



Plastic Pollution and Recycling Modernization Act

Determining Producer Obligations and Definitions

The Plastic Pollution and Recycling Modernization Act updates Oregon's recycling system by building on local community programs and leveraging the resources of producers to create an innovative system. The new law creates several compliance obligations for producers of covered products. This document is intended to help understand:

1. Whether an item is a covered product (and if so, what type of covered product it is), and
2. For each type of covered product, who the "producer" is (who has compliance obligations).

This document is a summary of the statute and is prepared for the convenience of organizations that may have compliance obligations. It is **not** a substitute for the law and in the case of conflict, the statute shall prevail. Administrative rulemaking in 2023 and 2024 may provide additional detail.

How to Use this Document

This document consists of three sections:

- Section A provides information to help determine if a given material is a covered product, and if so, what type of covered product it is.
- Section B provides information on several exemptions that apply to entities that might be producers of covered products.
- Section C provides information to help determine the category of covered product for producers with compliance obligations— food serviceware, packaging, and printing and writing paper.

Section A: Determining whether an item is a "covered product"

NOTE: Consider each item that is placed into sale or distribution in Oregon. For example, a producer of spray cooking oil should separately consider spray bottles, caps, cartons, and carton inserts.

Q1: Is the item a newspaper, magazine, flyer, brochure, booklet, catalog, telephone directory, or paper used for copying, writing or other general use? YES/NO

If "YES": The material is considered "printing and writing paper" and may be a covered product.
(Proceed to Q7)

If "NO": (Proceed to Q2)

Q2: Is the item a paper or plastic plate, wrap, cup, bowl, pizza box, cutlery, straw, lid, bag, aluminum foil, clamshell, or similar container? YES/NO

If "YES": (Proceed to Q3)

If "NO": (Proceed to Q5)

Q3: Is it generally intended for single use? YES/NO

If "YES": (Proceed to Q4)

If "NO": (Proceed to Q5)

Q4: Is it sold to a retailer, a dine-in food establishment, or a take-out food establishment (regardless of whether it is used to prepackage food for resale, is filled on-site for food ordered by a customer, or is resold as is)? YES/NO

If "YES": The item is considered "food serveware" and may be a covered product. (Proceed to Q7)

If "NO": (Proceed to Q5)

Q5: Is the item used for the containment or protection of products, including but not limited to a single-use bag, or a nondurable material used in storage, shipping or moving, such as packing materials, moving boxes, file boxes or folders? YES/NO

If "YES": (Proceed to Q6)

If "NO": Your item is likely not a covered product, and does not have compliance obligations under the Plastic Pollution and Recycling Modernization Act.

Q6: Is the item a needle, IV tubing with needles attached, scalpel blade, lancet, glass tube that could be broken during handling or a syringe? YES/NO

If "YES": The item is not a covered product.

If "NO": The item is considered "packaging" and may be a covered product. (Proceed to Q7)

Q7: Does the item meet any of the following exemptions? YES/NO

- 2(6)(b)(A) A beverage container, as defined in ORS 459A.700
- 2(6)(b)(B) Bound books
- 2(6)(b)(C) Napkins, paper towels, or other paper intended to be used for cleaning or the absorption of liquids
- 2(6)(b)(D) Rigid pallets used as the structural foundation for transporting goods lifted by a forklift, pallet jack or similar device
- 2(6)(b)(E) Specialty packaging items that are used exclusively in industrial or manufacturing processes, such as cores and wraps for rolls of packaging sold by a mill to a packaging converter or food processor, or trays used for the transport of component parts from a parts supplier to a manufacturer that assembles those parts
- 2(6)(b)(F) Liquified petroleum gas containers that are designed to be refilled
- 2(6)(b)(H) Pallet wrap or similar packaging used to secure a palletized load and added by a person that is not the producer of the palletized covered products (see Section C of this document)
- 2(6)(b)(K) Items sold on a farm or used on a farm, including items used for farm use as defined in ORS 215.203, or for processing on a farm, provided that the item used on farm is not subsequently sold at an off-farm retail establishment
- 2(6)(b)(L) Items used by a nursery licensed under ORS 571.055 and that generates the majority of its revenue through the sale of nursery stock as defined in ORS 571.005, provided that the item is not sold through retail sales
- 2(6)(b)(M) Packaging and paper products sold or supplied in connection with prescription drugs as defined in ORS 689.005, nonprescription drugs as defined in ORS 689.005, drugs marketed under a brand name as defined in ORS 689.515, or drugs marketed under a generic name as defined in ORS 689.515
- 2(6)(b)(N) Packaging and paper products sold or supplied in connection with drugs that are used for animal medicines, including but not limited to parasiticide drugs for animals
- 2(6)(b)(O) Packaging and paper products sold or supplied in connection with infant formula as defined in 21 U.S.C. 321(z), medical food as defined in 21 U.S.C. 360ee(b)(3), or fortified oral nutritional supplements used for individuals who require supplemental or sole source nutrition to meet nutritional needs due to special dietary needs directly related to cancer, chronic kidney disease, diabetes, malnutrition, or failure to thrive, as those terms are defined as by the International Classification of Diseases, Tenth Revision, or other medical conditions as determined by the Environmental Quality Commission
- 2(6)(b)(P) Wine and spirit containers for which a refund value is established under Oregon law
- 2(6)(b)(Q) Packaging for products that are required under 40 C.F.R. 156.140, or other federal regulation pertaining to toxic or hazardous materials, to state on the label or container that the packaging should not be recycled or should be disposed of in a manner other than recycling, or which are identified by the Environmental Quality Commission by rule as product that is

required by law to state on the label or container that the packaging should **not** be recycled or should be disposed of in a manner other than recycling

- 2(6)(b)(R) Any other material identified by the Environmental Quality Commission as exempt from being a covered product.

If "YES": The item is **not** a covered product.

If "NO": (Proceed to Q8)

Q8: Is the item packaging related to containers for architectural paint, as defined in ORS 459A.822, that may be collected by a producer responsibility organization under the program established under ORS 459A.820 to 459A.855? YES/NO

If "YES": The portion of the packaging that is collected by the producer responsibility organization under the program established under ORS 459A.820 to 459A.855 is exempt. The remainder is a covered product. (Proceed to Q9)

If "NO": (Proceed to Q9)

Q9: How much of the item is discarded (for purposes of recycling, recovery or disposal) inside the state of Oregon? ALL/SOME/NONE

If "ALL": All of it is a covered product. Proceed to Section B.

If "SOME": Only the portion discarded inside the state of Oregon is a covered product. Proceed to Section B.

If "NONE": The item is **not** a covered product.

Section B: General Producer Exemptions

Q10: Is your organization a nonprofit organization as described in section 501(c)(3) of the Internal Revenue Code and exempt from income tax under section 501(a) of the Internal Revenue Code? YES/NO

If "YES": Your organization is exempt from the requirements of Section 4 of the Recycling Modernization Act.

If "NO": (Proceed to Q11)

Q11: Is your organization a public body as defined in ORS 174.109? YES/NO

If "YES": Your organization is exempt from the requirements of Section 4 of the Recycling Modernization Act.

If "NO": (Proceed to Q12)

Q12: Did your organization have gross revenue (worldwide) of less than \$5 million for the most recent fiscal year? YES/NO

If "YES": Your organization is exempt from the requirements of Section 4 of the Recycling Modernization Act, for that year.

If "NO": (Proceed to Q13)

Q13: Did your organization sell in or into Oregon less than one metric ton of covered products for use in the state in the most recent calendar year? YES/NO

If "YES": Your organization is exempt from the requirements of Section 4 of the Recycling Modernization Act, for that year.

If "NO": (Proceed to Q14)

Q14: Is your organization a manufacturer of a beverage sold in a beverage container, as those terms are defined in ORS 459A.700? YES/NO

If "YES": (Proceed to Q15)

If "NO": (Proceed to Q16)

Q15: If you answered "YES" to question 14, did your organization sell in or into Oregon less than five metric tons of covered products, including secondary and tertiary packaging for beverage containers, for use in Oregon in the most recent calendar year? YES/NO

If "YES": Your organization is exempt from the requirements of Section 4 of the Recycling Modernization Act for that year.

If "NO": (Proceed to Q16)

Q16: Is your organization a restaurant, food cart or similar business establishment that primarily sells to members of the public food that is generally intended to be consumed immediately and without the need for further preparation? YES/NO

If "YES": (Proceed to Q17)

If "NO": (Proceed to Q18)

Q17: Is your organization a producer of food serviceware? (see Section A for definition of "food serviceware" and see Section C to determine if you are a producer of food serviceware) YES/NO

If "YES": (Proceed to Q28)

If "NO": Your organization is exempt from the requirements of Section 4 of the Recycling Modernization Act.

Q18: Does your organization operate a single retail sales establishment and have no online sales? YES/NO

If "YES": (Proceed to Q19)

If "NO": (Proceed to Q20)

Q19: Is your organization supplied or operated as part of a franchise or chain? YES/NO

If "YES": (Proceed to Q20)

If "NO": You are exempt from the requirements of Section 4 of the Recycling Modernization Act.

Q20: For any of the covered product that your organization sells, offers to sell, or distributes in or into Oregon, has another person registered with a producer responsibility organization as the producer responsible for that covered product? YES/NO

If "YES": So long as another person(s) maintains registration for those covered products, your organization is **not** responsible for those products under Section 4 of the Recycling Modernization Act. However, your organization retains compliance obligations for covered products for which no other person has registered. (Proceed to Q21 for the portion of covered product for which no other person has registered)

If "NO": (Proceed to Q21)

Q21: Is the item collected in Oregon through a recycling collection service not provided under the opportunity to recycle as defined in ORS 459A.005, e.g., a private recycler? YES/NO

If "YES": (Proceed to Q22)

If "NO": Your organization does **not** qualify for any general exemptions. Proceed to Section C to determine if your organization or another party is the "producer" of the covered product(s) for compliance purposes.

Q22: After being collected for recycling, does the item undergo separation from other materials at a commingled recycling processing facility? YES/NO

If "YES": Your organization does **not** qualify for any general exemptions. Proceed to Section C to determine if your organization or another party is the "producer" of the covered product(s) for compliance purposes.

If "NO": (Proceed to Q23)

Q23: Is the material recycled at a responsible end market? YES/NO

If "YES": The "producer" with compliance obligations may qualify for an exemption for all or a portion of the covered product.¹ Proceed to Section C to determine who that producer is.

If "NO": Your organization does **not** qualify for any general exemptions. Proceed to Section C to determine if your organization or another party is the "producer" of the covered product(s) for compliance purposes.

Section C: Identifying Which "Person" Has Compliance Obligations

The term "person" is used to mean: the United States, the state or a public or private corporation, local government unit, public agency, individual, partnership, association, firm, trust, estate or any other legal entity.

This section assumes that the item in question is a covered product, and is either "food serviceware," "packaging" or "printing and writing paper." This section also assumes that an organization does **not** qualify for the general exemptions described above. However, the compliance obligations for the covered product(s) may lie with someone other than the organization in question. The Recycling Modernization Act assigns compliance obligations in different ways for different types of covered products. To find out who has compliance obligations, refer below to Section C1 for food serviceware items, Section C2 for packaging, and Section C3 for printing and writing paper.

Section C1: Food Serviceware

NOTES:

- *In many cases, the "first seller" will either be the manufacturer of the food serviceware, or a distributor.*
- *Food serviceware is typically packaged in cartons, sleeves, etc. That packaging may also be a covered product. Refer to Section C2 to determine compliance obligations for packaging.*

Q24: Did your organization first sell the food serviceware in or into the state of Oregon? YES/NO

If YES: Your organization is the "producer" and has compliance obligations under the Recycling Modernization Act.

If NO: Your organization is **not** the producer and has no compliance obligations for that food serviceware under the Recycling Modernization Act.

¹ Senate Bill 582 (2021), Section 4(13):

- A producer may demonstrate to the department that a material is exempt from the requirements for a covered product if the material:
 - Is collected through a recycling collection service **not** provided under the opportunity to recycle;
 - Does **not** undergo separation from other materials at a commingled recycling processing facility; and
 - Is recycled at a responsible end market.
- If only a portion of the material sold in or into this state by a producer meets the criteria of paragraph (a) of this subsection, the portion that meets the criteria is exempt and the portion that does **not** meet the criteria is a covered product.

Section C2: Packaging

Q25: Is the packaging used for an item that is sold in Oregon at a physical retail location, via remote sale (such as internet, catalog, etc.), both, or neither? PHYSICAL RETAIL SALE ONLY/REMOTE SALE ONLY/BOTH/NEITHER

If "PHYSICAL RETAIL SALE ONLY": (Proceed to Q26)

If "REMOTE SALE ONLY": (Proceed to Q32)

If "BOTH": Your organization should consider the questions in this section twice – once for the fraction of packaged items sold via physical retail sale, and again for the remaining fraction that is sold via remote sale. (Proceed to both Q26 and Q32).

If "NEITHER": The producer with compliance obligations is the person that first distributes the packaged item in or into the state of Oregon.

Q26 (Physical retail sales): Is the packaged item sold in packaging under the same brand as the manufacturer² of the packaged item? YES/NO

If "YES": Proceed to Q27

If "NO": Proceed to Q28

Q27: Is the manufacturer of the packaged item a person in the United States? YES/NO

If "YES": The producer with compliance obligations is the manufacturer/brand-owner of the packaged item.

If "NO": The producer with compliance obligations is the person that imports the packaged item into the United States for use in a commercial enterprise that sells, offers for sale or distributes the item in Oregon.

Q28: Does the packaged item lack identification of a brand? (For example, generic "watermelon pieces" that are cut and packaged off-site then sold to a supermarket for retail sales) **YES/NO**

If "YES": Proceed to Q29

If "NO": Proceed to Q30

Q29: Is the manufacturer of the packaged item a person in the United States?³ YES/NO

If "YES": The producer with compliance obligations is the manufacturer of the packaged item.

If "NO": The producer with compliance obligations is the person that imports the packaged item into the United States for use in a commercial enterprise that sells, offers for sale or distributes the item in Oregon.

Q30: Is the person that manufactures the packaged item a licensee of the brand or trademark under which a packaged item is sold or distributed?⁴

If "YES" Proceed to Q31

If "NO": The producer with compliance obligations is the person that first distributes the packaged item in or into the state of Oregon.

Q31: Is the manufacturer/licensee a person in the United States? YES/NO

² "Manufacturer" includes persons that direct manufacturing by simple contract, including setting specifications for an item's packaging.

³ See definition of "person" at the top of this section.

⁴ A "licensee" is defined as a person that is licensed by a brand and manufactures a covered product or a packaged item under that brand. Such an arrangement would be organized through a licensing agreement as opposed to a simple contract, with the licensee generally authorized to sell the branded products independently of the brand-owner.

If "YES": The producer with compliance obligations is the manufacturer (licensee of brand or trademark) of the packaged item.

If "NO": The producer with compliance obligations is the person that imports the packaged item into the United States for use in a commercial enterprise that sells, offers for sale or distributes the item in Oregon.

Q32 (Remote sales): For any packaged item sold via remote sale, there are potentially two separate producers. For packaging used to ship the packaged item to a customer, such as an outer carton with void fill, or mailing envelope, the producer with compliance obligations is the person that packages and ships the packaged item (e.g., the internet re-seller).

To identify the producer of the packaging used to directly protect or contain the sold item (e.g., a toothpaste tube), proceed to Q33.

NOTE: A person that sells a covered product in or into Oregon via remote means and is only the producer of the packaging used to ship the covered product must notify the producer of the product packaging, and that producer's producer responsibility organization, of the sale of a packaged product in or into the state, so that such producer is aware of their compliance obligations. For Example: Company A is located in California and operates an online storefront that sells a variety of hair products remotely to customers throughout the country. In a given year, Company A fulfills 3,000 sales into Oregon, of which 2,000 are Brand X products and 1,000 are Brand Y products. Company A fulfills these orders using cardboard boxes and bubble wrap. Company A has compliance obligations for the cardboard boxes and bubble wrap. It is also required to inform Brand X and Brand Y of its sales into Oregon as they have compliance obligations for the product packaging (shampoo and hairspray bottles and boxes, if any, etc.). However, packaging that is not ultimately discarded in Oregon is not a covered product, so any cartons from Brand X or Brand Y that Company A discards at its repacking facility (in California) are exempted.

Q33: Is the packaged item sold in packaging under the same brand as the manufacturer of the packaged item? YES/NO

If "YES": Proceed to Q34

If "NO": Proceed to Q35

Q34: Is the manufacturer of the packaged item a person in the United States? YES/NO

If "YES": The producer with compliance obligations is the manufacturer/brand-owner of the packaged item.

If "NO": Proceed to Q39

Q35: Does the packaged item lack identification of a brand? YES/NO

If "YES": Proceed to Q36

If "NO": Proceed to Q37

Q36: Is the manufacturer of the packaged item a person in the United States?⁵ YES/NO

If "YES": The producer with compliance obligations is the manufacturer of the packaged item.

If "NO": Proceed to Q39.

⁵ See definition of "person" at the top of this section.

Q37: Is the person that manufactures the packaged item a licensee of the brand or trademark under which a packaged item is sold or distributed? ⁶

If "YES" Proceed to Q38

If "NO": The producer with compliance obligations is the person that first distributes the packaged item in or into the state of Oregon.

Q38: Is the manufacturer/licensee a person in the United States? YES/NO

If "YES": The producer with compliance obligations is the manufacturer (licensee of brand or trademark) of the packaged item.

If "NO": Proceed to Q39.

Q39: Did the person that imported the packaged item into the United States import it for use in a commercial enterprise that sells, offers for sale, or distributes the item in Oregon?

If "YES": That importer is the producer with compliance obligations.

If "NO": The producer with compliance obligations is the person that first distributes the packaged item in or into the state of Oregon.

Section C3: Printing and Writing Paper

NOTE: Printing and writing paper is typically also protected by packaging (e.g., ream wrappers, newspaper sleeves, etc.). That packaging may also be a covered product. Refer to Section C2 to determine compliance obligations for packaging.

Q40: Is the covered product a magazine, newspaper, catalog, telephone directory or similar publication? YES/NO

If YES: The producer is the publisher, regardless of their location.

If NO: (Proceed to Q41)

Q41: Is the covered product printing and writing paper sold under the manufacturer's own brand? YES/NO

If "YES": The producer is the manufacturer. (Proceed to Q42)

If "NO": The producer is the person that manufactures the paper under license to the brand owner. (Proceed to Q42)

Q42: Is this manufacturer of the paper also a person in the United States?⁷ YES/NO

If "YES": The person that manufactures the paper is the producer with compliance obligations.

If "NO": (Proceed to Q43)

Q43: Does the person that imports the printing and writing paper into the United States use the paper in a commercial enterprise that sells, offers for sale, or distributes the item in Oregon?

If "YES": That person (the importer) is the producer with compliance obligations.

If "NO": There is no person with compliance obligations for this particular covered product.

⁶ A "licensee" is defined as a person that is licensed by a brand and manufactures a covered product or a packaged item under that brand. For example, a retailer selling store-branded bagels might contract with a commercial bakery to manufacture those bagels and package them in store-branded packaging. In this case, the commercial bakery is the licensee.

⁷ See definition of "person" at the top of this section.

More Information

Visit RecyclingAct.Oregon.gov to sign up for email notifications, announcements and more information about implementation.

Alternative Formats

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email deqinfo@deq.state.or.us.