



Oregon Department of Environmental Quality

Preliminary Draft Rule Summary: Standards for Life Cycle Evaluations

Plastic Pollution and Recycling Modernization Act (SB 582, 2021)

Rulemaking Advisory Committee Meeting 8, Rulemaking 2

April 10, 2024

Background

This document is being provided to summarize preliminary draft rule language describing standards and methods for the evaluation and disclosure of life cycle impacts. The purpose of this document is to assist the Rulemaking Advisory Committee with its consideration of the fiscal impacts of the proposed draft rules, which are very technical in nature.

Life cycle evaluation and disclosure requirements are described in statute at ORS 459A.944 (Life cycle evaluation; rules), which tasks the Oregon Environmental Quality Commission with establishing by rule the methodology, procedures, and requirements to be used by producers of covered products when evaluating life cycle environmental impacts. Large producers would need to follow these rules when disclosing life cycle impacts of one percent of their products on a biennial basis. These rules may also be used by any producers seeking to qualify for graduated (referred to as “ecomodulated”) fee bonuses pursuant to ORS 459A.884(4).

DEQ published a [relevant rule concept](#) prior to the Rulemaking Advisory Committee’s Feb. 14, 2024 meeting.

Rules Summary

DEQ proposes to organize the life cycle evaluation rules in five sections, described below, with particular fiscal impacts noted.

1. Definitions

All technical terms used in the subsequent four sections of the rules are defined in this section, with many definitions drawn from existing normative standards for life cycle assessment.

2. Scope and Applicability

This section lays out how rules in the subsequent three subsections must be applied by large producers to fulfill their disclosure obligation, and by producer responsibility organizations to fulfill the requirement pursuant to ORS 459A.884(4) to adjust producer fees in a manner that continually incentivizes reduction of environmental and human health impacts of covered products.

Aspects of this section that will potentially have fiscal impacts include:

- The requirement that large producers evaluate and disclose impacts for the top one percent of their Stock Keeping Units ranked by sales volumes, the requirement that a producer evaluate impacts for a new set of SKUs for subsequent biennial disclosure deadlines, and the allowance for multiple SKUs to be batched together in a project report and counted toward the one percent requirement. These rules, described on pages 5-6 of the Feb. 14 rule concept in the section “Clarifying rules on the large producer disclosure requirement,” impact how many project reports a producer will need to provide in order to fulfill their one percent disclosure obligation.

Translation or other formats

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- The requirement that producer responsibility organizations make available fee bonuses to member producers for 1) voluntary impact disclosure and 2) substantial impact reduction. Producers will need to conduct evaluations and detail their findings in project reports in accordance with the rules in subsections 3-5 to qualify for either bonus.

Any administrative work undertaken by the PRO and associated with offering these bonuses to member producers would be an indirect financial impact to the PRO, as the cost would be borne by producers through their membership fees. This includes any development of a software tool that would automate the process for a producer to conduct an evaluation and generate a project report.

These rules were described on pages 6-7 of the Feb. 14 rule concept in the section “Clarifying rules on ecomodulation.”

Changes to the rule concept: Preliminary draft rules now include a requirement that a PRO offer the substantial impact reduction bonus to a producer for at least five years, while the voluntary disclosure bonus should be granted to a producer for one year only. The general requirement to make these two bonuses available to member producers, and the proposed time frames over which the bonuses must be applied to a producer’s membership fees, have fiscal import for PROs and their member producers. The PRO will need to balance bonuses given to a subset of producers with either maluses (also given to a subset of producers) or with a surcharge applied to all member fees.

However, the rules leave PROs with considerable flexibility in terms of how to incorporate the mandated bonuses into their overall approach to fee adjustments.

3. Project Report

This section describes required contents of the project reports to be submitted by producers to their PRO and to DEQ for the purpose of evaluation and disclosure of life cycle impacts of their products. It also contains a requirement that all project reports undergo third-party verification, which could have a fiscal impact on producers.

4. Product Category Rules

The core product category rules appear in this section, with content divided among the following four subsections:

- A. Methodological Framework: this subsection lays out the overall framework for the evaluation by describing 1) what portions of the product life cycle should be included in an evaluation; 2) the sequence of information modules which group together impacts associated with particular life cycle stages; 3) criteria according to which elements can be excluded from an assessment, and 4) data quality requirements.
- B. Life Cycle Inventory: this subsection describes rules for developing a data inventory to be used as the basis for life cycle impact assessment, including 1) rules describing how plastic leakage data is to be compiled, 2) data requirements specific to evaluation of reusable packaging products, and 3) rules for how benefits of recycling are to be allocated within inventory data.
- C. Life Cycle Impact Assessment: this subsection lays out the methods to be used in assessing impacts, including 1) rules for applying a recently-published, novel methodology in assessing the physical impact of plastic on aquatic biota, 2) rules for applying weightings in order to aggregate values for disparate impacts into a single numeric value for the purposes of assessing whether or not impact reduction meets the “substantial” threshold in order for a producer to claim the associated bonus, and 3) A 3-year grace period for reusable packaging products during which time a producer may use projections rather than actual data for key parameters, in order to incentivize transition from single-use to reusable packaging.
- D. Interpretation: this subsection describes requirements to conduct sensitivity analysis to provide information on variability of results.

Key aspects of these rules were described on pages 6-12 of the Feb. 14 rule concept.

Details of how data inventories are to be compiled and how impact assessment is to be conducted have fiscal import for producers in terms of where the cost of conducting an evaluation will fall within the general price range for conducting such assessments. Elements custom to Oregon's requirements and not included in other existing normative standards commonly used for the evaluation of life cycle impacts of covered products may require more time for a producer to address, although this is subject to uncertainty with respect to software tools that could be developed by a PRO or by third-party companies in order to provide an automatized vehicle for the accomplishment of assessments specific to Oregon's requirements.

Aspects of these rules, such as the weightings for impact seriousness and robustness of data, also have potential fiscal impacts in terms of determining what producer actions will and will not qualify for a substantial impact reduction bonus.

5. Additional Environmental and Human Health Information

These rules mandate four types of additional information to be disclosed in the project reports:

- Intentionally-added hazardous substances (as defined by the Toxic Free Kids Act and the Toxic Free Cosmetics Act) embedded in the covered product at levels exceeding practical quantification limits,
- Any known releases of hazardous substances from a covered product to the environment or to a consumer, for example, as demonstrated through an exposure assessment conducted in the past five years by the producer,
- Any non-compliance of the covered product with customer health and safety regulations or voluntary codes in any jurisdiction in the past five years (for example, non-compliance with a US state Toxics In Packaging law), and
- For large producer disclosures only: material health impacts of the covered product on affected communities in accordance with the European Sustainability Reporting Standards 2023/2772/EU (ESRS) Disclosure Requirement (DR)-IRO 1, or a justification as to why the producer considers that only non-material impacts are occurring.

Rule concepts relevant to this section were presented to the RAC at its March 14 meeting.

These additional requirements are anticipated to have limited fiscal impacts on the cost of conducting an evaluation and where it will fall within the general price range for administering such assessments. However, these additional requirements are asking producers for information that they will already have access to (with respect to the intentionally-added hazardous substances and known releases of them) and/or information that is reported to meet the requirements of other jurisdictions (the European Union, with respect to materiality assessment) or to meet the requirements of a prominent corporate social responsibility standard (with respect to reporting of non-compliances across jurisdictions).

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