

Policy Interpretation: Small Producer Definition

Background

- In May 2011, the [Recycling Regulation](#) (the Regulation) was amended to include the Packaging and Printed Paper (PPP) product category.
- Under the Regulation, producers of PPP were required to submit a stewardship plan (or be included in one) to the Ministry of Environment by November 19, 2012 and implement their approved stewardship plan by May 19, 2014.
- Multi-Material BC (MMBC) representing many producers submitted the only stewardship plan for a provincial recycling program, which was approved by the Ministry of Environment on April 15, 2013.
- The new requirements for PPP in the Regulation drew concern from the small business community regarding the added financial and administrative burden it placed on small business owners.
- In response, on May 23, 2014, the Province amended the Regulation (OIC 269) to add a definition for “small producers” and various other related clauses, which establishes de minimis criteria (exemption thresholds) that alleviate the burden on small businesses producing PPP for residential consumers.
- Various producers and stakeholders are encountering difficulty interpreting the new amendment and determining who qualifies as a “small producer,” specifically in regard to franchise systems.

Objective

This Policy Interpretation Paper provides a plain language explanation of the Regulation and amendment, with a specific focus on:

1. The existing cascading definition of “producer”
2. The intention of the “small producer” definition
3. Interpretation of regulatory obligations for franchise systems

Definition of “Producer”

Extended Producer Responsibility (EPR) is a management system based on industry and consumers taking life-cycle responsibility for the products they produce and use. In British Columbia, producers of regulated products are required to manage industry-led product stewardship programs that include collection and recycling.

B.C. has a Regulation that is flexible for industry. The Regulation has what is known as a cascading definition of producer, which allows each producer to determine (based on unique business and supply chain needs) who will assume responsibility for the material they take part in distributing and/or selling.

A Producer is defined in the Regulation as the first business that:

- 1. Manufactures a product/material and sells or distributes it in B.C. under its own brand;**
- 2. Owns a trademark under which a product/material is sold or distributed in B.C.; or**
- 3. Imports a product/material into B.C. for sale or distribution.**

How a particular business is caught by this definition varies by the supply chain at work with that business. There is no one-size-fits-all definition or explanation.

Definition of “Small Producer”

Small producers of PPP contribute a small amount of material into the residential waste stream. The updated Regulation ensures most small producers of PPP are exempt.

An exemption is granted to a producer if any one of the following four criteria is met:

- **Generate less than one million dollars in annual revenues.**
- **Generate less than one tonne of PPP supplied to B.C. residents.**
- **Operate as a single point of retail sale and are not supplied by or operated as part of a franchise.**
- **Are a registered charity.**

The small producer definition responds to requests from B.C.’s businesses for creative solutions to meet the intent of the regulation, while avoiding inadvertent costs or administration.

Regulatory Obligations for Franchise Systems

Franchising is a concept rather than a well-defined term and it can encompass many different types of legal relationships and agreements between parties. Typically, the franchisor is a supplier that allows an operator, or a franchisee, to use the supplier's trademark and distribute the supplier's goods.

Franchisors and franchisees may be caught at any stage of the “producer” definition depending on the supply chain. However, as a general rule franchisors will usually be caught first as a manufacturer or a trademark owner. The recent amendments to the Regulation reinforce this rule and place the responsibility for franchise systems with the franchisor, not the franchisee. Part 1, Section 1 (2) of the Regulation considers franchisors and franchisees operating under a franchise agreement to be a single producer. Part 1, Section 2 (1.1) of the Regulation stipulates that the financial and reporting responsibilities for franchise operations involving PPP that ends up in residential blue boxes, lie with the parent corporation/franchisor, not with the individual franchisee. See Figure 1 for an illustration of the designation and duty of franchise systems.

Placing the duty of being a producer with the franchisor is more appropriate given that most consumer packaging and marketing materials for the entire franchise system are often designed, supplied and distributed by the parent corporation, with minimal influence by the franchisee. Therefore, the franchisor is in the best position make decisions regarding PPP materials used.

The Regulation applies equally to franchisors with headquarters located inside or outside of B.C. If a franchisor that has its headquarters located outside of B.C. is doing business through a franchise agreement with individual franchisees in the province, the franchisor has a substantial connection to the province and is therefore assigned responsibility under the Regulation.

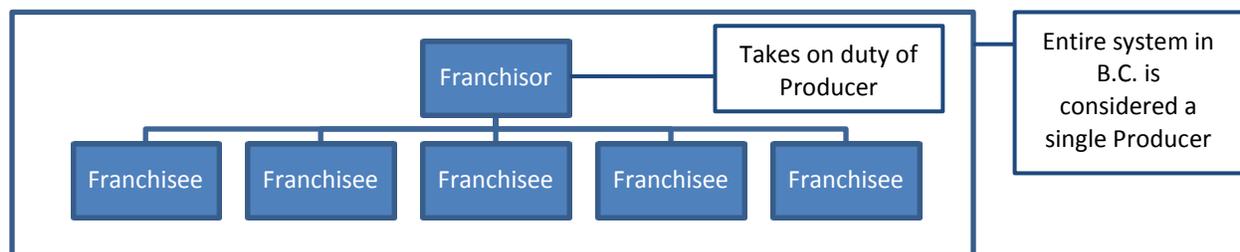


Figure 1 Designation and Duty of Franchise Systems

Quick Facts:

- Less than 3,000 businesses in B.C. are affected by the Regulation. This is less than 1% of the total number of businesses in the province.
- Of those businesses affected by the Regulation, it is estimated that the largest 150 would be responsible for 80 per cent of the costs of the stewardship program.

Examples of Producer Obligation

Small Business (Local Gift Shop)

- Independently owned
 - Not part of a franchise system
 - Products: shopping bags, wrapping paper, packaging, flyers, etc.
 - Gross annual revenue of \$750,000.00
- = Small producer. Not obligated under **Part 1, Section 1, “Small Producer” Definition (b)(i)** of the Regulation.

Small Franchisee (Fast Food Restaurant)

- Independently owned
 - Part of a franchise system
 - Products: shopping bags, drink cups, packaging, flyers, etc.
 - Gross annual revenue of \$750,000.00
- = Producer. Not obligated. Under **Part 1, Section 1 (2)** of the Regulation, the franchisee and franchisor are considered to be a single producer. Under **Part 1, Section 2 (1.1)** of the Regulation, the responsibility of having and complying with an approved plan for parties in a franchise agreement lies with the franchisor.

Franchisor (Fast Food Headquarters)

- Corporation with headquarters in B.C.
 - 100+ franchisee locations in organization
 - Products: shopping bags, drink cups, packaging, flyers, etc.
 - Gross annual revenue of approximately \$50,000,000.00
- = Producer. Obligated under **Part 1, Section 1, “Producer” Definition (b)(i)** of the Regulation and is responsible for all its B.C. located franchises under: **Part 1, Section 2 (1.1)**.

Small Franchisor (Housecleaning Service)

- Supplier with headquarters in B.C.
 - 35 franchise agreements
 - Products: Flyers, thank you cards
 - Tonnage of material for entire franchise system: approximately 500 kg (0.5 tonnes)
- = Small Producer. Not obligated under **Part 1, Section 1, “Small Producer” Definition (b)(ii)** of the Regulation.

Non-resident Franchisor (Fast Food Headquarters)

- Corporation with headquarters in Ontario
 - 100+ B.C. franchisee locations in organization
 - Products: shopping bags, drink cups, packaging, etc.
 - Gross annual revenue of approximately \$50,000,000.00
- = Producer. Obligated under **Part 1, Section 1, “Producer” Definition (b)(i)** of the Regulation and responsible for all its B.C. franchise locations, under: **Part 1, Section 2 (1.1)**. Through a franchise agreement with individual franchisees in B.C., the franchisor has a substantial connection to the province and is therefore captured by the legislation.