



Frequently Asked Questions

Recycling Modernization Act Exemptions

Small Producer Exemption (ORS 459A.872(1))

Q1: Is the de minimis gross revenue threshold of \$5 million pursuant to ORS 459A.863(32)(c) referring to a company's sales specifically in Oregon, or rather the company's sales across all jurisdictions where the company operates?

A1: The \$5 million gross revenue limit is not specific to Oregon; it rather refers to a company's gross *international* revenues (e.g. sales).

Q2: If I am exempt as a small producer, does another producer in my supply chain need to step in and pay EPR fees for the covered products that I would have been responsible for?

A2: No, the products that a small producer would have been designated the obligated producer for, pursuant to the producer definitions at ORS 459A.866 and clarified at OAR 340-090-0860, are "orphaned," meaning no fees are paid for the products.

Q3: With respect to producers that are associated with one another pursuant to OAR 340-090-0860(6), such as companies with a parent-subsidary relationship, should the de minimis small producer thresholds for covered product volumes and gross revenues (eg ORS 459A.863(32)(c), (d), and (e)) be applied to each company individually, or to all of the companies as an aggregate?

A3: The gross revenues and covered product volumes sold or distributed in or into Oregon must be added together across all associated producers before comparing with the small producer de minimis thresholds to determine qualification as an exempt small producer.

Q4: Should associated producers also be lumped together when considering whether or not they qualify as a small producer through one of the other four ways, e.g. ORS 459A.863(a)-(b) and (f)-(g)?

A4: Yes, the rule to lump together applies to the small producer definition holistically. None of the producers in the lumped aggregate are exempt if the aggregate:

- includes at least one organization that is neither a public body nor a nonprofit,
- makes less than 50% of its gross revenues from provision of ready-to-eat food to the public,
- includes a producer that is the first seller of food serviceware into the state, or
- operates more than one retail sales establishment.

Q5: Would a fast food restaurant headquarters/franchisor be considered exempt or not, pursuant to ORS 459A.863(32)(f)?

A5: To qualify as an exempt small producer due to being a restaurant, a company must meet the two conditions described at ORS 459A.863(32)(f)(A) and (B) – namely, the company's predominant mode of business must be provision of ready to eat food to members of the public, and the company must not be

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obligated to pay the Oregon EPR fees for food serviceware, e.g. must not be the first seller of food serviceware in or into Oregon.

Whether or not a particular business meets the two conditions needs to be determined on a case-by-case basis, but DEQ presumes that many fast food franchisors would not be exempt because they do not operate restaurants directly and therefore do not meet the first condition (A).

Covered Product Exemptions (ORS 459A.863(6)(b)(A)-(R))

Q6: Is packaging other than residential, recyclable packaging exempt from this law?

A6: No, all packaging as defined at ORS 459A.863(18) is within the scope of the law except for types of packaging that are specifically exempt at either ORS 459A.863(6)(b) or OAR 340-090-0840(2). As such, non-recyclable, compostable, reusable, B2B, and other types of packaging are all within the scope of the law; there is no specific exemption in statute or rule that would exempt these types of packaging.

Q7: Are the caps of beverage containers covered under the Bottle Bill exempt under ORS 459A.863(6)(b)(A)?

A7: "Beverage container," pursuant to the exemption at ORS 459A.863(6)(b)(A), is interpreted to include the container cap that seals the container. As such, if the beverage container is exempt under ORS 459A.863(6)(b)(A), its cap is also exempt. If the container is not exempt (not all beverage containers are covered under Oregon's bottle bill), the cap is also in scope.

Q8: What items qualify for the exemption at ORS 459A.863(6)(b)(E) for specialty packaging used exclusively in industrial and manufacturing applications?

A8: Besides the two products indicated as exempt at ORS 459A.863(6)(b)(E)(i)-(ii), the following packaging formats are also considered to qualify when used exclusively for industrial or manufacturing purpose:

- Drums
- Industrial Totes
- Industrial Sacks
- Gaylords, and
- Intermediate Bulk Containers Totes

Q9: If a covered product goes from a brand-holding manufacturer to a distributor before reaching the end user, and the distributor applies pallet wrap, is the pallet wrap exempt pursuant to ORS 459A.863(6)(b)(H)?

A9: The pallet wrap applied by the distributor is exempt if the distributor is not identified as the obligated producer for any of the packaging associated with the product, pursuant to the packaging producer definitions at ORS 459A.866(1)(a)-(c).

Q10: What is meant by the exemption at ORS 459A.863(6)(b)(J) of "any item that is not ultimately discarded inside this state, whether for purposes of recovery or disposal?"

A10: This exemption liberates a producer from the obligation to report and pay fees on any item that is not ultimately discarded inside Oregon. This exemption is distinct from and should not be confused with the exemption under ORS 459A.869(13) for material that is managed through a recycling collection service not provided under the opportunity to recycle, providing that the collected material does not undergo separation from other materials at a commingled recycling processing facility and is recycled at a responsible end market.

DEQ interprets "ultimately discarded" to mean "set aside for the sole purpose of recovery or disposal, when the material provides no additional useful function to the generator." This means that the determination of whether

an exemption under this subsection is applicable or not, depends on the location of the generator when a decision is made to discard the item, and not the location of where the item is ultimately recovered or disposed. For example, items that a generator located in Oregon places in a disposal or recycling container that are subsequently shipped out of state to be managed, would not be eligible for this exemption as the item was "ultimately discarded" in Oregon by the generator.

Q11: Is packaging containing hazardous substances exempt under ORS 459A(6)(b)(Q)?

A11: No, according to DEQ's research, there are exceedingly few products that, pursuant to federal regulation, need to be labeled with "packaging should not be recycled" or "packaging should be disposed of in a manner other than recycling." Packaging containing hazardous substances by and large is in the scope of Oregon's law, although some hazardous agricultural products are exempt at OAR 340-090-0840(2)(d).

Exemption For Private Recycling (ORS 459A.869(13))

Q12: Why was a single claims form, filled in by producers with their 2024 data, used to determine exemptions for two fee years, 2025 and 2026?

A12: Pursuant to OAR 340-090-0700(3), 2024 supply data is used by the PRO to set producer fees for 2025 and 2026. The claims process for ORS 459A.869(13) follows this same alignment of data years with fee years, with 2024 data used to determine the exemptions for the 2025 and 2026 fee years.

Q13: I know that some of my material is being privately-recycled, but it is impossible for me to follow my packaging beyond point of sale in the amount of detail necessary to be able to fill out a claim form. Are there other ways for me to claim this exemption?

A13: In recognition of the difficulty for producers to follow their products beyond point of sale, DEQ also provided two less laborious options for claiming the exemption for the 2025 and 2026 fee years:

- The passive claims reporting approach, applicable to non-consumer tertiary transport corrugated cardboard and non-consumer pallet wrap only. To claim a portion of the "pool volume" for these materials, a producer did not need to submit a claim form to DEQ, and needed only to report gross volumes of these materials supplied in or into Oregon in 2024 to Circular Action Alliance by March 31, 2025.
- The limited-active reporting approach, applicable to shredded printer/copier paper. To claim a portion of the "pool volume" for this material, a producer needed only to fill out limited portions of the claim form (Tabs 1 and 2) and submit it to DEQ.

DEQ used data on total volumes of private recycling of those three materials in the state from its Material Recovery Survey to determine the pool volumes.

Stay tuned for possible updates to the ORS 459A.869(13) exemption process, with the next window of opportunity, for the 2027 fee year, likely opening in January 2026.

Q14: How do I prove that my material was recycled at a responsible end market as part of the claims process for the private recycling exemption?

A14: As part of the claims process for the exemptions for the 2025 and 2026 fee years, DEQ only required that applicant producers provide identifying information and a filled-out responsible end market self-attestation from the end market that ultimately processes the material.

In future claims windows, the requirements may be increased to encompass required auditing of facilities against the "responsible" standard.

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