



State of Oregon Department of Environmental Quality

Rule Concepts: 2 - Market Share

A Memo on Options for Defining “Market Share”

Plastic Pollution and Recycling Modernization Act (SB 582, 2001)

Rulemaking Advisory Committee Meeting 1 of 5, Rulemaking 1

Background

DEQ has considered several options for defining market share. Two options (weight, financial burden) are described in this memo.

The Plastic Pollution and Recycling Modernization Act (“Act”) allows for multiple Producer Responsibility Organizations (see ORS 459A.869(9) and (12)). The same section of the Act requires the Environmental Quality Commission to establish by rule “methods for calculating market share”.

The Act refers to the term “market share” in the following ways:

- ORS 459A.863(13) defines “market share” to mean “a producer’s percentage of all covered products sold in or into this state during a specified time period, as calculated in accordance with methods established by the commission by rule.”
- Market share is used to define “large producers” per ORS 459A.863(8): A “large producer” means a producer that is among the 25 largest producers of covered products based on market share. (“Large producers” are required to undertake additional evaluation and disclosure of environmental impacts, per ORS 459A.944.)
- ORS 459A.869(9) requires the EQC to establish methods for calculating market share.
- ORS 459A.869(12) establishes that in order to maintain standing as a PRO, PROs must have members with a combined market share of least 10 percent of the total combined market share of all producers of covered products.
- ORS 459A.872(2) allows the EQC to adopt rules to exempt producers with market share below a defined threshold from the requirements of the Act.
- ORS 459A.887(3) requires each PRO to report to DEQ a confidential addendum containing information that can be used to calculate the market share of individual members.

DEQ defines here two different types of market share:

- **Individual producer market share:** the market share of an individual producer expressed as a percentage of the combined market share of all producers. This is consistent with the definition contained in ORS 459A.863(13).
- **PRO market share:** the combined market shares of all members of a PRO, expressed as a percentage of the combined market share of all producers. This is necessary to evaluate compliance with ORS 459A.869(12) (requiring PROs to each have at least 10 percent of combined market shares). DEQ also assumes that each PRO market share will form the basis of allocation of financial obligations between multiple PROs.

For consistency, DEQ plans to propose the same method for calculation of both types of market share.

There are several different ways that market share can be denominated: by mass (weight) of the covered product, by financial burden of the covered product, or some other factor. DEQ's evaluation of these first two options is presented below. Additional options include defining market share based on the number of items, or the environmental impacts of the covered products. DEQ evaluated these additional options and is not recommending further consideration of them by the Rulemaking Advisory Committee.

DEQ notes that both of the options described below begin with the weight of covered products as reported by producers. The Act (including but not limited to ORS 459A.887(2)(c)) makes clear that PROs will report to DEQ the amounts of covered products on the basis of weight. Weight is also the standard basis for accounting for materials flows in the recycling system.

Options for discussion at July 20, 2022 RAC meeting

DEQ seeks feedback from Rulemaking Advisory Committee members on the following options:

Option One: Calculate Market Share on the Basis of Weight of Covered Products

In this option, the rule would require market share to be denominated in terms of weight (mass), measured in units such as kilograms or tons. Producers would report to their PROs the mass of each type of covered product and each PRO would sum together the total mass of all covered products across all of its producer members. Under this rule, DEQ may allow producers to estimate the mass of their covered products based on national market data prorated for Oregon. Each PRO would report this total to the coordinating body, which would then sum all reports together for a grand total.

This option is perhaps the simplest method to calculate PRO market shares. However, it has the consequence of potentially providing an advantage to PROs whose members' portfolios of covered products are predominantly comprised of materials that are lightweight and have higher per-ton costs to the recycling system. For example, consider this simplified scenario involving two PROs:

- PRO A has 100 members that each place into Oregon, on average, 10 tons of corrugated cardboard and 2 tons of plastic film (for a total mass of 1,200 tons).
- PRO B has 50 members that each place into Oregon, on average, 8 tons of corrugated cardboard and 16 tons of plastic film (for a total mass of 1,200 tons).
- Calculated solely on the basis of weight, each PRO has a market share of 50%.
- The members of PRO A contribute 1,000 tons of corrugated cardboard and 200 tons of plastic film, while the members of PRO B contribute 400 tons of corrugated cardboard and 800 tons of plastic film.
- Assume that corrugated cardboard is assessed a fee of \$0.38/kg, while plastic film is assessed a fee of \$0.94/kg, and that these fees are calculated to represent the actual cost of those materials to the PRO(s). If the costs are distributed according to market share by weight, PRO B would be responsible for covering 50% of the cost, even though the cost of its members' material to the system was 61% of the total cost. Meanwhile, PRO A would also be responsible for covering 50% of the cost, even though the cost of its members' material to the system was 39% of the total cost.

This type of allocation may undermine the intent behind ORS 459A.884(1), which, in the context of the fees that individual PROs assess their members, requires that "Membership fees charged for different covered product types, materials and formats must be proportional to the costs to the producer responsibility organization for that covered product type, material or format."

Option Two: Calculate Market Share on the Basis of Financial Burden of Covered Products

In the second option market share would be calculated on the basis of “financial burden”.

The basic calculation parallels that in Option One. However, for each type of covered product (where “type” corresponds to a classification of covered product listed in the PRO’s membership fee schedule), the total mass of covered products across all producer members of the PRO would first be multiplied by a unit factor that corresponds with an estimate of the per-kilogram (or per-ton) financial burden of that type of covered product.¹ Each PRO would then sum the resulting subtotals (for each type of covered product) across all materials in its members’ portfolios of covered products, and then report the resulting sum to the coordinating body. The coordinating body would then use these PRO totals as the basis of calculating each PRO’s market share.

Due to ORS 459A.88’s requirement that membership base fees are proportional to the product-specific costs to the PRO, the membership base fees themselves could serve as a reasonable estimate of financial burden for each type of covered product. Under this option, the unit factors would be drawn from the PROs’ own membership fee schedules.

The calculation of market share could require each PRO to derive its subtotals using unit factors drawn from its own fee schedule, or to use consistent unit factors that are derived from some kind of average of the different fee schedules. In the second case, that average itself could either be a simple average, or weighted based on the prior year’s relative PRO market shares.

DEQ is leaning towards recommending to the EQC that rules require market share to be calculated on the basis of financial burden, as opposed to simple weight. The recommended approach aligns with the Legislature’s intent to discourage cross-subsidization of materials and does not encourage producers to simply substitute heavy materials with lighter-weight ones, without consideration of their impacts on the recycling system.

DEQ further recommends that for the purpose of this calculation, and in the event of multiple PROs, unit factors for financial burden should be consistent across all PROs, and derived as a weighted average of the published base fee schedules of the individual PROs. The weighting factors for calculating the weighted average of fees should be the most recently (previously) calculated market shares of the PROs, except in year one, when no such market shares are available. In year one, each individual fee schedule would be weighted equally (a simple average).

It should be noted that this approach requires a common list and consistent definition of materials across the fee schedules of multiple PROs. The establishment of that common list is one of several tasks identified in the separate rules concepts for coordination needs that will be discussed in a separate agenda item at the July 20, 2022 meeting of the Rulemaking Advisory Committee.

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DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email deqinfo@deq.oregon.gov.

¹ Continuing the prior example, the total kilograms of corrugated cardboard would be multiplied by \$0.38, while the total kilograms of film plastic would be multiplied by \$0.94.

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