



Oregon Department of Environmental Quality

Rule Concept: Associated Producers and Designation of Large and Small Producers

Plastic Pollution and Recycling Modernization Act (SB 582, 2021)
Rulemaking Advisory Committee Meeting 4, Rulemaking 2

Jan. 17, 2024

Background

This memo provides background information to the Rulemaking Advisory Committee on a rule concept defining small producer and large producer.

Per ORS 459A.869, producers of covered products must join a Producer Responsibility Organization, report data to the PRO on the amount of product they sell into the state, and pay membership fees. Small producers as defined at ORS 459A.863(32) are exempt from these requirements. Large producers as defined at ORS 459A.863(8) bear an additional requirement to disclose environmental impacts of a portion of their products, per ORS 459A.944(2).

The below rule concept addresses the potential for producers to either qualify for the small producer exemption or qualify as a large producer.

Rule concept for discussion at Jan. 31, 2024 RAC meeting

I. Associated producers and application of the small producer and large producer definitions

Per ORS 459A.872(1), small producers are exempt from the requirement to join a PRO and the requirements to report data and pay fees to a PRO. Small producers, per the definition in ORS 459A.863(32), include producers with less than \$5 million in gross (global) revenue in the organization's most recent fiscal year. Producers that sold in or into Oregon less than one metric ton of covered products in the most recent calendar year are also small producers.

This rule concept is intended to prohibit a producer from avoiding regulation by dividing its revenues and/or production of covered product among multiple entities to qualify for the small producer exemption.

It also addresses a similar concern with respect to a large producer avoiding the impact disclosure requirement applied by ORS 459A.944(2) to the top 25 producers by market share in the state. It would prohibit a producer from attributing its covered product tonnages to multiple subsidiaries rather than aggregating to the parent company to avoid qualifying as a large producer.

DEQ proposes to require that market share data and revenues of *associated producers* be aggregated for the purposes of applying the large producer and small producer definitions. In

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addition, DEQ proposes the following definition of “associated producer,” adapted from the federal tax code’s definition of related parties at Internal Revenue Code Section 267(b):

Two producers are associated producers for the purposes of applying the small producer and large producer designations if:

- They are owned by members of the same family (i.e. siblings, spouses, ancestors, and lineal descendants) and engaged in the same type of business activity;
- One producer owns, directly or indirectly, more than 50 percent of the outstanding stock, membership or partnership interests of the other producer;
- They are members of the same controlled group as defined in Section 1563(a) of the Internal Revenue Code;
- One is a fiduciary of a trust and the other is a corporation of which more than 50 percent in value of the outstanding stock is owned by the trust or by a person who is a grantor of the trust;
- They are a corporation and a partnership or LLC if the same persons own:
 - more than 50 percent of the outstanding stock of the corporation, and
 - more than 50 percent of the interest, in the partnership or LLC;
- They are both S corporations and the same persons own more than 50 percent of the outstanding stock of each corporation; and
- One producer is an S corporation and the other is a C corporation, if the same persons own more than 50 percent of the outstanding stock of each corporation.

Non-discrimination statement

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