share will be denominated by the percentage of weight (mass) of covered product measured in kilograms.

(b) A producer's market share will be calculated by dividing the weight of all covered products sold or distributed by the producer in or into Oregon in a particular program year by the total weight of all covered products sold or distributed by all producers in or into Oregon in that year.

(c) A producer responsibility organization's market share will be calculated by dividing the summed weight of all covered products sold or distributed by all of the producer responsibility organization's member producers in or into Oregon in a particular program year by the total weight of all covered products sold or distributed by all producers in or into Oregon in that year.

(d) A producer must on an annual basis submit market data establishing the weight of covered products sold or distributed in or into Oregon to the producer responsibility organization to which it belongs. Producers may submit estimates of the weight of their covered product rather than actual data provided that they must submit their estimation methodology to the producer responsibility organization along with the estimate. Estimation methodology must be in accordance with applicable best practices. If estimated market data is submitted by a producers and actual market data becomes available that demonstrates the estimates were not accurate, the producer must report corrections to the estimated data to the producer responsibility organization before the next annual reporting deadline. If a producer uses estimates of the weight of covered product rather than actual data, the producer will receive the least favorable graduated fee adjustment under ORS 459A.884(4) possible for the amounts estimated.

(c) When submitting market data to the department in an annual report, a producer responsibility organization will distinguish between market data that are estimates and market data that are actual data, and the methodological justifications must accompany the corresponding estimates.

(2) Purpose of and Method for Calculating Modified Market Share. If the department approves more than one producer responsibility organization plan pursuant to ORS 459A.878, financial obligations of implementation of provisions ORS 459A.860 to 459A.975 will be allocated among the producer responsibility organizations by modified market share, as provided by this section.

(a) Modified market share will be denominated in percentage of financial burden measured in US dollars.

(b) A producer responsibility organizations modified market share will be calculated as follows:

(A) The material-specific unit factor, described in subsection c, is multiplied by the total weight of covered products of each material sold or distributed in or into Oregon by each member producer;

(B) The results of paragraph A for each material and each member producer of the producer responsibility organizations are summed;

(C) the weight of all covered product of each material sold in or into Oregon in a given year is multiplied by the material-specific unit factors and the result for each material are summed;

(D) The result of paragraph B is divided by the result of paragraph C.

(E) The result of paragraph D is a producer responsibility organization's modified market share.

(F) The following formula describes the process provided for by Paragraphs (A) through (E):

$$\frac{\sum_{p=1}^x \sum_{m=1}^y (W_{R,p,m} \times U_m)}{\sum_{R=a}^z \sum_{p=1}^x \sum_{m=1}^y (W_{R,p,m} \times U_m)}$$

W = weight of product sold, p = producer, m = material, R = producer responsibility organization, and Um = material-specific unit factor

(c) The material-specific unit factor represents the financial burden of a material on the recycling system. The material-specific unit factor is denominated in cost in U.S. dollars per unit mass of material. The material-specific unit factor is the weighted average, using a producer responsibility organization's market share for that material as the weight, of all of the producer responsibility organization's material-specific base fee rates, as provided by ORS 459A.884(2), from the prior year for a given material. In the first year of the program (2025), before base fee rates from a prior year are available, the Department will contract with an independent organization to develop an index of material-specific unit factors.

(3) Interim Reporting of Marking Share. By August 1, 2025, a producer responsibility organization must report information that will be used to calculate "interim market share" for the 2025 program year to the Department. Interim market share is estimated market share for July 1 - December 31, 2025, calculated from estimates of the weight of covered product sold into Oregon by each member producer, organized by type of material.

**OAR 340-090-0670**  
**Proprietary Information**

(1) For purposes of ORS 459A.860 to 975 “proprietary information” is information protected as a trade secret under the Uniform Trade Secrets Act.

(2) A party providing information to the Department that it considers proprietary or otherwise confidential must, at the time it provides the information, specify that the information is proprietary or otherwise not subject to disclosure. The claim must be assigned to specific information and not a generalized statement.

(3) The department may require at any time that a claimant substantiate its claim that information is proprietary or confidential.

(4) Notwithstanding section 1 of this rule, the following information is not proprietary for purposes of ORS 459A.860 to 975:

(a) Information that is already publicly available and where any potential economic value is derived solely from compilation;

(b) The market shares of producer responsibility organizations;

(c) The list of the top 25 producers in Oregon by market share in alphabetical order, and

(d) The list of end markets of Oregon’s waste including the business or person name; city, state, region, and country; identity of the material received; and amount received, excluding the names of the commingled recycling processing facilities where the waste originated.

(5) If necessary for the implementation or enforcement of ORS 459A.860 to 975, DEQ may bring proprietary information to the attention of a producer responsibility organization, provided that the producer responsibility organization agrees to treat the information in accordance with the limitations in statute and rule.

(6) If a producer responsibility organization opens its own facility instead of contracting with an existing recycling depot or drop off center due to the exceedance of the price premium cap in [CITE RULE], the Department may request financial information from both the producer responsibility organization and the existing facility to verify that the cap exceeded. A producer responsibility organization must provide the information requested by the Department and may not prohibit, by nondisclosure agreement or other mechanism, the sharing of the requested information by the existing facility.

#### **OAR 340-090-0680**

##### **Program Calendar**

(1) The first three-year producer responsibility program plan period will include the 2025, 2026, and 2027 calendar years. It will run from July 1, 2025 (or earlier in 2025, if stipulated in approved program plan) to December 31, 2027

(2) Subsequent producer responsibility program plan periods will run for five-year increments beginning on January 1 and ending on December 31 (the first set of updated plans

will be valid from a start date of January 1, 2028 through to an end date of December 31, 2032).

(3) Prospective new producer responsibility organizations may submit program plans on the same calendar as renewal applicants (180 days before the end of a program period) and may also submit plans at other times (for example, midstream in a program period) upon petitioning the Department and receiving advance approval.

#### **OAR 340-090-0690**

##### **Process for producer responsibility organizations with less than 10% market share**

(1) If the Department determines that a producer responsibility organization's market share has fallen below the 10% threshold provided by ORS 459A.869(12), the department shall:

(a) Issue notification to the producer responsibility organization of the intent to revoke their plan;

(b) Begin a 60-day review process, during which the producer responsibility organization may describe any actions it will undertake to exceed the 10% threshold;

(c) After the conclusion of the 60-day review period, issue either an order revoking the producer responsibility organization's program plan or a notification that the plan will not be revoked; and

(2) If the Department revokes a plan under this rule the producer responsibility organization must notify its producer members. Producer responsibility organization members will have 60 days to transition to another producer responsibility organization.

(3) If the Department notifies a producer responsibility organization that a plan will not be revoked, pursuant to subsection 1(c) of this rule, the department may include any of the action described by the producer responsibility organization pursuant to subsection 1(b) of this rule as conditions on its decision not to revoke the plan.

(4) A decision to terminate a plan under this rule may be challenged under the procedures of ORS chapter 183 for contested cases.

#### **OAR 340-090-0700**

##### **Reporting for plastic goal**

To enable the Department to assess progress toward the statewide plastic recycling goal, a producer responsibility organization's annual reporting of the weight of plastic packaging and food serviceware sold in Oregon by member producers must use a product categorization that aligns with the uniform statewide collection list categorization of products, as required under ORS 459A.887(2)(c).

#### **OAR 340-090-0710**

##### **Program plan amendments and producer responsibility organization fees**

(1) A producer responsibility organization's routine, annual updating of base fee rate amounts to align with the most recent sales information received from member producers does not constitute a method change and will not require a program plan amendment.

(2) Changes to fee structure do constitute a method change and will require a program plan amendment.

(3) A producer responsibility organization may request provisional approval of a plan amendment if it needs to implement a fee structure method change rapidly due to financial urgency. If such a request is made, the Department will notify the producer responsibility organization within 30 days of its response. If provisional approval is granted, the producer responsibility organization may implement the fee schedule method change on a provisional basis while the process for final approval, pursuant to ORS 459A.878, is ongoing. If the plan amendment is ultimately not approved, the producer responsibility organization must correct its member accounts to reverse the provisional change.

#### **OAR 340-090-0720**

##### **Producer responsibility organization membership fees**

(1) A material is accepted by recycling collection programs in this state, for the purpose of ORS 459A.884(3), only if it is designated by rule on the Local Government Recycling Acceptance List , [pursuant to CITE rule] or the Producer Responsibility Organization Recycling Acceptance List [pursuant to CITE rule], or otherwise has been added to the Uniform Statewide Collection List by the mechanism provided for in ORS 459A.914(4)(b).

## **Transportation Costs Reimbursement**

**340-090-0730**

### **Local Government Compensation**

(1) A producer responsibility organization must pay the costs of transporting covered products from a recycling depot or recycling reload facility to a commingled recycling processing facility or a responsible end market as provided by ORS 459A.890(2) and this rule.

(2) Transportation costs must be based on the actual costs of managing and transporting covered products that must be shipped more than 50 miles.

(3) The 50-mile distance in section 2 and ORS 459A.890(2)(b)(E) is the shortest driving distance to the nearest commingled recycling processing facility or a responsible end market with capacity to accept the material and applies to covered products as stated in subsections (a) through (d) of this section.

(a) If the material is fully commingled, the distance measured is to the nearest commingled recycling processing facility with capacity to accept the material.

(b) If the material is collected separately (for example glass) or is not fully commingled and requires further sorting or processing before being received by a responsible end market, then the distance is measured to the nearest processing or sorting facility that will prepare the material and send it to a responsible end market.

(c) If the material is collected separately and in a condition that would allow it to be received directly by a responsible end market without additional processing, then the distance is measured to a responsible end market.

(d) If a separated material or a group of materials is initially taken to a commingled recycling processing facility or other processing facility and the material requires additional processing or sorting before it can be accepted by a responsible end market, then the distance is measured to the initial commingled recycling processing facility or other processing facility. The producer responsibility organization is not responsible for paying the transportation costs associated with the transport of material from the initial commingled recycling processing facility or other processing facility to additional processing facilities or a responsible end market.

(4) Costs to receive, consolidate, load and transport covered products include, but are not limited to, purchasing and maintaining equipment, signage, and other similar costs of operating the recycling depot or recycling reload facility not already covered under other sections of ORS 459A.860 through ORS 459A.975.

(5) Transportation costs include administrative costs related to the activities described in ORS 459A.890(2). Administrative costs include, but are not limited to, costs related to staffing and the hiring and managing of staff.

(6) Transportation costs do not include the proportion of a shipment of recyclable material that is not covered products, as provided by ORS 459A.890(2)(b)(C). Costs that are not eligible for payment under ORS 459A.890(2)(b)(C) will be determined as stated in subsections (a) through (c) of this section.

(a) Until completion of the study described in subsection (b) of this section, a producer responsibility organization will use data from the 2023 Oregon Solid Waste Characterization and Composition Study to determine the proportion of a shipment of recyclable material that is not covered products.

(b) Starting in 2027, and at least once every five years thereafter, a producer responsibility organization must fund a study to determine the proportion of collected recyclable material that is covered product and is eligible for transportation costs reimbursement. The study will include the following:

(A) The study will provide statewide averages for the proportion of covered material in commingled recyclable material, recyclable material that is collected separately and recyclable material that is not fully commingled. For the latter two categories the study may provide different averages for different materials as appropriate.

(B) Study protocols and timing must be included in the producer responsibility organization's program plan and will be approved as a part of plan approval under ORS 459A.878. If multiple producer responsibility organization program plans are approved by the Department, the producer responsibility organizations' coordinating body will undertake one study and submit a joint study protocol to the Department for approval in the manner provided by the Department.

(C) Upon completion of a study, a producer responsibility organization, or coordinating body, will use the statewide averages from the study to determine the proportion of a shipment of recyclable material that is not covered products.

(c) If a local government, a local government's service provider or a producer responsibility organization believes that the local commingled recycling stream has a substantially different proportion of recyclable material that is not covered products compared to the statewide average, then a local government, a local government's service provider or a producer responsibility organization may, at their own expense, conduct a study to better determine the proportion of recyclable material that is not covered products in the local collected commingled recycling stream. The party conducting the study will provide the other parties and the Department with at least 30 days to comment on study methods. The dispute resolution process in the producer responsibility organization's approved program plan shall apply to any dispute between the producer responsibility organization, or a coordinating body, and the local government or local government's service provider regarding a study performed under this subsection. Upon completion of the study and subject to dispute resolution and the Department concurrence, the averages determined in the study will be used by a producer responsibility organization, or a coordinating body, and the local government or local government's service provider that performed the study.

(7) Transportation costs include the cost to receive, consolidate, and load covered products. If a shipment of material contains both covered products and material that is not covered products, the cost a producer responsibility organization, or a coordinating body, must pay to receive, consolidate and load are the costs associated with the covered product. If such costs associated with the covered products cannot be separated from such costs associated with material that is not covered product and a producer responsibility organization and a local government or local government's service provider cannot otherwise agree on the payment of such costs, the producer responsibility organization, or coordinating body, will pay the total cost to receive, consolidate and load the material reduced by the estimated proportion of the material that is not covered product.

(8) For purposes of this rule, material that is not fully commingled if a load of recyclable material intended to be transported to a commingled recycling processing facility that contains some but not all of the material listed on the Uniform Statewide Collection List.

#### **OAR 340-090-0740**

##### **Method for Determining Payment of Transportation Costs**

(1) A producer responsibility organization must include in a program plan submitted under ORS 459A.875 methods for calculating transportation costs.

(a) Methods may include rate schedules or zonal maps specific to locations and materials, periodic adjustments for fuel prices or other variable factors.

(b) Methods must account for proximity to an appropriate commingled recycling processing facility or responsible end market that has capacity to process or recycle the material and other factors that could affect transportation costs.

(c) Methods must include a voluntary option that allows service providers to transfer some or all transportation responsibilities to the producer responsibility organization or coordinating body.

(d) A producer responsibility organization must attempt to coordinate with local governments and local government service providers to develop the proposed methods. A producer responsibility organization shall amend its proposal based on local government and service provider feedback.

(e) The Department will consider feedback from local governments and local government service providers on the method proposed by the producer responsibility organization in determining whether to approve the method as part of the producer responsibility plan under ORS 459A.878. The Department may require a producer responsibility organization to amend an approved program plan at any time if the Department determines that the approved methods are not adequate.

(f) A producer responsibility organization must implement the method for paying transportation costs approved as part of its program plan.

(2) A producer responsibility organization, or a coordinating body, a local government or designated local government's service provider and the Department may agree in writing to use an alternative method of calculating transportation costs that is not approved as part of the program plan, provided that the alternative method must comply with ORS 459A.890(2)(c) and any other applicable requirements.

#### **OAR 340-090-0750**

##### **Expansion of Service**

(1) The program plan must describe how the producer responsibility organization will implement the requirements of ORS 459A.890(5) and OAR 340-090-XXXX. The producer responsibility plan must include:

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

(b) For the initial program plan period only (July 2025 through December 2027), a plan for how the producer responsibility organization will implement expansion of collection services according to the following order of priority:

(A) Local governments that are not, or will not be, able to provide the opportunity to recycle as stated in ORS 459A.005 and ORS 459A.007.

(B) Existing recycling depots to provide for the collection of any materials that were formerly collected on-route by the local government or a local government's service provider, as needed to ensure continuation of recycling opportunities.

(C) Existing recycling depots to provide for the collection of any materials that are not currently or were not formerly collected on-route by the local government or a local government's service provider.

(D) Local governments with populations less than 4,000, according to the Portland State University Population Research Center's most recent Population Estimate Report, or such other estimate approved by the Department.

(E) Local governments of any size that are looking to add new on-route or recycling depot service.

(F) All other local governments that are looking to expand existing on-route collection, recycling depots or both, in order of ascending population.

(c) For program plan periods after the initial period described in paragraph (b), the Department may provide guidance to a producer responsibility organization, or coordinating body, for the inclusion of any priority for implementing the expansion of collection service in a renewed program plan.

(d) A method for determining advanced funding or reimbursement amounts under ORS 459A.890(5), consistent with OAR 340-090-XXXX

(e) The total amount of funds that will be made available to each local government included in the Department's needs assessment under ORS 459A.890(5) per year; and

(f) Sample forms with details to be included in reimbursement or advanced funding requests from local governments or a local government's service provider authorized by a local government to provide services under ORS 459A.890 and OAR 340-090-0760.

(2) A producer responsibility organization must submit an amendment to a producer responsibility program plan according to ORS 459A.881 when responding to a new needs assessment provided by the Department according to ORS 459A.890(8) and OAR 340-090-0760

### **OAR 340-090-0760**

#### **Expansion of Service Funding and Needs Assessment**

(1) Costs associated with the expansion and provision of recycling collection service for covered products, as provided by ORS 459A.890(5), (6) and (7), and OAR 340-090-XXXX, are eligible costs for funding or reimbursement by a producer responsibility organization.

(a) A producer responsibility organization must provide funding for activities requested by local governments through the periodic needs assessment including, but not limited to:

(A) Adding new services,

(B) Expanding services, or

(C) Adding or expanding recycling depots as needed to provide convenient recycling opportunities.

(b) A producer responsibility organization, or coordinating body, will not provide funding for expansion that is inconsistent with the terms of expansion between the producer responsibility organization, or coordinating body, and the local government or a local government's service provider that are finalized pursuant to OAR 340-090-XXXX, including but not limited to:

(A) New or expanded services or facilities,

(B) New equipment, or

(C) New staff (at recycling depots and recycling reload facilities only).

(c) Eligible costs under ORS 459A.890(5) and OAR 340-090-XXXX(S), including but not limited to:

(A) Start-up costs for on-route programs including but not limited to:

(i) Trucks,

(ii) Collection containers, roll carts, or both,

- (iii) On-board contamination monitoring equipment and software,
- (iv) New program promotional literature,
- (v) The process of hiring and training staff,
- (vi) Staff safety equipment, and
- (vii) recycling reload facilities for reloading recyclables, including but not limited to any equipment necessary for moving, compacting, baling and loading recyclables for shipment for the recycling reload facility, provided that the facility is necessary, and no other facility is available or existing facilities are inadequate.

(B) Start-up and operational costs for recycling depots, including but not limited to:

- (i) Land acquisition,
- (ii) Site preparation or other start-up costs,
- (iii) Collection containers,
- (iv) Signage,
- (v) On-site monitoring equipment,
- (vi) Equipment to move, compact, bale and load recyclables for shipment,
- (vii) Hiring and training staff,
- (viii) Staff safety equipment, and
- (ix) Operational costs,

(2) The Department must conduct statewide needs assessments periodically in accordance with ORS 459A.890(8)(a) and OAR 340-090-XXXX.

(a) Local governments that request services through the periodic needs assessment will commit to providing additional services with an agreement with the producer responsibility organization, or coordinating body, after working with the producer responsibility organization, or coordinating body, to determine the details to be implemented according to 459A.890 (5)(b).

(b) The initial expansion of service commitments will be implemented by the producer responsibility organization during the first approved producer responsibility program plan.

(c) The Department may conduct up to two local government needs assessments for the producer responsibility organization, or coordinating body, to respond to for each subsequent program plan according to ORS 459A.875, OAR 340-090-XXXX- and OAR-340-XXX-XXXX.

(d) For expansion that is to occur at the beginning of a subsequent program plan, the Department will submit information from a local government needs assessment conducted as part of OAR 340-090-XXXX(3), 18 months before the current program plan is due to expire.

(e) For expansion that is to occur mid-program plan, the Department may submit information from a local government needs assessment at least four years before the current program plan is due to expire.

(f) When the Department sends a local government needs assessment report to a producer responsibility organization, or coordinating body, within four years of the current program plan expiration, the producer responsibility organization, or coordinating body, must submit a program plan amendment to the Department to address the service expansion interest from the needs assessment within 180 days.

(3) A local government or local government's service provider authorized by a local government to provide services, may request reimbursement under ORS 459A.890 and OAR 340-090-XXXX and must submit an accounting of its costs to a producer responsibility organization, or coordinating body, as detailed in an approved producer responsibility organization plan.

(a) A local government or a local government's service provider authorized by a local government to provide services which is requesting reimbursement under ORS 459A.890 may not submit a reimbursement invoice to a producer responsibility organization, or coordinating body, more than once per month.

(b) A local government's service provider authorized by the local government to provide services may submit an invoice jointly on behalf of other local governments. The local government service provider submitting the joint invoice must list all jurisdictions represented and provide documentation from each jurisdiction that approves of the reimbursement request or otherwise authorizes them to seek funding on their behalf.

(c) A local government or a local government's service provider authorized by the local government to provide services must return unused funding to the producer responsibility organization.

(A) Upon completion of a request for expansion of service, any unused advanced funding provided by a producer responsibility organization, or coordinating body, to a local government or local government's service provider, for the purposes of funding that expansion request, must be returned to the producer responsibility organization, or coordinating body, within 60 days of completion of the expansion request. An invoice detailing how the local government or local government's service provider used the advanced funding must also be provided.

(B) Upon request of the Department, a local government or a local government's service provider will demonstrate to the Department's satisfaction that the funding a local government or a local government's service provider received was used for its intended purpose.

(4) A local government must identify to the Department service providers that are authorized to receive advanced funding or reimbursement directly, as described in this rule, from the producer responsibility organization, or coordinating body, via a process to be determined by the Department. If for any reason a service provider to the local government was to change, the local government would be responsible for informing the Department of that change.

(5) A local government and service providers authorized by a local government to provide services, that has received funds for expansion or improvements to recycling collection under ORS 459A.890 and this rule must report to the producer responsibility organization, or coordinating body, when the expansion or improvements have been fully implemented. A local government or a local government's service provider authorized by a local government to provide services must also report the status of implementation to the producer responsibility organization, or coordinating body, on an annual basis for any funded collection program that has not been fully implemented, so that the producer responsibility organization, or coordinating body, may include that information in the annual report required under ORS 459A.887.

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