

Chapter 459A

1991 EDITION

Reuse and Recycling

SOLID WASTE RECOVERY GENERALLY

(Recycling)

- 459A.005 Opportunity to recycle
- 459A.010 Statewide goal; opportunity to recycle program elements; recovery rates
- 459A.015 Commission duties
- 459A.020 Statewide integrated solid waste management plan
- 459A.025 Commission to adopt rules regarding waste disposal and recycling
- 459A.030 Technical assistance to local governments
- 459A.035 Solid waste composition study
- 459A.040 Biennial report on opportunity to recycle
- 459A.045 Request for modification or variance
- 459A.050 Annual recycling reports
- 459A.055 Variance or request for extension to provide opportunity to recycle
- 459A.060 Request for variance from requirement to implement additional program elements
- 459A.065 Mandatory participation in recycling
- 459A.070 Limitation on amount charged person who source separates recyclable material
- 459A.075 Exemptions
- 459A.080 Prohibitions against removing or mixing recyclable material
- 459A.085 City, county authority to issue collection service franchises; opportunity to recycle; rates
- 459A.100 Definitions for ORS 459A.100 to 459A.120
- 459A.105 Policy
- 459A.110 Additional fees for programs for reduction of domestic solid waste and environmental risks; assessment; maximum fee
- Note Additional fees when state collects certain surcharge; use; assessment; maximum fee—1991 c.385 §91
- Note Deduction from fees paid for solid waste generated out of state if state collects certain surcharge—1991 c.385 §92
- 459A.115 Surcharge on fee imposed under ORS 459A.110; use of surcharge
- 459A.120 Use of additional fees

(Recycling Markets Development Council)

(Temporary provisions relating to Recycling Markets Development Council are compiled as notes following ORS 459A.120)

SPECIFIC RECYCLING REQUIREMENTS

(Newsprint and Directories)

- 459A.500 Definitions for ORS 459A.500 to 459A.515
- 459A.505 Minimum recycled content for newsprint
- 459A.510 Report to consumer of amount of post-consumer waste in shipment
- 459A.515 Annual report to department; content
- 459A.520 Minimum recycled content for directories

(Oregon Newsprint Recycling Task Force)

(Temporary provisions relating to Oregon Newsprint Recycling Task Force are compiled as notes following ORS 459A.515)

(Glass)

- 459A.550 Report on use of new and recycled glass; minimum percentage of recycled glass required

(Compost)

- 459A.600 "Compost" defined
- 459A.605 Rules for purchase of compost and sewage sludge by state
- 459A.610 Identification of uses for compost and sewage sludge
- 459A.615 Programs to use compost and sewage sludge
- 459A.620 Use of compost or sewage sludge by state agencies given priority

(Plastics)

- 459A.650 Definitions for ORS 459A.650 to 459A.665
- 459A.655 Minimum recycled content for rigid plastic containers
- Note Exemptions for plastic containers; review and report on plastic recycling programs—1991 c.385 §34e
- 459A.660 Certification; records; exempt containers
- 459A.665 Opportunity to recycle rigid plastic containers
- 459A.675 Definitions for ORS 459A.675 to 459A.685
- 459A.680 Labeling requirements for rigid plastic containers
- 459A.685 Prohibition on manufacture of rigid plastic containers without label

BEVERAGE CONTAINERS

- 459A.700 Definitions for ORS 459A.700 to 459A.740
- 459A.705 Refund value required
- 459A.710 Practices required of dealers and distributors
- 459A.715 When dealer or distributor authorized to refuse to accept or pay refund in certain cases; notice
- 459A.720 Indication of refund value required; exception; certain metal containers and plastic container holders prohibited
- 459A.725 Certification of containers as reusable by more than one manufacturer
- 459A.730 Decision upon certification application; review and withdrawal of certifications
- 459A.735 Redemption centers
- 459A.740 Certification and withdrawal procedures

EDUCATION

- 459A.750 Recycling and waste reduction component of curriculum; teacher's guide; informational materials

PUBLIC HEALTH AND SAFETY

FOOD PACKAGING REGULATION

459A.775 "State agency" defined

459A.780 Prohibition against purchase or use of nonbiodegradable and nonrecyclable food packaging; exemptions

459A.785 Effective recycling program; standards for determining

CROSS REFERENCES

Definitions, 459.005

**SOLID WASTE RECOVERY
GENERALLY**

(Recycling)

459A.005 Opportunity to recycle. (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 which complies with rules of the commission; and

(b) Complies with the rates and program elements required under ORS 459A.010.

(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]

459A.010 Statewide goal; opportunity to recycle program elements; recovery rates. (1) It is the goal of the State of Oregon that by January 1, 2000, the amount of recovery from the general solid waste stream shall be at least 50 percent.

(2) In addition to the requirements of ORS 459A.005, the "opportunity to recycle" shall include the requirements of subsection (3) of this section, which shall be implemented on or before July 1, 1992, by using the following program elements:

(a) Provision of at least one durable recycling container to each residential service customer by not later than January 1, 1993.

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

(c) An expanded education and promotion program conducted to inform citizens of the manner and benefits of reducing, reusing and recycling material. The program shall include:

(A) Provision of recycling notification and education packets to all new residential,

commercial and institutional collection service customers that includes at a minimum the materials collected, the schedule for collection, the way to prepare materials for collection and reasons that persons should separate their material for recycling;

(B) Provision of quarterly recycling information to residential, commercial and institutional collection service customers that includes at a minimum the materials collected, the schedule for collection and at least annually includes additional information including the procedure for preparing materials for collection; and

(C) Targeting of community and media events to promote recycling.

(d) 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 having five or more units. The multifamily collection program shall include promotion and education directed to the residents of the multifamily dwelling units.

(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 residences 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) Regular onsite collection of source separated principal recyclable materials from commercial and institutional solid waste generators employing 10 or more persons and occupying 1,000 square feet or more in a single location. As used in this paragraph, "commercial and institutional solid waste generators" means stores, offices including manufacturing and industry offices, restaurants, warehouses, schools, colleges, universities, hospitals and other nonmanufacturing entities, but does not include other manufacturing activities or business, manufacturing or processing activities in residential dwellings.

(g) Expanded depots for recycling of at least all principal recyclable materials and provisions for promotion and education to maximize the use of the depots. The depots shall have regular and convenient hours and shall be open on the weekend days and, when feasible, shall 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 shall not decrease with increasing size of containers, nor shall the rates per container service be less with additional containers serviced.

(3)(a) Not later than July 1, 1992, each city with a population of at least 4,000 but not more than 10,000 that is not within a metropolitan service district and any county responsible for the area between the city limits and the urban growth boundary of such city shall implement one of the following:

(A) The program elements set forth in paragraphs (a), (b) and (c) of subsection (2) of this section;

(B) A program that includes at least three elements set forth in subsection (2) of this section; or

(C) An alternative method of achieving recycling rates that complies with rules of the Environmental Quality Commission.

(b) Not later than July 1, 1992, each city that is within a metropolitan service district or that has a population of more than 10,000 and any county responsible for the area within a metropolitan service district or the area between the city limits and the urban growth boundary of such city shall implement one of the following:

(A) Program elements set forth under paragraphs (a), (b) and (c) of subsection (2) of this section and one additional element set forth under subsection (2) of this section;

(B) A program that includes at least five elements set forth under subsection (2) of this section; or

(C) An alternative method of achieving recycling rates that complies with rules of the Environmental Quality Commission.

(4)(a) Recovery rates shall be determined 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. It is the policy of the State of Oregon that recovery of material shall be consistent with the priority of solid waste management in ORS 459.015 (2). Therefore, except as provided in subsection (6) of this section, recovery rates shall include all material collected for recycling, both source separated or sorted from solid waste, including yard debris.

(b) If there is not a viable market for recycling a material under paragraph (a) of this subsection, the composting or burning of the material for energy recovery may be included in the recovery rate for the watershed. Mixtures of materials that are composted or burned for energy recovery shall not be included in the recovery rate if more than half of the materials by weight could have been recycled if properly source separated. In its annual report to the department, the county or metropolitan service district shall state how much composting or energy recovery under this paragraph is included as recovery and state the basis for the determination that there was not a viable market for recycling the material. As used in this paragraph, "viable market" means a place within a watershed that will pay for the material or accept the material free of charge or a place outside a watershed that will pay a price for the material that, at minimum, covers the cost of transportation of the material.

(c) Recovery rates shall 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 in which arrangements are made to sell or give the material 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 paragraph (b) of this subsection and in paragraph (a) of subsection (6) of this section.

(E) Mixed solid waste burned for energy recovery.

(d) "Solid waste disposed" shall mean 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 a resource recovery facility; and

(E) Solid waste not generated within this state.

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

(A) Include in those rates all net costs incurred by the franchisee or licensee for providing the "opportunity to recycle" under ORS 459A.005 and for implementing the requirements of subsection (3) of this section; or

(B) Fund implementation of the "opportunity to recycle" under ORS 459A.005 or the requirements of subsection (3) of this section through an alternative source of funding including but 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 recyclable material to market 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.

(6)(a) Clackamas, Multnomah and Washington counties, in aggregate, shall achieve a recovery rate of 45 percent for the calendar year 1995. No more than five percent of the recovery level may be achieved by the processing of mixed solid waste compost. If the metropolitan service district does not develop a mixed solid waste composting process, the recovery rate for Clackamas, Multnomah and Washington counties, in aggregate, shall be 40 percent for the calendar year 1995.

(b) The following wastesheds shall achieve a recovery rate of 30 percent for the calendar year 1995:

- (A) Benton County;
- (B) Lane County;
- (C) Linn County;
- (D) Marion County;
- (E) Polk County; and
- (F) Yamhill County.

(c) The following wastesheds shall achieve a recovery rate of 25 percent for the calendar year 1995:

- (A) Clatsop County;
- (B) Columbia County;
- (C) Deschutes County;
- (D) Douglas County;
- (E) Hood River County;
- (F) Jackson County;
- (G) Josephine County; and
- (H) Wasco County.

(d) The following wastesheds shall achieve a recovery rate of 15 percent for the calendar year 1995:

- (A) Baker County;
- (B) Coos County;
- (C) Crook County;
- (D) Curry County;
- (E) Klamath County;
- (F) Lincoln County;
- (G) Malheur County;
- (H) Tillamook County;
- (I) Umatilla County;
- (J) Union County; and
- (K) The City of Milton-Freewater.

(e) The following wastesheds shall achieve a recovery rate of seven percent for the calendar year 1995:

- (A) Gilliam County;
- (B) Grant County;
- (C) Harney County;
- (D) Jefferson County;
- (E) Lake County;
- (F) Morrow County;
- (G) Sherman County;
- (H) Wallowa County; and
- (I) Wheeler County.

(7) In any wasteshed set forth in paragraph (b) of subsection (6) of this section using, on or before July 1, 1991, an energy recovery facility to dispose of its solid waste, the recovery rate shall be 25 percent until the solid waste disposed of from within the wasteshed exceeds 180,000 tons. Any solid waste disposed of by the wasteshed in excess of 180,000 tons shall achieve a recovery rate of 30 percent.

(8) If a wasteshed fails to achieve the recovery rate set forth in subsection (6) or (7) of this section, any city with a population of more than 4,000 or a county responsible for the area between the city limits and the urban growth boundary of such city shall institute, not later than July 1, 1996, two additional program elements as set forth in subsection (2) of this section.

(9) In calculating the rates set forth in subsection (6) 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 shall not be counted as material recovery or recycling. The depart-

ment 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 which prevents double counting of material recovered. Information collected under the provisions of this section, as it relates specifically to private sector customer lists or specific amounts and types of materials collected or marketed, shall be maintained as confidential by the department and exempt from disclosure under ORS 192.410 to 192.505. The department may use and disclose such information in aggregated form. [1991 c.385 §2]

Note: Section 2a, chapter 385, Oregon Laws 1991, provides:

Sec. 2a. The Sixty-ninth Legislative Assembly shall review the 1995 recovery rates achieved by each watershed and by the state as a whole, and shall set watershed recovery rates, or other goals that allow measurement of each watershed's progress in achieving greater reduction, reuse and recycling, for the calendar year 2000. [1991 c.385 §2a]

459A.015 Commission duties. The 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, 459.995 and 459A.005 to 459A.665.

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

(3) Submit a report to each regular session of the Legislative Assembly regarding compliance with and implementation of the provisions of ORS 459.005, 459.015, 459.035, 459.250, 459.992, 459.995 and 459A.005 to 459A.665. [Formerly 459.168]

459A.020 Statewide integrated solid waste management plan. (1) On or before January 1, 1994, the Environmental Quality Commission shall adopt a statewide integrated solid waste management plan. The plan shall include, but need not be limited to:

- (a) Source reduction;
- (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 statewide integrated solid waste management plan shall be developed in consultation with local government, the Economic Development Department and other appropriate state and regional agencies,

commissions and task forces. The plan shall address integrated solid waste management for at least 10 years into the future. The department shall review the plan every two years and the commission shall revise the plan at regular intervals in order to allow local governments to take advantage of the data and analysis in the state plan. [1991 c.385 §18]

459A.025 Commission to adopt rules regarding waste disposal and recycling.

(1) By January 1, 1985, and according to the requirements of ORS 183.310 to 183.550, the commission shall adopt rules and guidelines necessary to carry out the provisions of ORS 459.005, 459.015, 459.035, 459.250, 459.992, 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 watersheds within the state;

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

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

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

(g) Subject to prior approval of the appropriate legislative agency, 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, 459.995 and 459A.005 to 459A.665.

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

(a) The purposes and 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 watershed. [Formerly 459.170]

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, reusing, recycling and solid waste management programs that comply with the opportunity to recycle established in ORS 459A.005. The department shall give special emphasis to assisting rural and remote counties. [1991 c.385 §52]

Note: 459A.030 was added to and made a part of 459.005 to 459.426 by legislative action but was not added to any smaller series therein. (The series 459.005 to 459.426 became 459.005 to 459.426, 459.705 to 459.790 and 459A.005 to 459A.665 in 1991.) See Preface to Oregon Revised Statutes for further explanation.

459A.035 Solid waste composition study. The department shall conduct a solid waste composition study at least once a biennium for all areas of the state not covered by other composition studies. The study may include:

(1) A measurement of the per capita waste disposal rate; or

(2) A statewide survey of the amount of waste reduced through resource recovery. [1991 c.385 §5]

459A.040 Biennial report on opportunity to recycle. The Department of Environmental Quality shall report biennially to the Legislative Assembly on the development and implementation of the opportunity to recycle in Oregon. [1991 c.385 §93]

Note: 459A.040 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 459 or 459A or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

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

(1) Request the 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 Annual recycling reports. (1) On behalf of each watershed and the cities within each watershed, each county shall submit to the department an annual report that:

(a) Documents how the watershed and the cities within the watershed are implementing the opportunity to recycle, including the requirements of ORS 459A.010.

(b) Reports participation in on-route collection programs, including single family and multifamily residential programs.

(c) Reports participation in regular onsite commercial collection programs.

(d) Reports for the watershed 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.

(e) If solid waste generated in the watershed is disposed of outside of the state, reports the total weight of waste disposed outside the state.

(2) The metropolitan service district for Multnomah, Washington and Clackamas counties and the cities therein in aggregate shall submit to the department an annual report that includes 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 (4)(d), each solid waste disposal site that receives solid waste, except transfer stations, shall report, for each watershed, the weight of in-state solid waste disposed of at the solid waste disposal site that was generated in each watershed.

(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 watershed 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 watershed, 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, shall be maintained as confidential by the department 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) to (4) and (6) of this section shall be collected and reported annually on a form provided by the department beginning in 1992 for calendar year 1991.

(9) As a part of the report required under section 91, chapter 385, Oregon Laws 1991, the department shall report:

(a) The annual weight of material disposed of per capita, by watershed and statewide.

(b) The annual recovery rate achieved by each watershed and statewide.

(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.

(d) The status of implementation of the provisions of ORS 459A.005 to 459A.665.

(e) Participation rates for commercial and residential on-route collection by watershed and statewide.

(f) Recommendations for improvements in the recycling, reuse and waste reduction programs.

(10) Unless extended by the commission upon application under ORS 459A.055 after the affected persons show good cause for an extension, the affected persons within the watershed shall implement the opportunity to recycle and submit the recycling report to the department. [Formerly 459.180]

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

(1)(a) Upon written application by an affected person, the commission may, to accommodate special conditions in the watershed or a portion thereof, grant a variance from specific requirements of the rules or guidelines adopted under ORS 459A.025 or if the affected person complies with the criteria established in ORS 459A.060, from the standards established in ORS 459A.010 (8).

(b) The 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, 459.992, 459.995 and 459A.005 to 459A.665 for providing for all or a part of the opportunity to recycle or submitting a recycling report to the department. 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]

459A.060 Request for variance from requirement to implement additional program elements. After January 1, 1995, a city or county may request from the department a variance under ORS 459A.055 from ORS 459A.010 (8) if beginning in 1992, the measurement of disposal rates shows that the per capita disposal rate is decreasing at a rate of five percent or more per year. [1991 c.385 §4]

459A.065 Mandatory participation in recycling. (1) Upon findings made under subsection (3) of this section, the commission may require one or more classes of solid waste generators within all or part of a watershed to source separate identified recyclable material from other solid waste and 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 and 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 purposes of 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 purposes of 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]

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, 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, 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;

(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]

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 a resource recovery facility; or

(f) Other material excluded by the commission in order to support the purposes of ORS 459.015. [Formerly 459.292]

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; maximum fee. (1) In addition to the permit fees provided in ORS 459.235, the commission shall establish a schedule of fees for all disposal sites that receive domestic solid waste except transfer stations. The schedule shall be based on the estimated tonnage or the actual tonnage, if known, received at the site 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.

(2) For solid waste delivered to disposal facilities 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.

(3) The commission also may require submittal of information related to volumes and sources of waste or recycled material if necessary to carry out the activities in ORS 459A.120.

(4)(a) A local government that franchises or licenses a domestic solid waste site 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 li-

censes the collection of solid waste shall allow the franchisee or licensee to include the amount of the fee in the solid waste collection service rate.

(5) 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.

(6) 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. [Formerly 459.294]

Note: Sections 91 and 92, chapter 385, Oregon Laws 1991, provide:

Sec. 91. If, after final appeal, the surcharge established by the Environmental Quality Commission under ORS 459.297 is held to be valid and the state is able to collect the surcharge, ORS 459.294, (renumbered 459A.110) as amended by section 13 of this Act, is further amended to read:

459A.110 Additional fees when state collects certain surcharge; use; assessment; maximum fee. (1) In addition to the permit fees provided in ORS 459.235, the commission shall establish a schedule of fees for all disposal sites that receive domestic solid waste except transfer stations. The schedule shall be based on the estimated tonnage or the actual tonnage, if known, received at the site 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.

(2) For solid waste delivered to disposal facilities 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.

(3) The commission also may require submittal of information related to volumes and sources of waste or recycled material if necessary to carry out the activities in ORS 459A.120.

(4)(a) A local government that franchises or licenses a domestic solid waste site 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 solid waste collection service rate.

(5) 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.

Sec. 92. Deduction from fees paid for solid waste generated out of state if state collects certain surcharge. If, after final appeal, the surcharge established by the Environmental Quality Commission under ORS 459.297 is held to be valid and the state is

able to collect the surcharge, any person subject to the surcharge shall pay the amount of the surcharge due for all solid waste generated out of state and accepted for disposal at the disposal site on and after January 1, 1991. However, the person responsible for payment of the surcharge may deduct from the amount due any fees paid under ORS 459A.110 (6) as amended by section 13 of this Act on solid waste generated out of state. [1991 c.385 §92]

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 and 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 90.318, 182.375, 279.545 to 279.555, 279.570 to 279.650, 459.005, 459.015, 459.235, 459.247, 459.418, 459.419, 459.995, 459A.005, 459A.010, 459A.020, 459A.030 to 459A.060, 459A.070, 459A.110, 459A.500 to 459A.685 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. [1991 c.385 §13a]

Note: 459A.115 was added to and made a part of 459.165 to 459.200 (renumbered 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 commission under ORS 459A.110 shall be deposited in the General Fund and credited to an account of the department. 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) To implement 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 domestic solid waste landfills.

(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) To pay administrative costs incurred by the department in accomplishing the purposes set forth in this section, the amount allocated under this subsection shall not exceed 10 percent of the fees generated under ORS 459A.110. [Formerly 459.295]

(Recycling Markets Development Council)

Note: Sections 45 to 49, chapter 385, Oregon Laws 1991, provide:

Sec. 45. (1) The Recycling Markets Development Council is created. The council shall consist of 12 members at least one of whom shall have expertise in national and international market development. The members appointed to the council shall represent the following interests:

- (a) Local government;
- (b) Solid waste collectors;
- (c) Environmental organizations;
- (d) Glass industry;
- (e) End-product manufacturers of glass;
- (f) Paper industry;
- (g) End-product manufacturers of paper;
- (h) End-product manufacturers of plastic;
- (i) Persons with expertise in the collection and sorting of recyclable materials;
- (j) Retail industry;
- (k) Processors of recovered materials; and
- (L) Plastics industry.

(2) The Governor shall appoint the members of the council, one of whom shall be designated as chairperson. Members of the council serve at the pleasure of the Governor and shall serve a term of two years. Any vacancy on the council shall be filled by the Governor. In making the appointments to the council, the Governor shall consider:

- (a) The person's knowledge of recycling;
 - (b) Geographic representation from throughout the state;
 - (c) The size of the business represented; and
 - (d) Expertise in market development.
- (3) The council shall meet at least quarterly.
- (4) The council shall:

- (a) Remain current with national and international market development activities;
- (b) Develop statewide market strategies for each secondary commodity;
- (c) Develop communication with and be a liaison to market development committees representing other states within the region;
- (d) Encourage uniform recycling definitions and standards throughout the states in the region;
- (e) Encourage the expansion of existing businesses and the recruitment of businesses into the region that use recovered materials from Oregon;

(f) Identify and evaluate financial and other incentives to attract new businesses to Oregon or to expand existing businesses that can use recovered materials from Oregon; and

(g) Promote the purchase of products made from recovered materials.

(5) The council shall submit a report to the Sixty-seventh Legislative Assembly. The report shall include but need not be limited to:

(a) Accomplishments of the council to date;

(b) Additional activities necessary to strengthen markets for recycled materials;

(c) Statutory additions or changes necessary to assist the council in carrying out its duties, including implementing the market development plans developed by the council's divisions; and

(d) The specific uses intended for the Oregon Recycling Markets Development Fund created under section 48 of this 1991 Act. [1991 c.385 §45]

Sec. 46. (1) The council shall establish three industry divisions to examine specific market development problems related to glass, paper and plastic. In addition to the glass, paper and plastic divisions, the council may establish ad hoc divisions to address market development problems not appropriately addressed by the glass, paper and plastic divisions. The council shall determine the organizational structure for the ad hoc divisions.

(2) The chairperson of the glass, paper and plastic divisions shall be the member of the council appointed by the Governor as the representative of the glass, paper or plastic industry, respectively. In addition, the council shall select at least four but not more than eight members for each division from representatives of each industry. Each division's members shall represent fairly the primary participants in each industry's Oregon economy, including material suppliers and manufacturers.

(3) The council shall define specific market problems for each secondary commodity and the appropriate division shall address each problem in the following manner:

(a) The division shall analyze current plant capacity and market demand issues for the secondary commodity in question;

(b) The division shall determine whether the industry has insufficient private development activity, planned or existing, to warrant additional market development; and

(c) If the division finds additional market development is warranted, the division shall establish a development plan for expanding markets for the secondary commodity, including a recommended capital development fund to finance the plan and a proposal for assessment of the industry to fund the market development plan.

(4) Each division shall report its activities and findings to the council on a quarterly basis and shall present an interim report to the council upon the council's request. The council may approve each division's market development plan and industry assessment mechanism. Upon each request each division shall report to the appropriate joint interim committee. Before implementing any assessment mechanism, the council shall submit the proposal to the Legislative Assembly.

(5) Until June 30, 1993, all service and expense items of the council and its divisions shall be provided by council members or industry. [1991 c.385 §46]

Sec. 47. Sections 45, 46, 48 and 49 of this 1991 Act are repealed on January 1, 1996. [1991 c.385 §47]

Sec. 48. (1) The Oregon Recycling Markets Development Fund is created in the State Treasury, separate

and distinct from the General Fund. Except as otherwise provided by law, all moneys received by the council shall be paid into the State Treasury and credited to the fund. Interest earnings on all moneys in the fund shall be retained in the fund.

(2) The Oregon Recycling Markets Development Fund shall consist of:

(a) Moneys generated as assessments under section 46 of this 1991 Act.

(b) Moneys from any private gifts, grants or donations made to the fund.

(3) Any funds generated under a division's industry assessment structure shall be placed in a subaccount and shall be used only to fund that division's market development plan and the expenses of the council. [1991 c.385 §48]

Sec. 49. (1) Moneys in the Oregon Recycling Markets Development Fund are continuously appropriated to the Recycling Markets Development Council to be used:

(a) To provide low interest loans to develop a secondary materials processing infrastructure for businesses engaged in processing secondary materials.

(b) For purposes set forth in each division's market development plan.

(c) To pay the reasonable and necessary expenses of the council.

(d) To provide grants for section 501(c)(3) organizations engaged in collecting, separating or processing secondary commodities.

(2) As used in this section, "section 501(c)(3) organization" means an organization exempt under section 501(c)(3) of the Internal Revenue Code, as amended and in effect on the effective date of this 1991 Act [July 1, 1991]. [1991 c.385 §49]

SPECIFIC RECYCLING REQUIREMENTS

(Newsprint and Directories)

459A.500 Definitions for ORS 459A.500 to 459A.515. As used in ORS 459A.500 to 459A.515:

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

(2) "Newsprint" means paper meeting 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]

459A.505 Minimum recycled content for newsprint. Unless exempted under section 30, chapter 385, Oregon Laws 1991, on and after January 1, 1995, every consumer of newsprint in Oregon shall insure that at least 7.5 percent of the annual aggregate fi-

ber 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 must meet or exceed 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]

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. (1) No later than February 28, 1992, and annually by the same date thereafter, each consumer of newsprint shall report to the Department of Environmental Quality the following information for the previous calendar year:

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

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

(c) The aggregate recycled content of the newsprint used as a percent.

(2) If a consumer of newsprint cannot obtain sufficient amounts of recycled-content newsprint during the year because of one or more of the factors described in ORS 459A.505, the report submitted by February 28, 1996, shall include such information. [1991 c.385 §29]

Note: Section 31, chapter 385, Oregon Laws 1991, provides:

Sec. 31. Sections 26 to 29 of this 1991 Act [459A.500 to 459A.515] do not apply to newsprint purchased before January 1, 1992. [1991 c.385 §31]

459A.520 Minimum recycled content for directories. (1) On and after January 1, 1995, every directory publisher shall insure 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 insure that recycling opportunities exist for directories at the time the directories are distributed provided markets exist for the directories.

(3) The department 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]

(Oregon Newsprint Recycling Task Force)

Note: Sections 30 and 32, chapter 385, Oregon Laws 1991, provide:

Sec. 30. (1) The Oregon Newsprint Recycling Task Force is created. Not later than 90 days after the effective date of this 1991 Act [July 1, 1991], the members of the Oregon Newsprint Recycling Task Force shall be appointed.

(2) The Oregon Newsprint Recycling Task Force shall:

(a) Assess the availability of recycled newsprint in Oregon;

(b) Determine the actions the state could take to increase the availability of recycled-content newsprint; and

(c) Assess the need for statewide voluntary guidelines and enter into voluntary agreements on behalf of the state that commit the parties to a program for the use of recycled-content newsprint that meets the criteria set forth in section 27 of this 1991 Act [459A.505]. The agreements under this paragraph shall comply with the criteria set forth in subsection (4) of this section.

(3) The task force shall consist of eight members appointed in the following manner:

(a) One shall be appointed by the President of the Senate to represent the Legislative Assembly;

(b) One shall be appointed by the Speaker of the House of Representatives to represent the Legislative Assembly; and

(c) Six shall be appointed by the Governor, one each representing the following, one of whom shall serve as chairperson:

(A) The commercial printing industry;

(B) Daily newspapers;

(C) Weekly newspapers;

(D) The recycling industry;

(E) The paper manufacturing industry; and

(F) The environmental community.

(4) The task force shall accept a voluntary agreement executed under subsection (2) of this section by a recognized association whose members include consumers of newsprint or by an individual firm that is not a member of an association if the agreement includes commitment by the members collectively or a firm individually to meet a goal of 25 percent of the annual aggregate fiber content of newsprint used by association members or a firm individually being composed of post-consumer waste for the calendar year 1995 and every year thereafter.

(5) A firm or the members of an association described in subsection (4) of this section shall be exempt from the requirements of section 27 of this 1991 Act [459A.505] if:

(a) The association or firm enters into a voluntary agreement under this section; and

(b) The goal established under subsection (4) of this section for January 1, 1995, and included in the voluntary agreement is achieved.

(6) The Oregon Newsprint Recycling Task Force shall report annually to the appropriate legislative committee. Not later than January 1, 1997, the task force shall report to the appropriate legislative committee whether recommended changes to the established goal of 7.5 percent of total content of newsprint consumed are appropriate.

(7) The Department of Environmental Quality shall provide staff assistance to the task force. The Department of Environmental Quality may delegate certain administrative responsibilities of the task force to a recognized trade association.

(8) As used in this section, "newspaper" has the meaning given in ORS 193.010. [1991 c.385 §30]

Sec. 32. Section 30 of this Act is repealed January 1, 1998. [1991 c.385 §32]

(Glass)

459A.550 Report on use of new and recycled glass; minimum percentage of recycled glass required. (1) Beginning February 28, 1992, and annually thereafter, every glass container manufacturer shall report to the department, in accordance with a method established by the department, the total amount, in tons, of new glass food, drink and beverage containers made or sold in Oregon by the glass container manufacturer, and the tons of recycled glass used in manufacturing the new container.

(2) 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 1, 2000.

(3) As used in this section, "glass container manufacturer" means a person that manufactures commercial containers whose principal component part consists of virgin glass, recycled glass or post-consumer glass, or any combination thereof, for sale in Oregon, or if manufactured in Oregon, for export to other states or countries. "Glass

container manufacturer" includes but is not limited to all commercial manufacturing operations that produce beverage containers, food or drink packaging material made primarily of glass, or any combination of both of these items. [1991 c.385 §34]

(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 Department of General 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 Identification of uses for compost and sewage sludge. On or after January 1, 1992, the State Forestry Department, the State Parks and Recreation Department, the Department of Transportation and the Department of General Services, in cooperation with the Department of Environmental Quality, shall each identify and evaluate uses for compost and environmentally safe sewage sludge in public land maintenance and rehabilitation projects, state landscaping projects and park and recreational area maintenance programs. The results of the evaluation shall be submitted to the Department of Environmental Quality not later than September 1, 1992. The Department of Environmental Quality shall include the results of the evaluation in the report submitted under section 91, chapter 385, Oregon Laws 1991. [1991 c.385 §22]

459A.615 Programs to use compost and sewage sludge. Based on the evaluation under ORS 459A.610, on or after January 1, 1994, the State Forestry Department, the State Parks and Recreation Department, the Department of Transportation and the Department of General 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]

459A.620 Use of compost or sewage sludge by state agencies given priority.

After January 1, 1994, 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]

(Plastics)

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

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

(2) "Manufacturer" means the producer or generator of a packaged product which is sold or offered for sale in Oregon in a rigid plastic container.

(3) "Package" means any container used to protect, store, contain, transport, display or sell products.

(4) "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.

(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) "Reusable package" means a package that is used five or more times for the same or substantially similar use.

(8) "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]

459A.655 Minimum recycled content for rigid plastic containers. (1) Except as provided in ORS 459A.660 (3), every manufacturer of rigid plastic containers sold, offered for sale or used in association with the

sale or offer for sale of products in Oregon shall insure that the container meets one of the following criteria:

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

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

(c) Is a reusable package.

(2) A manufacturer's rigid plastic container shall meet the requirements in paragraph (b) of subsection (1) 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]

Note: Section 34e, chapter 385, Oregon Laws 1991, provides:

Sec. 34e. Exemptions for plastic containers; review and report on plastic recycling programs. (1) On or before January 1, 1993, the department shall report to the Legislative Assembly on whether to grant an exemption from the criteria established by section 34b of this 1991 Act [459A.655] for rigid plastic containers that cannot meet the recycled content criterion and remain in compliance with United States Food and Drug Administration regulations.

(2) On or before January 1, 1997, the department shall review certifications provided pursuant to section 34c of this 1991 Act [459A.660] and report to the Legislative Assembly on the status of plastic recycling programs in the state, including, but not limited to, participation rates, estimates of the quantities and qualities of recycled materials and status of markets for plastic recycled materials. The report may be used to recommend which rigid plastic containers, if any, should be required to contain higher or lower recycled content or recycling rate standards for the year 2000. [1991 c.385 §34e]

459A.660 Certification; records; exempt containers. (1) On or before March 1, 1995, and annually on or before March 1 thereafter, each manufacturer of rigid plastic containers shall submit a certification to the department. The certification shall include the total tons of rigid plastic containers the manufacturer produced or sold for sale or distribution in the state by resin type, the tons of recycled materials used in manufacturing those rigid plastic containers and other information the department may require to administer the requirements of ORS 459A.650 to 459A.665. Proprietary informa-

tion included in a report or certification submitted to the department under this section shall not be made available to the general public. Manufacturers shall keep records documenting the certification for presentation to the department upon its request. Each manufacturer required to make a certification under this section may be audited by the department.

(2) Each manufacturer shall certify that the manufacturer has complied with one or more of the requirements of ORS 459A.655 during the preceding calendar year for all of the manufacturer's rigid plastic containers except any rigid plastic containers subject to subsection (3) of this section.

(3) For any rigid plastic containers not certified under subsection (2) of this section, each manufacturer shall certify that such containers are exempt from the requirements of ORS 459A.655 for one of the following reasons:

(a) The packages are used for medication prescribed by physicians.

(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 which 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 the potential for the package to be recycled or be made of recycled content. 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. [1991 c.385 §34c]

459A.665 Opportunity to recycle rigid plastic containers. (1) 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:

(2) The Recycling Markets Development Council shall determine:

(a) If and when a stable market exists.

(b) Whether the requirements of this section are met for any particular wasteshed. [1991 c.385 §34d]

Note: The amendments to 459A.665 by section 50, chapter 385, Oregon Laws 1991, take effect January 1, 1996. The text is set forth for the user's convenience.

459A.665. 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.

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 capacity of between at least 16 ounces and five gallons or less.

(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 capacity of between at least eight ounces and five gallons or less. [1991 c.385 §86]

Note: 459A.675 to 459A.685 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 459 or 459A or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

459A.680 Labeling requirements for rigid plastic 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 material 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) On and after January 1, 1992, 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]

Note: See note under 459A.675.

459A.685 Prohibition on manufacture of rigid plastic 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.

BEVERAGE CONTAINERS

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 beer or other malt beverages and mineral waters, soda water and similar carbonated soft drinks in liquid form and intended for human consumption.

(2) "Beverage container" means the individual, separate, sealed glass, metal or plastic bottle, can, jar, or carton containing a beverage.

(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) "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.

(8) "Manufacturer" means every person bottling, canning or otherwise filling beverage containers for sale to distributors or dealers.

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

(10) "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. [Formerly 459.810]

459A.705 Refund value required. (1) Except as provided in subsection (2) 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) 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]

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

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

(2) A distributor shall not refuse to accept from a dealer any empty beverage containers of the kind, size and brand sold by the distributor, or refuse to pay the dealer the refund value of a beverage container as established by ORS 459A.705. [Formerly 459.830]

459A.715 When dealer or distributor authorized to refuse to accept or pay refund in certain cases; notice. (1) A dealer may refuse to accept from any person, and a distributor may refuse to accept from a dealer any empty beverage container which 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 empty beverage containers if the place of business of the dealer and the kind and brand of empty beverage containers are included in an order of the commission approving a redemption center under ORS 459A.735.

(3) A dealer may refuse to accept and to pay the refund value of any beverage container visibly containing or contaminated by a substance other than water, residue of the original contents or ordinary dust.

(4) A dealer may refuse to accept and to pay the refund value of more than 96 individual beverage containers returned by any one person during one day if a daily time is posted when larger quantities of containers will be accepted.

(5) In order to refuse containers under subsection (3) or (4) of this section, 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; or

2. More than 96 individual beverage containers from any one person during one day if a daily time is posted when larger quantities of containers will be accepted.

Quantities in excess of 96 individual containers may be returned on the following schedule or by appointment.

[Formerly 459.840]

459A.720 Indication of refund value required; exception; certain metal containers and plastic container holders prohibited. (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.

(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 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 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. (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 and brand names of the beverage containers which will be accepted at the redemption center and the names and addresses of the dealers to be served by the redemption center. 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 the dealers to be served by the redemption center and the kind and brand names of empty beverage containers which the redemption center must accept. The order may contain such other provisions to insure the redemption center will provide a convenient service to the public as the commission may determine.

(4) 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]

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 183.310 to 183.550. [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) Beginning July 1, 1993, 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 first shall provide a current teacher's guide by July 1, 1993, and at a minimum, every fourth year thereafter, shall update, revise and replace the teacher's guide 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) Beginning July 1, 1993, 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 first shall provide this material by July 1, 1993, and shall revise the material annually to keep the information presented current and effective.

(c) On or before July 1, 1993, 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]

Note: 459A.750 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 459 or 459A or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Note: Section 36, chapter 385, Oregon Laws 1991, provides:

Sec. 36. The Department of Education shall report to the Sixty-seventh Legislative Assembly on the development and implementation of the integrated solid waste management curriculum and recycling and waste reduction education component established pursuant to section 35 of this Act [459A.750]. [1991 c.385 §36]

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 chapters 459 and 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.

