

WEBINAR SERIES: PREPARING PRODUCERS FOR OREGON PACKAGING EPR

E-Commerce and Online Retail Packaging - September 10, 2024

Q&A Extended Response



#	Question	Answer
1	How will a large producer be determined?	A producer is a "large producer" if, according to the supply data that it reports to the PRO, it is among the top 25 producers in terms of the weight of covered product it is obligated for that is sold or distributed in or into Oregon. DEQ will announce the first list of large producers in September 2025, compiled on the basis of 2024 supply data, and the first set of large producer disclosures will be due at the end of 2026.
2	Can Nielsen Sales data be used for product sold in Oregon?	Typically producers maintain internal sales data, ideally specific to Oregon but if not then regional or national, that they can use as the basis of their required supply reporting to CAA. If no internal sales data exist, producers can look at what external data could be used as a temporary proxy, such as Nielsen data, while internal reporting systems are established. As the coverage of Nielsen sales data varies by product type and is typically not holistic, it would likely be appropriate to apply correction factors --inquiries about specific scenarios may be addressed to CAA. More generally, with respect to producer supply reporting, OAR 340-090-0700(1)(d) affords producers some flexibility in terms of how they estimate the amounts of covered material sold or distributed into Oregon. Namely, estimation methods must align with applicable best practices and if better data becomes available, corrections to already-reported data should be reported to the PRO. CAA is actively providing guidance to producers on what qualifies as "best available." This guidance includes a specific methodology for pro-rating national data to estimate volumes sold in Oregon if state-specific data are lacking, as well as the Average Bill of Materials method to be used when comprehensive data on the types or weights of individual packaging and paper materials are lacking.
3	How will a producer know if they are classified as a large producer?	See response to question #2 above -- DEQ will periodically announce the identity of the large producers, with the first announcement in September 2025. This information will go out over DEQ's Govdelivery subscription messaging system, and producers are encouraged to subscribe to be sure to receive the information.
4	What is DEQ's view of enforcement as it relates to compliance? Given the fast approaching program start date, will there be immediate enforcement or will DEQ work with CAA and producers to teach compliance?	DEQ and CAA are in active discussions regarding producer compliance, on which the two organizations are collaborators and CAA has a leading role, and producer-facing enforcement, a DEQ role, as well as the interrelationship between the two. Generally DEQ will endeavor to balance its historically even-handed and measured approach toward enforcement (e.g. pre-enforcement notifications generally precede formal enforcement actions such as imposition of fines) with the sense of urgency on behalf of producers already registered with CAA that they pay their fair share and not the shares of free riders.
5	What will the 2025 fees be based on?	2025 fees will take the following data points into account -- 1. the estimate of system costs for the first program plan period (which is continually being revised, with the summer 2024 ORSOP survey of local governments and their service providers a particularly important input that has been factored into the fee schedule of the third draft program plan submitted to the department on Dec 6, 2024) 2. the number of producers registered with CAA, and 3. the registered producers' 2024 supply of covered products into Oregon (which must be reported to CAA by producers before the pre-registration deadline of March 31, 2025).
6	When will producers need to actually pay fees in 2025? How can we get a estimate for 2025 budgeting?	Producers need not pay fees until the start date of the program on July 1, 2025. CAA will issue the invoices for 2025 fee payments in June 2025, and that will be the only invoice for 2025. In following years, CAA shall issue invoices to producers for payment of producer fees no more than two times per year, in January and July. As for estimated fees to be used by producers for budgeting purposes producers should refer to draft fee schedules in CAA's program plan submissions to the department, the third draft of which was submitted on Dec 6, 2024, and can be found on the Act's main DEQ webpage: https://www.oregon.gov/deq/recycling/Pages/Modernizing-Oregons-Recycling-System.aspx . The fee schedule begins on pg 198, and features low and high estimates. An updated version of the fee schedule will be issued in May-June 2025, and will indicate a single fee amount for each material.
7	What if there are multiple packaged products within a package delivered into Oregon? Are we only reporting the single package?	All of the packaging that comes into Oregon, both the primary and secondary packaging directly containing and protecting each product and the outer, tertiary packaging containing all of the products, is covered under the Act (and must be reported to a PRO and paid fees for) unless it qualifies for a product-specific exemption in statute or rule.
8	Is Oregon's EPR program planning to require producers report not just outer packaging of the product, but also the product that is inside the packaging? In other words, if a plastic product is sold in a plastic container, all the plastic is reportable?	Products sold in packaging that are covered products under the Act include printing and writing paper, food serviceware, and "packaging-like-products" (not an official name in Oregon but the term used in Canadian EPR) including storage items, file folders, file boxes, moving boxes and single-use bags (these are types of packaging that the consumer rather than the producer fills). Both these items themselves and their packaging are covered products for which producers must report to a PRO and pay fees. Other products sold in packaging -- such as plastic toys, pens, or other such products -- are outside the scope of the law. Producers need only report on and pay fees for the packaging.
9	Are FIFRA regulated products exempt?	Oregon's statute does not contain a broad exemption for FIFRA-regulated products. However, four subgroupings of agricultural chemical packaging -- i.e., four types of packaging of FIFRA-regulated products, but not all packaging of FIFRA-regulated products -- have been exempted in rule at OAR 340-090-0840(2)(d).

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10	Colorado has an exemption for dietary supplements under the medical/pharmaceutical exemption. Will Oregon consider adding dietary supplement packaging as an exemption?	There is an existing exemption for the packaging of a subset of dietary supplements in statute at ORS 459A.863(6)(b)(O). Additional exemptions in rule were a subject of the second RMA rulemaking that concluded on November 22, 2024, but no additional exemptions for dietary supplements were included.
11	Would cardboard boxes received and recycled by our warehouse be exempt?	The commenter does not provide enough detail in order for DEQ to understand and opine definitively, but DEQ recommends that the commenter review ORS 459A.869(13) and the clarifying rule language at OAR 340-090-0840(3) -- these citations pertain to the exemption for materials collected outside of the Opportunity To Recycle framework and responsibly recycled outside of the commingled system.
12	Are all of the exempt packages that end up in the waste stream free riders? Meaning the registered members of the PRO are paying for their disposal?	Technically, producers of exempt products are free riders, because the exemptions do not reduce program costs, but rather just subdivide them across fewer obligated producers that each will need to pay more to cover the program costs.
13	Is pallet wrap included if discarded by the retailer?	DEQ cannot opine definitively on this scenario because the commenter does not indicate who applied the pallet wrap to the products in question. Pursuant to ORS 459A.863(6)(b)(H), if pallet wrap is applied to products by someone other than the obligated producer of the products, that pallet wrap is exempt. Otherwise, pallet wrap is a covered product. Some pallet wrap that goes to retailers may qualify for the exemption at ORS 459A.869(13) if it is collected for recycling from the retailer through a collection service provided outside of the Opportunity To Recycle framework, and is responsibly recycled outside of the commingled system.
14	Can you repeat about lumping Parent and Subs revenue/products sold into OR?	Pursuant to OAR 340-090-0860(6), associated producers such as parent companies and subsidiaries must lump together their gross international revenues and tonnages of covered products sold or distributed into Oregon in order to determine whether or not they qualify as a "small" or a "large producer."
15	Statute exempts cores of rolls sold to a packaging converter or food processor. The slide said "manufacturing". Is this exemption being expanded to all manufacturing through the rule making process, or is it still limited to packaging converting and food processing applications?	The commenter noted an error in the slide language, which has been updated to correct for this. Only (i) cores and wraps for rolls of packaging sold by a mill to a packaging converter or food processor; and (ii) trays, whether designed for a single use or multiple uses, used for the transport of component parts from a parts supplier to a manufacturer that assembles those parts, are definitely within the scope of the exemption at ORS 459A.863(6)(b)(E). The statute leaves room for other, similar types of packaging to be considered within this category, but for the moment no such examples have been identified.
16	Is the packaging of beverages considered to be "food processing"?	Yes.
17	Are there any exemptions for products sold to local, state and federal agencies such as first responders (fire depts. law enforcement)?	No, there are no such exemptions in statute or rule, and as such the packaging of such products is covered under the Act if sold or distributed into Oregon.
18	For small producer exemptions do you need to meet only one of the criteria or both/all criteria?	A producer need meet only one of the seven criteria at ORS 459A.863(32)(a)-(g) in order to qualify as a small producer exempt from the obligation to join and pay fees to a PRO.
19	In Scenario #4, how do producers track if product sold via e-commerce was shipped to Oregon, if the e-commerce fulfillment center is in another state? (Regarding responsibility for the primary packaging)	The obligated producer will need to work with the e-commerce supply chain partner to obtain the sales data for Oregon, or if necessary, can use a best-practice methodology to estimate it.
20	If we ship to a retailer that then ships it to their stores. How are we supposed to know how much of each product is getting shipped into Oregon. Is the retailer expected to supply this to the producer?	Statute and rule do not require downstream supply chain partners to provide sales data to obligated producers, but an obligated producer may want to write such a requirement into their contract with a distributor or partner retailer.
21	In scenerio 4, how would the manufacturer of the product know what was sold/sent from the other company's distribution center in California into Oregon?	See response to question #19 above.
22	In a situation similar to Scenario 5, if the box used to ship is the only packaging for an item, and the box displays the branding of the retailer, not the manufacturer/shipper, would that make the retailer the producer?	Scenario #5 involves a pottery seller that sells items that it manufacturers and brands on an e-commerce platform and self-handles packaging and shipping items sold by remote distribution. There is no retailer in the scenario, just the pottery seller/manufacturer, the e-commerce platform, and the consumer. Hence, it is hard to opine on the commenter's question. Generally, the branding of shipping packaging does not matter for the assignment of obligations; rather, who applied the packaging and shipped the item is the important distinction upon which assignment of producer obligations hinges.

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23	Can we get a list of the Material Categories that are in scope for reporting?	Sixty reporting categories for Oregon were approved by DEQ on Sept 27, 2024, as part of the program plan review process. The list of categories can be viewed in CAA's third draft program plan, beginning on pg 190. https://www.oregon.gov/deq/recycling/Documents/caaProgPlan120624.pdf
24	Does plastic food serviceware fall under the plastic tub category on the Uniform Material List?	As a rule of thumb, product formats that are uniquely used as food serviceware are not currently included among materials on the Uniform Statewide Collection and PRO Recycling Acceptance lists in Oregon, due primarily to concerns about contamination. However, plastic tubs are used as both packaging and as food serviceware, and either way, they ARE on the Uniform Statewide Collection List.
25	What are PET Thermoforms?	"PET thermoform" refers to Polyethylene Terephthalate (PET) produced through a thermoforming process. Most PET thermoform material is not presently on a recycling acceptance list in Oregon. PET thermoform tubs ARE on the Uniform Statewide Collection List as part of the USCL listing of plastic tubs (pursuant to OAR 340-090-0630(1)(n), "tub means a rigid container that has a neck or mouth similar in size to its base"), but thermoform clamshells and similar containers, i.e., containers with a lid that is affixed to the base using a hinge or similar mechanism, are not included on a recycling acceptance list in Oregon at this time.
26	How will you engage overseas sellers that sell on marketplaces that are direct to consumer business models? Temu/Alibaba/etc...Enforcement seems difficult especially if the producers are non-responsive. Are there steps the agency is taking to keep it fair for the domestic producers playing by the rules so they don't have to carry the load for these free riders?	CAA and DEQ will know who is registered/complying with the law; the compliance and enforcement challenge lies with identifying who is missing that should be registered (i.e., obligated producers that do not qualify for the small producer exemption). This has been challenging work in the Canadian EPR programs with respect to overseas e-commerce sellers; however, the large overseas providers are generally known (and can be pursued), while many of the small sellers would likely be under the \$5 million annual global revenues de minimis threshold for qualifying as a small producer.
27	Is there software that takes all the LCA factors into account?	No software has yet been developed that would automate a producer's development of a life cycle evaluation that aligns with the methodology of Oregon's product category rule at OAR 340-090-0930. However, DEQ hopes that producer demand for such a tool will drive its development after the rule is finalized in mid-November.
28	Will scenarios like those provided in this presentation be made available in a guidance document from DEQ once the guidance is finalized?	CAA is issuing reporting guidance for member producers that will incorporate the scenarios presented by DEQ during the webinar series.
29	How would a printing company identify who the end user of its products are if it sells a variety of paper products to businesses and consumers (i.e. how would it determine who the producer is of the paper products)?	A prior webinar in the series convened on July 16, 2024, covered information targeted toward producers of printing and writing paper; the commenter may wish to review the recording and slides of that webinar. Generally, statute at ORS 459A.866(2)(a) and (b) breaks printing and writing paper into two groups of products -- specialty-printed publications for which the obligated producer is the publisher, and all other products for which the obligated producer is the branded-manufacturer. The group that a paper product belongs with will generally be distinguishable from the format of the source paper. See OAR 340-090-0860(5), rule language that clarifies how the distinction among the two groups of products is to be made. For neither group of the two groups of products is the printing company obligated.
30	Are producers required to reporting and paying fees for all CY24 data or is it by quarter?	The 2025 fees will be invoiced once, with invoices issued in June 2025. Payments cannot be required before July 1, 2025, the statutory start date of the program.
31	Are cardboard boxes covered? Also what about workplace products that are made of plastic? Are they covered?	Cardboard boxes are considered packaging and are covered under the law, as they are nondurable shipping materials pursuant to ORS 459A.863(18)(a)(C). As for workplace products that are made of plastic, things like pens and staplers are not covered because they are not packaging.
32	Why do aluminum cans show as exempt and then show on a list uniform statewide collection list. Who is paying for their recycling or disposal if they are exempt?	There are several materials on the uniform statewide collection list that are either not within scope of the Recycling Modernization Act or are exempt from the definition of "covered product" -- paperback books, scrap metal, aluminum beverage cans and gift wrap are four such examples. They are on the USCL because they performed well against the 12 statutory criteria at ORS 459A.914(3) and their collection in the commingled system and recycling has been deemed beneficial. While producers not having to pay fees to a PRO for these products and associated free ridership is an economic consideration that can be taken into account in a listing decision, it is only one of the dozen criteria that must be taken into consideration, and there is no requirement that all USCL materials be covered products.
33	Has the September 2024 program plan, mentioned on slide 50, been published for producer review and budgeting?	Each successive draft of the program plan is published to DEQ's main page for the Act with at least 30 days of public comment that producers can participate in. The plan also contains fee information that producers can use in budgeting. The third draft was posted to DEQ's website on Dec 6: https://www.oregon.gov/deq/recycling/Documents/caaProgPlan120624.pdf
34	Regarding the CAA Producer Agreement - how was / will that be distributed or is it available on-line?	First register with CAA here: https://www.circularactionportal.org/producers/s/producer-registration . Review and signing of the producer agreement and Oregon-specific addendum is the next step to follow in the process. Contact CAA Producer Services at Producer.Support@CircularAction.org for more information.

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35	How/where can I get an Agreement with CAA?	See response to question #34.
36	In the Sept 17 CAA Working Group meeting, will there be a visual update on the data reporting portal?	As of early December 2024, the CAA reporting portal for Oregon is near-complete. Once launched it will be introduced to producers at following webinars/events. See https://circularaction.org/events for a list of upcoming events.
37	In addition to paying fees to CAA, the cost of acquiring and assembling data that is reportable comes at a high cost. Does CAA or DEQ plan to offer any subsidies to producers who have expended this cost in exchange for good data?	Most companies that sell into Canada or Europe -- i.e, companies that are already complying with such laws in other jurisdictions -- already internally compile the data needed to comply with the Act. As for smaller, regional companies, CAA is providing technical assistance with reporting, and initial lack of accurate data is being accommodated through allowance of the use of approximations as long as best available methodologies are used.
38	Will CAA have materials available to help companies who are not obligated producers, but who will need to provide data to customers who are obligated producers, to provide that data in the correct format at at the correct level of detail?	CAA guidance resources are being provided primarily to companies that register with CAA. Companies can register with CAA even if they are not obligated producers and gain access to the full suite of reporting guidance resources.
39	If we package our "waste" packaging materials for the purpose of shipping them to the recycler, does that shipping material also count towards the total amount of packaging material? For example, in slide 32 there are bands on the bale.	Bands used to secure waste bales are a nondurable material used in shipping, and as such are packaging, pursuant to ORS 459A.866(18)(a)(C).
40	Top 25 by market share by category or total volume of materials shipped/sold into Oregon? In other words, would there be a total of 25 top producers or will there be 25 producers per material or market segment (food serviceware, packaging, packaging like item)?	Large producers are the top 25 producers by market share across all material categories, so there will be 25 large producers total for Oregon.
41	Regarding e-sales, manufacturers who ship products to distribution centers that are not located in Oregon and are not affiliated with the DC, can you confirm that the manufacturer is not obligated to report on where those outside, non-affiliated DCs, since we would have no idea where the buyer's residence is. Even if the DC did ship to some Oregon households, we would not know that and that type of information (residence) has privacy issues. Apologies if this sounds repetitive but this issue seems unresolved among the states.	Unfortunately, a lack of data visibility on the amount of product sold by distributors in or into Oregon does not relieve an obligated producer of the obligations to join a PRO, report sales data to the PRO and pay fees commensurate with those volumes. Obligated producers can work with supply chain partners (i.e, their distributors) to set up systems to generate these data, and pursuant to ORS 459A.869(3), if it is more convenient for a downstream partner to report the data and pay fees for a product, a producer may make arrangements to have the partner business bear the obligation (if the arrangement is mutually agreed upon). In cases where the obligated producer is separated from the use of the product by one or more intermediary nodes in the supply chain, producers may also use a best available estimation methodology (see CAA guidance on use of the Average Bill Of Materials method) or pro-rate national sales data for Oregon's population pursuant to OAR 340-090-0700(1)(d).
42	Are slip sheets counted as packaging if used instead of pallets?	Yes, slip sheets are packaging and unlike rigid pallets, are not exempt from the definition of "covered product."
43	If a producer ships products to retailer warehouses in Oregon. Why can't that be used as the estimate instead of using national sales data since we are allowed to estimate?	CAA is issuing guidance on reporting methodologies and will also work with producers on a case-by-case basis to determine whether or not a particular supply data estimation approach meets the bar of "best available methodology" pursuant to OAR 340-090-0700(1)(d). Reach out to CAA Producer Services at Producer.Support@CircularAction.org to provide more specific information on your scenario and receive specific guidance.
44	When does DEQ expect to publish responses to comments made on Second Rulemaking?	The Environmental Quality Commission reviewed and adopted the rules at its November 22, 2024, meeting. The adopted rule language can be viewed on the Secretary of State webpage, Oregon Administrative Rules: https://secure.sos.state.or.us/oard/displayChapterRules.action?selectedChapter=80
45	If we register with Circular Action Alliance, are we registered with each of the states or is this something required separately?	In the registration process, a producer indicates the states into which its products are sold or distributed, and then signs state-specific addendums for each of those states as part of the producer agreement. As such, the process is streamlined -- a single registration -- but includes state-specific commitments.
46	If most of the retailers give back point of sale data can we use that data to estimate for the few retailers that don't instead of using population data?	CAA is issuing guidance on reporting methodologies and will also work with producers on a case-by-case basis to determine whether or not a particular supply data estimation approach meets the bar of "best available methodology" pursuant to OAR 340-090-0700(1)(d). Reach out to CAA Producer Services at Producer.Support@CircularAction.org to provide more specific information on your scenario and receive specific guidance.

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47	Will a subsidiary with less than 5 million in revenue in Oregon be considered a small producer and be exempt from EPR?	OAR 340-090-0860(6) requires associated producers, including parent companies and subsidiaries, to lump together their revenues to determine whether or not they qualify as a small producer. If the rule goes through as proposed, it is not possible to answer the commenter's question without knowing the cumulative global annual revenues of all the subsidiaries and the parent company combined. If that number is under \$5 million then the associated producers would be exempt as small producers; if not they would be obligated for their covered products.
48	<p>(A) The producer of packaging used to directly protect or contain the item is the same as the producer for purposes of paragraph (a) of this subsection.</p> <p>(B) The producer of packaging used to ship the item to a consumer is the person that packages and ships the item to the consumer.</p> <p>How would this work in the case where a the direct, primary packaging and the packaging used to ship are one and the same and that package is private labeled on behalf of another brand/company?</p>	It is more common that the manufacturer of the packaged item rather than an e-commerce platform or seller would be the one to have applied the packaging in cases in which the primary packaging is also being used as the shipping packaging. As such, DEQ considers it in line with the concept of producer responsibility that in such cases ORS 459A.866(1)(a) should supersede (1)(b), and the three-tiered definition should be used to determine the obligated producer for the packaging.
49	Are the large producers based on total weight across all materials, or are the top 25 large producers identified in each material category?	See response to question #40 above.
50	In the whole process of deciding what is covered materials were there any organizations or lobbyist allowed to advocate for the producers? Not the PRO of course because they are not lobbyists.	Many producers and trade associations engaged in the Recycling Steering Committee process that participated in the design of the bill, and also engaged in the legislative process through which the bill was refined and ultimately adopted. The definition of "covered product" was among issues that these individuals and groups focused on.