

Rulemaking Advisory Committee Meeting #5

Plastic Pollution and Recycling Modernization Act

March 10, 2023
Zoom Webinar

Agenda

Time	Topic
9 a.m.	Welcome, Overview of Today's Meeting
9:10 a.m.	Introductions
9:20 a.m.	Rulemaking recap and process updates
10 a.m.	Draft proposal for Implementation Transition Period (2025-2027)
10:30 a.m.	BREAK
10:40 a.m.	Rule Concepts: Confidentiality, Covered Product Estimates and Entry of New PROs
11:15 a.m.	Preview of Cascadia Report
11:30 a.m.	Responsible end markets: Practicability benchmark and response to input
12 p.m.	LUNCH
12:30 p.m.	Public input period
1 p.m.	Overview and Discussion- Specific materials from the materials list
1:50 p.m.	Meeting wrap-up, next steps, adjourn meeting at 2:00pm

Note- times subject to change and topics may begin earlier than listed

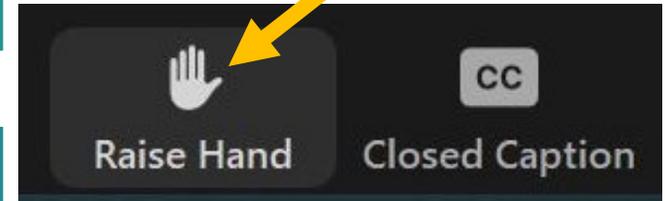
Webinar Tips

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 email stephanie.caldera@deq.oregon.gov or text 971-279-9517



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
- Move around and take care of yourself as needed
- Comment constructively with a focus on rule content

Introductions - DEQ Staff



Cheryl Grabham, Program Manager, Materials Management Product Stewardship Team



Stephanie Caldera, Policy Analyst



Roxann Nayar, Recycling Program Analyst



Arianne Sperry, Implementation Lead



Nicole Portley, PRO Program Plan Lead

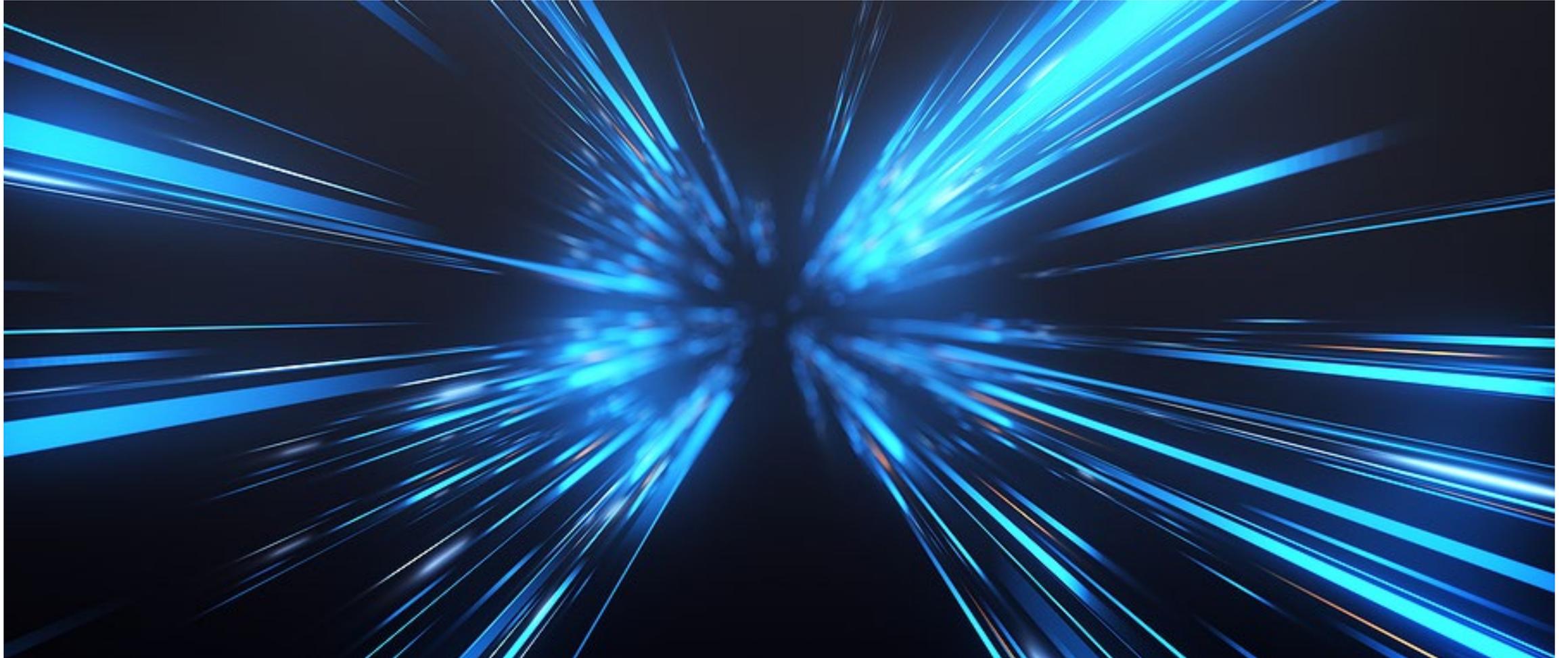


David Allaway, Senior Policy Analyst

Input and Engagement

- RAC input is welcome throughout the process and during formal comment period
- DEQ will clarify and provide information when possible
- The 10-day input period will close on **March 24, 2023**
- Comments and questions received are being considered during rule development
- Thank you for offering solutions and constructive comments

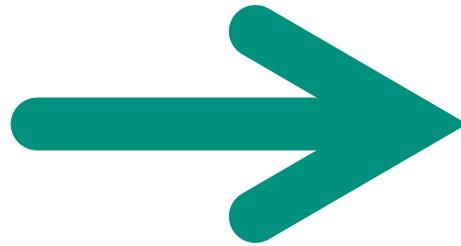
RMA Recap



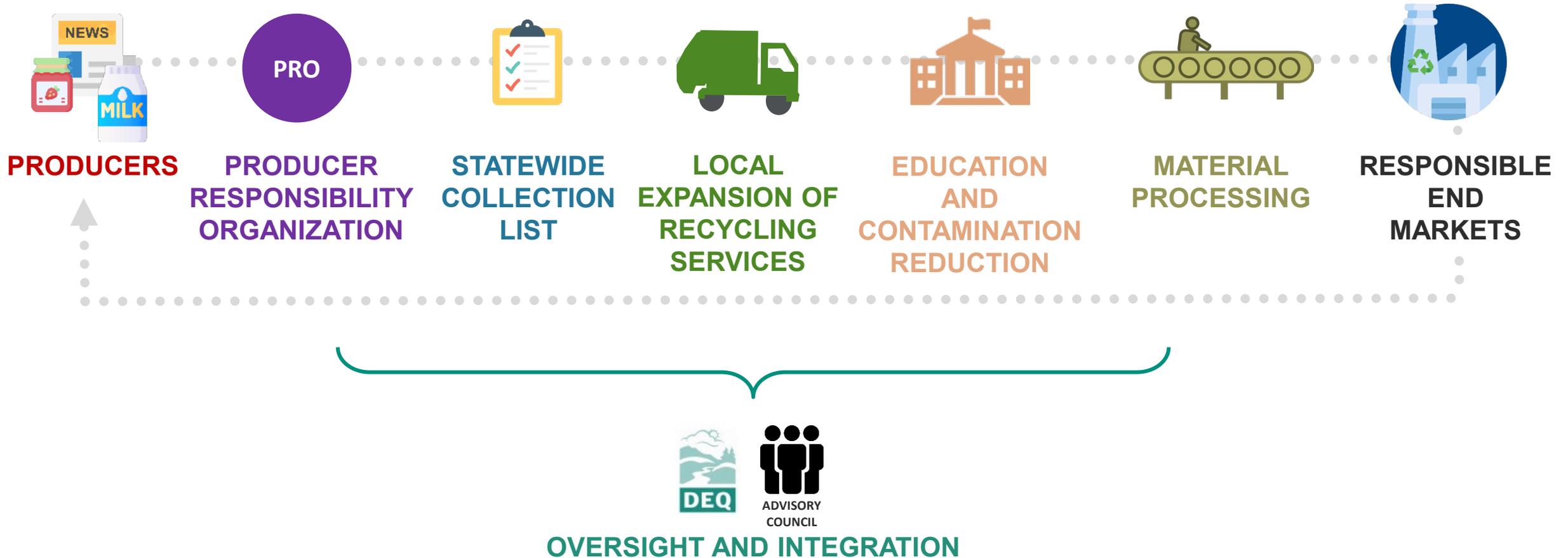
Modernizing Oregon's recycling system



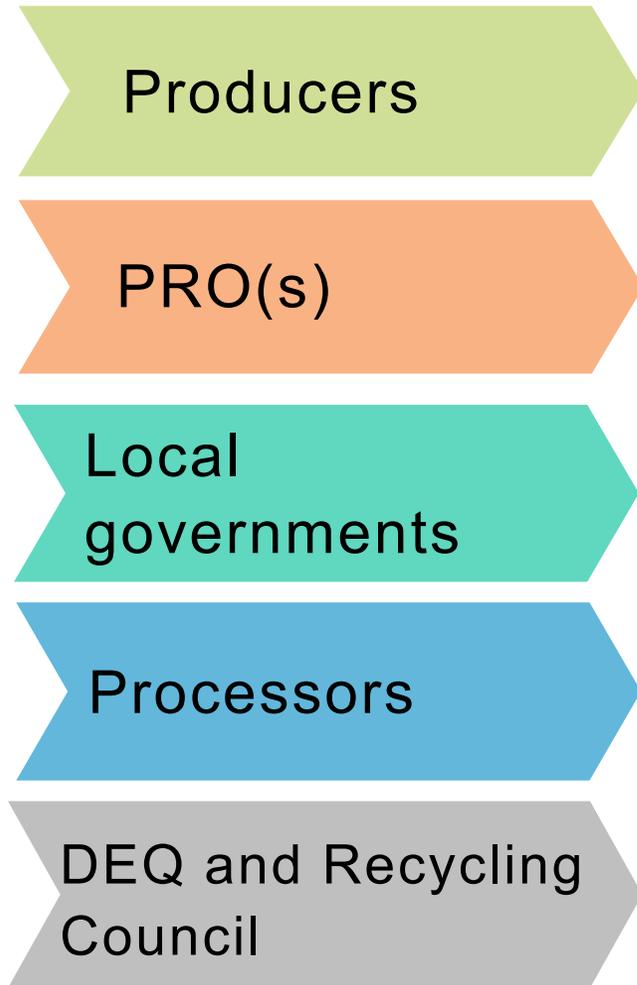
Challenges and Solutions



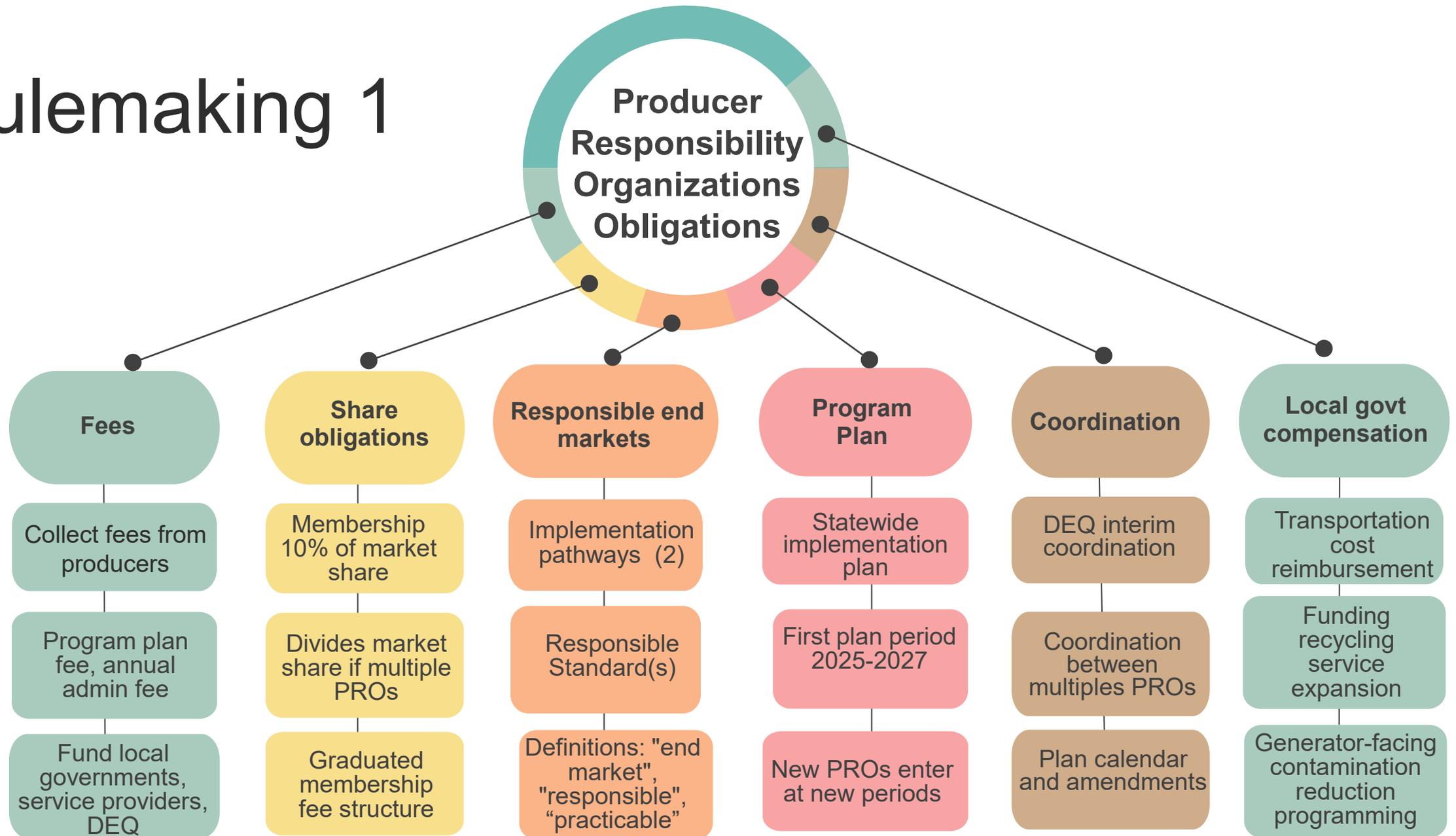
How it will work



Key Obligations- rulemaking 1



Rulemaking 1

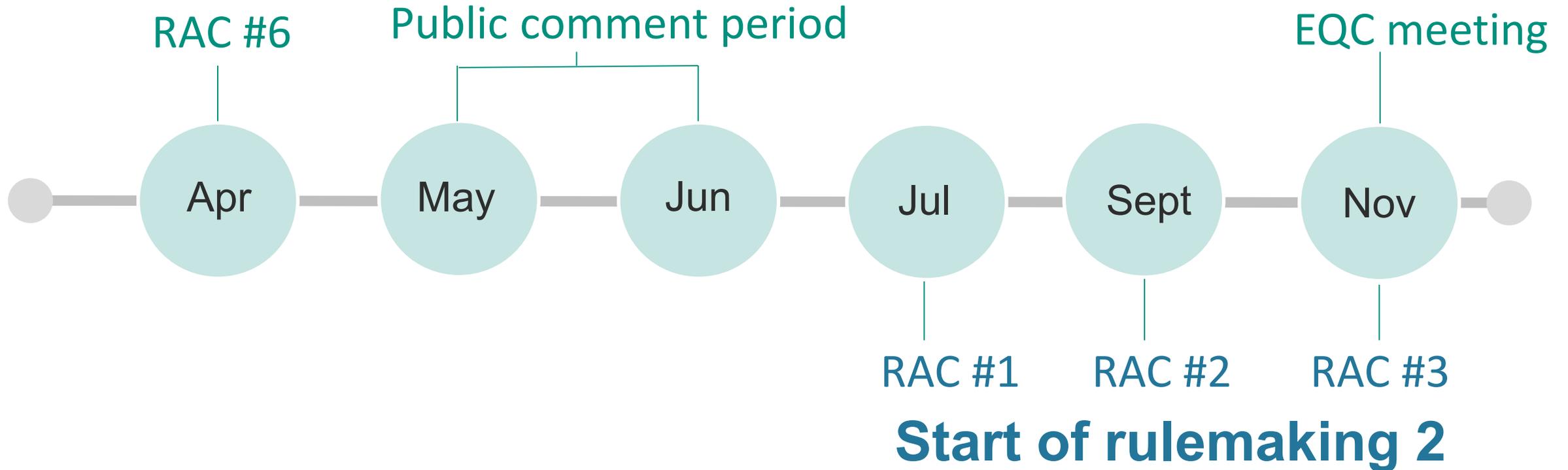


Rulemaking 1



Rulemaking Timeline

Rulemaking 1



2023-24 Rulemaking

- Equity
- Local government topics
- Waste prevention and reuse
- Covered product exemptions
- Processor permits and fees
- Environmental impact evaluation and disclosures
- Draft rules, fiscal impact and racial equity statements



Draft proposal: RMA implementation transition period



February 2023

State of Oregon
DEQ Department of Environmental Quality

DRAFT proposal for discussion: RMA Implementation Transition Period

A system of shared responsibility relies on coordination.

The Plastic Pollution and Recycling Modernization Act (RMA) will modernize Oregon's recycling system through the coordinated effort of many entities throughout the state. One of the most important changes is welcoming producers of printed packaging, and food serveware to the table. In the new system:

- Producers of covered products will join producer responsibility organizations, or PROs. PROs will provide financial support to local governments, service providers, and commingled recycling processing facilities and work together to expand and improve recycling services.

Commingled recycling processing facilities will be permitted and required to ensure that sorted materials only go to responsible end markets for final disposition. DEQ, in consultation with the new Recycling Council, will play an oversight, administration, and enforcement role.

Successful coordination takes time.

The success of the RMA is dependent on everyone playing their part. In many cases, the ability of one entity to meet its regulatory requirements is dependent upon the actions of other players in the system. For example, local governments and commingled recycling processing facilities will rely on PRO funding to fulfill their obligations.

DEQ recognizes it takes time to build a new system. It takes time to establish partnerships, plant seeds of change, and for those investments to yield results. It takes time to order and install equipment, to change collection services, and conduct effective outreach to the public. Therefore, DEQ is proposing a period of transition during the first few years of RMA implementation, to ensure changes can take place in the proper sequence and to allow for adaptation to new requirements.

Why is DEQ exploring a transition period?

- Change takes time
- RMA relies on coordination of many partners
- Actions of some depend upon actions of others
- Allows time for proper sequencing

By July 1, 2025 (no change)

Producers will:

- Join a Producer Responsibility Organization (PRO)
- Report data on covered products sold in Oregon
- Pay fees to the PRO

By July 1, 2025 (no change)

PROs will:

- Implement program plans
- Develop promotional resources for Uniform Statewide Collection List (USCL)
- Establish collection points for PRO materials
- Prepare to verify end markets are “responsible”

By July 1, 2025 (no change)

Local governments and service providers will:

- Be eligible to receive funding from PROs
- Send commingled recycling to permitted facilities
- Begin PRO-funded contamination reduction programming

By July 1, 2025 (no change)

Commingled Recycling Processing Facilities will:

- Accept materials on Uniform Statewide Collection List
- Be eligible for PRO funding through contamination management and processor commodity risk fees
- Meet permit requirements

Potential changes during transition period

PROs

- May meet depot convenience standards over time (TBD in program plan)

Local governments and service providers

- May phase in program requirements dependent on PRO funding

Commingled Recycling Processing Facilities

- Some permitting standards will ramp up over time (TBD in second rulemaking)

Discussion: Transition Period Proposal

- How might this proposal affect your organization and communities?
- What are potential opportunities and consequences of this approach?
- What's missing from the proposal?
- What questions still need to be answered?

Break



Rule Concept: Confidentiality



State of Oregon Department of Environmental Quality

Rule Concept: Confidentiality

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

Rulemaking Advisory Committee Meeting 5 of 6, Rulemaking 1

Background

This memo provides background information and proposes two rule concepts regarding confidentiality and the disclosure of financial information.

The Plastic Pollution and Recycling Modernization Act (“Act”) contains five subsections that use the word “proprietary” to refer to information that may be designated confidential and not subject to public disclosure. Those subsections use consistent language as follows:

“Proprietary information furnished to the department relating to [particular subsections] may be designated confidential. Information designated confidential is not subject to public disclosure under ORS 192.311 to 192.478, except that the department may disclose summarized information or aggregated data if the information or data do not directly or indirectly identify the proprietary information of [a/any] specific [person/facility/processor].”

These excerpts are in the following citations:

Defining “proprietary information”

“**Proprietary information** furnished to the department relating to [particular subsections] may be designated confidential. Information designated confidential is not subject to public disclosure under ORS 192.311 to 192.478, except that the department may disclose summarized information or aggregated data if the information or data do not directly or indirectly identify the proprietary information of [a/any] specific [person/facility/processor].”



Defining “proprietary information”

Types of information that it applies to:

1. **Commingled Recycling Processing Facility (CRPF) info for:**

- Contamination management fee and processor commodity risk fee
- Equity assessment (info on worker conditions, wages, and benefits)
- Compliance with the responsible end market obligation (disposition reporting)

2. **PRO info for:**

- Market share
- General accounting and reimbursement

3. Info from any party furnished to the department upon request regarding control of collected materials and obligations under ORS 459A.860 to 459A.975

Defining “proprietary information”

- Proposed definition in rule for “proprietary information”: “trade secret” under the Oregon Uniform Trade Secrets Act (UTSA)
- “Trade secret” is defined as follows in ORS 646.461(4):

“Information, including a drawing, cost data, customer list, formula, pattern, compilation, program, device, method, technique or process that: (a) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.”

Proprietary information: Additional aspects

- How to claim information as “proprietary” or “confidential”
- Substantiation of claims required upon request from DEQ
- List of info not considered proprietary
- Sharing proprietary information with a PRO



Disclosure of financial information

- Disclosure of financial information to allow enforcement of the price premium cap



Rule Concept: Covered Product Estimates



State of Oregon Department of Environmental Quality
Rule Concept: Covered Product Estimates

Plastic Pollution and Recycling Modernization Act (SB 582, 2021)
Rulemaking Advisory Committee Meeting 5 of 6, Rulemaking 1

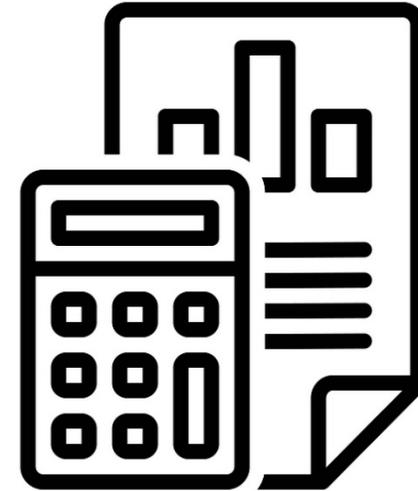
Background

This memo provides background information and proposes a rule concept allowing a producer to submit estimates rather than actual data for calculating market share.

The Plastic Pollution and Recycling Modernization Act requires each Producer Responsibility Organization to report to DEQ a confidential addendum containing information that can be used to calculate the market share of individual members (see ORS 459A.887(3)). Per the rule concept [Market Share and Modified Market Share](#) discussed at the Sept. 28, 2022 Rulemaking Advisory Committee meeting, each PRO will provide the amounts of covered product, organized by material, sold or distributed by each of its members in or into Oregon in a given year. This information, covering the previous calendar year, must be submitted in the PRO's annual report to DEQ by July 1. These data will be used internally by a PRO to set its membership fees.

Covered Product Estimates

- Estimates can be used in absence of real data, but must be accompanied by methodological justifications
- If real data is available later it must be provided
- Incentivize the use of real data



Rule Concept: Entry of New PROs



State of Oregon Department of Environmental Quality

Rule Concept: Entry of a New PRO

Plastic Pollution and Recycling Modernization Act (SB 582, 2021)
Rulemaking Advisory Committee Meeting 5 of 6, Rulemaking 1

Background

This memo provides background information and proposes a rule concept regarding the timeline for a new Producer Responsibility Organization entering the system.

The Plastic Pollution and Recycling Modernization Act (“Act”) includes statutory language directing the date to begin implementing the first set of approved PRO program plans. It also defines the duration of the first PRO program plan and subsequent, updated PRO program plans. The relevant citations for these items were included with the rule concept on [PRO Program Plan Timelines](#) that was presented to the RAC on Sept. 28, 2022 and set a standard calendar for PRO program plan periods.

The statutory citations and rule concept do not specify when a new PRO can apply to enter the system. Oregon allows multiple PROs to foster competition. However, a rule allowing a prospective new PRO to submit a program plan at any time could prompt excess changes to the PRO coordination plan and disrupt efficiency. Yet a rule limiting the entry of new PROs to the start of each five-year program period could leave producers without more PRO options for extended periods of time.

Entry of New PROs

Existing rule concept clarifying program plan periods:

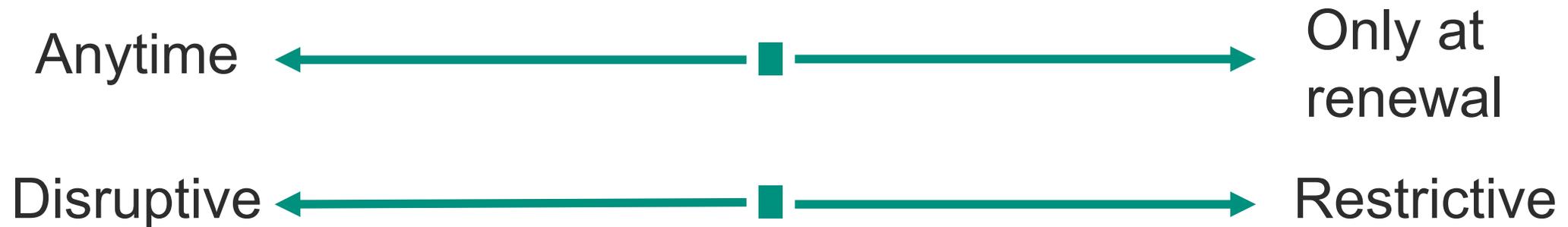
Initial Program Plan	Year 1	Year 2	Year 3
	2025	Jan. 1, 2026-Dec. 31, 2026	Jan. 1, 2027- Dec. 31, 2027

Second Program Plan (due Jul. 4, 2027)	Year 4	Year 5	Year 6	Year 7	Year 8
	Jan. 1, 2028 - Dec. 31, 2028	Jan. 1, 2029 - Dec. 31, 2029	Jan. 1, 2030 - Dec. 31, 2030	Jan. 1, 2031- Dec. 31, 2031	Jan. 1, 2032 – Dec. 31, 2032

- *Must submit updated plan 180 days before approval expires*

Entry of New PROs

When can a new PRO enter?



Balanced option: generally at renewals but possibly at other times with department approval

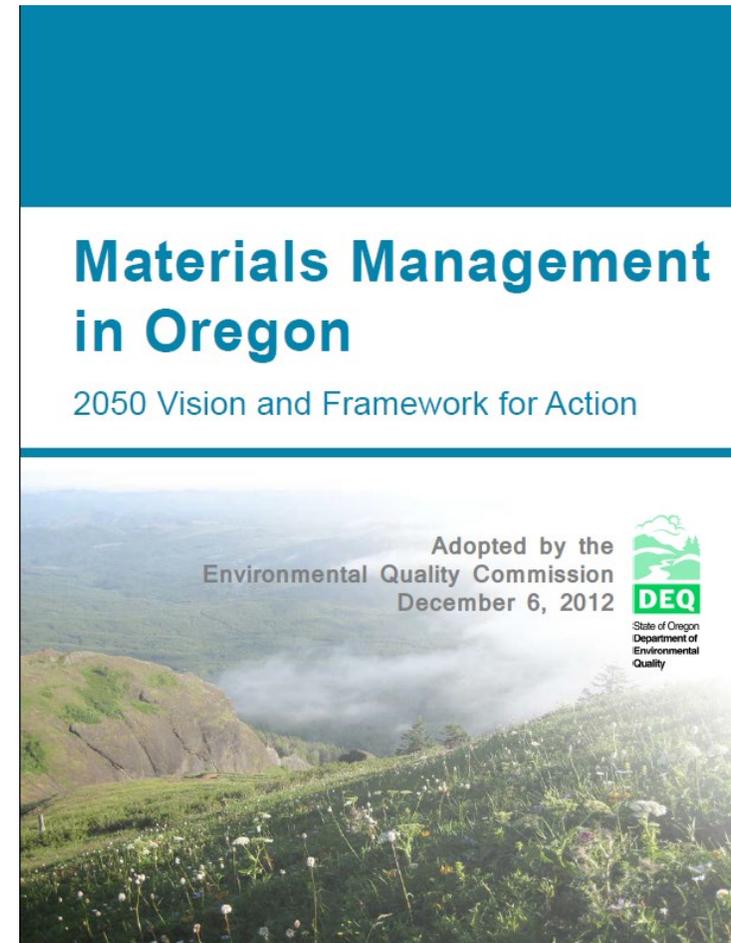
Preview: Scenario Modeling (Economics) Report

Recycling acceptance list evaluation criteria (ORS 459A.914):

- Stability, maturity, accessibility and viability of responsible end markets;
- Environmental health and safety considerations;
- **Anticipated yield loss;**
- Compatibility with existing recycling infrastructure;
- Amount of material available;
- Practicalities of sorting and storing the material;
- Contamination;
- Ability for waste generators to easily identify and properly prepare the material;
- **Economic factors;**
- **Environmental factors from a life cycle perspective; and**
- The policy expressed in ORS 459.015(2)(a) to (c).

Economic “Costs”

- “Direct” costs = spending (on labor, fuel, capital, etc.) by solid waste collectors, depot operators, MRFs, landfills, etc.
- “Indirect” costs = a monetary estimate of the cost to society of the environmental impacts of material flows
- “Net” costs = Direct + Indirect costs



Study Design

- Estimate direct, indirect and net costs for a variety of scenarios
- Compare scenarios to inform rule concepts, fiscal impact assessment, etc.

- Project team:    



A few results

- “In-scope” garbage and recycling services have direct costs of ~\$1 billion/year.
- Future recycling scenarios (evaluated in the report) would increase those direct costs by 1 to 6 percent.
- On-route commingled collection is more cost-effective than depots . . . for most materials

More results

As commingled lists grow in length and complexity . . .

- Direct costs (net of garbage) increase due to higher processing requirements
- Indirect costs decrease (benefits increase) due to more recycling
- Initially, adding more materials is cost effective (marginal benefits > marginal costs)
- Beyond a certain point, direct costs increase more sharply and benefits grow more slowly

Responsible end markets

List of rule concepts:

1. “End market” material-specific definition
2. 4-prong standard for “responsible”
3. Implementation pathways
4. Reporting and auditing requirements
5. Definition of “practicable” and pathways for proving ‘impracticability’

Items to be revisited today:

- Proposal for alternative definition
- Comments on yield from RAC 4
- Practicability benchmark

Practicability: cost/benefit benchmark

Certain 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

Practicability: cost/benefit benchmark

Comparing Cascadia Scenario 24 (similar to current rule concept) against Cascadia Scenario 25 (“zero recycling”):

- **Direct costs** of future scenario (24) are ~\$105 million/year higher
- **Indirect costs** of future scenario (24) are ~\$1,147 million/year lower
- Scenario 24 involves ~493,300 tons of **materials properly marketed**

Proposed cost/benefit (“practicability”) benchmark is \$2,111/ton (2021\$)

Defining “end market”

“Responsible End Market” Definition (ORS 459A.863(29)):

“a materials market in which the recycling or recovery of materials or the disposal of contaminants is conducted in a way that **benefits the environment** and minimizes **risks to public health and worker health and safety.**”

Also: legislative intent to restore public confidence in recycling

Defining “end market”



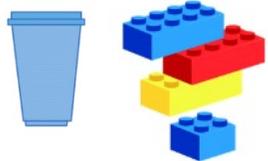
- **Glass:** first users of the glass in lieu of a virgin material e.g. bottle, fiberglass, pozzolan producer



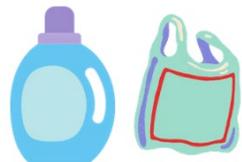
- **Metal:** smelters that produce ingots, sheet, coil, etc.



- **Paper:** facilities that repulp recycled materials



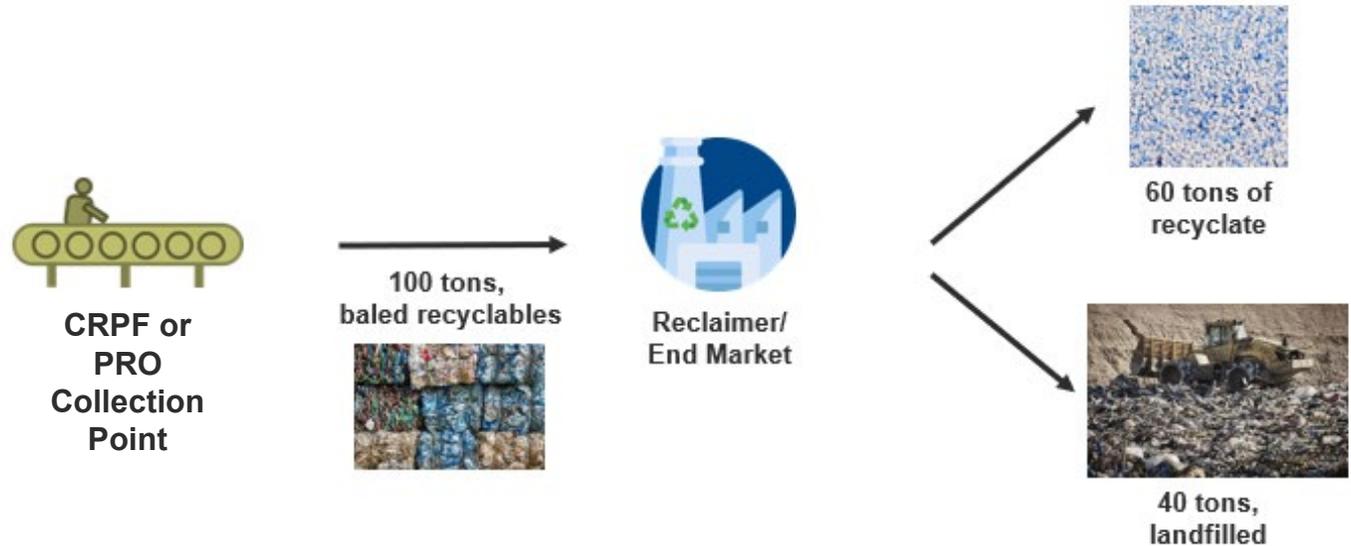
- **Plastic for food and beverage packaging and children's products:** users of flake or pellet to make a new product



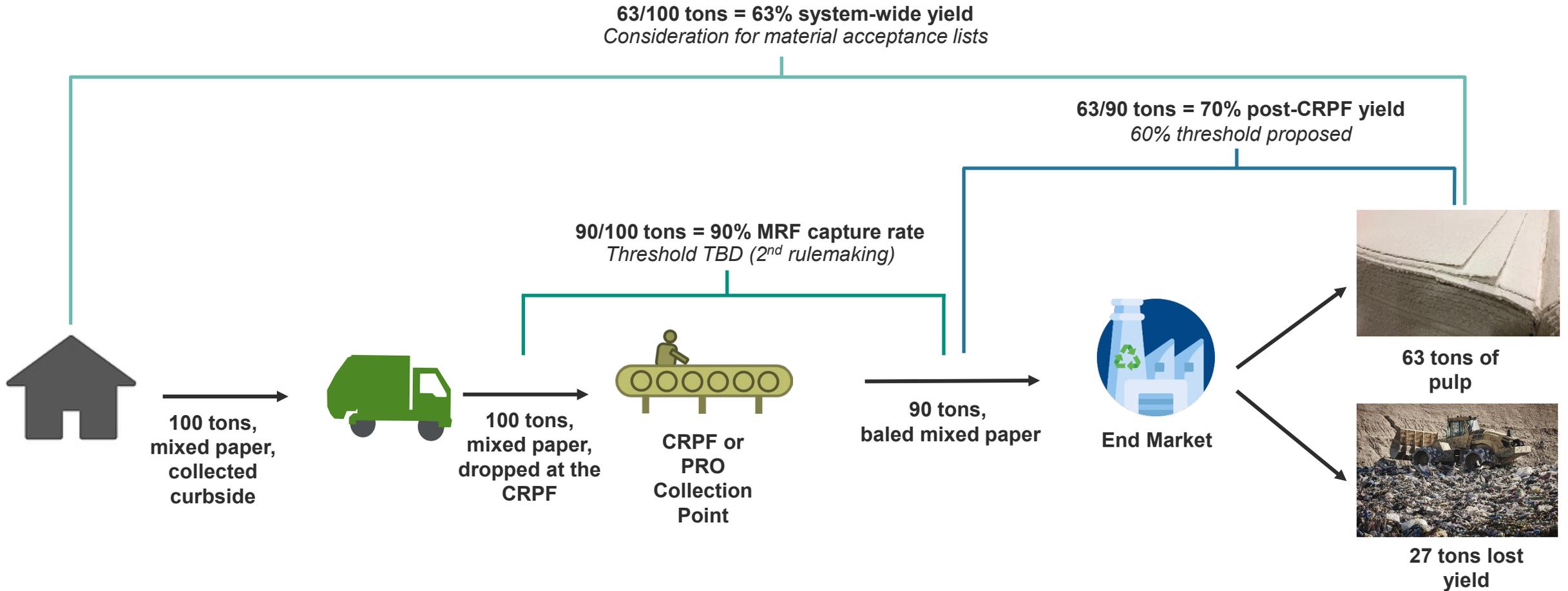
- **Plastic for all other applications:** last handlers of flake or pellet before it is sold to a producer.

60% Yield Threshold: Feedback Received

- 60% is too low
- Can this be measured?
- Why are paper cans treated differently?



Differentiating Types of Yield



Yield Threshold: Two options for RAC feedback

60% threshold for the material

Pros	Cons
Simpler rule	Low number could be misunderstood (i.e., “Only 60% of material actually gets recycled in Oregon?!”)
Simpler verification	
	Asterisk rule needed for multi-materials

80% threshold for the recoverable fraction

Pros	Cons
Higher floor = less potential for misunderstanding	More complicated rule (need to define recoverable fractions)
Better targeted toward recycler responsibility	More complicated verification (requires estimation of the recoverable fraction of a material in a bale)
No asterisk rule needed for multi-materials	

Lunch break



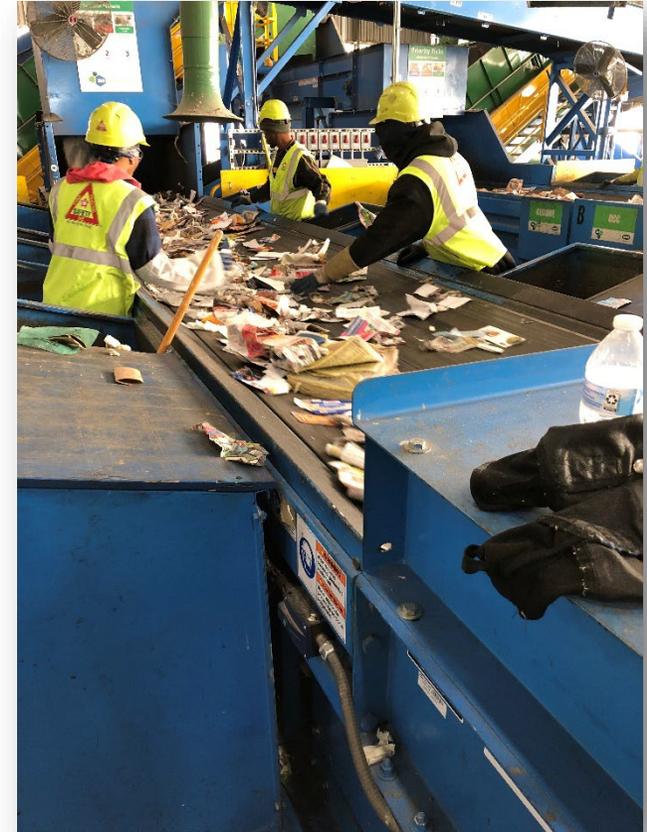
Public input period



Materials acceptance lists

Two sets of topics for today's meeting:

- Small-format packaging
- Seven other materials identified by ORRA



Pic courtesy of Justin Gast

Small-format plastics

Rule concept

- Plastic bottles and tubs of certain resins 6 ounces in volume or larger

Alternative one

- Use Association of Plastics Recyclers Design Guide

Alternative two

- Maintain volume threshold, but switch to 4 ounces vs. 6



Seven additional materials



1. Paper cans with metal ends



2. Polycoated gable-top cartons, aseptic cartons, and polycoated paper cups



3. Nursery plant packaging (#2 and #5)



4. Clear plastic cups made of PET or PP

5. Plastic buckets, pails, storage containers



6. Steel and aluminum aerosol packaging



7. Single-use liquid fuel canisters and other pressurized cylinders

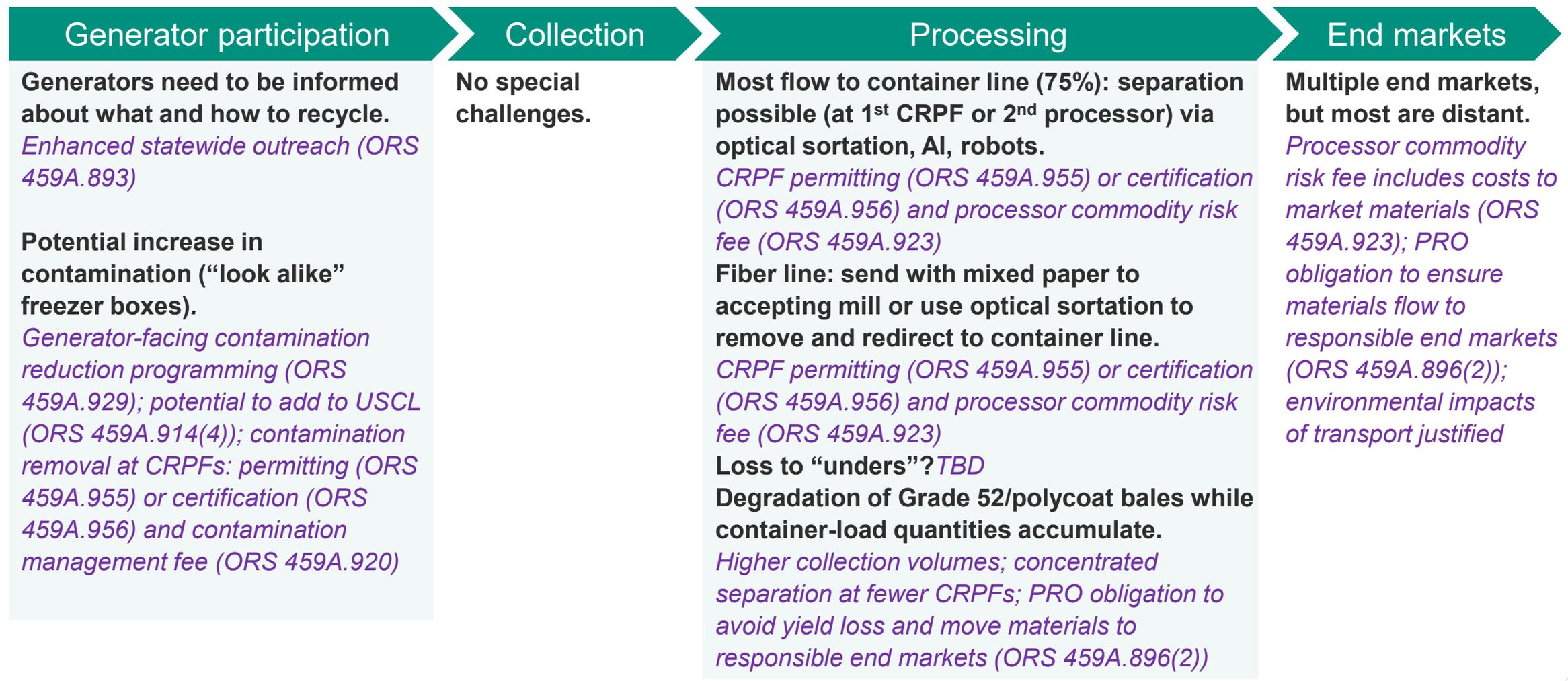


Polycoated, aseptic cartons, polycoated paper cups

Currently accepted in some areas (cartons only)

Recommended for USCL

Challenges - Solutions

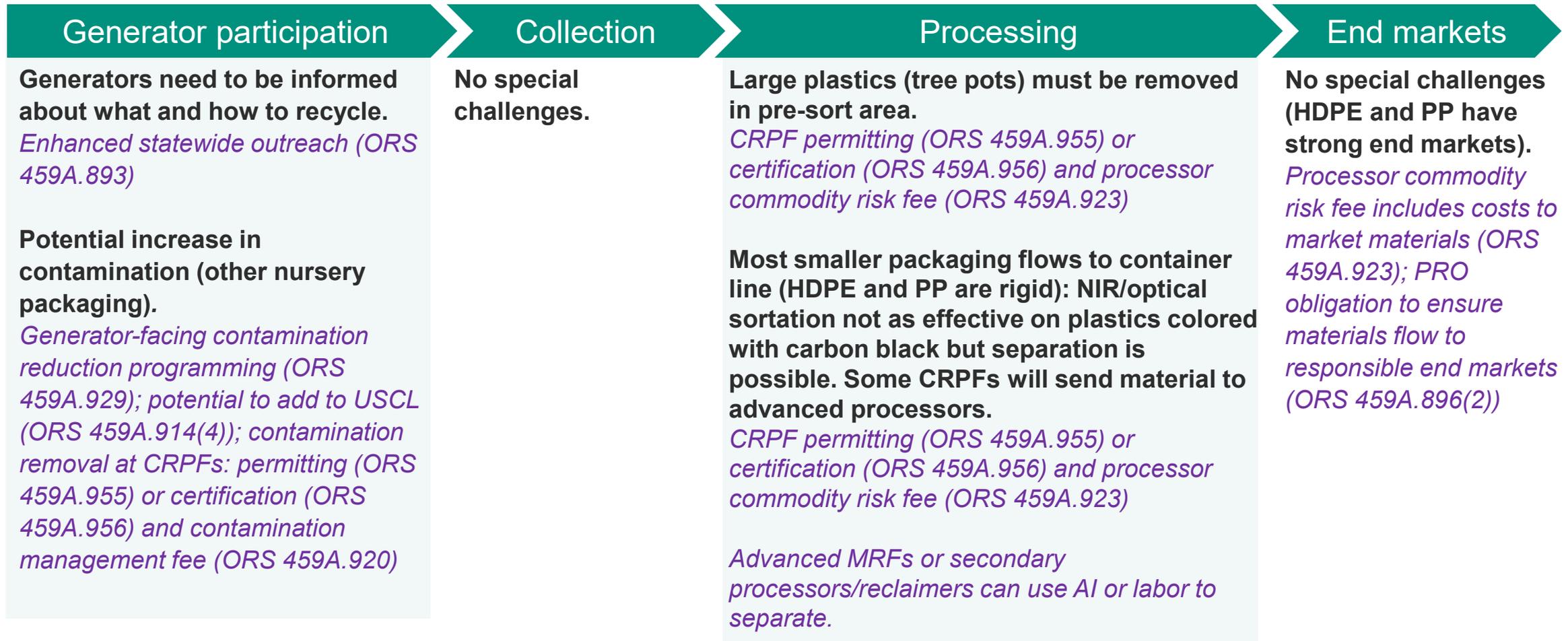


Nursery packaging (pots, trays) made of HDPE or PP

Currently accepted in some areas (all resins)

Recommended for USCL

Challenges - Solutions



Clear plastic cups made of PET or PP

Not currently accepted in Oregon

Recommended for USCL

Challenges - Solutions

Generator participation

Generators need to be informed about what and how to recycle.

Enhanced statewide outreach (ORS 459A.893)

Potential increase in contamination (liquids, other resins, other food serviceware).

Generator-facing contamination reduction programming (ORS 459A.929); potential to add to USCL (ORS 459A.914(4)); contamination removal at CRPFs: permitting (ORS 459A.955) or certification (ORS 459A.956) and contamination management fee (ORS 459A.920)

Collection

No special challenges.

Processing

Sort similar to PET or PP bottles
Most flow to container line: separation possible (at first CRPF or secondary processor) via optical sortation, AI, robots.

MRF permitting (ORS 459A.955) or certification (ORS 459A.956) and processor commodity risk fee (ORS 459A.923)

Fiber line: CRPFs will use optical sortation to remove and redirect to container line.

CRPF permitting (ORS 459A.955) or certification and processor commodity risk fee (ORS 459A.923)

Loss to “unders”?

TBD

End markets

PET thermoforms: include in PET bottle bales (lower volumes) or separate and direct to PET thermoform reclaimers (limited labels/adhesives), forcing investments in “responsible end markets”

Processor commodity risk fee includes costs to market materials (ORS 459A.923); PRO obligation to ensure materials flow to responsible end markets (ORS 459A.896(2))

Plastic buckets, pails, storage containers, etc. (HDPE and PP)

Currently accepted in some areas (buckets/pails only)

Recommended for USCL
PRO Collection Points

Challenges - Solutions

Generator participation

Generators need to be informed about what and how to recycle.

Enhanced statewide outreach (ORS 459A.893)

Potential increase in contamination

Generator-facing contamination reduction programming (ORS 459A.929); potential to add to USCL (ORS 459A.914(4)); contamination removal at CRPFs: permitting (ORS 459A.955) or certification and contamination management fee (ORS 459A.920)

Collection

Large containers may jam carts, older trucks.

Allow local programs to set size limits; supplement with PRO depot collections (ORS 459A.896(1)); PRO compensation for carts/trucks if needed to expand acceptance (ORS 459A.890(5))

Processing

Must be removed in pre-sort area.

CRPF permitting (ORS 459A.955) or certification (ORS 459A.956) and processor commodity risk fee (ORS 459A.923)

End markets

Limited but multiple end markets, some expense to bale and transport.

Processor commodity risk fee includes costs to market materials (ORS 459A.923); PRO obligation to ensure materials flow to responsible end markets (ORS 459A.896(2))

Steel and aluminum aerosol packaging

Currently accepted in some areas (on-route)

Recommended for PRO collection points

Challenges - Solutions

Generator participation

Generators need to be informed about what and how to recycle.

Enhanced statewide outreach (ORS 459A.893)

Depots are less convenient than on-route collection.

Potential to add to USCL (ORS 459A.914(4)); provide for modest depot convenience standards (ORS 459A.914(7))

Collection

Acceptance from non-RCRA exempt generators.

Staffed collection provides for screening (performance standards)

Potential for release of contents if not handled/stored appropriately.

DEQ proposed performance standards for PRO Recycling Acceptance List

Processing

Potential release of contents in a CRPF.

Avoid USCL (for now)

Potential release of contents during puncturing.

DEQ proposed performance standards for PRO Recycling Acceptance List, requirement to “overmanage” to universal waste standards

End markets

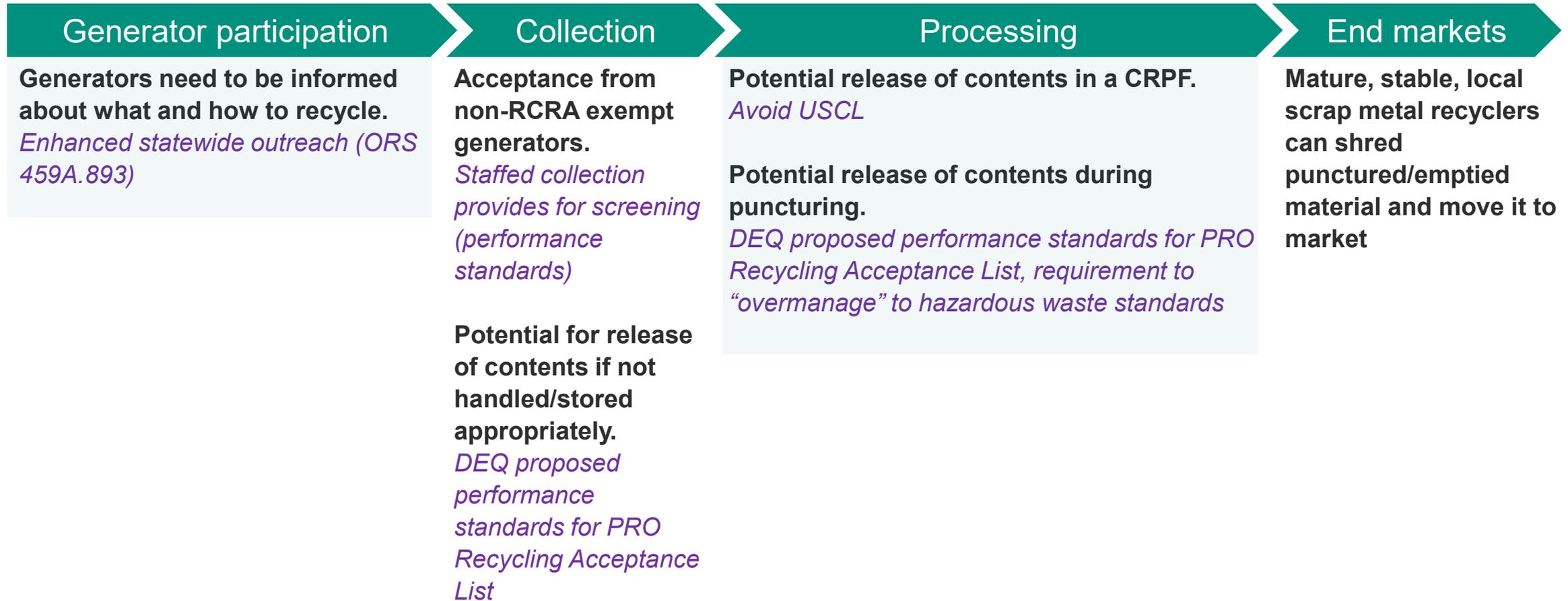
Mature, stable, local scrap metal recyclers can shred punctured/emptied material and move it to market.

Pressurized cylinders

Currently accepted in some HHW programs

Recommended for PRO collection points

Challenges - Solutions



Thank you!

- April 11, 2023 - RAC meeting # 6
 - Fiscal impacts and racial equity statements
 - (Some) draft rules preview
- Input period closes March 24, 2023
- Email input: recycling.2023@deq.oregon.gov
- Rulemaking webpage and GovDelivery sign-up: oregon.gov/deq/rulemaking/Pages/Recycling2023.aspx

Non-discrimination and Translation

Translation or other formats

[Español](#) | [한국어](#) | [繁體中文](#) | [Русский](#) | [Tiếng Việt](#) | [العربية](#)
800-452-4011 | TTY: 711 | deqinfo@deq.oregon.gov

Non-discrimination statement

DEQ does not discriminate on the basis of race, color, national origin, disability, age or sex in administration of its programs or activities.

Visit DEQ's [Civil Rights and Environmental Justice page](#).