



State of Oregon Department of Environmental Quality

Rule Concept: Covered Product Estimates

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

Feb. 17, 2023

Background

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

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

The Oregon Statute does not specify whether estimates can be used in the place of actual data. While DEQ expects that many producers maintain sales data at a state-specific level of granularity, some producers may not. Extended Producer Responsibility programs in the United States, Canada, and Europe address the potential for uncertainty in various ways, such as requiring the subsequent replacement of estimates with hard data and requiring methodological justifications along with estimates. Some programs stipulate that estimates should be based on prorated national market data, though this could be an ineffective method for regional brands not sold throughout the United States.

Concept for discussion at RAC meeting on March 10, 2023

DEQ proposes to allow producers, in the absence of actual data, to submit to PROs estimates of the amounts of covered product that they have sold in or into Oregon. If an estimate is used, it must be accompanied by a methodological justification. When the data for all members of a PRO are subsequently reported to DEQ in annual reporting, estimates should be clearly marked, and they should be accompanied by the methodological justifications. If actual data become available later, the producer must report the corrected data to the PRO before the next annual reporting deadline.

To incentivize collection and reporting of actual data, DEQ proposes requiring PROs to limit fee adjustments (eco-modulation) when collecting membership dues from producers who report estimates. PROs should apply the least favorable adjustment when setting the fees for a producer that has provided estimates rather than actual data.

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