



Request for Information (RFI) to Support the Plastic Pollution and Recycling Modernization Act rulemaking related to standards and requirements for the evaluation of life cycle impacts

Executive Summary

The Plastic Pollution and Recycling Modernization Act requires the Oregon Environmental Quality Commission to establish by rule the methodology, procedures, and requirements to be used by producers of covered products when conducting evaluations of life cycle environmental impacts pursuant to the Act. Evaluations conducted by producers of packaging, printing and writing paper, and food serveware in accordance with these rules will be used by the top 25 largest producers in the state to fulfill an obligation to evaluate and disclose impacts (per ORS 459A.944 excerpted below) and can be used by all producers in requesting eco-modulated fee discounts (under ORS 459A.884, also excerpted below).

459A.944 Life cycle evaluation; rules. The Environmental Quality Commission shall establish by rule standards for the evaluation and disclosure of the environmental impacts of covered products through the life cycle of the products. Rules adopted under this section must:

- (1) Establish procedures and requirements to be used by producers when evaluating the life cycle impacts of covered products to obtain an incentive under ORS 459A.884 or when required to do so under subsection (2) of this section.
- (2) Require large producers to:
 - (a) Once every two years, perform an evaluation of the life cycle impacts of at least one percent of covered products that the large producer sells or distributes in or into this state;
 - (b) Provide the results of the evaluation to the Department of Environmental Quality; and
 - (c) Make the evaluation available on the website of the producer responsibility organization of which the large producer is a member. [2021 c.681 §33]

459A.884(4) Membership fees charged by producer responsibility organizations. In addition to the base fees described in subsections (2) and (3) of this section, a producer responsibility organization's membership fee schedule must incentivize producers to continually reduce the environmental and human health impacts of covered products by offering fee adjustments to producers that make or have made changes to the ways in which they produce, use, and market covered products. Fee adjustments developed under this subsection must include lower fees for covered products with a lower environmental impact and higher fees for covered products with a higher environmental impact. In establishing the criteria for the graduated fee structure, a producer responsibility organization must consider factors that include, but are not limited to:

- (a) The post-consumer content of the material, if the use of post-consumer content in the covered product is not prohibited by federal law;

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- (b) The product-to-package ratio;
- (c) The producer's choice of material;
- (d) Life cycle environmental impacts, as demonstrated by an evaluation performed in accordance with ORS 459A.944; and
- (e) The recycling rate of the material relative to the recycling rate of other covered products.

PLEASE NOTE: If you choose to comment, you do not need to respond to/address every question. Instead, you may focus on those where you have relevant experience or knowledge. **If you do respond, please identify the question(s) you are responding to by including the associated question number.**

The Department of Environmental Quality will host a public webinar on May 18, 2023, at 9:00 a.m. PDT to discuss the RFI and provide an opportunity to ask questions directly of staff. There will be other opportunities for stakeholder engagement throughout the rulemaking process.

With information gathered through this RFI and other data gathering efforts, DEQ will propose a rule concept that will be shared with a rulemaking advisory committee at a public meeting (including an opportunity for public input) in late 2023 or early 2024. Following feedback from the RAC, DEQ will prepare draft rules, which will be posted for public input. Draft rules may then be revised, and final rules will be submitted to the Environmental Quality Commission for consideration and possible adoption in late 2024. DEQ also reserves the option to address certain requirements during that rulemaking and to adjust or add to rules via a subsequent rulemaking.

Questions

1. General Questions – How much should the results of life cycle impact evaluations generated under these standards influence the eco-modulation of EPR fees paid by producers under the Recycling Modernization Act? How should these results be weighed alongside other criteria for evaluating the environmental impacts of covered products (i.e., should ORS 459A.884(d) be valued less, more, or equally with items (a)-(c) and (e))?
2. Normative Standards and Guidance – What international standards or guidelines should the Department consider when developing evaluation standards in rule as required by the RMA? Are there any standards or guidelines that could serve as the foundation for DEQ's standards?
3. Policy and Law – Consider other international, federal, state, or local laws and policies that have integrated life cycle assessment methodologies for products or materials. Which of these laws and policies should the Department evaluate when developing standards pursuant to the above sections of the Act?
4. Data Sources and Quality – Should the Department prescribe that specific data sources and/or life cycle inventories be used when developing these standards? If so, which data sources and/or life cycle inventories are recommended and why? If not, and any available data sources are permitted, what requirements should be placed on the quality of the data? How should that quality be evaluated?
5. Evaluation tools – Should these rules set standards limited to the evaluation tool commonly referred to as Life Cycle Analysis, or are there other tools that the Department should consider enabling the use of and/or setting standards for? If so, which additional tools should the Department take into consideration, and why?
6. LCA Methodology
 - a. Functional or Declared Unit – For the assessments produced under this standard, what is the appropriate reference unit that should be considered?

- b. Life Cycle Stages – Which phases of the life cycle of covered products should be included in the methodological requirements? Should the use or end of life phases be included? Or should the scope focus on the upfront production (cradle to gate or A1:A3) stages of the life cycle?
 - c. Product Categories – While the scope of covered product in the RMA generally includes packaging materials and paper, the function of the covered products can vary greatly. For example, there are an array of different applications of packaging materials. How should the standards deal with this variability? Should category specific rules be developed for each type of packaging application? Can a core/general set of rules be defined across all covered products?
 - d. Impact Assessment – Which methodologies are recommended or preferred for impact assessment? Which categories and indicators should be considered? Are there any existing LCA standards/rules which provide a comprehensive set of category indicators?
 - e. Other Environmental Areas of Concern (emergent impacts like microplastics/marine debris, novel entities, etc.) – What emergent impacts should the Department endeavor to capture in these standards, and how could this be achieved?
 - f. Scenario Analysis – Through previous and future rulemakings, the RMA will determine a list of covered products for which the evaluation of life cycle impacts can be calculated. The inclusion of methods for scenario analysis might enable particular approaches to eco-modulated fee discounts (e.g., discounts for reductions from a baseline, or for best-in-class in a particular product format).
 - Should these rules consider the current impacts of covered products' life cycles (e.g., backward looking) only? Or should they also require comparison with hypothetical or future scenarios (e.g. additional end of life dispositions, production using a project energy mix of the future, etc.)?
 - Should a producer's initial submission establish a baseline of impacts that will be a point of reference for future evaluations of the same product?
 - Should products of similar utility that are created by different producers be compared with one another?
 - g. Time Frame – What time frame should be considered in the standards for evaluation of environmental impacts of covered products? Should producers report data for the most recent data? Should a longitudinal average be considered?
 - h. Biogenic Carbon – What specific standards or guidelines related to biogenic carbon accounting that should be considered when developing these rules for the evaluation of life cycle environmental impacts for covered products?
 - i. Reuse – If a covered product is reusable, as opposed to single use, how should these rules deal with the number of reuses? Particularly when single use items are also covered products and subject to these same rules for the calculation of life cycle impacts.
 - j. Third-Party Review and Verification – Should this rulemaking include any form of third-party review, verification or conformity assessment for the evaluation of life cycle impacts? If yes, what approach(es) should be considered?
7. Reporting/Formatting – Which format(s) should the results of the life cycle impacts evaluation be reported in? Examples include digital, print, machine-readable, and Environmental Product Declaration. Should the underlying life cycle inventories be published? What elements of confidentiality should be considered? Should the resultant evaluation of life cycle impacts for covered products be made available through a centralized repository?
 8. Other Input – The Department welcomes any further input on the development and use of these standards that establish the methodological requirements under the aforementioned sections of the Act.

Responses must be received by June 30, 2023. Submit your comments, identified by RFI name to RethinkRecycling@deq.state.or.us

Once submitted, comments cannot be edited or retracted. If you elect to comment, you do not need to address every question and may focus on those where you have relevant expertise or experience. **Please identify the question(s) you are responding to by question number when submitting your comments.**

Do not submit electronically any information you consider to be Confidential Business Information or other information whose disclosure is restricted by statute. Please do not submit information in audio or video format. The written comment is considered the official comment and should include discussion of all points you wish to make. In all cases, to the extent possible, please cite any public data related to or in support of your responses. If data are available, but non-public, describe such data to the extent permissible.

For further information, contact RethinkRecycling@deq.state.or.us

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