

Administrative Rules of Metro Code Chapter 5.01 Administrative Rule Repeal and Adoption Record and Findings

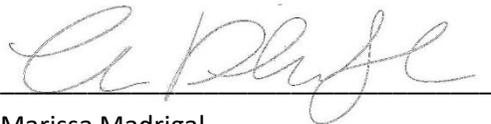
These administrative rules are adopted under the authority of Metro Code Section 5.01.195 and Metro Code Chapter 5.08, which authorizes the Chief Operating Officer to adopt a temporary administrative rule without public notice, comment or a hearing upon a finding that a failure to act promptly will result in serious prejudice to the public interest or the interest of an affected party.

In 2018, Metro developed a draft putrescible waste tonnage allocation methodology that was designed to achieve several objectives outlined in the 2016 Transfer System Configuration Policy (Council Resolution No. 16-4716), but did not implement it because the anticipated public benefits were insufficient. In 2019, Metro Council adopted the 2030 Regional Waste Plan, which identifies extensive and specific equity and environmental goals to guide how Metro manages and makes investments in the regional solid waste system. Metro staff subsequently began to revise the allocation approach to advance Regional Waste Plan goals, ensure system stability, offer flexibility in addressing Council priorities, and provide better overall public benefits than both the previous draft and status quo allocations.

On December 2, 2020, the Chief Operating Officer adopted temporary administrative rules AR 5.01—1300-T through 1340-T. These temporary rules provided privately owned transfer stations with their base tonnage allocations for 2021 and established the overall methodology for allocating goals-based tonnage. In order to execute Council's September 2020 direction to staff to develop and implement voluntary goals-based allocations mid-year 2021, the Chief Operating Officer finds it necessary to repeal temporary administrative rules AR 5.01-1300-T through 1340-T adopted in December 2020 and adopt new temporary rules that both incorporate language from the prior temporary rules and further describe the criteria, reporting and implementation requirements for any eligible private transfer station choosing to participate in the goal-based tonnage program. The Chief Operating Officer further finds that a failure to act in a timely manner would result in serious prejudice to the public interest.

Temporary rules AR 5.01-1300-T through 1340-T adopted on December 2, 2020 are repealed. Temporary rules AR 5.01-1300 through 1375-T are hereby adopted. These rules will expire 180 days from the date of my signature below or upon adoption of permanent rules if completed earlier than 180 days. All base allocations previously granted by the December 2, 2020, temporary rules remain in effect, and all goals-based allocations granted by these temporary rules will remain in effect until the Chief Operating Officer adopts new permanent rules. The requirements of these administrative rules are in addition to all other requirements and provisions in Metro Code Chapter 5.01.

It is so ordered:



Marissa Madrigal
Metro Chief Operating Officer

3/31/2021

Date

Solid Waste

Administrative Rules

AR 5.01 – 1300-T through 1375-T

Transitional Putrescible Waste Tonnage Allocation

Table of Contents

5.01 – 1300-T Definitions
5.01 – 1305-T Effective Dates
5.01 – 1310-T Transitional Putrescible Waste Tonnage Allocation Methodology
5.01 – 1315-T Equal Share Calculation
5.01 – 1320-T Proportional Share Calculation
5.01 – 1325-T Goals-based Share Calculation
5.01 – 1330-T Determining Transfer Station Allocation for CY 2021 for In-Region Stations
5.01 – 1335-T Determining Transfer Station Allocation for CY 2021 for Out-of-Region Stations
5.01 – 1340-T Conditions and Adjustments
5.01 – 1345-T Criterion for “Living Wages and Good Benefits” Goal
5.01 – 1347-T Reporting and Implementation for “Living Wages and Good Benefits” Goal
5.01 – 1350-T Criterion for “Increase Diversity in Workforce” Goal
5.01 – 1352-T Reporting and Implementation for “Increase Diversity in Workforce” Goal
5.01 – 1355-T Criteria for “Minimize Environmental Impacts” Goal
5.01 – 1357-T Reporting and Implementation for “Minimize Environmental Impacts” Goal
5.01 – 1360-T Criteria for “Invest in Communities” Goal
5.01 – 1362-T Reporting and Implementation for “Invest in Communities” Goal
5.01 – 1365-T Criteria for “Affordable and Consistent Rates” Goal
5.01 – 1367-T Reporting and Implementation for “Affordable and Consistent Rates” Goal
5.01 – 1370-T Consequences of Failing to Maintain Criteria, Reporting or Implementation Requirements
5.01 – 1375-T Appeal of Decision Regarding Failure to Qualify for Goals-based Tonnage

5.01 – 1300-T Definitions

Unless otherwise specifically defined in these rules, all other applicable definitions are found in Metro Code Chapter 5.00.

Forecasted Tonnage means the total putrescible waste tonnage forecast to be generated in the Metro jurisdictional boundary (hereinafter “region”) in calendar year 2021.

Non-Transfer Station Reserve means the amount reserved from the Forecasted Tonnage that is transported directly to disposal sites such as landfills and incineration.

Adjusted Regional Tonnage means the Forecasted Tonnage minus (1) the Non-Transfer Station Reserve, (2) any True-Up Reserve applicable.

Metro Tonnage Reserve means 40 percent of the Adjusted Regional Tonnage.

Transitional Tonnage Allocation Methodology means the process that Metro will use to determine putrescible waste tonnage allocations for privately owned transfer stations until a full implementation methodology is developed and approved by the Chief Operating Officer.

Equal Share means the component of the tonnage allocation that is calculated by dividing tonnage into uniformly sized shares for each transfer station to provide system consistency and reset historical discrepancies that were not designed to achieve public benefits or equity.

Proportional Share means the component of the tonnage allocation determined by multiplying a transfer station’s 2020 allocation percentage by the percentage of Adjusted Regional Tonnage to be allocated proportionally.

Goals-based Share means those allocations designed to incentivize progress towards Regional Waste Plan goals.

5.01 – 1305-T Effective Dates

The transition putrescible waste tonnage allocation methodology will be applied to the Fall 2020 Annual Solid Waste Forecast to determine the tonnage allocations that will be effective January 1, 2021, through December 31, 2021.

5.01 – 1310-T Transitional Putrescible Waste Tonnage Allocation Methodology

Adjusted Regional Tonnage is allocated to each private transfer station as follows and as visualized in Figure 1 below.

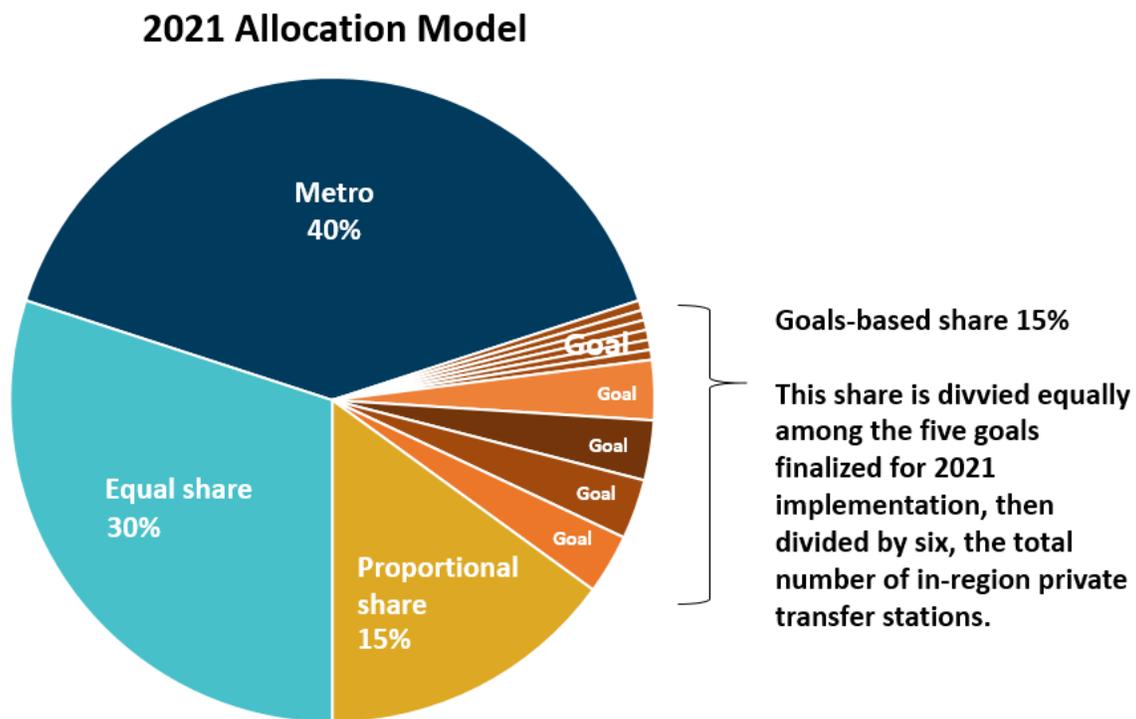


Figure 1. 2021 allocation plan

1. Thirty percent is allocated as an Equal Share.
2. Fifteen percent is allocated as a Proportional Share.
3. Fifteen percent is allocated as a Goals-based Share.

5.01 – 1315-T Equal Share Calculation

Equal shares are determined by dividing 30 percent of the Adjusted Regional Tonnage for in-region and out-of-region transfer stations as follows:

- 1 Each authorized privately owned in-region transfer station receives an equal share to every other in-region privately owned transfer station. Each authorized, designated, out-of-region privately owned transfer station receives a half of the amount of the equal share.
- 2 This amount is determined by calculating 30 percent of the available tonnage, counting each in-region transfer station as one share and each out-of-region designated facility as a half of a share, totaling the number of shares, and dividing the available tonnage by the shares to get tonnage per share.

5.01 – 1320-T Proportional Share Calculation

Proportional shares are determined by multiplying an in-region transfer station's 2020 allocation percentage by 15 percent of the Adjusted Regional Tonnage. Proportional Shares are not available to out-of-region transfer stations.

5.01 – 1325-T Goals-based Share Calculation

Goals-based shares are determined as follows:

- 1 Private transfer stations may choose to apply for goals-based tonnage for up to five COO-approved Regional Waste Plan (RWP) goals.
 - a. Living Wages and Good Benefits (RWP Goal 3)
 - b. Increase Diversity in Workforce (RWP Goal 4)
 - c. Minimize Environmental Impacts (RWP 12)
 - d. Invest in Communities (RWP Goal 13)
 - e. Affordable and Consistent Rates (RWP Goal 14)
- 2 To calculate the tonnage amount available per goal, Metro will calculate fifteen percent of the Adjusted Regional Tonnage, divide that amount by five (the number of goals), and then divide each goal's share by six (the number of in-region, privately owned transfer stations). This represents the amount of tonnage each transfer station may receive per goal, if it meets the criteria for that goal. For calendar year 2021, this equals 3,615 tons per transfer station per goal.
- 3 No later than June 30, 2021, a private transfer station must demonstrate to Metro per the reporting and implementation requirements of each goal (as set forth in administrative rule) that it has met the criteria necessary to receive its chosen goals-based allocations.
- 4 A transfer station that meets the reporting and implementation requirements of three or more goals will receive the full goals-based tonnage allocation available, equivalent to 18,075 tons.
- 5 A transfer station that meets less than three criteria will receive 3,615 tons for each goal met.
- 6 Metro may not allocate goals-based tonnage until it has reviewed and accepted the criteria evidence.

Goals-based shares are not available to out-of-region transfer stations.

5.01 – 1330-T Determining Transfer Station Allocation for CY 2021 for In-Region Stations

The 2021 transfer station allocation for each in-region transfer station is the sum of its Equal Share, Proportional Share, and Goals-based Share amounts.

5.01 – 1335-T Determining Transfer Station Allocation for CY 2021 for Out-of-Region Stations

The 2021 transfer station allocation for each out-of-region transfer station is its Equal Share amount.

5.01 – 1340-T Conditions and Adjustments

1. Tonnage allocations will be determined in accordance with Chapters 5.01 and 5.05 and these administrative rules.
2. Any Goals-based Share tonnage not allocated to private transfer stations will be reserved by Metro for possible reallocation to a transfer station during calendar year 2021 if Metro determines it is necessary to protect the public's interest.
3. If actual regional tonnage varies from the forecast at any point during the year, Metro may adjust and revise the tonnage allocation of a transfer station.
4. In order to minimize system disruption and serve broader public benefits, Metro may reallocate tonnage at the request of a transfer station that does not expect to fully utilize its original allocation.

5.01 – 1345-T Criterion for “Living Wages and Good Benefits” Goal

To qualify for this goal, a transfer station must match or exceed Metro's in-house and contracted lowest wage for entry level industry positions at the transfer station: \$17.50 per hour for direct employees and \$15.00 per hour for staff contracted through temporary staffing agencies.

5.01 – 1347-T Reporting and Implementation for “Living Wages and Good Benefits” Goal

1. By June 30, 2021, a transfer station must provide to Metro written notification certifying that the lowest base wage paid to any employee (as of June 30, 2021) that supports the transfer station's operations meets or exceeds the thresholds established in Rule 5.01-1350-T.
2. The notification in subsection (1) must list the dollar amount of the lowest hourly base wage paid at the transfer station and the position titles and number of employees who receive that lowest base wage.

5.01 – 1350-T Criterion for “Increase Diversity in Workforce” Goal

1. To qualify for this goal, a transfer station must provide diversity-related data to Metro for all employees who support the operations of that facility.
2. Each transfer station's data must represent its workforce snapshot for February or March 2021 according to the form provided by Metro.

5.01 – 1352-T Reporting and Implementation for “Increase Diversity in Workforce” Goal

1. A transfer station must complete a reporting form provided by Metro that specifies the following characteristics for each position that supports the operations of that facility, by title:
 - a. Gender
 - b. Race and Ethnicity
 - c. Full-time or part-time position
 - d. Regular or temporary employee
 - e. Supervisor or lead worker
 - f. Years of service with the company
2. The report must include all paid part-time, temporary, front line and managerial positions.

5.01 – 1355-T Criteria for “Minimize Environmental Impacts” Goal

To qualify for this goal, a transfer station must do one of the following:

1. Use low particulate and low greenhouse gas emission fuel for rolling stock at the transfer station; or

2. Use R99 or qualifying renewable diesel for long-haul disposal transport; or
3. Use non-road equipment with Tier 4 engines or retrofitted with an Emission Control Device.

5.01 – 1357-T Reporting and Implementation for “Minimize Environmental Impacts” Goal

1. If a transfer station chooses Option 1 in Rule 5.01-1360-T, then no later than June 30, 2021, it must complete the following two actions:
 - a. Demonstrate or certify that one or more of the transfer station’s main pieces of non-road/rolling stock equipment uses a low emissions fuel; and
 - b. Provide to Metro the following information about one or more pieces of non-road equipment:
 - Equipment type (for example: wheel loader, skid steer loader, forklift, dozer, excavator, yard goat)
 - Fuel type (for example: electricity, renewable diesel, renewable propane, compressed natural gas, liquefied natural gas, B20 biodiesel)
 - Fuel producer/electric utility company
 - Fuel carbon intensity value (in gCO₂e/MJ)
 - Fuel pathway code approved by the Oregon Department of Environmental Quality (DEQ)
 - Equipment manufacturer/make and model
 - Equipment model year
 - Engine manufacturer/make and model
 - Engine model year
 - Engine family number
2. If a transfer station chooses Option 2 in Rule 5.01-1360-T, then no later than June 30, 2021, it must complete the following three actions:
 - a. Demonstrate that the transfer station’s long-haul disposal transport contract specifies the use of R99 renewable diesel or another blend of renewable diesel with a carbon intensity score below 59 grams of carbon dioxide equivalent per megajoule (gCO₂e per MJ), based on the most recent DEQ data;
 - b. Provide Metro a copy of the contractual agreement to use R99 or another blend of renewable diesel with a carbon intensity value less than 60 grams of carbon dioxide equivalent per megajoule (gCO₂e/MJ); and
 - c. Identify the following for all long-haul disposal transport:
 - Quantity of fuel
 - Fuel type (for example: R99)
 - Fuel producer
 - Fuel carbon intensity value (in gCO₂e/MJ)
 - Fuel pathway code approved by the Oregon Department of Environmental Quality (DEQ)
3. If a transfer station chooses Option 3 in Rule 5.01-1360-T, then no later than June 30, 2021, it must complete the following two actions:
 - a. Demonstrate that at least one or more pieces of non-road equipment regularly used in transfer station operations has an engine that meets Tier 4 federal emission standards or is retrofitted with an Emission Control Device, as defined below:
 - Emission Control Device – Technology added to equipment to reduce harmful emissions; including diesel particulate filters (DPF) and diesel oxidation catalysts (DOC).
 - Diesel oxidation catalyst (DOC) – A flow-through device designed to reduce harmful diesel emissions such as carbon monoxide, hydrocarbons and diesel particulate emissions, with a diesel particulate matter removal efficiency of at least 20%.
 - Diesel particulate filter (DPF) – A device designed to trap diesel particulate matter above a

- certain size with a removal efficiency of at least 85%; and
- b. Provide Metro with an invoice or statement signed by the installer of the retrofit technology showing:
- The date when each Emission Control Device installation was performed
 - The type of Emission Control Device installed (for example: DOC or DPF)
 - The make, model and year of the engine on which the Emission Control Device was installed
 - The make, model and year of the piece of equipment on which the Emission Control Device was installed

5.01 – 1360-T Criteria for “Invest in Communities” Goal

To qualify for this goal, a transfer station must do one of the following:

1. Collect and remit a supplemental community investment fee of \$0.50 per ton on all putrescible waste that the transfer station receives in addition to any community enhancement fee required under Metro Code; or
2. Collect and remit a supplemental community investment fee of \$1.00 per ton on all types of waste received at the transfer station that are not subject to any community enhancement fee as of June 30, 2021.

5.01 – 1362-T Reporting and Implementation for “Invest in Communities” Goal

1. The transfer station must collect the additional fees for at least six consecutive months beginning on July 1, 2021.
2. The transfer station must report and remit all of the fees to Metro for inclusion in the community enhancement fee program.
3. The transfer station must notify Metro in writing that it intends to voluntarily collect and remit to Metro supplemental enhancement fees on the waste that it receives effective no later than July 1, 2021, and for no less than six consecutive months. The transfer station must identify the types of waste that will be subject to the fees and the additional amount the transfer station will assess.
4. The transfer station must file monthly tonnage reports and remit to Metro all enhancement fees in the same manner as required under Metro’s eFile procedures or as otherwise prescribed by Metro.

5.01 – 1365-T Criterion for “Affordable and Consistent Rates” Goal

To qualify for this goal, a transfer station’s total rate per ton (inclusive of all fees and charges) actually charged to commercial customers must be no more than five percent greater than Metro’s garbage disposal fee at the Metro public transfer stations. The rate must be effective no later than July 1, 2021, and the transfer station must maintain rates within the acceptable range for at least six consecutive months.

5.01 – 1367-T Reporting and Implementation for “Affordable and Consistent Rates” Goal

1. The transfer station must charge a total commercial rate per ton (inclusive of all fees and charges) that is no more than five percent greater than the garbage disposal fee charged at Metro transfer stations effective July 1, 2021.
2. The facility must provide written notice to Metro by June 30, 2021, of the total rate that it will charge by customer and waste type for six consecutive months beginning July 1, 2021. The facility must notify Metro in writing if it changes its rates during that time.
3. The transfer station must provide Metro with a copy of any rate notifications it sends to its commercial customers and must post its rates at all public entrances in accordance with its franchise requirements.

4. The transfer station must report to Metro the actual amount it charged to each customer in the same manner as required under its franchise, Metro's SWIS eFile data standard, or as otherwise prescribed by Metro.

5.01 – 1370-T Consequences of Failing to Maintain Criteria, Reporting or Implementation Requirements

If a transfer station receives goals-based tonnage for one or more goals but subsequently fails to maintain criteria, reporting or implementation requirements for that goal during the calendar year, Metro will notify the transfer station that it must comply within 15 days. A failure to demonstrate compliance within 15 days will result in reduced eligibility for goals-based tonnage for that goal in the following calendar year's allocation cycle.

5.01 – 1375-T Appeal of Decision Regarding Failure to Qualify for Goals-based Tonnage

1. The Waste Prevention and Environmental Services Department Director will decide whether a private transfer station qualifies for any particular goals-based tonnage allocation based on the reporting and implementation requirements of that particular goal as outlined in administrative rules (including any required documentation).
2. The Director may request additional information from the transfer station operator or make any investigation as the Director considers appropriate to determine qualifications for goal-based tonnage.
3. If the Director finds that a transfer station does not qualify for any particular goals-based tonnage allocation for which it has applied, the transfer station operator may appeal that decision to the Chief Operating Officer. The transfer station operator must send its appeal request in writing to the Chief Operating Officer no later than 15 business days after the Director's written decision. The appeal request must describe the reasons for which the operator seeks to appeal the Director's decision.
4. The Chief Operating Officer will make a final decision on an appeal request within 20 business days.
5. The Chief Operating Officer's decision on the appeal is a final decision and is appealable only as provided under Oregon law.