

# Chapter 459A

2015 EDITION

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## SOLID WASTE RECOVERY GENERALLY

**459A.005 “Opportunity to recycle” defined.** (1) As used in ORS 459.015, 459.250 and 459A.005 to 459A.665, the “opportunity to recycle” means at least that the city, county or metropolitan service district responsible for solid waste management:

(a)(A) Provides a place for collecting source separated recyclable material located either at a disposal site or at another location more convenient to the population being served and, if a city has a population of 4,000 or more, collection at least once a month of source separated recyclable material from collection service customers within the city’s urban growth boundary or, where applicable, within the urban growth boundary established by a metropolitan service district; or

(B) Provides an alternative method that complies with rules of the Environmental Quality Commission; and

(b) Complies with the program element requirements described in ORS 459A.007.

(2) The “opportunity to recycle” defined in subsection (1) of this section also includes a public education and promotion program that:

(a) Gives notice to each person of the opportunity to recycle; and

(b) Encourages source separation of recyclable material. [Formerly 459.165; 2015 c.534 §1]

**Note:** The amendments to 459A.005 by section 2, chapter 534, Oregon Laws 2015, become operative July 1, 2022. See section 3, chapter 534, Oregon Laws 2015. The text that is operative on and after July 1, 2022, is set forth for the user’s convenience.

**459A.005.** (1) As used in ORS 459.015, 459.250 and 459A.005 to 459A.665, the “opportunity to recycle” means at least that the city, county or metropolitan service district responsible for solid waste management:

(a)(A) Provides a place for collecting source separated recyclable material located either at a disposal site or at another location more convenient to the population being served and, if a city has a population of 4,000 or more, collection at least once a month of source separated recyclable material from collection service customers within the city’s urban growth boundary or, where applicable, within the urban growth boundary established by a metropolitan service district; or

(B) Provides an alternative method that complies with rules of the Environmental Quality Commission; and

(b) Complies with the program element requirements described in ORS 459A.007.

(2) The “opportunity to recycle” defined in subsection (1) of this section also includes a public education and promotion program that:

(a) Gives notice to each person of the opportunity to recycle; and

(b) Encourages source separation of recyclable material.

(3) As used in this section, “collection service customers” includes:

(a) Customers of a collection service as defined in ORS 459.005; and

(b) The residential and commercial tenants of landlords or property managers that are customers of a collection service for the benefit of their tenants.

**459A.007 Opportunity to recycle program elements; local government fee.** (1) A person providing the opportunity to recycle shall fulfill the requirements of subsection (3) of this section using the following recycling program elements:

(a) Provision of at least one durable recycling container to each residential service customer.

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

(c) An expanded education and promotion program as described in ORS 459A.008.

(d) A multifamily collection program that includes:

(A) Collection of at least four principal recyclable materials or the number of materials required to be collected under the residential on-route collection program, whichever is less, from each multifamily dwelling complex that has five or more units; and

(B) Education and promotion directed to the residents of the multifamily dwelling complex.

(e) An effective residential yard debris collection and composting program that includes the promotion of home composting of yard debris, and that also includes either:

(A) Monthly or more frequent on-route collection of yard debris from residential collection service customers for production of compost or other marketable products; or

(B) A system of yard debris collection depots conveniently located and open to the public at least once a week.

(f) A commercial recycling program that includes:

(A) Weekly, or on a more appropriate regular schedule, onsite collection of source separated principal recyclable materials from, at a minimum, commercial generators of solid waste employing 10 or more persons and occupying 1,000 square feet or more in a single location.

(B) An education and promotion program conducted to inform all commercial generators of solid waste of the manner and benefits of the commercial recycling program that provides effective promotion of the program to the generators.

(C) Other optional elements, including but not limited to waste assessments and re-

cycling recognition programs. A city or county is encouraged to involve local business organizations in publicly recognizing outstanding recycling efforts by commercial generators of solid waste. The recognition may include awards designed to provide additional incentives to increase recycling efforts.

(D) Each commercial generator of solid waste shall strive to achieve 55 percent recovery from its solid waste stream by the year 2025.

(g) Expanded depots for recycling of at least all principal recyclable materials, and provisions for promotion or education to maximize the use of the depots. The depots must:

(A) Have regular and convenient hours;

(B) Be open on the weekend days; and

(C) When feasible, collect additional recyclable materials.

(h) Solid waste residential collection rates that encourage waste reduction, reuse and recycling through reduced rates for smaller containers, including at least one rate for a container that is 21 gallons or less in size. Based on the average weight of solid waste disposed per container for containers of different sizes, the rate on a per pound disposed basis may not decrease with increasing size of containers, and the rates per container service may not be less with additional containers serviced.

(i) A collection and composting system for food and other compostable waste from commercial and institutional entities that generate large amounts of such wastes.

(j) A commercial recycling program that requires commercial generators of solid waste that generate large amounts of recyclable materials to source separate recyclable materials.

(k) A program for monthly or more frequent on-route collection and composting for food and other compostable waste from residential collection service customers. The program described in this paragraph must include education or promotion to reduce contamination of the compost feedstock collected.

(L) A recovery program for construction and demolition debris that:

(A) Requires construction and demolition debris to be source separated at the generation site or sent to a material recovery facility for processing and recovery; and

(B) Includes an education or promotion program for developers, contractors and residential owners that provides strategies to:

(i) Reduce waste during preconstruction planning and in building construction, renovation and demolition phases; and

(ii) Direct waste to reuse and material recovery facilities.

(m) A food waste collection program requiring nonresidential generators that generate large amounts of food waste to source separate the food waste for recovery.

(2) The waste prevention education and reuse program elements that a city or county shall use to implement the requirements of subsection (6) or (7) of this section are as follows:

(a) A citywide or countywide education and promotion program about the environmental benefits of, and opportunities to reduce the generation of waste through, waste prevention and reuse.

(b) A waste prevention campaign targeting residential generators of waste and focused on one or more toxic or energy intensive materials or consumer purchasing practices.

(c) A waste prevention campaign targeting commercial or institutional generators of waste and focused on one or more toxic or energy intensive materials or consumer purchasing practices.

(d) A waste prevention and reuse education program in elementary and secondary schools.

(e) A program for the provision of city or watershed funding or infrastructure support to promote and sustain reuse, repair, leasing or sharing efforts.

(f) A program for the provision of city or watershed technical assistance to promote and sustain the reuse, repair or leasing of materials or other sharing of efforts to reduce waste.

(g) City or watershed support for a food rescue program that diverts to residents food that would otherwise be composted or disposed.

(3) Each city that is within a metropolitan service district or with a population of at least 4,000 and each county that is responsible for the area between city limits and the urban growth boundary of the city or the area outside the city limits but within a metropolitan service district shall implement either:

(a) The applicable number of recycling program elements for the size and location of the city as provided in subsection (4) of this section; or

(b) An alternative program that complies with the rules of the Environmental Quality Commission and that is designed to be as ef-

fective in recovering recyclable materials from solid waste as the requirements provided in subsection (4) of this section and to achieve at least the lesser of:

(A) Recovery rates specified in ORS 459A.010 (2); or

(B) Recovery levels comparable to similar communities.

(4) The number of recycling program elements that cities and counties must implement to comply with subsection (3) of this section are as follows:

(a) For cities within a metropolitan service district:

(A) The three recycling program elements set forth under subsection (1)(a), (b) and (c) of this section and at least four additional elements set forth under subsection (1) of this section; or

(B) At least eight recycling program elements set forth under subsection (1) of this section.

(b) For cities with a population of at least 4,000 but not more than 10,000 that are located 120 miles or less from the City of Portland, at least four recycling program elements set forth under subsection (1) of this section.

(c) For cities with a population of at least 4,000 but not more than 10,000 that are more than 120 miles from the City of Portland, at least three recycling program elements set forth under subsection (1) of this section.

(d) For cities with a population of more than 10,000 but not more than 50,000 that are located 150 miles or less from the City of Portland:

(A) The three recycling program elements set forth under subsection (1)(a), (b) and (c) of this section and at least two additional elements set forth under subsection (1) of this section; or

(B) At least six recycling program elements set forth under subsection (1) of this section.

(e) For cities with a population of more than 10,000 that are located more than 150 miles from the City of Portland:

(A) The three recycling program elements set forth under subsection (1)(a), (b) and (c) of this section and at least one additional element set forth under subsection (1) of this section; or

(B) At least five recycling program elements set forth under subsection (1) of this section.

(f) For cities with a population of more than 50,000 that are located 150 miles or less from the City of Portland:

(A) The three recycling program elements set forth under subsections (1)(a), (b) and (c) of this section and at least three additional recycling program elements set forth under subsection (1) of this section; or

(B) At least seven recycling program elements set forth under subsection (1) of this section.

(5) A city or county that is not subject to subsection (6) or (7) of this section may substitute the waste prevention and reuse program element set forth in subsection (2)(a) of this section and at least two additional elements set forth in subsection (2) of this section for one recycling program element set forth under subsection (1) of this section.

(6) Each city that is within a metropolitan service district or with a population of greater than 50,000 and each county that is responsible for the area between city limits and the urban growth boundary of a city with a population of greater than 50,000 or the area outside of city limits but within a metropolitan service district urban growth boundary shall implement either:

(a) The waste prevention and reuse program element set forth under subsection (2)(a) of this section, and at least four additional elements set forth under subsection (2) of this section; or

(b) An alternative program that complies with the rules of the Environmental Quality Commission and is designed to achieve similar benefits as the elements in subsection (2) of this section.

(7) Each city with a population of greater than 10,000 but no more than 50,000, that is within a county of greater than 100,000 population, and each county of greater than 100,000 population that is responsible for the area between city limits and the urban growth boundary of a city with a population of greater than 10,000 but no more than 50,000 shall implement either:

(a) The waste prevention and reuse program element set forth under subsection (2)(a) of this section, and at least two additional elements set forth under subsection (2) of this section; or

(b) An alternative program that complies with the rules of the Environmental Quality Commission and is designed to achieve similar benefits as the elements in subsection (2) of this section.

(8)(a) For a city using waste prevention and reuse elements set forth under subsection (2) of this section to satisfy requirements set forth in subsection (6) or (7) of this section, waste prevention and reuse elements may be provided by the county or metropol-

itan service district where the city is located, provided that implementation or provisions of such elements are made available throughout the city.

(b) For a county that includes or is within a metropolitan service district using waste prevention and reuse elements set forth under subsection (2) of this section to satisfy requirements set forth in subsection (6) or (7) of this section, waste prevention and reuse elements may be provided by the metropolitan service district where the county is located, provided that implementation or provision of such elements are made available within the entire urban growth boundary of the metropolitan service district.

(9)(a) Each local government that franchises or licenses the collection of solid waste and establishes the rates to be charged for collection service shall:

(A) Include in those rates all net costs incurred by the local government, franchisee or licensee for providing the opportunity to recycle and for implementing the requirements of this section; or

(B) Fund implementation of the opportunity to recycle through an alternative source of funding that may include but is not limited to disposal fees.

(b) As used in this subsection, “net costs” includes but is not limited to the reasonable costs for collecting, handling, processing, storing, transporting and delivering to market recyclable material and for providing any required education and promotion or data collection services adjusted by a factor to account for proceeds from the sale of recyclable material.

(10) A local government may assess a fee on solid waste collection or disposal services to cover costs to the local government for providing the opportunity to recycle and for implementing the requirements of this section. [2015 c.534 §5]

**Note:** 459A.007 and 459A.008 were added to and made a part of 459A.005 to 459A.665 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**459A.008 Expanded education and promotion program.** An expanded education and promotion program to satisfy the requirements of ORS 459A.007 must carry out the policy set forth in ORS 459.015, inform generators of solid waste of the manner and benefits of reducing, reusing, recycling and composting material, promote use of recycling services and reduce contamination in collected recyclables. The city, county or metropolitan service district responsible for providing an opportunity to recycle shall provide the education and promotion program in one of the following ways:

(1)(a) Preparing and implementing an education and promotion plan that includes actions to effectively reach solid waste generators and all new and existing collection service customers as necessary to fulfill the intent of this section.

(b) The plan described in paragraph (a) of this subsection must be submitted to the Department of Environmental Quality during the first year that the plan is in effect. Thereafter, the watershed shall submit a summary of activities in the plan to the department at the same time the county submits the periodic report required under ORS 459A.050 (1)(a). The summary must cover at least the time period until the next periodic report is due to the department.

(2) Implementing all of the following:

(a)(A) Provision of recycling notification and education packets to all new residential, commercial and institutional collection service customers that include, at a minimum, information about the materials collected, the schedule for collection, the way to prepare materials for collection, why separating material for recycling is necessary and how to reduce contamination of the materials set out for collection.

(B) In addition to the requirements of subparagraph (A) of this paragraph, the educational and promotional materials provided to commercial collection customers must:

(i) Be targeted to meet the needs of various types of businesses;

(ii) Include information on the economic and other benefits of recycling, common barriers to recycling and solutions to the barriers, additional resources for commercial generators of solid waste and other information designed to assist and encourage recycling efforts and reduce contamination; and

(iii) Encourage each commercial collection customer to have a goal to achieve 55 percent recovery from the customer’s solid waste stream by 2025.

(b) Provision of recycling information to collection service customers, in a variety of formats and materials at least four times per calendar year, that includes, at a minimum, the materials collected and the schedule for collection.

(c) Provision, at least annually, of the information described in paragraph (a) of this subsection to all residential, commercial and institutional collection service customers.

(d) Targeting of community and media events to promote recycling and reduce contamination in collected recyclables.

(e) A program to determine the levels of contamination of materials set out for col-

lection and to take action to reduce contamination in collected recyclables. [2015 c.534 §6]

**Note:** See note under 459A.007.

**459A.010 Policy; statewide goals; recovery rates.** (1) It is the policy of the State of Oregon that recovery of material is consistent with the priority of solid waste management set forth in ORS 459.015 (2). It is the goal of the State of Oregon that:

(a) For the calendar year 2009 and subsequent years, there be no annual increase in total general solid waste;

(b) For the calendar year 2020 and subsequent years, the rate of material recovery from the general solid waste stream shall be at least 52 percent;

(c) For the calendar year 2020 and subsequent years, the rate of material recovery of certain materials from the general solid waste stream shall be as follows:

(A) Food waste, at least 25 percent; and

(B) Plastic waste, at least 25 percent;

(d) For the calendar year 2025 and subsequent years, the rate of material recovery of carpet waste from the general solid waste stream shall be at least 25 percent;

(e) For the calendar year 2025 and subsequent years, the rate of material recovery from the general solid waste stream shall be at least 55 percent;

(f) For calendar years 2025 through 2049, total general solid waste generation shall be 15 percent below total general solid waste generation for the calendar year 2012; and

(g) For the calendar year 2050 and subsequent years, total general solid waste generation shall be 40 percent below total general solid waste generation for the calendar year 2012.

(2)(a) The recovery goal for the wasteshed consisting of Clackamas, Multnomah and Washington Counties, in aggregate, shall be to achieve a recovery rate of 64 percent for the calendar year 2025 and subsequent years.

(b) The recovery goals for the following wastesheds shall be to achieve the following recovery rates for the calendar year 2025 and subsequent years:

(A) Baker County, 25 percent;

(B) Benton County, 44 percent;

(C) Clatsop County, 53 percent;

(D) Columbia County, 45 percent;

(E) Coos County, 30 percent;

(F) Crook County, 20 percent;

(G) Curry County, 30 percent;

(H) Deschutes County, 45 percent;

(I) Douglas County, 34 percent;

(J) Gilliam County, 25 percent;

(K) Grant County, 25 percent;

(L) Harney County, 25 percent;

(M) Hood River County, 35 percent;

(N) Jackson County, 25 percent;

(O) Jefferson County, 32 percent;

(P) Josephine County, 20 percent;

(Q) Klamath County, 20 percent;

(R) Lake County, 15 percent;

(S) Lane County, 63 percent;

(T) Lincoln County, 37 percent;

(U) Linn County, 45 percent;

(V) Malheur County, 25 percent;

(W) Marion County, 64 percent;

(X) City of Milton-Freewater, 25 percent;

(Y) Morrow County, 20 percent;

(Z) Polk County, 48 percent;

(AA) Sherman County, 20 percent;

(BB) Tillamook County, 37 percent;

(CC) Umatilla County, 20 percent;

(DD) Union County, 25 percent;

(EE) Wallowa County, 25 percent;

(FF) Wasco County, 35 percent;

(GG) Wheeler County, 20 percent; and

(HH) Yamhill County, 45 percent.

(c) The Environmental Quality Commission may temporarily revise the waste recovery goal for a wasteshed downward if the commission determines that a revision is necessary because reasonably available markets do not exist for one or more high-volume recoverable materials, including but not limited to paper, scrap metal, yard debris, wood, glass, food waste and plastic.

(d) For purposes of providing the opportunity to recycle under ORS 459A.005, the recovery goals provided under this subsection are voluntary and may not be interpreted to authorize the Department of Environmental Quality to require compliance with the goals by a wasteshed.

(e)(A) Except as provided in paragraph (c) of this subsection, if the commission or the department initiates efforts to revise the waste recovery goals in this subsection, the department must provide written notice and an opportunity to comment to members of the governing body of each city, county or metropolitan service district within the wastesheds that would be affected by any proposed revisions.

(B) As used in this paragraph, "governing body" means the council, commission, board or other controlling body, however designated, in which the legislative powers of the

city, county or metropolitan service district are vested.

(3)(a) Recovery rates under this section shall be calculated by dividing the total weight of material recovered by the sum of the total weight of the material recovered plus the total weight of solid waste disposed that was generated in each watershed.

(b) Recovery rates may not include:

(A) Industrial and manufacturing wastes such as boxboard clippings and metal trim that are recycled before becoming part of a product that has entered the wholesale or retail market.

(B) Metal demolition debris for which arrangements are made to sell or give the debris to processors before demolition such that it does not enter the solid waste stream.

(C) Discarded vehicles or parts of vehicles that do not routinely enter the solid waste stream.

(D) Material recovered for composting or energy recovery from mixed solid waste, except as provided in subsection (4) of this section.

(c)(A) In calculating the recovery rates set forth in subsection (2) of this section, commercial, industrial and demolition scrap metal, vehicles, major equipment and home or industrial appliances that are handled or processed for use in manufacturing new products and that do not routinely enter the solid waste stream through land disposal facilities, transfer stations, recycling depots or on-route collection programs may not be counted as material recovery or recycling.

(B) The Department of Environmental Quality shall annually conduct an industry survey to determine the contribution of post-consumer residential scrap metal, including home appliances, to recycling and recovery levels in a manner that prevents double counting of material recovered.

(C) Information collected under the provisions of subparagraph (B) of this paragraph, as it relates specifically to private sector customer lists or specific amounts and types of materials collected or marketed, is confidential and exempt from disclosure under ORS 192.410 to 192.505. The department may use and disclose such information in aggregate form.

(d) As used in this subsection, "solid waste disposed" means the total weight of solid waste disposed other than the following:

(A) Sewage sludge or septic tank and cesspool pumpings;

(B) Waste disposed of at an industrial waste disposal site;

(C) Industrial waste, ash, inert rock, dirt, plaster, asphalt and similar material if delivered to a municipal solid waste disposal site or demolition disposal site and if a record is kept of such deliveries and submitted as part of the annual report submitted under ORS 459A.050;

(D) Waste received at an ash monofill from an energy recovery facility; and

(E) Solid waste not generated within this state.

(4)(a) If there is not a viable market for recycling a material, the composting or burning of the material for energy recovery may be included in the recovery rate for the watershed calculated under subsection (3) of this subsection.

(b) If the material is burned for energy recovery and then included in the recovery rate for Clackamas, Multnomah or Washington Counties in aggregate or for Benton, Lane, Linn, Marion, Polk or Yamhill County watersheds, the same material, when burned as part of mixed solid waste, may be included in the recovery rate for a watershed that burns mixed solid waste for energy recovery. The amount of the material within the mixed solid waste that may be included in the recovery rate for energy recovery shall be determined by a waste composition study performed by the watershed at least every six years.

(c) Mixtures of materials that are composted or burned for energy recovery may not be included in the recovery rate if more than half of the mixed materials by weight could have been recycled if properly source separated.

(d) In its annual report to the department, the county or metropolitan service district shall state how much composting or energy recovery under this subsection is included as recovery and state the basis for the determination that there was not a viable market for recycling the material.

(e) As used in this subsection, "viable market" means a person located within a watershed that will pay for the material or accept the material free of charge or a person located outside a watershed that will pay a price for the material that, at minimum, covers the cost of transportation of the material.

(5) As an alternative to achieving the weight-based recovery goals described in this section, watersheds may achieve outcome-based recovery goals as adopted by the Environmental Quality Commission in accordance with ORS 459A.012. [1991 c.385 §2; 1993 c.560 §74; 1995 c.541 §3; 1997 c.552 §9; 2001 c.513 §2; 2015 c.534 §7]



**459A.012 Alternative recovery rate calculation methods; rules.** (1)(a) The Environmental Quality Commission shall develop and adopt by rule a method for calculating recovery rates based on the rate of energy savings achieved by recovering materials from the general solid waste stream. The calculation method must account for:

(A) The energy savings achieved from material recovery, as opposed to material disposal;

(B) Recovery of energy from waste, including methane recovery at landfills; and

(C) Energy saving practices implemented as part of local solid waste reduction, reuse and recycling programs or solid waste management programs, including but not limited to:

(i) Fuel, efficiency and other improvements involving waste collection vehicles;

(ii) Energy efficiency improvements at recycling and solid waste facilities; and

(iii) Production of energy from renewable sources at solid waste facilities through means other than recovery of energy from waste, such as the use of solar energy to produce electricity.

(b) A recovery rate of 100 percent under the calculation method is equivalent to the energy savings achieved if all materials in the general solid waste stream are directed to their optimal final destinations for purposes of the energy savings that can be achieved through the recovery of each type of material.

(2) Using the calculation method developed under subsection (1) of this section, the commission shall adopt by rule recovery goals consistent with the goals under ORS 459A.010 (1) and (2).

(3)(a) The commission may develop and adopt by rule other methods for calculating recovery rates from the general solid waste stream that are based on achieving outcomes that result from waste recovery and management, and may include but are not limited to the following:

(A) Reductions in greenhouse gas emissions.

(B) Reductions in the emissions of toxic or potentially toxic chemicals.

(C) Water conservation.

(b) The commission may adopt by rule other outcome-based recovery goals consistent with the goals under ORS 459A.010 (1) and (2) using outcome-based calculation methods developed under this subsection. [2015 c.534 §9]

**Note:** 459A.012 was added to and made a part of 459A.005 to 459A.665 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**459A.015 Commission duties.** The Environmental Quality Commission shall:

(1) Amend the state solid waste management plan to conform to the requirements of ORS 459.005, 459.015, 459.035, 459.250, 459.992 (1) and (2), 459.995 and 459A.005 to 459A.665.

(2) Review Department of Environmental Quality reports on compliance with and implementation of ORS 459.005, 459.015, 459.035, 459.250, 459.992 (1) and (2), 459.995 and 459A.005 to 459A.665.

(3) Submit the report by the department on the statewide integrated solid waste management plan under ORS 459A.020 (2) to each odd-numbered year regular session of the Legislative Assembly. [Formerly 459.168; 1993 c.560 §75; 1997 c.552 §10; 2011 c.545 §57]

**Note:** Sections 12 to 13c, chapter 534, Oregon Laws 2015, provide:

**Sec. 12.** (1) For calendar year 2020, the Department of Environmental Quality shall conduct a statewide survey of recovery rates for food waste and plastic waste.

(2) If the statewide survey reveals that the statewide waste recovery goals for food waste or plastic waste under ORS 459A.010 are not being met, the department shall submit a report to the interim committees of the Legislative Assembly related to solid waste, as appropriate, no later than September 15, 2022. The report must include:

(a) An evaluation of options to improve recovery; and

(b) Recommendations for meeting or modifying the recovery goals for food waste and plastic waste under ORS 459A.010. [2015 c.534 §12]

**Sec. 13.** Section 12 of this 2015 Act is repealed on the date of the convening of the 2023 regular session of the Legislative Assembly as specified in ORS 171.010 [February 1, 2023]. [2015 c.534 §13]

**Sec. 13a.** (1) For calendar year 2025, the Department of Environmental Quality shall conduct a statewide survey of recovery rates for carpet waste.

(2) If the statewide survey reveals that the statewide waste recovery goal for carpet waste under ORS 459A.010 is not being met, the department shall submit a report to the interim committees of the Legislative Assembly related to solid waste, as appropriate, no later than September 15, 2027. The report must include:

(a) An evaluation of options to improve recovery; and

(b) Recommendations for meeting or modifying the recovery goals for carpet waste under ORS 459A.010. [2015 c.534 §13a]

**Sec. 13b.** Section 13a of this 2015 Act is repealed on the date of the convening of the 2028 regular session of the Legislative Assembly as specified in ORS 171.010 [February 1, 2028]. [2015 c.534 §13b]

**Sec. 13c.** As part of the report made to the Legislative Assembly in 2019 as required in ORS 459A.015 (3), the Department of Environmental Quality shall provide information on the implementation of multitenant recycling throughout Oregon, including:

(1) Actions undertaken by the department to encourage and support recycling at multifamily and other multitenant facilities;

(2) Efforts to reduce contamination in multitenant recycling, such as studies, pilot projects and education efforts; and

(3) An evaluation of the costs of implementing multitenant recycling within the urban growth boundaries of cities with populations of 4,000 or more that have not fully implemented multitenant recycling. [2015 c.534 §13c]

**459A.020 Statewide integrated solid waste management plan; review; revision.** (1) The Environmental Quality Commission shall adopt a statewide integrated solid waste management plan. The plan shall include, but need not be limited to, the following components of solid waste management:

- (a) Waste prevention;
- (b) Recycling;
- (c) Solid waste collection and processing;
- (d) Composting and energy recovery;
- (e) Incineration;
- (f) Disposal;
- (g) Disposal capacity and facility siting; and
- (h) Transportation.

(2) The commission shall develop the statewide integrated solid waste management plan in consultation with local government units, the Oregon Business Development Department and other appropriate state and regional agencies, commissions and task forces. The plan must address integrated solid waste management for at least 10 years into the future. The Department of Environmental Quality shall review the plan every two years and submit the report to the commission. The report must include:

(a) The status of implementation of the provisions of ORS 459A.005 to 459A.665, including:

(A) The annual weight of material disposed of per capita, by wasteshed and statewide;

(B) The annual recovery rate achieved by each wasteshed and statewide as calculated by:

(i) Weight as provided for in ORS 459A.010;

(ii) Rate of energy savings as provided for in ORS 459A.012; and

(iii) Any other method adopted by the commission under ORS 459A.012; and

(C) The amount of each type of material recovered annually statewide and, based on available information, the amount of each type of material recycled annually statewide;

(b) Compliance with and implementation of the provisions of ORS 459.015, 459.035, 459.055, 459.992 (1) and (2) and 459.995;

(c) The status of the metropolitan service district's waste reduction program as submitted to the commission under ORS 459.345 and its compliance with the criteria in ORS 459.350; and

(d) Recommendations for improvements in waste prevention, reuse, recycling and composting programs.

(3) The commission shall revise the plan at regular intervals in order to allow local government units to take advantage of the data and analysis in the state plan. [1991 c.385 §18; 1993 c.560 §76; 1997 c.552 §11; 2015 c.534 §10]

**459A.025 Adoption of rules regarding waste disposal and recycling.** (1) According to the requirements of ORS chapter 183, the Environmental Quality Commission shall adopt rules and guidelines necessary to carry out the provisions of ORS 459.005, 459.015, 459.035, 459.250, 459.992 (1) and (2), 459.995 and 459A.005 to 459A.665, including but not limited to:

(a) Acceptable alternative methods for providing the opportunity to recycle;

(b) Education, promotion and notice requirements, which requirements may be different for disposal sites and collection systems;

(c) Identification of the wastesheds within the state;

(d) Identification of the principal recyclable material in each wasteshed;

(e) Guidelines for local government units and other persons responsible for implementing the provisions of ORS 459.005, 459.015, 459.035, 459.250, 459.992 (1) and (2), 459.995 and 459A.005 to 459A.665; and

(f) Standards for the joint submission of the recycling reports required under ORS 459A.050 (1).

(2) In adopting rules or guidelines under this section, the commission shall consider:

(a) The policy stated in ORS 459.015.

(b) Systems and techniques available for recycling, including but not limited to existing recycling programs.

(c) Availability of markets for recyclable material.

(d) Costs of collecting, storing, transporting and marketing recyclable material.

(e) Avoided costs of disposal.

(f) Density and characteristics of the population to be served.

(g) Composition and quantity of solid waste generated and potential recyclable material found in each wasteshed. [Formerly

459.170; 1993 c.560 §77; 1995 c.79 §275; 1997 c.552 §12; 2015 c.662 §3]

**Note:** The amendments to 459A.025 by section 3, chapter 662, Oregon Laws 2015, become operative July 1, 2016. See section 9, chapter 662, Oregon Laws 2015. The text that is operative until July 1, 2016, is set forth for the user's convenience.

**459A.025.** (1) According to the requirements of ORS chapter 183, the Environmental Quality Commission shall adopt rules and guidelines necessary to carry out the provisions of ORS 459.005, 459.015, 459.035, 459.250, 459.992 (1) and (2), 459.995 and 459A.005 to 459A.665, including but not limited to:

(a) Acceptable alternative methods for providing the opportunity to recycle;

(b) Education, promotion and notice requirements, which requirements may be different for disposal sites and collection systems;

(c) Identification of the wastesheds within the state;

(d) Identification of the principal recyclable material in each wasteshed;

(e) Guidelines for local government units and other persons responsible for implementing the provisions of ORS 459.005, 459.015, 459.035, 459.250, 459.992 (1) and (2), 459.995 and 459A.005 to 459A.665;

(f) Standards for the joint submission of the recycling reports required under ORS 459A.050 (1); and

(g) Subject to prior approval of the Oregon Department of Administrative Services and a report to the Emergency Board prior to adopting the fee, the amount of an annual or permit fee or both under ORS 459.235, 459.245 and 468.065 necessary to carry out the provisions of ORS 459.005, 459.015, 459.035, 459.250, 459.992 (1) and (2), 459.995 and 459A.005 to 459A.665.

(2) In adopting rules or guidelines under this section, the commission shall consider:

(a) The policy stated in ORS 459.015.

(b) Systems and techniques available for recycling, including but not limited to existing recycling programs.

(c) Availability of markets for recyclable material.

(d) Costs of collecting, storing, transporting and marketing recyclable material.

(e) Avoided costs of disposal.

(f) Density and characteristics of the population to be served.

(g) Composition and quantity of solid waste generated and potential recyclable material found in each wasteshed.

**459A.027 Legislative findings.** The Legislative Assembly finds and declares that:

(1) Public and private recycling programs that collect source separated recyclable materials from residences and from commercial and institutional establishments on a schedule that is convenient to the generator, are effective and efficient methods of recovering recyclable material in the ongoing effort to achieve the solid waste recovery goals of the State of Oregon; and

(2) An effective way to support the efforts of local government units responsible for implementing solid waste programs directed at achieving solid waste recovery goals is by using existing state resources to support local recycling programs through grants. [1997 c.552 §7]

**459A.029 Provision of materials to local governments; commercial generator recovery rate goal.** (1) The Department of Environmental Quality shall work with local government units to provide educational and promotional materials that local government units may distribute to commercial generators of solid waste. The educational and promotional materials should be targeted to businesses and include reasons to recycle, including economic benefits, common barriers to recycling and solutions to the barriers, additional resources for commercial generators and other information designed to assist and encourage meeting the state's 55 percent recovery rate.

(2) Each wasteshed is encouraged to involve local business organizations in publicly recognizing outstanding recycling efforts by commercial generators of solid waste. The recognition may include awards designed to provide additional incentives to increase recycling efforts.

(3) Each commercial generator of solid waste shall strive to achieve 55 percent recovery from its solid waste stream by 2025.

(4) The Legislative Assembly encourages local government units that have chosen to implement commercial recycling programs to evaluate the effectiveness of those programs. The effectiveness of a program may be determined by measuring solid waste diverted by programs, by participation in programs or by some other method. [1997 c.552 §8; 2015 c.534 §16]

**459A.030 Technical assistance to local governments.** The Department of Environmental Quality shall provide technical assistance to cities, counties or metropolitan service districts in the development, revision, amendment and implementation of local solid waste reduction, reuse and recycling and waste prevention programs and solid waste management programs that comply with the opportunity to recycle established in ORS 459A.005 and 459A.007. The department shall give special emphasis to assisting rural and remote counties. [1991 c.385 §52; 1993 c.560 §78; 2015 c.534 §17]

**459A.035 Solid waste composition study.** The Department of Environmental Quality shall conduct a solid waste composition study to determine the quantities and sources of different materials disposed of in the waste stream at least once every three biennia for all areas of the state not covered by other solid waste composition studies. The study may include:

(1) Measurement and composition of wastes disposed of through nonstandard methods such as litter; and

(2) The composition of commingled and other recovered materials collected or processed in Oregon. [1991 c.385 §5; 1993 c.560 §79; 2015 c.534 §11]

**459A.040** [1991 c.385 §93; repealed by 1997 c.552 §40]

**459A.045 Request for modification or variance.** Any affected person may:

(1) Request the Environmental Quality Commission to modify the recyclable material for which the commission determines the opportunity to recycle must be provided; or

(2) Request a variance under ORS 459A.055. [Formerly 459.175]

**459A.050 Recycling reports.** (1) On behalf of each wasteshed and the cities within each wasteshed, each county shall submit to the Department of Environmental Quality:

(a) A periodic report, as required by the department, but not more frequently than annually, that documents how the wasteshed and the cities within the wasteshed are implementing the opportunity to recycle, including the requirements of ORS 459A.007 and 459A.010. A wasteshed is encouraged to report the results of the wasteshed's commercial recycling program evaluations in the wasteshed's periodic report to the department.

(b) An annual report that states for the wasteshed the type of material and the weight of each type of material collected through the following means:

(A) On-route collection;

(B) Collection from commercial customers; and

(C) Collection at disposal site recycling depots.

(c) If solid waste generated in the wasteshed is disposed of outside of the state, the total weight of the solid waste disposed of outside the state, which shall be included in the annual report.

(2) The metropolitan service district for Multnomah, Washington and Clackamas counties and the cities therein in aggregate shall submit to the department annual reports that include the information required under subsection (1) of this section.

(3) Except as provided in subsection (4) of this section and subject to the exclusions of ORS 459A.010 (3)(d), each solid waste disposal site that receives solid waste, except transfer stations, shall report, for each wasteshed, the weight of in-state solid waste disposed of at the solid waste disposal site that was generated in each wasteshed.

(4) The metropolitan service district for Multnomah, Washington and Clackamas counties and the cities therein in aggregate shall submit to the department the weight of

solid waste disposed of through the following facilities:

(a) Metropolitan service district central transfer station;

(b) Metropolitan service district south transfer station;

(c) Municipal solid waste compost facility; and

(d) Any disposal facility or transfer facility owned, operated or under contract by the metropolitan service district.

(5) The cities and counties within each wasteshed shall share proportionally in the costs incurred for the preparation and submission of the annual report required under this section.

(6) At least annually, the department shall survey privately operated recycling and material recovery facilities, including but not limited to buy back centers, drop off centers, recycling depots other than those at permitted land disposal facilities, manufacturers and distributors. The department shall collect the following information:

(a) By type of material for each wasteshed, the weight of in-state material collected from other than on-route collection programs, both residential and commercial.

(b) Any other information necessary to prevent double counting of material recovered or to determine if a material is recyclable.

(7) Information collected under subsection (6) of this section, as it relates specifically to the entity's customer lists or specific amounts and types of materials collected or marketed, is confidential and exempt from disclosure under ORS 192.410 to 192.505. The department may use and disclose such information in aggregated form.

(8) The information in subsections (1)(b) to (4) and (6) of this section shall be collected and reported annually on a form provided by the department.

(9) Unless extended by the Environmental Quality Commission upon application under ORS 459A.055 after the affected persons show good cause for an extension, the affected persons within the wasteshed shall implement the opportunity to recycle and submit the recycling report to the department. [Formerly 459.180; 1993 c.560 §80; 1997 c.552 §13; 2001 c.513 §4; 2015 c.534 §18]

**459A.055 Variance or request for extension to provide opportunity to recycle.**

(1)(a) Upon written application by an affected person, the Environmental Quality Commission may, to accommodate special conditions in the wasteshed or a portion thereof, grant a variance from specific requirements of the

rules or guidelines adopted under ORS 459A.025.

(b) The Environmental Quality Commission may grant all or part of a variance under this section.

(c) Upon granting a variance, the commission may attach any condition the commission considers necessary to carry out the provisions of ORS 459.015, 459.250 and 459A.005 to 459A.665.

(d) In granting a variance, the commission must find that:

(A) Conditions exist that are beyond the control of the applicant;

(B) Special conditions exist that render compliance unreasonable or impractical; or

(C) Compliance may result in a reduction in recycling.

(2) An affected person may apply to the commission to extend the time permitted under ORS 459.005, 459.015, 459.035, 459.250, 459A.005 and 459A.050 for providing for all or a part of the opportunity to recycle or submitting a recycling report to the Department of Environmental Quality. The commission may:

(a) Grant an extension upon a showing of good cause;

(b) Impose any necessary conditions on the extension; or

(c) Deny the application in whole or in part. [Formerly 459.185; 1993 c.560 §81; 1997 c.552 §14; 2001 c.513 §5]

**459A.060** [1991 c.385 §4; 1997 c.552 §15; repealed by 2001 c.513 §6]

**459A.065 Mandatory participation in recycling.** (1) Upon findings made under subsection (3) of this section, the Environmental Quality Commission may require one or more classes of solid waste generators within all or part of a wasteshed to recycle identified recyclable material that has been source separated from other solid waste or otherwise make the material available for recycling.

(2) In determining which materials are recyclable for purposes of mandatory participation, the cost of recycling from commercial or industrial sources shall include the generator's cost of source separating or otherwise making the material available for recycling or reuse.

(3) Before requiring solid waste generators to participate in recycling under this section, the commission must find, after a public hearing, that:

(a) The opportunity to recycle has been provided for a reasonable period of time and the level of participation by generators does not fulfill the policy set forth in ORS 459.015;

(b) The mandatory participation program is economically feasible within the affected wasteshed or portion of the wasteshed; and

(c) The mandatory participation program is the only practical alternative to carry out the policy set forth in ORS 459.015.

(4) After a mandatory participation program is established for a class of generators of solid waste, no person within the identified class of generators shall put solid waste out to be collected nor dispose of solid waste at a disposal site unless the person has separated the identified recyclable material according to the requirements of the mandatory participation program and made the recyclable material available for recycling. [Formerly 459.188; 1993 c.560 §82; 2001 c.513 §3]

**459A.070 Limitation on amount charged person who source separates recyclable material.** (1) A collection service or disposal site may charge a person who source separates recyclable material and makes it available for reuse or recycling less, but not more, for collection and disposal of solid waste and collection of recyclable material than the collection service charges a person who does not source separate recyclable material.

(2) A collection service or disposal site may charge a person who does not have solid waste collection service but who source separates recyclable material and makes the material available for reuse or recycling, for the cost of providing that service. In no case shall the charge be greater than the charge to collect or dispose of that material as solid waste. [Formerly 459.190]

**459A.075 Exemptions.** Nothing in ORS 459.005, 459.015, 459.035, 459.250, 459.992, 459.995 and 459A.005 to 459A.665 applies to recyclable material which is:

(1) Source separated by the generator; and

(2) Purchased from or exchanged by the generator for fair market value for recycling or reuse. [Formerly 459.192]

**459A.080 Prohibitions against removing or mixing recyclable material.** A person may not:

(1) Without the permission of the owner or generator of recyclable material, take recyclable material set out to be collected by a person authorized by a city or county to provide collection service for that recyclable material.

(2) Remove any recyclable material from a container, box, collection vehicle, depot or other receptacle for the accumulation or storage of recyclable material without permission of the owner of the receptacle.

(3) Mix source separated recyclable material with solid waste in any vehicle, box, container or receptacle used in solid waste collection or disposal. [Formerly 459.195]

**459A.085 City, county authority to issue collection service franchises; opportunity to recycle; rates.** (1) The Legislative Assembly finds that providing for collection service including but not limited to the collection of recyclable material as part of the opportunity to recycle is a matter of statewide concern.

(2) The exercise of the authority granted by this section is subject to ORS 221.735 and 459.085 (3).

(3) It is the intent of the Legislative Assembly that a city or county may displace competition with a system of regulated collection service by issuing franchises which may be exclusive if service areas are allocated. The city or county may recognize an existing collection service. A city or county may award or renew a franchise for collection service with or without bids or requests for proposals.

(4) In carrying out the authority granted by this section, a city or county acts for and on behalf of the State of Oregon to carry out:

(a) The purposes of ORS 459.015;

(b) The requirements of ORS 459.005, 459.015, 459.035, 459.250, 459.992 (1) and (2), 459.995 and 459A.005 to 459A.665;

(c) Waste reduction programs; and

(d) The state solid waste management plan.

(5) After October 15, 1983, a city or a county may continue, extend or renew an existing franchise or grant a new franchise for collection service. If a city or county, in furtherance of ORS 459.005 to 459.426, 459.705 to 459.790 and 459A.005 to 459A.665, has granted a collection service franchise before October 15, 1983, it may treat the franchise as if adopted under this section.

(6)(a) If a collection service franchise is continued, extended, renewed or granted on or after October 15, 1983, the opportunity to recycle shall be provided to a franchise holder's customers no later than July 1, 1986. This subsection does not apply to that portion of the opportunity to recycle provided at or in connection with a disposal site under ORS 459.250.

(b) The opportunity to recycle may be provided by:

(A) The person holding the franchise;

(B) Another person who provides the opportunity to recycle to the franchise holder's customers; or

(C) A person who is granted a separate franchise from the city or county solely for the purpose of providing the opportunity to recycle.

(c) In determining who shall provide the opportunity to recycle, a city or county shall first give due consideration to any person lawfully providing recycling or collection service on June 1, 1983, if the person continues to provide the service until the date the determination is made and the person has not discontinued the service for a period of 90 days or more between June 1, 1983, and the date the city or county makes the determination.

(7) In granting a collection service franchise, the city or county may:

(a) Prescribe the quality and character of and rates for collection service and the minimum requirements to guarantee maintenance of service, determine level of service, select persons to provide collection service and establish a system to pay for collection service.

(b) Divide the regulated area into service areas, grant franchises to persons for collection service within the service areas and collect fees from persons holding such franchises.

(8) The rates established under this section shall be just and reasonable and adequate to provide necessary collection service. The rates established by the city or county shall allow the person holding the franchise to recover any additional costs of providing the opportunity to recycle at the minimum level required by ORS 459.005, 459.015, 459.035, 459.250, 459.992 (1) and (2), 459.995 and 459A.005 to 459A.665 or at a higher level of recycling required by or permitted by the city or county. The rates shall also allow the person to recover the costs of education, promotion and notice of the opportunity to recycle provided by a person holding a franchise.

(9) Instead of providing funding for the opportunity to recycle through rates established pursuant to subsection (8) of this section, a city or county may provide an alternative method of funding all or part of the opportunity to recycle.

(10) In establishing service areas, the city or county shall consider:

(a) The policies contained in ORS 459.015;

(b) The requirements of ORS 459.250 and 459A.005 to 459A.665;

(c) Any applicable local or regional solid waste management plan approved by the Department of Environmental Quality;

(d) Any applicable waste reduction plan approved by the department; and

(e) The need to conserve energy, increase efficiency, provide the opportunity to recycle, reduce truck traffic and improve safety.

(11) A city or county may further restrict competition by permitting one or more collection service franchise holders to cooperate to provide the opportunity to recycle if the city or county finds that such cooperation will:

(a) Improve collection service efficiency;

(b) Guarantee an adequate volume of material to improve the feasibility and effectiveness of recycling;

(c) Increase the stability of recycling markets; or

(d) Encourage joint marketing of materials or joint education and promotion efforts.

(12) The provisions of this section are in addition to and not in lieu of any other authority granted to a city or county. A city or county's exercise of authority under this section is not intended to create any presumption regarding an activity of the local government unit not addressed in this section. This section shall not be construed to mean that it is the policy of Oregon that other local government activities may not be exercised in a manner that supplants or limits economic competition. [Formerly 459.200; 1993 c.560 §84]

**459A.100 Definitions for ORS 459A.100 to 459A.120.** As used in ORS 459A.100 to 459A.120:

(1) "Domestic solid waste" includes but is not limited to residential, commercial and institutional wastes generated within this state.

(2) "Domestic solid waste" does not include:

(a) Sewage sludge or septic tank and cesspool pumpings;

(b) Building demolition or construction wastes and land clearing debris, if delivered to a disposal site that is limited to those purposes;

(c) Source separated recyclable material, or material recovered at the disposal site;

(d) Waste going to an industrial waste facility;

(e) Waste received at an ash monofill from an energy recovery facility; or

(f) Other material excluded by the Environmental Quality Commission in order to support the policies of ORS 459.015. [Formerly 459.292; 1993 c.560 §85]

**459A.105 Policy.** The Legislative Assembly finds and declares that:

(1) Domestic solid waste disposal capacity is a matter of statewide concern;

(2) The disposal in Oregon of domestic solid waste generated both outside and within Oregon will reduce the total capacity available for disposal of domestic solid waste generated in this state;

(3) The disposal in Oregon of domestic solid waste generated outside Oregon and within Oregon will add to the level of environmental risk associated with the transportation and disposal of those wastes; and

(4) It is in the best interest of the public health, safety and welfare of the people of Oregon to reduce the amount of domestic solid waste being generated in Oregon in order to extend the useful life of existing domestic solid waste disposal sites and to reduce the environmental risks associated with receiving waste generated outside Oregon at those sites. [Formerly 459.293]

**459A.110 Additional fees for programs for reduction of domestic solid waste and environmental risks; assessment.** (1) In addition to the permit fees provided in ORS 459.235, the Environmental Quality Commission shall establish a schedule of fees for all:

(a) Disposal sites that receive domestic solid waste or solid waste generated outside the state, for final disposal or destruction; and

(b) Persons who transport solid waste out of the State of Oregon for final disposal or destruction to a disposal site that receives domestic solid waste.

(2) If the amount of waste tonnage per calendar year subject to the fees established under subsection (1) of this section falls, for two consecutive calendar years, below 90 percent of the amount of waste tonnage subject to the fees as averaged over the 2014 to 2016 calendar years, the commission may establish a schedule of fees for disposal sites for composting. A fee schedule established under this subsection shall:

(a) Apply only to tonnage received by a disposal site for composting that is in excess of the first 5,000 tons received per year by the disposal site; and

(b) Remain in effect unless or until the commission determines that a fee under this subsection is no longer necessary.

(3) Fees adopted under subsections (1) and (2) of this section shall be based on the estimated tonnage or the actual tonnage, if known, received at the site or transported out of state for disposal and any other similar or related factors the commission finds appropriate.

(4) For solid waste delivered to a disposal site owned or operated by a metropolitan service district, the schedule of fees, but not the permit fees provided in ORS 459.235, established by the commission in subsection (1) of this section shall be levied on the district, not the disposal site.

(5) The commission also may require submittal of information related to volumes and sources of solid waste if necessary to carry out the activities described in ORS 459A.120. For solid waste transported out of the State of Oregon for final disposal or destruction, the required information may include the type of solid waste, the county of origin of the solid waste and the state to which the solid waste is transported for final disposal or destruction.

(6) Before transporting or arranging for transport of solid waste out of the State of Oregon to a disposal site that receives domestic solid waste, a person shall notify the Department of Environmental Quality in writing.

(7)(a) A local government that franchises or licenses a disposal site that receives domestic solid waste shall allow the disposal site to pass through the amount of the fees established by the commission in subsections (1) and (2) of this section to the users of the site.

(b) If a disposal site that receives domestic solid waste passes through all or a portion of the fees established by the commission in subsections (1) and (2) of this section to a solid waste collector who uses the site, a local government that franchises or licenses the collection of solid waste shall allow the franchisee or licensee to include the amount of the fee in the collection service rate.

(8) As used in this section, "person" does not include an individual who transports the individual's own residential solid waste to a disposal site located out of the state. [Formerly 459.294; 1993 c.528 §2; 1993 c.560 §86; 2015 c.662 §4]

**Note 1:** The amendments to 459A.110 by section 4, chapter 662, Oregon Laws 2015, become operative April 1, 2016. See section 9, chapter 662, Oregon Laws 2015. The text that is operative until April 1, 2016, is set forth for the user's convenience.

**459A.110.** (1) In addition to the permit fees provided in ORS 459.235, the Environmental Quality Commission shall establish a schedule of fees for all:

(a) Disposal sites that receive domestic solid waste except transfer stations; and

(b) Persons who transport solid waste out of the State of Oregon to a disposal site that receives domestic solid waste.

(2) The schedule adopted under subsection (1) of this section shall be based on the estimated tonnage or the actual tonnage, if known, received at the site or transported out of state for disposal and any other similar or related factors the commission finds appropriate.

The fees collected pursuant to the schedule shall be sufficient to assist in the funding of programs to reduce the amount of domestic solid waste generated in Oregon and to reduce environmental risks at domestic waste disposal sites.

(3) For solid waste delivered to a disposal site owned or operated by a metropolitan service district, the schedule of fees, but not the permit fees provided in ORS 459.235, established by the commission in subsection (1) of this section shall be levied on the district, not the disposal site.

(4) The commission also may require submittal of information related to volumes and sources of solid waste if necessary to carry out the activities in ORS 459A.120. For solid waste transported out of the State of Oregon for disposal, the required information may include the type of solid waste, the county of origin of the solid waste and the state to which the solid waste is transported for final disposal.

(5) Before transporting or arranging for transport of solid waste out of the State of Oregon to a disposal site that receives domestic solid waste, a person shall notify the Department of Environmental Quality in writing.

(6)(a) A local government that franchises or licenses a disposal site that receives domestic solid waste shall allow the disposal site to pass through the amount of the fees established by the commission in subsection (1) of this section to the users of the site.

(b) If a disposal site that receives domestic solid waste passes through all or a portion of the fees established by the commission in subsection (1) of this section to a solid waste collector who uses the site, a local government that franchises or licenses the collection of solid waste shall allow the franchisee or licensee to include the amount of the fee in the collection service rate.

(7) The fees generated under subsection (1) of this section shall be sufficient to accomplish the purposes set forth in ORS 459A.120 but shall be no more than 50 cents per ton.

(8) There shall be a fee on solid waste generated out of state. This fee shall be an amount equal to the sum of the fees established under subsection (1) of this section and ORS 459A.115 and shall be collected in the same manner as fees established under subsection (1) of this section and ORS 459A.115.

(9) As used in this section, "person" does not include an individual who transports the individual's own residential solid waste to a disposal site located out of the state.

**Note 2:** The amendments to 459A.110 by section 13, chapter 662, Oregon Laws 2015, become operative April 1, 2019. See section 14, chapter 662, Oregon Laws 2015. The text that is operative on and after April 1, 2019, is set forth for the user's convenience.

**459A.110.** (1) In addition to the permit fees provided in ORS 459.235, the Environmental Quality Commission shall establish a schedule of fees for all:

(a) Disposal sites that receive domestic solid waste, building demolition or construction waste, land clearing debris, waste tires or solid waste generated outside the state, for final disposal or destruction; and

(b) Persons who transport solid waste out of the State of Oregon for final disposal or destruction to a disposal site that receives domestic solid waste, building demolition or construction waste, land clearing debris or waste tires.

(2) If the amount of waste tonnage per calendar year subject to the fees established under subsection (1) of this section falls, for two consecutive calendar years, below 90 percent of the amount of waste tonnage subject to the fees as averaged over the 2014 to 2016 calendar years, the commission may establish a schedule of fees



for disposal sites for composting. A fee schedule established under this subsection shall:

(a) Apply only to tonnage received by a disposal site for composting that is in excess of the first 5,000 tons received per year by the disposal site; and

(b) Remain in effect unless or until the commission determines that a fee under this subsection is no longer necessary.

(3) Fees adopted under subsections (1) and (2) of this section shall be based on the estimated tonnage or the actual tonnage, if known, received at the site or transported out of state for disposal and any other similar or related factors the commission finds appropriate.

(4) For solid waste delivered to a disposal site owned or operated by a metropolitan service district, the schedule of fees, but not the permit fees provided in ORS 459.235, established by the commission in subsection (1) of this section shall be levied on the district, not the disposal site.

(5) The commission also may require submittal of information related to volumes and sources of solid waste if necessary to carry out the activities described in ORS 459A.120. For solid waste transported out of the State of Oregon for final disposal or destruction, the required information may include the type of solid waste, the county of origin of the solid waste and the state to which the solid waste is transported for final disposal or destruction.

(6) Before transporting or arranging for transport of solid waste out of the State of Oregon to a disposal site that receives domestic solid waste, a person shall notify the Department of Environmental Quality in writing.

(7)(a) A local government that franchises or licenses a disposal site that receives domestic solid waste shall allow the disposal site to pass through the amount of the fees established by the commission in subsections (1) and (2) of this section to the users of the site.

(b) If a disposal site that receives domestic solid waste passes through all or a portion of the fees established by the commission in subsections (1) and (2) of this section to a solid waste collector who uses the site, a local government that franchises or licenses the collection of solid waste shall allow the franchisee or licensee to include the amount of the fee in the collection service rate.

(8) As used in this section, "person" does not include an individual who transports the individual's own residential solid waste to a disposal site located out of the state.

**459A.115** [1991 c.385 §13a; 1993 c.560 §88; repealed by 2015 c.662 §5]

**Note:** 459A.115 is repealed April 1, 2016. See sections 5 and 9, chapter 662, Oregon Laws 2015. 459A.115 (2013 Edition) is set forth for the user's convenience.

**459A.115 Surcharge on fee imposed under ORS 459A.110; use of surcharge.** (1) From January 1, 1992, to December 31, 1993, the schedule of fees as established by the Environmental Quality Commission under ORS 459A.110 (1) is increased by 35 cents per ton. The portion of the fees attributable to the 35 cents per ton increase shall be deposited into the General Fund and credited to an account of the Department of Environmental Quality. Such moneys are continuously appropriated to the department to implement the provisions of this section and ORS 459.005, 459.015, 459.235, 459.247, 459.418, 459.995, 459A.005, 459A.010, 459A.020, 459A.030 to 459A.055, 459A.070, 459A.110, 459A.500 to 459A.685, 459A.695 and 459A.750.

(2) Beginning January 1, 1994, the schedule of fees as established by the commission under ORS 459A.110 is increased by 31 cents per ton and shall be deposited

into the General Fund and credited to an account of the department. Such moneys are continuously appropriated to the department to implement the provisions described in subsection (1) of this section, excluding ORS 459.418.

**Note:** 459A.115 was added to and made a part of 459A.005 to 459A.665 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**459A.120 Use of additional fees.** (1) The fees established by the Environmental Quality Commission under ORS 459A.110 shall be deposited in the General Fund and credited to an account of the Department of Environmental Quality. Such moneys are continuously appropriated to the department to fund the update and implementation of the statewide integrated solid waste management plan under ORS 459A.020 and the policies set forth in ORS 459.015.

(2) Activities that may be funded to carry out the purposes of this section include but are not limited to:

(a) Activities to reduce the environmental and human health impacts of materials at all stages of their life cycles, such as:

(A) Promoting and enhancing waste prevention, recycling and other waste recovery activities;

(B) Collecting data;

(C) Researching, planning, developing and applying performance measures;

(D) Developing standards and educational and promotional activities;

(E) Supporting markets;

(F) Demonstrating activities; and

(G) Managing household hazardous wastes and materials;

(b) Solid waste planning activities by counties and metropolitan service districts, as approved by the department; and

(c) Providing grants or loans to fund the types of activities listed in paragraphs (a) and (b) of this subsection. In providing grants under this paragraph, the department shall give preference to providing grants for activities that reduce solid waste generation and exceed the requirements of this chapter. [Formerly 459.295; 1993 c.560 §89; 1999 c.59 §130; 2015 c.662 §7]

**Note:** The amendments to 459A.120 by section 7, chapter 662, Oregon Laws 2015, become operative April 1, 2016. See section 9, chapter 662, Oregon Laws 2015. The text that is operative until April 1, 2016, is set forth for the user's convenience.

**459A.120.** (1) Except as provided in ORS 459A.115, the fees established by the Environmental Quality Commission under ORS 459A.110 shall be deposited in the General Fund and credited to an account of the Department of Environmental Quality. Such moneys are continuously appropriated to the department to carry out the purposes set forth in subsection (2) of this section.

(2) The fees collected under ORS 459A.110 shall be used only for the following purposes:

(a) Implementation of the provisions of ORS 459.411 to 459.417.

(b) Department of Environmental Quality programs to promote and enhance waste reduction and recycling statewide, including data collection, performance measurement, education and promotion, market development and demonstration projects.

(c) Department of Environmental Quality activities for ground water monitoring and enforcement of ground water protection standards at disposal sites that receive domestic solid waste.

(d) Solid waste planning activities by counties and the metropolitan service district, as approved by the department, including planning for special waste disposal, planning for closure of solid waste disposal sites, capacity planning for domestic solid waste and regional solid waste planning.

(e) Grants to local government units for recycling and solid waste planning activities.

(f) Payment of administrative costs incurred by the department in accomplishing the purposes set forth in this section. The amount allocated under this paragraph shall not exceed 10 percent of the fees generated under ORS 459A.110.

**459A.125 Maximum amount of additional fee; adjustments.** (1) The fees generated under ORS 459A.110 shall be sufficient to accomplish the purposes set forth in ORS 459A.120, provided that:

(a) The fees established under ORS 459A.110 (1) shall be no more than \$1.18 per ton for the biennium beginning July 1, 2015; and

(b) Any per-ton fee on disposal sites for composting under ORS 459A.110 (2) shall be no more than the per-ton fee assessed on domestic solid waste disposal under ORS 459A.110 (1), less \$0.81 per ton.

(2) For the biennium beginning July 1, 2017, and each subsequent biennium and subject to prior approval by the Oregon Department of Administrative Services, the Environmental Quality Commission may:

(a) Proportionally adjust the fees established under this section and ORS 459A.110 to meet revenue needs consistent with the budget authorized by the Legislative Assembly as that budget may be modified by the Emergency Board; or

(b) Adjust for inflation by modifying the amount of the fees established under this section and ORS 459A.110 based on the West Region Consumer Price Index for All Urban Consumers for All Items, as published by the Bureau of Labor Statistics of the United States Department of Labor.

(3) Any fee adjustment adopted pursuant to subsection (2) of this section shall be adopted not less than six months prior to the date that the fee adjustment will be effective.

(4) The commission may not adopt a fee adjustment under subsection (2) of this section if the adjustment would result in:

(a) A fee increase or decrease of less than two percent for the biennium for which the fee adjustment will be effective; or

(b) A fee under ORS 459A.110 (1) that is greater than the maximum fee provided for in subsection (1)(a) of this section adjusted annually on July 1 by a three percent increase in the maximum fee.

(5) The commission may not adopt more than one fee adjustment under subsection (2) of this section each biennium. [2015 c.662 §6]

**Note:** 459A.125 becomes operative April 1, 2016. See section 9, chapter 662, Oregon Laws 2015.

**Note:** 459A.125 and 459A.130 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 459A or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**459A.130 Rebate of additional fee to economically distressed counties.** (1)(a) By September 30 of each year, the Department of Environmental Quality shall provide a rebate of the fees established under ORS 459A.110 to the nine most economically distressed counties in this state.

(b) The department shall annually identify the counties that will receive the rebate provided for under this section and, no later than January 31 of each year, provide notice to:

(A) Each of the economically distressed counties identified by the department that will receive the rebate calculated under subsection (2) of this section for the calendar year; and

(B) Each of the counties that received a rebate during the previous calendar year.

(2)(a) For the biennium beginning July 1, 2015, the amount of the rebate provided to an economically distressed county under this section shall be no more than \$0.28 per:

(A) Each ton of solid waste disposed that was generated within the economically distressed county during the previous calendar year; or

(B) If the department calculates an adjustment under paragraph (c) of this subsection, each adjusted ton of solid waste disposed that was generated within the economically distressed county during the previous calendar year.

(b) For the biennium beginning July 1, 2017, and each subsequent biennium, if the Environmental Quality Commission adjusts the fees established under ORS 459A.110 pursuant to ORS 459A.125 (2), the commission shall also proportionally adjust the amount of the per-ton rebate specified in paragraph (a) of this subsection.

(c)(A) The department shall calculate the total tonnage of solid waste disposed that was generated in a calendar year within all

of the economically distressed counties identified under subsection (1) of this section.

(B) If the total for all economically distressed counties is greater than 10 percent of all solid waste disposed of in this state during the same calendar year, the department may calculate an adjusted tonnage for each economically distressed county for purposes of calculating the rebate provided for under this section.

(C) The adjusted tonnage for each economically distressed county shall be proportional to the actual tonnage generated and calculated such that the sum of the adjusted tonnage for all of the economically distressed counties is equal to 10 percent of all solid waste disposed of in this state during the calendar year.

(3) If a city within an economically distressed county owns and operates a landfill, the department shall distribute the portion of the rebate for the economically distressed county that is calculated based on tons of solid waste disposed that was generated in the county and disposed of at the landfill owned by the city to the city instead of the county.

(4) Moneys received by a city or county pursuant to the rebate program provided for under this section may be used only for:

- (a) Purposes authorized in ORS 459A.120;
- (b) The operation of solid waste disposal facilities; or
- (c) The reduction of disposal fees.

(5)(a) The commission shall adopt rules to carry out the provisions of this section. Rules adopted under this subsection shall include:

(A) A methodology for identifying the most economically distressed counties in this state; and

(B) A process for providing rebates to the economically distressed counties.

(b) The methodology for identifying economically distressed counties adopted under this subsection may be based on a methodology adopted by the Oregon Business Development Department by rule under ORS 285A.020 and 285A.075.

(6) As used in this section:

(a) "Landfill" has the meaning given that term in ORS 459.005; and

(b) "Solid waste disposed" has the meaning given that term in ORS 459A.010 (3)(d). [2015 c.662 §6a]

**Note:** 459A.130 becomes operative April 1, 2016. See section 9, chapter 662, Oregon Laws 2015.

**Note:** See second note under 459A.125.

**Note:** Section 18, chapter 662, Oregon Laws 2015, provides:

**Sec. 18.** No later than October 31, 2022, the Department of Environmental Quality shall submit a report in the manner provided by ORS 192.245, and may include recommendations for legislation, to the interim committees of the Legislative Assembly having subject matter jurisdiction over the environment and natural resources. The report shall include:

(1) Information on options for sustainable and adequate funding of solid waste management, prevention, reuse and recycling programs;

(2) An evaluation of the effectiveness and value of the fee rebate program provided for under section 6a of this 2015 Act [459A.130]; and

(3) Information on the implementation of the state's plan for an integrated system of materials and waste management in the State of Oregon, as adopted in accordance with ORS 459A.020. [2015 c.662 §18]

## SPECIFIC RECYCLING REQUIREMENTS

### (Electronic Devices)

**459A.300 Legislative findings.** The Legislative Assembly finds that:

(1) It is necessary to encourage the design of electronic devices that are more resource-efficient, more recyclable and less environmentally toxic;

(2) The development and availability of a statewide system that conveniently serves both urban and rural areas of Oregon for the collection, transportation and recycling of electronic devices is in the best interest of the state; and

(3) A statewide collection, transportation and recycling system should be financed by the manufacturers of those electronic devices. [2007 c.302 §1]

**Note:** 459A.300 to 459A.365 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 459A or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**459A.305 Definitions for ORS 459A.305 to 459A.355.** As used in ORS 459A.305 to 459A.355:

(1) "Brand" means a name, symbols, words or marks that identify a covered electronic device, rather than any of its components, and attribute the device to the owner of the brand as the manufacturer.

(2) "Collector" means an entity that collects covered electronic devices as part of a manufacturer program or the state contractor program.

(3) "Computer peripheral" means:

(a) A keyboard or mouse sold exclusively for external use with a computer as a wireless or corded device that provides input into, or output from, a computer; or

(b) Cords used with a keyboard or mouse described in paragraph (a) of this subsection.

(4)(a) "Covered electronic device" means:

(A) A computer monitor of any type having a viewable area greater than four inches measured diagonally;

(B) A desktop computer or portable computer;

(C) A television of any type having a viewable area greater than four inches measured diagonally;

(D) A computer peripheral; or

(E) A printer.

(b) "Covered electronic device" does not include:

(A) Any part of a motor vehicle;

(B) Any part of a larger piece of equipment designed and intended for use in an industrial, commercial or medical setting, such as diagnostic, monitoring or control equipment;

(C) Telephones or personal digital assistants of any type unless the telephone or personal digital assistant contains a viewable area greater than four inches measured diagonally; or

(D) Any part of a clothes washer, clothes dryer, refrigerator, freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier or air purifier.

(5) "Covered entity" means any Oregon household, a business that employs 10 or fewer individuals, a not-for-profit organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code that employs 10 or fewer individuals, or any person giving seven or fewer covered electronic devices to a collector at any one time.

(6) "Environmentally sound management practices" means practices that comply with all applicable laws, including but not limited to adequate record keeping, tracking the fate of recycled materials, performance audits and inspections, provisions for reuse and refurbishment, compliance with worker health and safety requirements, maintaining liability insurance and financial assurances and practices that may be adopted by rule by the Environmental Quality Commission.

(7)(a) "Manufacturer" means any person, irrespective of the selling technique used, including by means of remote sale:

(A) That manufactures covered electronic devices under a brand that it owns or is licensed to use;

(B) That sells covered electronic devices manufactured by others under a brand that the seller owns;

(C) That manufactures covered electronic devices without affixing a brand;

(D) That manufactures covered electronic devices to which it affixes a brand that it does not own; or

(E) On whose account covered electronic devices manufactured outside the United States are imported into the United States. This subparagraph does not apply if, at the time the covered electronic devices are imported into the United States, another person is registered as the manufacturer of the brand of the covered electronic devices.

(b) "Manufacturer" does not include a person:

(A) With a license to manufacture covered electronic devices for delivery exclusively to or at the order of the licensor.

(B) That manufactures only computer peripherals and no other covered electronic devices.

(8) "Manufacturer program" means a statewide plan for collecting, transporting and recycling covered electronic devices that is provided by a single manufacturer or group of manufacturers pursuant to ORS 459A.320.

(9) "Orphan device" means a covered electronic device for which no manufacturer can be identified.

(10) "Person" means the United States, the state or a public or private corporation, local government unit, public agency, individual, partnership, association, firm, trust, estate or other legal entity.

(11) "Portable computer" means any of the following that has a viewable area greater than four inches measured diagonally and that can be carried as one unit by an individual:

(a) A laptop computer;

(b) A notebook computer; or

(c) A notepad computer.

(12) "Premium service" means services such as at-location system upgrade services and at-home pickup services, including curbside pickup service.

(13)(a) "Printer" means a device that:

(A) Is used to make reproductions, or is multifunctional and performs one or more operations such as scanning or faxing in addition to making reproductions;

(B) Is designed to be placed on a desk or other work surface and may include an optional floor stand; and

(C) Uses print technology such as laser, electrographic, ink jet, dot matrix, thermal or digital sublimation.

(b) "Printer" does not include a device used to make reproductions that:

(A) Is floor-standing;

- (B) Is a point of sale receipt printer;
- (C) Is also a calculator;
- (D) Can also make labels; or
- (E) Is embedded in something other than a covered electronic device.

(14)(a) "Recycling" means:

(A) Processing through disassembling, dismantling, shredding, transforming or re-manufacturing covered electronic devices, components and by-products into usable or marketable raw materials or products in a manner such that the original products may lose their identity; or

(B) Smelting materials from components removed from covered electronic devices to recover metals for reuse in conformance with applicable laws and rules.

(b) "Recycling" does not include:

(A) Landfill disposal or incineration of covered electronic devices; or

(B) Energy recovery or energy generation by means of combusting covered electronic devices, components and by-products with or without other waste.

(15) "Recycling credit" means a credit granted to a manufacturer program or a state contractor program for the collection, transport and recycling of covered electronic devices in an amount that exceeds the program's return share by weight for a calendar year.

(16) "Retailer" means a person that offers new covered electronic devices for sale at retail through any means, including but not limited to remote offerings such as sales outlets, catalogs or the Internet.

(17) "Return share" means the minimum percentage of covered electronic devices that an individual manufacturer is responsible for collecting, transporting and recycling.

(18) "Return share by weight" means the minimum total weight of covered electronic devices that an individual manufacturer is responsible for collecting, transporting and recycling.

(19)(a) "Sell" or "sale" means any transfer of title for consideration, including but not limited to remote sales conducted through sales outlets, catalogs or the Internet, or any other similar electronic means.

(b) "Sell" or "sale" does not include leases.

(20) "State contractor program" means a statewide program for collecting, transporting and recycling covered electronic devices that is provided by the Department of Environmental Quality for manufacturers who pay a recycling fee to the department pursuant to ORS 459A.325. [2007 c.302 §2; 2011 c.548 §§3,4]

**Note:** See note under 459A.300.

**459A.310 Applicability to manufacturers; applicability to reused or refurbished covered electronic devices; requirements for sale of covered electronic devices by manufacturers.** (1) ORS 459A.305 to 459A.355 apply to all manufacturers engaging in the activities set forth in ORS 459A.305 (7) before, on or after June 7, 2007.

(2) ORS 459A.305 to 459A.355 do not apply to reused or refurbished covered electronic devices.

(3) A manufacturer may not sell or offer for sale any covered electronic device, except for computer peripherals, in or for delivery in this state unless:

(a) The covered electronic device is labeled with a brand and the label is permanently affixed and readily visible; and

(b) The brand is included in the plan that is filed with the Department of Environmental Quality pursuant to ORS 459A.320. [2007 c.302 §3; 2011 c.548 §9]

**Note:** See note under 459A.300.

**459A.315 Registration by manufacturer; fees.** (1) Before January 1 of each year, a manufacturer of covered electronic devices sold or offered for sale in this state shall register with the Department of Environmental Quality, for a period to cover the upcoming calendar year, on a form provided by the department. The registration shall include:

(a) A list of all the brands manufactured, sold or imported by the manufacturer, including those brands being offered for sale in this state by the manufacturer.

(b) A statement of whether the manufacturer will be implementing a manufacturer program or utilizing the state contractor program for recycling covered electronic devices.

(c) Any other information required by the department to implement ORS 459A.305 to 459A.355.

(2)(a) Not later than July 1 of each year, a manufacturer of covered electronic devices sold or offered for sale in this state shall pay an annual registration fee to the department.

(b) For calendar years 2008 through 2011, the manufacturer registration fee shall be:

(A) \$15,000 for manufacturers selling more than one percent of the total number of units of covered electronic devices sold in this state the previous calendar year.

(B) \$5,000 for manufacturers selling at least 0.1 percent but not more than one percent of the total number of units of covered electronic devices sold in this state the previous calendar year.

(C) \$200 for manufacturers selling at least 0.01 percent but less than 0.1 percent of the total number of units of covered electronic devices sold in this state the previous calendar year.

(D) \$40 for manufacturers selling less than 0.01 percent of the total number of units of covered electronic devices sold in this state the previous calendar year.

(c) For calendar years 2012 and beyond, the Environmental Quality Commission may modify the registration fees under this section so that the total of registration fees collected approximately matches the department's costs in implementing ORS 459A.305 to 459A.355, excluding costs incurred under ORS 459A.340 (4).

(3)(a) If a manufacturer ceases to manufacture, sell or import covered electronic devices and covered electronic devices manufactured, sold or imported by the manufacturer are collected for recycling under a manufacturer program or the state contractor program, the manufacturer shall register with the department and pay a registration fee of \$250.

(b) Any manufacturer described in paragraph (a) of this subsection to which the department provides notification of a return share and return share by weight and that has not previously filed a registration shall, within 30 days of receiving the notification, file a registration with the department and pay to the department a registration fee of \$250. [2007 c.302 §4]

**Note:** See note under 459A.300.

**459A.320 Manufacturer program plan; state contractor program.** (1) A manufacturer choosing to implement a manufacturer program shall submit a plan to the Department of Environmental Quality at the time of payment of the annual registration fee required under ORS 459A.315.

(2) The manufacturer's plan must describe how the manufacturer will:

(a) Finance, manage and conduct a statewide program to collect covered electronic devices from covered entities in this state.

(b) Provide for environmentally sound management practices to collect, transport and recycle covered electronic devices.

(c) Provide for advertising and promotion of collection opportunities statewide and on a regular basis.

(d) Include convenient service in every county in this state and at least one collection site for any city with a population of at least 10,000. A collection site for a county may be the same as a collection site for a city in the county. Collection sites shall be staffed and open to the public at a frequency

adequate to meet the needs of the area being served. A program may provide collection service jointly with another program.

(3) A manufacturer choosing to implement a manufacturer program shall:

(a) Meet or exceed the requirements for collection sites described in subsection (2) of this section.

(b) Provide for collection, transportation and recycling of covered electronic devices for covered entities free of charge, except that a manufacturer that provides premium service for a covered entity may charge for the additional cost of that premium service.

(c) Implement the plan required under this section.

(d) Conduct a statistically significant sampling or actual count of the covered electronic devices, except for computer peripherals, collected and recycled by the manufacturer each calendar year using a methodology approved by the department. The manufacturer shall report the results of the sampling or count to the department, in accordance with the approved sampling methodology or as directed by the department, no later than March 1 of the following calendar year. The report must include:

(A) A list of all brands identified during the sampling or count by the manufacturer;

(B) The weight of covered electronic devices identified for each brand during the sampling or count; and

(C) The total weight of covered electronic devices, including orphan devices and computer peripherals, collected from covered entities in the state by the manufacturer during the previous calendar year.

(e) By March 1 of each year, provide a report to the department that details how the plan required under this section was implemented during the previous calendar year.

(4) A group of manufacturers may choose to implement a manufacturer program as one entity, if in doing so the manufacturers meet the sum of their individual return shares by weight under ORS 459A.340 (3) and that sum is at least five percent.

(5) By July 1 of each year, a manufacturer that does not meet its return share by weight for the previous calendar year shall pay the department for the amount not achieved at a rate determined by the department to be equivalent to the amount the manufacturer would have paid, plus 10 percent, to be part of the state contractor program under ORS 459A.340.

(6) A manufacturer participating in the state contractor program under ORS 459A.340 shall notify the department at the time of its registration each year.

(7) Except as provided in subsection (4) of this section, a manufacturer with less than a five percent return share is required to participate in the state contractor program under ORS 459A.340. [2007 c.302 §5; 2007 c.302 §6; 2011 c.548 §§5,6]

**Note:** See note under 459A.300.

**459A.322 Recycling credits; reporting; rules.** (1) A manufacturer program or a state contractor program that collects, transports and recycles covered electronic devices in an amount that exceeds the program's return share by weight for a calendar year may claim recycling credits for use in succeeding calendar years as follows:

(a) A program may claim one recycling credit for each pound of covered electronic devices collected, transported and recycled in excess of the program's return share by weight for a calendar year;

(b) A program may retain all or part of its recycling credits or may sell any portion of its recycling credits to another program at a price negotiated by the parties;

(c) A manufacturer program may use recycling credits earned or purchased to meet up to 15 percent of its return share by weight during any calendar year. One recycling credit may be used to meet one pound of return share by weight; and

(d) By rule, the Environmental Quality Commission may change the percentage of the return share by weight specified in paragraph (c) of this subsection.

(2) A manufacturer program must include the following information on recycling credits in its annual report to the Department of Environmental Quality required by ORS 459A.320 (3)(e):

(a) The number of recycling credits the manufacturer program possessed at the beginning of the previous calendar year.

(b) The total number of recycling credits the manufacturer program purchased and sold during the previous calendar year, the names of the programs from which recycling credits were purchased or to which recycling credits were sold and the number of recycling credits purchased from or sold to each program.

(c) The number of recycling credits the manufacturer program used to meet its return share by weight for the previous calendar year.

(d) The number of recycling credits the manufacturer program is claiming from the previous calendar year. This number is the difference between the total weight of covered electronic devices that the manufacturer program collected, transported and recycled during the previous calendar year

and the program's return share by weight for the previous calendar year. [2011 c.548 §2]

**Note:** See note under 459A.300.

**459A.325 Recycling fee for manufacturer participating in state contractor program.** By September 1 of each year, a manufacturer that participates in the state contractor program shall pay a recycling fee to the Department of Environmental Quality in an amount determined by the department under ORS 459A.340 (6) to cover the costs of collecting, transporting and recycling the manufacturer's annual return share of covered electronic devices for the following year. [2007 c.302 §7]

**Note:** See note under 459A.300.

**459A.330 Prohibition against charging fee for collection, transportation or recycling of covered electronic devices; exception.** (1) Except as authorized in subsection (2) of this section, a manufacturer program, the state contractor program or a collector participating in a manufacturer program or the state contractor program may not charge a fee to covered entities for the collection, transportation or recycling of covered electronic devices.

(2) A collector that provides a premium service to a covered entity may charge for the additional cost of providing the premium service. [2007 c.302 §8]

**Note:** See note under 459A.300.

**459A.335 Requirements for sale of covered electronic devices by retailers; retailer's duty to consumers regarding information about recycling covered electronic devices.** (1) A retailer may not sell or offer for sale any covered electronic device, except for computer peripherals, in or for delivery into this state unless:

(a) The covered electronic device is labeled with a brand and the label is permanently affixed and readily visible;

(b) The brand is included on the list posted by the Department of Environmental Quality pursuant to ORS 459A.340 (1); and

(c) The list posted by the department pursuant to ORS 459A.340 (1) specifies that the manufacturer is in compliance with the requirements of ORS 459A.305 to 459A.355.

(2) A retailer shall provide to a consumer at the time of the sale of a covered electronic device information from the department's website that provides details about where and how a consumer can recycle covered electronic devices in Oregon. The information shall be provided in printed form for in-store sales and in printable form for Internet sales and other sales where the Internet is involved. [2007 c.302 §9; 2011 c.548 §7]

**Note:** See note under 459A.300.

**459A.340 Duties of department; surcharge.** The Department of Environmental Quality shall:

(1) Maintain and make available on its website the following lists, which must be updated by the first day of each month:

(a) A list of registered manufacturers and their brands;

(b) A list of brands for which no manufacturer has registered; and

(c) A list that identifies which manufacturers are in compliance with ORS 459A.305 to 459A.355.

(2) Review and approve manufacturer plans that comply with ORS 459A.320 and are submitted annually by manufacturers choosing to implement a manufacturer program for recycling covered electronic devices.

(3)(a) Determine the return share and return share by weight for each calendar year for each manufacturer. The return share shall be determined by dividing the total weight of covered electronic devices of that manufacturer's brands by the total weight of covered electronic devices for all manufacturers' brands. The return share by weight shall be determined by multiplying the return share for each such manufacturer by the total weight in pounds of covered electronic devices, including orphan devices and computer peripherals, as determined by the department.

(b) For each manufacturer except those specified in paragraph (c) of this subsection, determine the return share and return share by weight for calendar years through 2011 based on the best available public return share data and public weight data from within the United States for covered electronic devices from covered entities. For subsequent years, the return share of covered electronic devices for each manufacturer shall be based on the most recent annual sampling or count of covered electronic devices. For subsequent years, the total weight in pounds of covered electronic devices shall be based on the total weight of covered electronic devices, including orphan devices and computer peripherals, as determined by the department.

(c) For each manufacturer whose manufacture of covered electronic devices as defined in ORS 459A.305 (4)(a)(C) exceeds its manufacture of covered electronic devices as defined in ORS 459A.305 (4)(a)(A) and (B), determine the return share and return share by weight based on the total return share and return share by weight determined under paragraph (a) of this subsection for all manufacturers described in this paragraph, allo-

cated according to each manufacturer's percentage of the total number of covered electronic devices described in ORS 459A.305 (4)(a)(C) sold in this state the previous calendar year. The department:

(A) May use national market data, retail and manufacturer data, consumer research and other data to determine the percentages described in this paragraph. The department may also require that manufacturers submit sales or other data regarding the number of the manufacturer's covered electronic devices sold in Oregon. Manufacturers must submit any data required by the department in the format requested by the department.

(B) May assess a surcharge to the annual registration fee for manufacturers described in this paragraph if the department determines that the surcharge is necessary to cover any additional costs to the department in making the determinations described in this paragraph. The department must allocate any assessed surcharge to the manufacturer as a percentage of the manufacturer's return share determined pursuant to this paragraph.

(d) By May 1 of each year, provide to each manufacturer that had a return share determined under this section its return share and its return share by weight for the following year.

(4) Establish a state contractor program for the collection, transportation and recycling of covered electronic devices from covered entities in this state. The state contractor program shall:

(a) To the extent practicable, use existing local collection, transportation and recycling infrastructure;

(b) Utilize environmentally sound management practices to collect, transport and recycle covered electronic devices;

(c) Provide for covered entities, free of charge, convenient and available collection services and sites for covered electronic devices in both rural and urban areas;

(d) Advertise and promote collection opportunities statewide and on a regular basis; and

(e) Conduct a statistically significant sampling or actual count of the covered electronic devices, except for computer peripherals, collected and recycled by the state contractor program during each calendar year using a methodology approved by the department and prepare a report no later than March 1 of the following calendar year that includes:

(A) A list of all brands identified during the sampling or count;



(B) The weight of covered electronic devices identified for each brand during the sampling or count; and

(C) The total weight of covered electronic devices, including orphan devices and computer peripherals, collected from covered entities in the state by the state contractor program during the previous calendar year.

(5) Determine a manufacturer's annual registration fee for purposes of ORS 459A.315 (2) using national market data prorated for Oregon based on statewide population.

(6) Determine the recycling fee to be paid under ORS 459A.325 by each manufacturer that participates in the state contractor program established pursuant to subsection (4) of this section. The department shall determine the recycling fees based on the manufacturer's annual return share and return share by weight as determined under subsection (3) of this section.

(7) Maintain on its website information on collection opportunities for covered electronic devices, including collection site locations and hours. The information must be made available in a printable format for retailers.

(8) Report biennially to the Legislative Assembly on the operation of the statewide system for collection, transportation and recycling of covered electronic devices. [2007 c.302 §10; 2010 c.38 §1; 2011 c.548 §8]

**Note:** See note under 459A.300.

**459A.345 Rules.** The Environmental Quality Commission may adopt rules as necessary to implement ORS 459A.305 to 459A.355. [2007 c.302 §11]

**Note:** See note under 459A.300.

**459A.350 Disposition of fees.** Fees collected by the Department of Environmental Quality under ORS 459A.305 to 459A.355 shall be deposited in the State Treasury to the credit of the Covered Electronic Devices Account established under ORS 459A.355. [2007 c.302 §12]

**Note:** See note under 459A.300.

**459A.355 Covered Electronic Devices Account; interest; uses.** The Covered Electronic Devices Account is established separate and distinct from the General Fund. Interest earned by the account shall be credited to the account. Moneys in the account are continuously appropriated to the Department of Environmental Quality and may be used only to pay the costs of implementing ORS 459A.305 to 459A.355 and enforcing the prohibition in ORS 459.247 relating to disposal of covered electronic devices. [2007 c.302 §13]

**Note:** See note under 459A.300.

**459A.360 Evaluation by department of certain federal laws.** (1) The Department of Environmental Quality shall evaluate any federal law that establishes a national program for the collection and recycling of electronic devices.

(2) If the department determines that the federal law substantially meets or exceeds the requirements and intent of ORS 459A.305 to 459A.355, the department shall include information on the federal law in the next biennial report to the Legislative Assembly pursuant to ORS 459A.340. [2007 c.302 §14]

**Note:** See note under 459A.300.

**459A.365 City and county regulation of collection of solid waste.** ORS 459A.305 to 459A.355 do not supersede any authority under ORS chapter 459 or 459A for cities and counties to regulate the collection of solid waste. [2007 c.302 §14a]

**Note:** See note under 459A.300.

### (State Agencies)

**459A.475 Legislative findings; policy.** The Legislative Assembly finds and declares that:

(1) It is the policy of the State of Oregon to conserve and protect its resources. The maintenance of a quality environment for the people of this state now and in the future is a matter of statewide concern.

(2) The volume of solid waste generated within the state, an increased rate in the consumption of products and materials, including paper products, and the absence of adequate programs and procedures for the reuse and recycling of these products and materials threaten the quality of the environment and well-being of the people of Oregon. [2003 c.794 §188]

**Note:** 459A.475 to 459A.490 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 459A or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**459A.480 State agency recycling program; requirements; training.** (1) For the current state waste paper collection program, the Oregon Department of Administrative Services, in consultation with the Department of Environmental Quality, shall provide participating locations with public awareness information and training to state and legislative employees, including but not limited to the proper separation and disposal of recycled resources. Additionally, the Oregon Department of Administrative Services, in consultation with the Department of Environmental Quality, shall provide training for personnel, including but not limited to state buildings and grounds personnel responsible for the collection of waste materials. This

training shall include but is not limited to educating and training the personnel concerning the separation and collection of recyclable materials.

(2) The Oregon Department of Administrative Services shall continue the current state waste paper collection program for employees of state government, as defined in ORS 174.111. This program shall include recycling opportunities for office paper, corrugated cardboard, newsprint, beverage containers as defined in ORS 459A.700, container glass, mixed waste paper, plastic bottles, waste oil, clay-coated materials, batteries, toner and printer cartridges and any other material at the discretion of the Director of the Oregon Department of Administrative Services, in consultation with the Department of Environmental Quality.

(3) The Oregon Department of Administrative Services may contract as necessary for the recycling of products returned under subsections (1) and (2) of this section. [2003 c.794 §189]

**Note:** See note under 459A.475.

**459A.485 System and procedures for separation and collection of solid waste; rules; exemption.** (1) Notwithstanding ORS 183.335 (5), the Oregon Department of Administrative Services shall adopt rules pursuant to ORS chapter 183 that:

(a) Establish procedures for the separation of solid waste generated by state agencies that can be recycled or reused.

(b) Establish a system for the collection of solid waste generated by state agencies that can be recycled or reused. The system shall ensure that the material is made available to appropriate agencies or private industries for reuse or recycling at the greatest economic value and to the greatest extent feasible for recycling.

(2) All state agencies shall comply with the procedures and systems established under subsection (1) of this section.

(3) The Governor may exempt any single activity or facility of any state agency from compliance under this section if the Governor determines it to be in the paramount interest of the state. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods not to exceed one year. The Governor shall make public all exemptions together with the reasons for granting such exemptions. [2003 c.794 §190]

**Note:** See note under 459A.475.

**459A.490 Paper conservation.** (1) The Oregon Department of Administrative Services shall encourage paper conservation.

(2) The department shall provide guidelines to state agencies and contractors on the availability of recycled paper and paper products, including the sources of supply and the potential uses of various grades of recycled paper.

(3) The department shall review the total paper purchases and utilization of each state agency.

(4) The department shall, in conjunction with the administrative heads of state agencies, develop procedures to eliminate excessive or unnecessary paper use, including but not limited to overpurchase of paper, overprinting of materials, purchase of too high a grade of paper, purchase of paper that is not recyclable and purchase of virgin paper when recycled paper is available in the same grade. [2003 c.794 §191]

**Note:** See note under 459A.475.

#### **(Newsprint and Directories)**

**459A.500 Definitions for ORS 459A.500 to 459A.520.** As used in ORS 459A.500 to 459A.520:

(1) “Consumer of newsprint” means a person who uses newsprint in a commercial or government printing or publishing operation.

(2) “Newsprint” means paper that meets the specifications for Standard Newsprint Paper and Roto Newsprint Paper as set forth in the current edition of the Harmonized Tariff Schedule of the United States for such products.

(3) “Post-consumer waste” means a material that would normally be disposed of as a solid waste, having completed its life cycle as a consumer or manufacturing item.

(4) “Recycled-content newsprint” means newsprint that includes post-consumer waste paper. [1991 c.385 §26; 1993 c.560 §90]

**459A.505 Minimum recycled content for newsprint.** Every consumer of newsprint in Oregon shall ensure that at least 7.5 percent of the annual aggregate fiber content of all newsprint used by the consumer of newsprint is composed of post-consumer waste paper, if:

(1) Recycled-content newsprint is available at the same or lower weighted net price compared to that of newsprint made from virgin material;

(2) The average mechanical and optical properties of recycled-content newsprint from any individual mill measured quarterly meets or exceeds the average mechanical and optical properties of all newsprint produced in the northwest as reported in the most current quarterly American Newspaper Publisher Association Newsprint Quality Program Special Report; and

(3) The recycled-content newsprint is available within the same period of time as virgin material. [1991 c.385 §27; 2005 c.22 §335]

**459A.510 Report to consumer of amount of post-consumer waste in shipment.** Each person who supplies a consumer of newsprint with newsprint shall report with each supply the amounts of post-consumer waste contained in each shipment to each consumer of newsprint. If a shipment contains no post-consumer waste paper, the supplier shall so report. [1991 c.385 §28]

**459A.515 Annual report to department; content.** No later than February 28 each year, each consumer of newsprint shall report to the Department of Environmental Quality the following information for the previous calendar year:

(1) The amount of newsprint used in short tons;

(2) The amount of recycled-content newsprint used in short tons; and

(3) The aggregate recycled content of the newsprint used as a percent. [1991 c.385 §29; 1993 c.560 §91; 2003 c.14 §292]

**459A.520 Minimum recycled content for directories.** (1) Every directory publisher shall ensure that directories distributed in Oregon:

(a) Have a minimum recycled content of at least 25 percent by weight, with no less than 15 percent of the total weight consisting of post-consumer waste, if:

(A) The recycled-content paper is available on the market; and

(B) The recycled-content paper is of the same quality as paper made from virgin material;

(b) Use bindings that do not impede recycling; and

(c) Use inks that do not impede recycling.

(2) For each local jurisdiction where directories are distributed, directory publishers will cooperate with local government agencies to ensure that recycling opportunities exist for directories at the time the directories are distributed provided markets exist for the directories.

(3) The Department of Environmental Quality shall develop a report format and survey directory publishers in Oregon on an annual basis to determine whether the publishers are meeting the requirements under subsections (1) and (2) of this section.

(4) As used in this section, "directory" means a telephone directory that weighs one pound or more for a local jurisdiction in Oregon distributed in this state. [1991 c.385 §33; 2005 c.22 §336]

(Glass)

**459A.550 Report on use of new and recycled glass; minimum percentage of recycled glass required.** (1) On or before

February 28 each year, every glass container manufacturer shall report to the Department of Environmental Quality, in accordance with a method established by the department, the total amount, in tons, of new glass food, drink and beverage containers made in Oregon or sold to packagers located in Oregon by the glass container manufacturer during the previous calendar year, and the tons of recycled glass used in manufacturing the new containers. A glass container manufacturer located more than 750 miles from the borders of this state shall report to the department only for those years in which the glass container manufacturer sells more than 1,000 tons of new glass containers to packagers located in Oregon.

(2) For glass containers manufactured in Oregon or within 750 miles of the borders of this state, each glass container manufacturer shall use the following minimum percentages of recycled glass in manufacturing glass food, drink or beverage containers:

(a) Thirty-five percent on and after January 1, 1995.

(b) Fifty percent on and after January 2, 2008.

(3) Upon request from a glass container manufacturer, the department shall not enforce the requirement that a minimum percentage of recycled glass be used in the manufacturing of glass food, drink or beverage containers under subsection (2) of this section if the department determines that a glass container manufacturer cannot meet the minimum percentage requirements because of a lack of available glass cullet that meets reasonable specifications established by the manufacturer.

(4) A manufacturer requesting an exemption from the recycled glass content requirements under this section shall inform the department of the steps the manufacturer plans to take in order to come into compliance with the recycled content requirements. The department shall grant exemptions for a period of no more than three years. An exemption may be renewed upon a reasonable showing by the applicant. The department may recover all costs involved in considering and acting upon exemption requests.

(5) On or after January 2, 2008, in determining whether a glass container manufacturer has met the 50 percent minimum percentage requirement, the department shall credit toward the requirement the combined amount of recycled glass generated in Oregon for secondary end uses. If the combined

amount meets the 50 percent minimum percentage requirement, the department shall not initiate enforcement action.

(6) The department shall not enforce the provisions of subsection (2)(b) of this section until January 2, 2008.

(7) As used in this section, "glass container manufacturer" means a person that manufactures new glass containers in Oregon or that, during the calendar year preceding the reporting period established under subsection (1) of this section, manufactured new glass containers outside Oregon that were sold by the manufacturer to packagers located in Oregon. [1991 c.385 §34; 1993 c.560 §92; 1997 c.537 §1; 1999 c.976 §1; 2003 c.671 §1]

### (Used Oil Recycling)

**459A.552 Recycling and recovery of used oil; goal.** It is the goal of the State of Oregon that the amount of recycling and recovery of used oil from households in Oregon shall be at least 70 percent. [1993 c.527 §2; 2005 c.22 §337]

**Note:** 459A.552 to 459A.599 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 459A or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**459A.554 Reduction, reuse and recovery of used oil.** After consideration of technical and economic feasibility, the Department of Environmental Quality and all persons in Oregon shall encourage the management of used oil in Oregon as follows:

(1) First, to reduce the amount of used oil generated;

(2) Second, to reuse oil by rerefining the oil; and

(3) Third, to recover energy from the used oil and use the oil for other secondary uses. [1993 c.527 §3]

**Note:** See note under 459A.552.

**459A.555 Definitions for ORS 459A.552 to 459A.599.** As used in ORS 459A.552 to 459A.599 unless the context requires otherwise:

(1) "Commission" means the Environmental Quality Commission.

(2) "Department" means the Department of Environmental Quality.

(3) "Recycle" means to prepare used oil for reuse as a petroleum product by refining, rerefining, reclaiming, reprocessing or other means or to use used oil in a manner that substitutes for a petroleum product made from new oil, provided that the preparation or use is operationally safe, environmentally sound and complies with all laws and regulations.

(4) "Person" means any individual, private or public corporation, partnership, cooperative association, estate, municipality, political or jurisdictional subdivision or governmental agency or instrumentality.

(5) "Used oil" means a petroleum-based oil which through use, storage or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties. [Formerly 468.850]

**Note:** See note under 459A.552.

**459A.560 Legislative findings.** The Legislative Assembly finds that:

(1) Millions of gallons of used oil are generated each year in the state;

(2) Used oil is a valuable petroleum resource which can be recycled; and

(3) In spite of this potential for recycling, significant quantities of used oil are wastefully disposed of or improperly used by means which pollute the waters, land and air and endanger the public health and welfare. [Formerly 468.853]

**Note:** See note under 459A.552.

**459A.565 Used oil to be collected and recycled.** The Legislative Assembly declares that used oil shall be collected and recycled to the maximum extent possible, by means which are economically feasible and environmentally sound, in order to conserve irreplaceable petroleum resources, preserve and enhance the quality of natural and human environments, and protect public health and welfare. [Formerly 468.856]

**Note:** See note under 459A.552.

**459A.570 Used oil information center; public education.** The Department of Environmental Quality shall conduct a public education program to inform the public of the needs for and benefits of collecting and recycling used oil in order to conserve resources and preserve the environment. As part of this program, the department shall:

(1) Establish, maintain and publicize a used oil information center that will explain local, state and federal laws and regulations governing used oil and will inform holders of quantities of used oil on how and where used oil may be properly disposed of; and

(2) Encourage the establishment of voluntary used oil collection and recycling programs and provide technical assistance to persons organizing such programs. [Formerly 468.859]

**Note:** See note under 459A.552.

**459A.575 Oil recycling information to be posted; rules.** The Environmental Quality Commission shall adopt rules, in accordance with the provisions of ORS 468.020, requiring sellers of more than 500 gallons of lubrication or other oil annually, in contain-

ers for use off the premises, to post and maintain at or near the point of sale durable and legible signs, unless otherwise prohibited by law, informing the public of the importance of proper collection and disposal of used oil, and how and where used oil may be properly disposed of, including locations and hours of operation of conveniently located collection facilities. [Formerly 468.862]

**Note:** See note under 459A.552.

**459A.580 Prohibited disposal of used oil.** Unless permitted pursuant to ORS 468B.050, no person shall dispose of used oil by discharge into sewers, drainage systems or the waters of this state as defined by ORS 468B.005, or by incineration other than for energy generating purposes. [Formerly 468.865; 2003 c.469 §3]

**Note:** See note under 459A.552.

**459A.585 Enforcement powers of commission.** The Environmental Quality Commission shall have the power to enforce compliance with or restrain violation of ORS 459A.580 or any rule adopted under ORS 459A.575 in the same manner provided for enforcement proceedings under ORS chapters 468, 468A and 468B. [Formerly 468.868]

**Note:** See note under 459A.552.

**459A.590 Use, management, disposal and resource recovery; rules.** The Environmental Quality Commission shall adopt rules and issue orders relating to the use, management, disposal of and resource recovery from used oil. The rules shall include but need not be limited to performance standards and other requirements necessary to protect the public health, safety and environment, and a provision prohibiting the use of untested used oil for dust suppression. The commission shall insure that the rules do not discourage the recovery or recycling of used oil in a manner that is consistent with the protection of human health, safety and the environment. [Formerly 468.869]

**Note:** See note under 459A.552.

**459A.595 Use for dust suppression or as herbicide.** Except to the extent that a use of used oil is prohibited or regulated by federal law, the rules adopted under ORS 459A.590 shall not prohibit or regulate the use of used oil for dust suppression or as an herbicide if the used oil is generated by a business or industry and does not contain polychlorinated biphenyls, or contain or show a characteristic of hazardous waste as defined in ORS 466.005 or is generated by a household and is:

- (1) Used on property owned by the generator; or
- (2) Generated and used on property leased by the generator or used on property immediately adjacent to property owned or

leased by the generator with the written approval of the property owner on whose property the oil is to be applied. [Formerly 468.870]

**Note:** See note under 459A.552.

**459A.599 Short title.** ORS 459A.552 to 459A.585 may be cited as the "Used Oil Recycling Act." [Formerly 468.871]

**Note:** See note under 459A.552.

### (Compost)

**459A.600 "Compost" defined.** As used in ORS 459A.605 to 459A.620, "compost" means the product resulting from the controlled biological decomposition of organic wastes that are source separated from the municipal solid waste stream. [1991 c.385 §19]

**459A.605 Rules for purchase of compost and sewage sludge by state.** In consultation with the Department of Environmental Quality and affected state and local agencies, the Oregon Department of Administrative Services shall adopt rules for the purchase by the State of Oregon of compost and sewage sludge. The rules shall designate the state minimum purchasing standards. The rules shall encourage the use of compost and sludge without jeopardizing the safety and health of the citizens of the state or the environment. [1991 c.385 §21]

**459A.610** [1991 c.385 §22; repealed by 1993 c.560 §107]

**459A.615 Programs to use compost and sewage sludge.** The State Forestry Department, the State Parks and Recreation Department, the Department of Transportation and the Oregon Department of Administrative Services shall initiate programs that use compost or sewage sludge in place of, or to supplement, soil amendments, ground cover materials, mulching materials or other similar products for which compost can be used as an effective substitute. [1991 c.385 §23; 1993 c.560 §93]

**459A.620 Use of compost or sewage sludge by state agencies given priority.** Any state agency that prepares a request for bid for soil amendments, ground cover materials, mulching materials or other similar products shall first determine that compost or sewage sludge is not available in adequate quantities, cannot practically be used for the intended applications, would jeopardize the intended project results or would be used in combination with a fertilizer or other similar product. [1991 c.385 §25; 2005 c.22 §338]

### (Mercury)

**459A.630 Motor vehicle mercury light switches.** The Department of Environmental Quality shall coordinate with and encourage entities such as associations representing motor vehicle repair shops to offer to the public the replacement and recycling of mo-

tor vehicle mercury light switches. The department shall make available to the public information concerning services to replace and recycle motor vehicle mercury light switches. [2001 c.924 §10]

**Note:** 459A.630 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 459A or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

### (Plastics)

**459A.650 Definitions for ORS 459A.650 to 459A.665.** As used in ORS 459A.650 to 459A.665:

(1) “Package” means any container used to protect, store, contain, transport, display or sell products.

(2) “Package manufacturer” means the producer or generator of a rigid plastic container for a packaged product that is sold or offered for sale in Oregon.

(3) “Product-associated package” means a brand-specific rigid plastic container line, which may have one or more sizes, shapes or designs and which is used in conjunction with a particular, generic product line.

(4) “Product manufacturer” means the producer or generator of a packaged product that is sold or offered for sale in Oregon in a rigid plastic container.

(5) “Recycled content” means the portion of a package’s weight that is composed of recycled material, as determined by a material balance approach that calculates total recycled material input as a percentage of total material input in the manufacture of the package.

(6) “Recycled material” means a material that would otherwise be destined for solid waste disposal, having completed its intended end use or product life cycle. Recycled material does not include materials and by-products generated from, and commonly reused within, an original manufacturing and fabrication process.

(7) “Rigid plastic container” means any package composed predominantly of plastic resin which has a relatively inflexible finite shape or form with a minimum capacity of eight ounces and a maximum capacity of five gallons, and that is capable of maintaining its shape while holding other products. [1991 c.385 §34a; 1993 c.560 §96; 1993 c.568 §1]

**459A.655 Minimum reuse, recycled material or recycled content for rigid plastic containers.** (1) Except as provided in ORS 459A.660 (5), any rigid plastic container sold, offered for sale or used in association with the sale or offer for sale of products in Oregon shall:

(a) Contain 25 percent recycled content by January 1, 1995;

(b) Be made of plastic that is being recycled in Oregon at a rate of 25 percent by January 1, 1995; or

(c) Be a package that is used five or more times for the same or substantially similar use.

(2) A rigid plastic container shall meet the requirements in subsection (1)(b) of this section if the container meets one of the following criteria:

(a) It is a rigid plastic container and rigid plastic containers, in the aggregate, are being recycled in the state at a rate of 25 percent by January 1, 1995;

(b) It is a specified type of rigid plastic container and that type of rigid plastic container, in the aggregate, is being recycled in the state at a rate of 25 percent by January 1, 1995; or

(c) It is a particular product-associated package and that type of package, in the aggregate, is being recycled in the state at a rate of 25 percent by January 1, 1995. [1991 c.385 §34b; 1993 c.560 §97; 1993 c.568 §2]

**459A.657 Recycling rate; hearings on decreased rate.** (1) The Department of Environmental Quality shall determine a recycling rate under ORS 459A.655 for rigid plastic containers in the aggregate on or before December 31, 1995, and thereafter, in accordance with the standards and procedures used to calculate such rate for calendar year 1996, as determined necessary by the department. If for any year thereafter, the department determines that the aggregate rate is less than 25 percent, the department also shall determine whether the recycling rate for compliance for rigid plastic containers made from the major resin types is 25 percent or more.

(2) If the recycling rate for rigid plastic containers in the aggregate determined by the department for compliance purposes is less than 25 percent for 1996 or any subsequent year, the department shall present relevant information regarding the decrease in the rate to the appropriate legislative committees or interim committees. The legislative committees shall hold hearings to determine the factors that caused the rate to decrease, including a review of the status of collection programs in the state and the capacity available to process rigid plastic containers collected and reclaim the resin from the collected containers. [1995 c.584 §2; 1997 c.552 §16]

**459A.660 Manufacturer records; certification by package manufacturer; exempt containers.** (1) Each product manufacturer and package manufacturer

shall maintain the records specified in this section that demonstrate for all rigid plastic containers of the manufacturer, how the manufacturer has complied with one or more of the requirements of ORS 459A.655, or for what reason, if any, the containers are exempt under subsection (5) of this section for the applicable period of time. Proprietary information included in the records, if submitted to the Department of Environmental Quality under this section shall not be made available to the general public. The records documenting the compliance shall be submitted to the department upon its request. Each manufacturer required to keep records under this section may be audited by the department. The department shall not take enforcement action, audit or request copies of the records kept by a manufacturer under this section before January 1, 1996, and until the department calculates the recycling rates in ORS 459A.655 (2) for the calendar year 1995.

(2) To the extent a rigid plastic container complies with ORS 459A.655 (1)(c) or (2)(c) because the product manufacturer's particular product-associated package or all of the product manufacturer's rigid plastic containers are being reused under ORS 459A.655 (1)(c) or recycled in the state at the rate specified in ORS 459A.655 (2)(c), the product manufacturer shall keep records that include the information the department may require to determine the product manufacturer's compliance.

(3) To the extent a rigid plastic container complies with ORS 459A.655 (1)(a) or (b) or (2)(a) or (b), the package manufacturer shall keep records that include the information the department may require to determine the package manufacturer's compliance.

(4) If subsection (3) of this section applies, the product manufacturer also shall maintain a record of the written certification by the package manufacturer that the rigid plastic containers comply with ORS 459A.655 (1)(a) or (b) or (2)(a) or (b). The certification also shall state that the package manufacturer will maintain the records required in subsection (3) of this section, and upon request of the department, submit to the department records that include the information the department may require to determine compliance. The product manufacturer may rely on the certification as a defense in any action or proceeding for violation of or to enforce ORS 459A.650 to 459A.665, whether such action or proceeding is brought under ORS 459.992, 459.995 or under any other law.

(5) Rigid plastic containers are exempt from the requirements of ORS 459A.655 if the

containers are not subject to the requirements of ORS 459A.700 to 459A.740 and if:

(a) The containers contain drugs, medical devices, medical food or infant formula as defined by the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 301 et seq.

(b) The packages are associated with products produced in or brought into the state that are destined for shipment to other destinations outside the state and that remain with such products upon such shipment.

(c) The packaging is necessary to provide tamper-resistant seals for public health purposes.

(d) The packages are reduced packages. A package shall qualify as reduced when the ratio of package weight per unit of product has been reduced by at least 10 percent when compared with the packaging used for the same product by the same packager five years earlier. In no case may packaging reduction be achieved, for purposes of this paragraph, by substituting a different material category for a material that constituted a substantial part of the packaging in question, or by packaging changes that adversely impact either the potential for the package to be recycled or contain recycled material. Exemptions under this paragraph shall be limited to five years, shall not be renewable and shall not be applicable to packages for which the ratio of package weight per unit of product increased after January 1, 1990.

(e) There has been substantial investment in achieving the recycling goal, viable markets for the material, if collected, can be demonstrated, the material is within five percent of the goal, there is substantial evidence of accelerating recycling rates and reasonable projections show that the material will meet the goal within two years.

(f) The containers contain food. A container shall be considered to contain food if it contains an article used, or intended to be used, for food, ice, confection or condiment, whether simple or compound, or any part or ingredient thereof or in the preparation thereof, and for human consumption, but a container shall not be considered to contain food if it contains a drinkable liquid and is a rigid plastic bottle. As used in this paragraph, "rigid plastic bottle" means a container that has a mouth narrower than its base.

(6) For any rigid plastic container not described in subsection (3) of this section, each product manufacturer shall keep records that include the information the department may require as evidence that the container is exempt from the requirements of ORS 459A.655.

(7) The department shall not enforce the provisions of ORS 459A.650 to 459A.660 during the first full calendar year after the department determines for the first time that the rate for compliance for rigid plastic containers in the aggregate is less than 25 percent. For any period for which the department determines that the rate for compliance for rigid plastic containers in the aggregate equals or exceeds 25 percent, product manufacturers and package manufacturers are not required to keep records under this section and are not required to comply with the requirements of ORS 459A.655 (1)(a) and (c) and (2)(b) and (c). [1991 c.385 §34c; 1993 c.560 §98; 1993 c.563 §1; 1993 c.568 §3; 1995 c.584 §§3,4]

**459A.665 Opportunity to recycle rigid plastic containers.** A local government shall provide the opportunity to recycle rigid plastic containers in metropolitan and urban wastesheds when there is a stable market price for those containers that equals or exceeds 75 percent of the necessary and reasonable collection costs for those containers. [1991 c.385 §§34d,50]

**459A.675 Definitions for ORS 459A.675 to 459A.685.** As used in ORS 459A.675 to 459A.685:

(1) "Label" means a code label, as described in ORS 459A.680, molded into or imprinted on or near the bottom of the plastic container or bottle.

(2) "Rigid plastic bottle" means any rigid plastic container intended for single use with a neck smaller than the container body that accepts a screw-type, snap cap or other closure and has a minimum capacity of 16 ounces and a maximum capacity of five gallons.

(3) "Rigid plastic container" means any formed or molded container other than a bottle comprised predominantly of plastic resin and having a relatively inflexible finite shape or form and intended primarily as a single service container with a minimum capacity of eight ounces and a maximum capacity of five gallons. [1991 c.385 §86; 1993 c.560 §99]

**Note:** 459A.675 to 459A.695 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 459A or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**459A.680 Labeling requirements for rigid plastic bottles and containers.** (1) All rigid plastic bottles and rigid plastic containers sold in Oregon shall be labeled with a code that indicates the resin used to produce the rigid plastic bottle or rigid plastic container. Rigid plastic bottles or rigid plastic containers with labels, basecups or other components of a different material may be coded by their basic material if the mate-

rial is compatible in recycling systems. The code shall consist of a number placed inside a triangle and letters placed below the triangle. The triangle shall be equilateral, formed by three arrows with the apex of each point of the triangle at the midpoint of each arrow, rounded with a short radius. The pointer of each arrow shall be at the midpoint of each side of the triangle with a short gap separating the pointer from the base of the adjacent arrow. The triangle, formed by the three arrows curved at their midpoints, shall depict a clockwise path around the code number. The numbers and letters used shall be as follows:

(a) 1 = PETE (polyethylene terephthalate);

(b) 2 = HDPE (high density polyethylene);

(c) 3 = V (vinyl);

(d) 4 = LDPE (low density polyethylene);

(e) 5 = PP (polypropylene);

(f) 6 = PS (polystyrene); and

(g) 7 = OTHER.

(2) The Department of Environmental Quality shall maintain a list of abbreviations used on labels under subsection (1) of this section and shall provide a copy of that list to any person upon request. [1991 c.385 §87; 1993 c.560 §100]

**Note:** See note under 459A.675.

**459A.685 Prohibition on manufacture of rigid plastic bottles or containers without label.** No person shall manufacture for use in this state any rigid plastic container or rigid plastic bottle that is not labeled in accordance with ORS 459A.680. [1991 c.385 §88]

**Note:** See note under 459A.675.

**459A.695 Requirement for retail establishment supplying plastic bags for customer use.** Any retail establishment that offers plastic bags to customers for purchases made at the establishment shall offer, at the location where the customer pays for the goods, paper bags as an alternative to plastic bags and inform customers that a choice is available. Nothing in this subsection shall be construed as requiring retail establishments to use plastic bags. [Formerly 459.419]

**Note:** See note under 459A.675.

## BEVERAGE CONTAINERS; BOTTLE BILL

**459A.700 Definitions for ORS 459A.700 to 459A.740.** As used in ORS 459.992 (3) and (4) and 459A.700 to 459A.740, unless the context requires otherwise:

(1) "Beverage" means a fluid described in ORS 459A.702.



(2) “Beverage container” means a container described in ORS 459A.702.

(3) “Commission” means the Oregon Liquor Control Commission.

(4) “Consumer” means every person who purchases a beverage in a beverage container for use or consumption.

(5) “Dealer” means every person in this state who engages in the sale of beverages in beverage containers to a consumer, or means a redemption center certified under ORS 459A.735.

(6) “Distributor” means every person who engages in the sale of beverages in beverage containers to a dealer in this state including any manufacturer who engages in such sales.

(7) “Importer” means any dealer or manufacturer who directly imports beverage containers into this state.

(8) “In this state” means within the exterior limits of the State of Oregon and includes all territory within these limits owned by or ceded to the United States of America.

(9) “Manufacturer” means every person bottling, canning or otherwise filling beverage containers for sale to distributors, importers or dealers.

(10) “Place of business of a dealer” means the location at which a dealer sells or offers for sale beverages in beverage containers to consumers.

(11) “Use or consumption” includes the exercise of any right or power over a beverage incident to the ownership thereof, other than the sale or the keeping or retention of a beverage for the purposes of sale.

(12) “Water and flavored water” means any beverage identified through the use of letters, words or symbols on its product label as a type of water. [Formerly 459.810; 2007 c.303 §1; 2011 c.277 §1]

**459A.702 Applicability of ORS 459A.700 to 459A.740.** (1) Except as provided in subsection (2) of this section, ORS 459A.700 to 459A.740 apply to any individual, separate, sealed glass, metal or plastic bottle or can, except for cartons, foil pouches and drink boxes, that contains the following beverages, intended for human consumption and in a quantity less than or equal to three fluid liters:

- (a) Water and flavored water;
- (b) Beer or other malt beverages; and
- (c) Mineral waters, soda water and similar carbonated soft drinks.

(2) One year after the date on which the Oregon Liquor Control Commission determines that at least 60 percent of the beverage containers returned for the refund value specified in ORS 459A.705 are returned

statewide to redemption centers approved under ORS 459A.735, or on January 1, 2018, whichever comes first, ORS 459A.700 to 459A.740 apply to any individual, separate, sealed glass, metal or plastic bottle or can, except for cartons, foil pouches, drink boxes and metal containers that require a tool to be opened, that contains:

(a) The following beverages, intended for human consumption and in a quantity less than or equal to three fluid liters:

- (A) Water and flavored water;
- (B) Beer or other malt beverages; and
- (C) Mineral waters, soda water and similar carbonated soft drinks.

(b) Any beverage other than those specified in paragraph (a) of this subsection that is intended for human consumption and is in a quantity more than or equal to four fluid ounces and less than or equal to one and one-half fluid liters, except distilled liquor, wine, dairy or plant-based milks, infant formula and any other exemptions set forth in rule of the Oregon Liquor Control Commission. [2011 c.277 §2]

**Note:** Sections 4 and 5, chapter 106, Oregon Laws 2013, provide:

**Sec. 4. Report.** No later than March 1 of each odd-numbered year, the Oregon Liquor Control Commission shall submit a report to the Legislative Assembly regarding beverage container redemption centers approved pursuant to the provisions of ORS 459A.737. The report must include, for the two previous calendar years:

(1) The number of beverage containers that are returned for refund value as a percentage of the total number of beverage containers sold in this state.

(2) The number of beverage container redemption centers operating in this state and the number of redemption centers for which applications are pending with the commission.

(3) The number of beverage containers that are returned for refund value in areas designated by the commission and the number of beverage containers returned for refund value in each area in the year before the beverage container redemption center began operation.

(4) The number of beverage containers that are returned for refund value to beverage container redemption centers in this state and the number of beverage containers that are returned for refund value to dealers in this state. [2013 c.106 §4]

**Sec. 5.** Section 4 of this 2013 Act is repealed on January 2, 2022. [2013 c.106 §5]

**459A.705 Refund value.** (1) Except as provided in subsections (2) and (3) of this section, every beverage container sold or offered for sale in this state shall have a refund value of not less than five cents.

(2)(a) Every beverage container sold or offered for sale in this state shall have a refund value of not less than 10 cents, beginning on the later of:

(A) Eight months after the Oregon Liquor Control Commission determines that, in

each of the two previous calendar years, the number of beverage containers returned for the refund value specified in this section was less than 80 percent of the total number of beverage containers that were sold in this state; or

(B) January 1 of the calendar year following the determination by the commission described in subparagraph (A) of this paragraph.

(b) The commission may not make a determination under this subsection before January 1, 2016.

(c) In making a determination under this subsection, the commission may not include the beverage containers and beverages described in ORS 459A.702 (2)(b) before January 1, 2021.

(3) Every beverage container certified as provided in ORS 459A.725, sold or offered for sale in this state, shall have a refund value of not less than two cents. [Formerly 459.820; 2011 c.277 §3]

**459A.710 Practices required of dealers and distributors.** Except as provided in ORS 459A.715:

(1)(a) Except as provided in paragraph (b) of this subsection, a dealer may not refuse to accept from any person any empty beverage containers that contained the kind of beverage sold by the dealer, or refuse to pay to that person the refund value of a beverage container as established by ORS 459A.705.

(b) A dealer that occupies a space of less than 5,000 square feet in a single area may refuse to accept from any person any empty beverage containers of the kind, size and brand that the dealer does not sell.

(2) A distributor or importer may not refuse to accept from a dealer any empty beverage containers of the kind, size and brand sold by the distributor or importer, or refuse to pay the dealer the refund value of a beverage container as established by ORS 459A.705.

(3) The manufacturer, distributor or importer of any beverage sold in this state shall ensure that all dealers or redemption centers in this state that redeem beverage containers are paid the refund value for those beverage containers and that those beverage containers are collected from the dealer or redemption center in a timely manner. [Formerly 459.830; 2007 c.303 §2]

**459A.712 Liability of manufacturer, distributor and importer for failure to pay refund value of beverage containers.** Any manufacturer, distributor or importer that fails to pay to a dealer or redemption center the refund value of beverage containers and to collect beverage containers as re-

quired by ORS 459A.710 (3) is liable to the dealer or redemption center for treble the unpaid refund value and treble the collection costs incurred by the dealer or redemption center for any beverage containers that were not collected as required. [2007 c.303 §7]

**459A.715 Refusal of dealer or distributor to accept or pay refund in certain cases; notice.** (1) A dealer may refuse to accept from any person, and a distributor or importer may refuse to accept from a dealer, any empty beverage container that does not state thereon a refund value as established by ORS 459A.705.

(2) A dealer may refuse to accept and to pay the refund value of:

(a) Empty beverage containers if the place of business of the dealer and the kind of empty beverage containers are included in an order of the Oregon Liquor Control Commission approving a redemption center under ORS 459A.735.

(b) Any beverage container visibly containing or contaminated by a substance other than water, residue of the original contents or ordinary dust.

(c)(A) More than 144 individual beverage containers returned by any one person during one day, if the dealer occupies a space of 5,000 or more square feet in a single area.

(B) More than 50 individual beverage containers returned by any one person during one day, if the dealer occupies a space of less than 5,000 square feet in a single area.

(d) Any beverage container that is damaged to the extent that the brand appearing on the container cannot be identified.

(3)(a) In order to refuse containers under subsection (2)(b), (c)(A) or (d) of this section, if a dealer occupies a space of 5,000 or more square feet in a single area, the dealer must post in each area where containers are received a clearly visible and legible sign containing the following information:

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#### NOTICE:

Oregon Law allows a dealer to refuse to accept:

1. Beverage containers visibly containing or contaminated by a substance other than water, residue of the original contents or ordinary dust;

2. More than 144 individual beverage containers from any one person during one day; or

3. Beverage containers that are damaged to the extent that the brand appearing on the container cannot be identified.

(b) In order to refuse containers under subsection (2)(b), (c)(B) or (d) of this section, if a dealer occupies a space of less than 5,000 square feet in a single area, the dealer must post in each area where containers are received a clearly visible and legible sign containing the following information:

NOTICE:

Oregon Law allows a dealer to refuse to accept:

1. Beverage containers visibly containing or contaminated by a substance other than water, residue of the original contents or ordinary dust;
2. More than 50 individual beverage containers from any one person during one day; or
3. Beverage containers that are damaged to the extent that the brand appearing on the container cannot be identified.

[Formerly 459.840; 1993 c.356 §1; 2003 c.761 §1; 2007 c.303 §§3,4]

**459A.717 Civil penalties.** (1) The Oregon Liquor Control Commission may impose a civil penalty of at least \$50, but not more than \$500, for a violation of any provision of ORS 459A.700 to 459A.740. Each day a violation occurs constitutes a separate violation. The authority to impose a civil penalty under this section is in addition to and not in lieu of the revocation and suspension authority under ORS 459.992 (4) and the criminal penalty authorized by ORS 459.992.

(2) Notwithstanding subsection (1) of this section, if a dealer, as defined in ORS 459A.700, violates a provision of ORS 459A.738, the commission shall provide the dealer with written notice informing the dealer of the violation and stating that the dealer may avoid civil penalty for the violation by curing the violation within 60 days after issuance of the notice. If the dealer fails to cure the violation within 60 days after issuance of the notice, the commission shall impose a civil penalty of at least \$200 for the violation. Each day after the 60-day period that the dealer continues to violate a provision of ORS 459A.738 is a separate offense subject to a separate civil penalty. The commission is not required to provide the dealer with an opportunity to cure a continuing violation before imposing a civil penalty for the continuing violation.

(3) Civil penalties under this section shall be imposed as provided in ORS 183.745.

(4) All penalties recovered under this section shall be paid into the State Treasury and credited to the General Fund and are available for general governmental expenses. [2013 c.157 §2; 2015 c.724 §5]

**459A.718 Distributor cooperatives; requirements; compliance; rules.** (1) Two or more distributors or importers may establish a distributor cooperative for the purposes of:

(a) Collecting the refund value of beverage containers specified in ORS 459A.705 from distributors or importers and refunding to dealers the amount the dealers paid for the refund value of empty beverage containers;

(b) Paying the refund value specified in ORS 459A.705 for beverage containers sold in this state; and

(c) Processing beverage containers sold in this state.

(2) A distributor cooperative established under this section must service a majority of the dealers in this state.

(3) If a distributor cooperative is established, a dealer that uses the distributor cooperative to redeem and process beverage containers sold in this state is not required to return beverage containers to a distributor or importer that does not participate in the distributor cooperative, provided that the dealer or the distributor cooperative provides an accounting to the distributor or importer of the beverage containers by brand and kind that were distributed by the distributor or importer and subsequently redeemed by the dealer or distributor cooperative.

(4) Upon receipt of the accounting required by subsection (3) of this section, a distributor or importer that does not participate in the distributor cooperative must pay the refund value of the redeemed beverage containers specified in the accounting to the dealer or distributor cooperative that provided the accounting.

(5)(a) For purposes of this subsection, beverage container return data is the number of beverage containers returned for the refund value specified in ORS 459A.705 in Oregon during the calendar year and the number of beverage containers that carry a refund value specified in ORS 459A.705 sold in Oregon during the calendar year, calculated separately.

(b) By July 1 of each calendar year, a distributor cooperative shall provide the Oregon Liquor Control Commission with a report that lists, in aggregate form for all distributors and importers that participate in the distributor cooperative, the previous calendar year's beverage container return data,

calculated separately for glass, metal and plastic beverage containers.

(c) By July 1 of each calendar year, a distributor or importer that does not participate in a distributor cooperative shall provide the commission with a report that lists the distributor's or the importer's beverage container return data for the previous calendar year, calculated separately for glass, metal and plastic beverage containers.

(6)(a) By August 1 of each calendar year, using the beverage container return data provided in subsection (5)(b) of this section, the Oregon Liquor Control Commission shall calculate the previous calendar year's percentage of beverage containers returned for the refund value specified in ORS 459A.705 for each distributor cooperative. The commission shall carry out the calculation separately for glass, metal and plastic beverage containers and shall post the percentages on the commission's website.

(b) By August 1 of each calendar year, using the beverage container return data provided in subsection (5)(c) of this section, the commission shall calculate the previous calendar year's percentage of beverage containers returned for the refund value specified in ORS 459A.705 for each distributor or importer that does not participate in a distributor cooperative. The commission shall carry out the calculation separately for glass, metal and plastic beverage containers and shall post the percentages on the commission's website.

(c) By August 1 of each calendar year, using the beverage container return data provided in subsection (5)(b) and (c) of this section, the commission shall calculate the previous calendar year's percentage of beverage containers returned for the refund value specified in ORS 459A.705 for all distributors and importers in Oregon. The commission shall carry out the calculation for all beverage containers, and separately for glass, metal and plastic beverage containers, and shall post the percentages on the commission's website.

(d) Except for the percentages described in paragraphs (a) to (c) of this subsection or in a proceeding under ORS 459A.717 for a violation of subsection (5) of this section, the commission may not disclose any information provided by a distributor, an importer or a distributor cooperative under subsection (5) of this section.

(7)(a) In order to determine compliance with the provisions of subsection (5) of this section, within six months of the date that the commission receives a report described in subsection (5)(b) and (c) of this section, the commission may review or audit the records of each reporting distributor cooper-

ative, or each reporting distributor or importer that does not participate in a distributor cooperative.

(b)(A) If in the course of a review described in paragraph (a) of this subsection the commission determines that an audit of a distributor cooperative, distributor or importer is necessary, the commission shall require the distributor cooperative, distributor or importer to retain an independent financial audit firm to determine the accuracy of information contained in the report. The distributor cooperative, distributor or importer that is the subject of review shall pay the costs of the audit. The audit must be limited to the records described in paragraph (a) of this subsection.

(B) The commission shall adopt rules to carry out the provisions of this paragraph. [2012 c.100 §2; 2013 c.157 §4]

**459A.720 Indication of refund value; exception; prohibition of certain metal containers and plastic container holders.**

(1) Every beverage container sold or offered for sale in this state by a dealer shall clearly indicate by embossing or by a stamp, or by a label or other method securely affixed to the beverage container, the refund value of the container.

(2) Subsection (1) of this section shall not apply to glass beverage containers designed for beverages having a brand name permanently marked thereon which, on October 1, 1972, had a refund value of not less than five cents.

(3) No person shall sell or offer for sale at retail in this state any metal beverage container so designed and constructed that a part of the container is detachable in opening the container without the aid of a can opener.

(4) On or after March 1, 1979, no person shall sell or offer for sale at retail in this state, in addition to beverages as defined in ORS 459A.700 (1), any beverage in liquid form intended for human consumption in any beverage container so designed and constructed that a metal part of the container is detachable in opening the container through use of a metal ring or tab without the aid of a can opener. However, nothing in this subsection shall prohibit the sale of a container the only detachable part of which is a piece of pressure sensitive tape.

(5) No person shall sell or offer for sale at retail in this state metal beverage containers connected to each other by a separate holding device constructed of plastic rings or other material which will not decompose by photobiodegradation, chemical degradation, or biodegradation within 120 days of disposal. [Formerly 459.850]

**459A.725 Certification of containers as reusable by more than one manufacturer; rules.**

(1) To promote the use in this state of reusable beverage containers of uniform design, and to facilitate the return of containers to manufacturers for reuse as a beverage container, the Oregon Liquor Control Commission may certify beverage containers which satisfy the requirements of this section.

(2) A beverage container may be certified if:

(a) It is reusable as a beverage container by more than one manufacturer in the ordinary course of business; and

(b) More than one manufacturer will in the ordinary course of business accept the beverage container for reuse as a beverage container and pay the refund value of the container.

(3) The commission may by rule establish appropriate liquid capacities and shapes for beverage containers to be certified or decertified in accordance with the purposes set forth in subsection (1) of this section.

(4) A beverage container shall not be certified under this section if by reason of its shape or design, or by reason of words or symbols permanently inscribed thereon, whether by engraving, embossing, painting or other permanent method, it is reusable as a beverage container in the ordinary course of business only by a manufacturer of a beverage sold under a specific brand name. [Formerly 459.860]

**459A.730 Decision upon certification applications; review and withdrawal of certifications.** (1) Unless an application for certification under ORS 459A.725 is denied by the Oregon Liquor Control Commission within 60 days after the filing of the application, the beverage container shall be deemed certified.

(2) The commission may review at any time certification of a beverage container. If after such review, with written notice and hearing afforded to the person who filed the application for certification under ORS 459A.725, the commission determines the container is no longer qualified for certification, it shall withdraw certification.

(3) Withdrawal of certification shall be effective not less than 30 days after written notice to the person who filed the application for certification under ORS 459A.725 and to the manufacturers referred to in ORS 459A.725 (2). [Formerly 459.870]

**459A.735 Redemption centers; application for approval; contents of approval order; notice.** (1) To facilitate the return of empty beverage containers and to serve

dealers of beverages, any person may establish a redemption center, subject to the approval of the Oregon Liquor Control Commission, at which any person may return empty beverage containers and receive payment of the refund value of such beverage containers.

(2) Application for approval of a redemption center shall be filed with the commission. The application shall state the name and address of the person responsible for the establishment and operation of the redemption center, the kind of beverage containers that will be accepted at the redemption center, the names and addresses of the dealers to be served by the redemption center and proposals for up to two convenience zones described in ORS 459A.738. The application shall include such additional information as the commission may require.

(3) The commission shall approve a redemption center if it finds the redemption center will provide a convenient service to persons for the return of empty beverage containers. The order of the commission approving a redemption center shall state:

(a) The location of the convenience zones specified by the commission under ORS 459A.738 (1);

(b) The dealers within the convenience zones to be served by the redemption center;

(c) The dealers within the convenience zones not to be served by or not participating in the redemption center;

(d) The services to be provided by the redemption center and the equivalent services required to be provided under ORS 459A.738 (5) by a dealer that does not participate in, and is not served by, the redemption center;

(e) The kind of empty beverage containers that the redemption center must accept; and

(f) Such other provisions to ensure the redemption center will provide a convenient service to the public as the commission may determine.

(4)(a) No later than five days after approving a redemption center under subsection (3) of this section, the commission shall provide written notice to each dealer that is identified in the order approving the redemption center as a dealer within the convenience zones not to be served by or not participating in the redemption center.

(b) The notice required under this subsection shall include:

(A) All information required to be in the order approving the redemption center under subsection (3) of this section; and

(B) Notice of the provisions of ORS 459A.738 that are applicable to the dealer receiving the notice.

(5) The commission may review at any time approval of a redemption center. After written notice to the person responsible for the establishment and operation of the redemption center, and to the dealers served by the redemption center, the commission may, after hearing, withdraw approval of a redemption center if the commission finds there has not been compliance with its order approving the redemption center, or if the redemption center no longer provides a convenient service to the public. [Formerly 459.880; 2007 c.303 §5; 2013 c.106 §3; 2015 c.724 §1]

**459A.737 Redemption centers; rules.**

(1) Pursuant to the provisions of ORS 459A.735, the Oregon Liquor Control Commission:

(a) Shall approve one beverage container redemption center in a city having a population of less than 300,000, operated by a distributor cooperative serving a majority of the dealers in this state; and

(b) May approve one or more additional beverage container redemption centers.

(2) Notwithstanding any other provision of ORS 459A.700 to 459A.740, a beverage container redemption center:

(a) May not refuse to accept and to pay the refund value of up to 350 individual empty beverage containers, as established by ORS 459A.705, returned by any one person during one day;

(b) Must provide hand counting of up to 50 individual empty beverage containers returned by any one person during one day for the refund value established by ORS 459A.705;

(c) May provide drop off service for at least 125 individual empty beverage containers returned by any one person during one day for the refund value established by ORS 459A.705, and may provide an accounting mechanism by which the person may redeem the refund value of the beverage containers at a later date; and

(d) May provide other services as determined necessary by the person responsible for the operation of the beverage container redemption center.

(3) The commission may adopt all rules necessary to implement and administer the provisions of this section and ORS 459A.738. [2011 c.277 §5; 2013 c.106 §2; 2015 c.724 §2]

**459A.738 Convenience zones.** (1) For each beverage container redemption center, the Oregon Liquor Control Commission shall specify up to two convenience zones. The first convenience zone shall be the sector

within a radius of not more than two miles around the beverage container redemption center. The second convenience zone shall be the sector beginning at the border of the first convenience zone and continuing to a radius of not more than three and one-half miles around the beverage container redemption center. The convenience zones shall be based to the greatest extent practicable upon the proposals submitted as part of the application for approval of the redemption center under ORS 459A.735.

(2) All dealers doing business within the first convenience zone that occupy a space of 5,000 or more square feet in a single area may participate in, be served by and be charged the cost of participation in the beverage container redemption center and, if such a dealer participates in, is served by and pays the cost of participation in the redemption center, the dealer may, notwithstanding any other provision of ORS 459A.700 to 459A.740, refuse to accept and to pay the refund value of empty beverage containers.

(3) All dealers doing business within the second convenience zone that occupy a space of 5,000 or more square feet in a single area may participate in, be served by and be charged the cost of participation in the beverage container redemption center and, if such a dealer participates in, is served by and pays the cost of participation in the redemption center, the dealer may, notwithstanding any other provision of ORS 459A.700 to 459A.740, refuse to accept and to pay the refund value of more than 24 individual empty beverage containers returned by any one person during one day.

(4) All dealers doing business within either convenience zone that occupy a space of less than 5,000 square feet in a single area may, notwithstanding any other provision of ORS 459A.700 to 459A.740, refuse to accept and to pay the refund value of more than 24 individual empty beverage containers returned by any one person during one day.

(5)(a) Any dealer doing business in either convenience zone that occupies a space of 5,000 or more square feet in a single area that does not participate in, and is not served by, the beverage container redemption center may not refuse to accept and to pay the refund value of up to 350 individual empty beverage containers, as established by ORS 459A.705, returned by any one person during one day and must, beginning on the date that the redemption center begins accepting beverage containers, provide services equivalent to those provided by the redemption center under ORS 459A.737 (2), including hand counting and drop off service.

(b) In addition to complying with the requirements specified in paragraph (a) of this subsection, a dealer described in paragraph (a) of this subsection must:

(A) Post in each area where beverage containers are received a clearly visible and legible sign that contains the list of services that must be provided by the dealer; and

(B) Provide two automated reverse vending machines capable of processing metal, plastic and glass beverage containers, or one automated reverse vending machine capable of processing metal, plastic and glass beverage containers for each 500,000 beverage containers sold by the dealer in the previous calendar year, whichever is greater.

(c)(A) The provisions of paragraphs (a) and (b) of this subsection do not apply to a dealer described in paragraph (a) of this subsection if the dealer sold fewer than 100,000 beverage containers in the previous calendar year. To be eligible for the exemption under this paragraph, a dealer described in paragraph (a) of this subsection must report to the commission the number of beverage containers sold by the dealer in the previous calendar year.

(B) The report required under this paragraph must be submitted by a dealer:

(i) Except as provided in subsection (6) of this section, no later than 60 days after issuance of the notice required under ORS 459A.735 (4); and

(ii) No later than January 1 of each calendar year following the year that the notice under ORS 459A.735 (4) was issued and for which the dealer intends to claim the exemption.

(d) The commission shall ensure compliance with this subsection by a dealer described in paragraph (a) of this subsection that is not subject to an exemption under paragraph (c) of this subsection.

(6) A dealer that plans to begin doing business in either convenience zone after the date that the beverage container redemption center associated with the convenience zone begins accepting beverage containers shall, not less than 60 days prior to the date that the dealer begins doing business:

(a) Provide notice to the commission explaining whether the dealer will or will not participate in, be served by and pay the cost of participation in the redemption center; and

(b) If the dealer will not participate in the redemption center and will claim an exemption under subsection (5)(c) of this section, provide documentation of compliance with the requirements for nonparticipating dealers under this section and an estimate

of the number of beverage containers that the dealer expects to sell during the first calendar year that the dealer does business in the convenience zone.

(7) The provisions of subsections (2) to (6) of this section do not apply to any dealer for which the driving distance from the place of business of the dealer to the beverage container redemption center, calculated using the shortest route, is more than two times the radius specified for the second convenience zone or, if only one convenience zone is specified by the commission, two times the radius specified for that convenience zone.

(8) Not more than 60 days after issuance of notice from the commission under ORS 459A.735 (4), a dealer shall provide the commission with written documentation confirming compliance with each of the requirements of this section that are applicable to the dealer receiving notice. [2015 c.724 §3]

**Note:** 459A.738 and 459A.739 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 459A or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**459A.739 Inspection authority.** In addition to the authority granted under ORS 459.992, inspectors and investigators employed by the Oregon Liquor Control Commission have authority to inspect any space occupied by a dealer, as defined in ORS 459A.700, for compliance with ORS 459A.738. [2015 c.724 §4]

**Note:** See note under 459A.738.

**459A.740 Certification and withdrawal procedures.** The procedures for certification or withdrawal provided for in ORS 459A.725 to 459A.735 shall be in accordance with ORS chapter 183. [Formerly 459.890]

## EDUCATION

**459A.750 Recycling and waste reduction component of curriculum; teacher's guide; informational materials.**

(1) By January 1, 1995, the Department of Education, in cooperation with the Department of Environmental Quality, shall integrate a recycling and waste reduction component into a required curriculum for all Oregon students in grades kindergarten through 12.

(2) The Department of Environmental Quality, in cooperation with the Department of Education, as appropriate in paragraphs (a) and (c) of this subsection, shall provide statewide promotion, education and technical assistance to local government units and schools in each watershed to increase participation in recycling. The assistance provided shall include but need not be limited to:

(a) Developing a current teacher's guide which shall be supplied to every school in the state for use in complying with this section. The Department of Environmental Quality shall update, revise and replace the teacher's guide at least once every four years as necessary to keep the teacher's guide current and effective. The teacher's guide also shall be available to local government units and recycling educators upon request. The Department of Environmental Quality shall participate each year as requested in teacher in-service workshops to present and facilitate use of the teacher's guide.

(b) Providing professionally produced informational materials including but not limited to camera-ready art and recycling and waste reduction copy for use by local government units, schools or recycling educators in each watershed for public information correspondence, brochures, flyers, newsletters and news releases, camera-ready newspaper public service advertisements and two annual workshops on recycling and waste reduction education and promotion, one to be held within and one to be held outside, the Portland metropolitan area. The Department of Environmental Quality shall revise the material annually to keep the information presented current and effective.

(c) Providing professionally produced instructional audiovisual materials to each school in the state to be used as part of the school's recycling and waste reduction education component. The audiovisual materials shall be appropriate to the grade level of the school to which they are supplied and shall be reviewed every two years and updated as necessary to keep the information presented current and effective. The materials also shall be available to local government units and recycling educators upon request. [1991 c.385 §35; 1993 c.560 §101]

**Note:** 459A.750 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 459A or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

## FOOD PACKAGING REGULATION

**459A.775 "State agency" defined.** As used in ORS 459A.775 to 459A.785, "state agency" means any state officer, department, board, commission or court created by the Constitution or statutes of this state, including the Legislative Assembly, its committees, officers and employees. [Formerly 468.967]

**Note:** 459A.775 to 459A.785 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 459A or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**459A.780 Prohibition against purchase or use of nonbiodegradable and nonrecyclable food packaging; exemptions.** (1) A state agency may not purchase any product to be used for packaging food if the product is composed of material that is not either biodegradable or recyclable through an existing effective recycling program.

(2) A vendor who leases space from a state agency shall not sell food in, or use for food packaging, any product containing or composed of material that is not either biodegradable or recyclable through an existing, effective recycling program.

(3) Notwithstanding subsections (1) and (2) of this section, the Environmental Quality Commission may exempt specific products from the requirements of subsections (1) and (2) of this section if the applicant for the exemption demonstrates:

(a) There is no acceptable alternative for the product; and

(b) Compliance with the conditions of subsections (1) and (2) of this section would cause undue hardship. [Formerly 468.968]

**Note:** See note under 459A.775.

**459A.785 Effective recycling program; standards for determining.** The Department of Environmental Quality shall establish percentages of plastic material that must be recycled before a recycling program is considered an effective recycling program. In establishing the percentages the department:

(1) Shall establish percentages for each different type of plastic resin;

(2) Shall require that at least 15 percent of each plastic resin type be recycled statewide in 1992; and

(3) May not establish a required percentage of more than 75 percent before December 31, 1999. [Formerly 468.969]

**Note:** See note under 459A.775.

## ARCHITECTURAL PAINT STEWARDSHIP PROGRAM

**459A.820 Findings.** The Legislative Assembly finds that it is in the best interest of this state for architectural paint manufacturers to finance and manage an environmentally sound, cost-effective architectural paint stewardship program, undertaking responsibility for the development and implementation of strategies to reduce the generation of post-consumer architectural paint, promote the reuse of post-consumer architectural paint and collect, transport and process post-consumer architectural paint for end-of-product-life management, including reuse, recycling, energy recovery and disposal. [2009 c.777 §1; 2015 c.27 §50]



**Note:** 459A.820 to 459A.855 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 459A or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**459A.822 Definitions for ORS 459A.820 to 459A.855.** As used in ORS 459A.820 to 459A.855:

(1)(a) “Architectural paint” means interior and exterior architectural coatings sold in containers of five gallons or less.

(b) “Architectural paint” does not mean industrial, original equipment or specialty coatings.

(2) “Architectural paint stewardship assessment” means the amount added to the purchase price of architectural paint sold in this state to cover the cost of collecting, transporting and processing the post-consumer architectural paint managed through a statewide architectural paint stewardship program.

(3) “Cost per gallon” means the total cost to a stewardship organization, including the amounts held in unallocated reserve funds, of an architectural paint stewardship program during a calendar year divided by the total number of gallons of post-consumer architectural paint collected during the same calendar year.

(4) “Distributor” means a company that has a contractual relationship with one or more producers to market and sell architectural paint to retailers in this state.

(5) “Energy recovery” means recovery in which all or a part of the solid waste materials of architectural paint are processed to use the heat content or other forms of energy from the solid waste materials.

(6) “Environmentally sound management practices” means policies and practices that are to be implemented by a stewardship organization, or by contractors working for a stewardship organization, to ensure compliance with all applicable laws related to the collection, storage, transportation, reuse, recycling and disposal of post-consumer architectural paint and that address:

(a) Adequate record keeping;

(b) The tracking and documentation of the fate of post-consumer architectural paint within this state and outside this state; and

(c) Adequate environmental liability coverage for professional services and for the operations of contractors working for a stewardship organization.

(7)(a) “Permanent collection site” means a collection site for post-consumer architectural paint at a fixed location with regular hours of operation.

(b) “Permanent collection site” does not mean collection events.

(8) “Post-consumer architectural paint” means architectural paint not used and no longer wanted by its purchaser.

(9) “Premium service” means the curbside collection of post-consumer architectural paint by local governments as defined in ORS 174.116, a collection service franchise holder under ORS 459A.085 or any person authorized by a local government to provide collection service as defined in ORS 459.005 (3), which is included in rates for the curbside collection paid by the customers.

(10) “Producer” means a person that manufactures architectural paint that is sold or offered for sale in this state.

(11)(a) “Recycling” means any process by which discarded products, components and by-products are transformed into new usable or marketable materials in a manner in which the products may lose their original composition.

(b) “Recycling” does not include energy recovery or energy generation by means of combusting discarded products, components and by-products with or without other waste products from post-consumer architectural paint.

(12) “Recycling rate” means the percentage of the total amount of latex post-consumer architectural paint collected by a stewardship organization in a calendar year that is recycled during the same calendar year.

(13) “Retailer” means any person that sells or offers for sale architectural paint at retail in this state.

(14) “Reuse” means the return of a product into the economic stream for use in the same kind of application intended for the use of the product, without a change in the product’s original composition or packaging.

(15) “Sell” or “sale” means any transfer of title for consideration, including remote sales conducted through sales outlets, catalogs or the Internet or through any other similar electronic means.

(16) “Stewardship organization” means a corporation, nonprofit organization or other legal entity created by a producer or group of producers to implement an architectural paint stewardship program as described in ORS 459A.820 to 459A.855. [2009 c.777 §2; 2013 c.677 §1]

**Note:** See note under 459A.820.

**459A.825 Participation in architectural paint stewardship program.** (1) A producer or retailer may not sell or offer for sale architectural paint to any person in this state unless the producer is participating in an

approved statewide architectural paint stewardship program organized by a stewardship organization. A retailer is in compliance with this subsection if, on the date the architectural paint was ordered from the producer or its agent, the website maintained by the Department of Environmental Quality lists the producer, along with the producer's product brand, as participating in an approved architectural paint stewardship program.

(2)(a) A stewardship organization must provide retailers selling or offering for sale architectural paint with information on available collection opportunities for post-consumer architectural paint offered through the organization's architectural paint stewardship program.

(b) A retailer that sells or offers for sale architectural paint must provide the information described in paragraph (a) of this subsection to the consumer at the time of sale. [2009 c.777 §3; 2013 c.677 §2]

**Note:** See note under 459A.820.

**459A.827 Plan for architectural paint stewardship program; requirements; exemptions; assessment.** (1) A stewardship organization must submit a plan for a statewide architectural paint stewardship program to the Director of the Department of Environmental Quality for approval under ORS 459A.832. The plan must address the requirements set forth in subsections (2) and (4) of this section.

(2) The plan must:

(a) Specify educational and outreach activities and materials that promote the architectural paint stewardship program. Educational and outreach materials must include, but are not limited to, signage, written materials and templates of materials for reproduction by retailers to be provided to the consumer at the time of sale. The materials must:

(A) Identify collection opportunities for post-consumer architectural paint;

(B) Explain the architectural paint stewardship assessment described in this section; and

(C) Promote:

(i) A reduction in the generation of post-consumer architectural paint; and

(ii) The reuse, recovery and recycling of post-consumer architectural paint.

(b) Specify activities related to the establishment and maintenance of a convenient system for the collection of post-consumer architectural paint as described in ORS 459A.830.

(c) Establish and provide for the development and implementation of goals to reduce the generation of post-consumer architectural paint, including goals for:

(A) Reducing the amount of post-consumer architectural paint that is generated in this state;

(B) Increasing the recycling rate for latex paint; and

(C) Increasing public awareness of the architectural paint stewardship program.

(d) Promote the reuse of post-consumer architectural paint.

(e) Undertake the responsibility of negotiating and executing contracts to collect, transport, recycle and process post-consumer architectural paint for end-of-product-life management that includes recycling, energy recovery and disposal.

(f) Describe how the end-of-product-life management of post-consumer architectural paint that is collected under the program will use environmentally sound management practices that are consistent with ORS 459.015 (2).

(g) Reflect compliance by the stewardship organization with ORS 459A.825.

(3) The director may exempt a stewardship organization from one or more of the activities specified in subsection (2) of this section if the director determines that the activity is impracticable or is unlikely to further the provisions of ORS 459A.820 to 459A.855.

(4) In addition to the requirements specified in subsection (2) of this section, the plan must also:

(a) Identify each producer participating in the program.

(b) Identify the participating brands of architectural paint sold in this state.

(c) Identify the processors that manage the post-consumer architectural paint that is collected under the program.

(d) Identify the transporters of post-consumer architectural paint that is collected under the program.

(e) Include an anticipated annual operating budget for the program for the next four calendar years, beginning with the year in which the plan is submitted to the director, as described in subsection (5) of this section.

(f) Include a funding mechanism whereby each architectural paint producer remits to the stewardship organization payment of an architectural paint stewardship assessment for each container of architectural paint the producer sells in this state. The architectural paint stewardship assessment must be added to the cost of all architectural paint sold to

Oregon retailers and distributors, and each Oregon retailer or distributor shall add the assessment to the purchase price of all architectural paint sold in this state. The architectural paint stewardship assessment may not be described as an Oregon recycling fee at the point of retail, and a fee may not be charged to the consumer at the point of collection of post-consumer architectural paint. To ensure that the funding mechanism is equitable and sustainable, a uniform architectural paint stewardship assessment must be established for all architectural paint sold in this state. The architectural paint stewardship assessment must be approved by the director as part of the plan and must be sufficient to recover, but not exceed, the costs of the architectural paint stewardship program.

(5) The budget required under subsection (4) of this section shall include, but not be limited to, budget line items relating to:

(a) The development and implementation of the educational and outreach activities and materials required under subsection (2)(a) of this section and the provision of information to retailers required under ORS 459A.825;

(b) The collection, transportation and processing of post-consumer architectural paint as part of the program;

(c) The administrative costs of the program to the stewardship organization;

(d) The anticipated amount of moneys that the stewardship organization will hold in unallocated reserve funds for the program;

(e) The administrative fees paid to the Department of Environmental Quality under ORS 459A.852; and

(f) Any additional budgetary information requested by the director that is necessary for the director to approve the plan. [2009 c.777 §4; 2013 c.677 §3]

**Note:** Section 20, chapter 677, Oregon Laws 2013, provides:

**Sec. 20.** (1) Initial plans for statewide architectural paint stewardship programs under section 4, chapter 777, Oregon Laws 2009 [459A.827], as amended by section 3 of this 2013 Act, must be submitted to the Director of the Department of Environmental Quality not later than January 1, 2014.

(2) A stewardship organization that submitted a plan for a statewide architectural paint stewardship pilot program to the director before the effective date of this 2013 Act [July 29, 2013], or that had a plan approved by the director before the effective date of this 2013 Act, must submit an updated plan under section 4, chapter 777, Oregon Laws 2009, as amended by section 3 of this 2013 Act, to the director not later than January 1, 2014.

(3) If requested by the director in writing, a stewardship organization that submitted an initial plan or an updated plan under subsection (1) or (2) of this section must submit a subsequent updated plan under section 4, chapter 777, Oregon Laws 2009, as amended by

section 3 of this 2013 Act, to the director not later than January 1, 2018, and up to once every four years thereafter. [2013 c.677 §20]

**Note:** See note under 459A.820.

**459A.830 Collection system for post-consumer architectural paint; requirements; exemptions.** (1) The convenient system for the collection of post-consumer architectural paint required under ORS 459A.827 (2) must ensure that:

(a) One permanent collection site exists for every 30,000 residents in this state.

(b) Ninety-five percent of the residents in this state are within 15 miles of a permanent collection site.

(c) For those geographically underserved areas where the population is not within 15 miles of a permanent collection site, at least one but no more than two collection events are held per year in each geographically underserved area.

(2) A stewardship organization is not required to comply with subsection (1)(b) of this section for a given geographic area if the stewardship organization is able to demonstrate that, after a good faith effort:

(a) The stewardship organization has been unable to identify an appropriate local government as defined in ORS 174.116, collection service franchise holder under ORS 459A.085, person who provides collection service as defined in ORS 459.005 (3), or a retailer, in the geographic area to coordinate with to establish a permanent collection site; or

(b) The stewardship organization cannot reach feasible, reasonable and mutually agreeable terms with the appropriate local government, collection service franchise holder, person who provides collection service, or a retailer, in the geographic area for participation in the program as a permanent collection site.

(3) A stewardship organization shall make a good faith effort to coordinate with the appropriate local government, collection service franchise holder or person who provides collection service for the promotion of and payment for a collection event under subsection (1)(c) of this section. If, after a good faith effort, the stewardship organization is unable to coordinate with the appropriate local government, collection service franchise holder or person who provides collection service, the stewardship organization shall promote and pay for the collection event.

(4) A stewardship organization is not required to comply with subsection (1)(c) of this section for a given geographic area if the Director of the Department of Environmental Quality agrees with the stewardship

organization that holding a collection event in that area will not be practicable or effective.

(5) For purposes of this section, a stewardship organization shall renegotiate a contract for the establishment of a permanent collection site once every two years unless another time frame is agreed to by the contracting parties. [2013 c.677 §4]

**Note:** See note under 459A.820.

**459A.832 Approval or denial of new or updated plans for architectural paint stewardship programs.** (1) The Director of the Department of Environmental Quality shall approve, deny or request additional information on a new or updated plan or a plan amendment no later than 60 days after the date the director receives the plan or amendment from the stewardship organization.

(2) If the director rejects, or requests additional information for, the new plan, updated plan or amendment, the director must provide the stewardship organization with the reasons in writing. The stewardship organization shall have 60 days from the date that the rejection or request for additional information is received to submit to the director any additional information necessary for the approval of the new plan, updated plan or amendment.

(3) The director's rejection of, or request for additional information for, an updated plan or amendment submitted under this section does not relieve the stewardship organization from continuing to implement the architectural paint stewardship program in compliance with the approved plan pending a final action by the director on the updated plan or amendment.

(4)(a) Beginning no later than two months after a new plan, updated plan or amended plan is approved under this section, a stewardship organization must implement an architectural paint stewardship program as described in the new, updated or amended plan.

(b) A stewardship organization may enter into contracts with local governments as defined in ORS 174.116, a collection service franchise holder under ORS 459A.085 or any person who provides collection service as defined in ORS 459.005 (3) in order to implement a program under this subsection. In negotiating a contract with a local government, collection service franchise holder or person who provides collection service, terms of the contract may include, but are not limited to:

(A) The coverage of costs for accepting post-consumer architectural paint and paint

containers into the program through permanent collection sites and collection events;

(B) The processing of post-consumer architectural paint at the permanent collection site; or

(C) The transportation, recovery and disposal of post-consumer architectural paint.

(5) Nothing in this section shall be construed to limit the power of a local government, a collection service franchise holder, or any person authorized by a local government to provide collection service, to offer premium service. [2013 c.677 §6]

**Note:** See note under 459A.820.

**459A.835 Approval for amendment or update to plan for architectural paint stewardship program.** (1) A stewardship organization must submit to the Director of the Department of Environmental Quality for approval an amendment to a plan or updated plan that has been approved by the director under ORS 459A.832 if, at any time:

(a) The stewardship organization makes a change to the architectural paint stewardship assessment that was approved by the director as part of the plan;

(b) The stewardship organization makes a change to the types of post-consumer architectural paint that will be collected by the stewardship organization under the plan;

(c) The stewardship organization makes a change to the goals that were approved by the director as part of the plan; or

(d) The director requests an amendment to the plan in order to address a specific finding by the director that:

(A) The administrative costs to the stewardship organization for the architectural paint stewardship program equaled 20 percent or more of the organization's total annual budget for the program during the prior calendar year;

(B) The cost per gallon of the program during the prior calendar year was 10 or more percent higher than the preceding calendar year;

(C) The unallocated reserve funds held by the stewardship organization for the program during the prior calendar year equaled 35 percent or more of the total annual budget for the program during the year;

(D) The total volume, in gallons, of post-consumer architectural paint collected as part of the program during the prior calendar year was 10 or more percent lower than the preceding calendar year; or

(E) The recycling rate for the program during the prior calendar year was 10 or more percent lower than the preceding calendar year.

(2) A stewardship organization must submit an amendment under subsection (1) of this section within 120 days after the date of the change by the stewardship organization or the date of the request by the director. [2013 c.677 §5]

**Note:** See note under 459A.820.

**459A.837 Notification regarding changes to architectural paint stewardship program.** If a stewardship organization makes any of the changes described in this section to an architectural paint stewardship program as provided for in a plan approved by the Director of the Department of Environmental Quality under ORS 459A.832, the organization shall notify the director in writing, within 30 days of the date of the change to the program, of:

(1) A change in the location or the number of permanent collection sites identified in the plan;

(2) A change in the producers or brands of architectural paint sold in this state that are participating in the program;

(3) A change in the processors that manage the post-consumer architectural paint collected by the stewardship organization under the program; or

(4) A change in the transporters of the post-consumer architectural paint collected by the stewardship organization under the program. [2013 c.677 §7]

**Note:** See note under 459A.820.

**459A.840 Conduct authorized; supervision by Department of Environmental Quality; rules.** (1) It is the intent of this section that a stewardship organization operating an architectural paint stewardship program pursuant to ORS 459A.820 to 459A.855, approved by the Department of Environmental Quality and subject to the regulatory supervision of the department, is granted immunity from federal and state antitrust laws for the limited purpose of establishing and operating an architectural paint stewardship program. The activities of the stewardship organization that comply with the provisions of this section may not be considered to be in restraint of trade, a conspiracy or combination or any other unlawful activity in violation of any provisions of ORS 646.705 to 646.826 or federal antitrust laws.

(2) The department shall actively supervise the conduct of the stewardship organization, including but not limited to conduct related to payments made by architectural paint producers to the stewardship organization for the architectural paint stewardship assessment specified in ORS 459A.827. The

department may require the stewardship organization to take whatever action the department considers necessary to:

(a) Ensure that the stewardship organization is engaging in conduct authorized under this section;

(b) Ensure that the policies of this state are being fulfilled by an architectural paint stewardship program; and

(c) Enjoin conduct that is not authorized by the department or conduct that the department finds does not advance the interests of this state in carrying out the architectural paint stewardship program.

(3) The Director of the Department of Environmental Quality may designate employees of the department to carry out the responsibility of actively supervising the conduct of the stewardship organization.

(4) The Environmental Quality Commission may adopt rules to carry out the purposes of this section. [2009 c.777 §5; 2015 c.27 §51]

**Note:** See note under 459A.820.

**459A.842 Reports by stewardship organizations.** (1) No later than April 1 of each year, a stewardship organization must submit an annual report to the Director of the Department of Environmental Quality describing the operation during the prior calendar year of an architectural paint stewardship program approved by the director under ORS 459A.832. At a minimum, the report must contain:

(a) A description of the methods used to collect, transport, recycle and process post-consumer architectural paint in this state;

(b) A calculation of the total volume in gallons of post-consumer architectural paint collected by the program, categorized by latex, alkyd and any other type of paint;

(c) For each permanent collection site and collection event under the program:

(A) A calculation of the total volume in gallons of post-consumer architectural paint collected at the site or event;

(B) The address or, if no address is available, the physical location of the site or event; and

(C) A description of whether the site or event is:

(i) A permanent collection site located at a retailer;

(ii) A permanent collection site or collection event for the program located within the local solid waste collection infrastructure; or

(iii) A collection event promoted and paid for by a stewardship organization;

(d) An estimate of the total weight and disposition of all paint containers collected by the program;

(e) The total volume of post-consumer architectural paint collected under the program, categorized by method of disposition, including reuse, recycling, energy recovery and disposal;

(f) The data, conversion factors and any changes from prior years in the methodology used to complete the analysis required to comply with paragraphs (b) to (e) of this subsection;

(g) An independent financial audit of the program;

(h) A description of program revenues and costs for the prior year that follows the budget requirements provided in ORS 459A.827 and that further describes:

(A) The total cost of the program during the prior year calculated as a per capita amount for each resident of this state;

(B) The cost per gallon of the program during the prior year;

(C) The use by the stewardship organization of any revenues from the program during the past year that exceeded the total costs of the program, including a description of the amount held by the stewardship organization in unallocated reserve funds at the end of the reporting period; and

(D) If requested by the director, any additional budgetary information necessary for the director to determine whether the stewardship organization must amend the plan under ORS 459A.835 (1)(d);

(i) An updated budget for the next calendar year that follows the budget requirements provided in ORS 459A.827;

(j) An evaluation of the operation of the program's funding mechanism;

(k) Samples of educational and outreach materials provided to consumers of architectural paint, an evaluation of the methods used to disseminate those materials and an assessment of the effectiveness of the education and outreach, including levels of waste prevention and reuse;

(L) Documentation of compliance with the requirements of ORS 459A.827 (2)(b) and 459A.830;

(m) A description of the activities undertaken to achieve, and the progress made toward achieving, the program goals as provided for in the program plan; and

(n) Notification to the director of any additional proposed changes to the operation of the program for the following calendar year, or a statement that the stewardship organization intends to continue to imple-

ment the program in the manner approved by the director under ORS 459A.832.

(2) No later than June 15 of each year, the director shall meet with interested stakeholders to review the annual reports submitted to the director under this section. The director shall post to the website maintained by the Department of Environmental Quality a copy of the minutes of the meeting within 30 days of the date of the meeting. [2009 c.777 §6; 2013 c.677 §8]

**Note:** See note under 459A.820.

**459A.845 Estimate by Department of Environmental Quality of total volume of post-consumer architectural paint collected.** No later than June 1 of each year, the Director of the Department of Environmental Quality shall publish an estimate of the total volume, in gallons, of post-consumer architectural paint collected in each watershed or metropolitan service district as part of an architectural paint stewardship program during the prior calendar year. For each watershed or metropolitan service district, the director shall also publish, stated as a percentage, the portion of the total volume in gallons of post-consumer architectural paint collected under the program at each of the following:

(1) Permanent collection sites located at a retailer;

(2) Permanent collection sites and collection events for the program located within the local solid waste collection infrastructure; and

(3) Collection events promoted and paid for by a stewardship organization. [2013 c.677 §12]

**Note:** Section 18, chapter 677, Oregon Laws 2013, provides:

**Sec. 18. Report to Legislative Assembly.** No later than November 1, 2018, the Director of the Department of Environmental Quality shall submit to the Legislative Assembly a report describing the results of any existing architectural paint stewardship programs and, if necessary, recommending any modifications to sections 1 to 10, chapter 777, Oregon Laws 2009 [459A.820 to 459A.855], that would serve to improve the functioning and efficiency of the programs. The report must include an accounting of the administrative fees paid by stewardship organizations to the Department of Environmental Quality under section 9, chapter 777, Oregon Laws 2009 [459A.852]. [2013 c.677 §18]

**Note:** See note under 459A.820.

**459A.847 Data disclosure.** (1)(a) Except for the financial, cost, production or sales data and records specified in paragraph (b) of this subsection, the Department of Environmental Quality may not disclose any financial, cost, production or sales data and records of a stewardship organization, or of a specific producer, obtained by the department as part of the approval of a plan, or updated plan, for a statewide architectural paint stewardship program pursuant to ORS

459A.827 or as part of an annual report submitted pursuant to ORS 459A.842.

(b) If the Department of Environmental Quality determines that disclosure is necessary for the public to adequately understand the derivation of the architectural paint stewardship assessment described in ORS 459A.827, the level of the services or associated costs that are anticipated under the assessment or the services or associated costs that are delivered under the assessment, the department may disclose, in aggregate form, information contained in the financial, cost, production or sales data and records related to the level of service and associated costs for the following services offered by the statewide architectural paint stewardship program:

(A) Collection, reuse, transportation, recycling, energy recovery, disposal and other processing of waste paint;

(B) Waste reduction efforts;

(C) Education and promotion; and

(D) Administration.

(2) The Department of Environmental Quality may not disclose the names of brands by specific producers obtained by the department as part of the approval of a plan for a statewide architectural paint stewardship program pursuant to ORS 459A.827. The department may disclose separate lists indicating participating producers and participating brands of the statewide architectural paint stewardship program.

(3) Nothing in this section shall impose additional reporting obligations on a stewardship organization beyond those specified in ORS 459A.820 to 459A.855. [2009 c.777 §7; 2011 c.146 §1; 2013 c.677 §11]

**Note:** See note under 459A.820.

**459A.850 Orders; actions.** (1) In accordance with the applicable provisions of ORS chapter 183 relating to contested case proceedings, the Department of Environmental

Quality may issue an order requiring compliance with the provisions of ORS 459A.820 to 459A.855.

(2) The department may bring an action against any producer or stewardship organization in violation of the provisions of ORS 459A.820 to 459A.855. [2009 c.777 §8]

**Note:** See note under 459A.820.

**459A.852 Fees.** (1) The Department of Environmental Quality shall charge the following fees to be paid by a stewardship organization for administering ORS 459A.820 to 459A.855:

(a) \$10,000 when the plan or updated plan specified in ORS 459A.827 is submitted to the Director of the Department of Environmental Quality; and

(b) \$40,000 each year that an approved architectural paint stewardship program is implemented for administrative costs related to the program.

(2) Fees collected by the department under this section shall be deposited in the Product Stewardship Fund established under ORS 459A.855. [2009 c.777 §9; 2013 c.677 §10]

**Note:** See note under 459A.820.

**459A.855 Product Stewardship Fund; sources; uses.** The Product Stewardship Fund is established, separate and distinct from the General Fund. Fees collected by the Department of Environmental Quality under ORS 459A.852 shall be deposited in the State Treasury to the credit of the Product Stewardship Fund. Interest earned by the Product Stewardship Fund shall be credited to the fund. Moneys in the fund are continuously appropriated to the Department of Environmental Quality and may be used only to pay the costs of implementing the provisions of ORS 459A.820 to 459A.855. [2009 c.777 §10]

**Note:** See note under 459A.820.

