

# DEQ follow-up from HCEE 11/17 information hearing on the Recycling Modernization Act

November 2025

## Background

Oregon Department of Environmental Quality presented information about the Recycling Modernization Act implementation at the 11/17 Interim House Committee on Climate Energy and Environment. Following are responses to some questions posed during the hearing.

## Questions

### **What does it mean for a producer or a product to be exempt under the RMA?**

The Recycling Modernization Act has two types of exemptions:

#### **1. Small Producer Exemption (ORS 459A.863(32)(a)-(g))**

A small producer can qualify in seven different ways, including if they:

- Are a nonprofit organization
- Are a public body
- Have a gross annual revenue of less than \$5 million
- Sell in or into Oregon less than one metric ton of covered products annually
  - Operate a single retail sales establishment, have no online sales and are not supplied or operated as part of a franchise or a chain

If a company qualifies as a small producer, they don't have to:

- Register with a Producer Responsibility Organization (PRO)
- Report their supply data
- Pay fees to the PRO

#### **2. Covered Product Exemptions**

The covered products in the RMA for which obligated producers must pay fees include packaging, printing and writing paper, and food serviceware.

Some products have been exempted in statute or in rule. When a product is exempt, it's not considered a covered product. This means producers don't have to pay fees for those products or report them to the PRO in most cases.

Certain statutory product exemptions were negotiated when lawmakers created the RMA, particularly for products that are unlikely to appear in the commingled recycling system. However, transport packaging for these products is still included. Examples of products exempted via statute ([ORS 459A.863\(6\)\(b\)\(A-Q\)](#)):

- Bottle Bill beverage containers
- packaging related to containers of architectural paint collected by PaintCare
- rigid pallets used to transport goods
- specialty packaging, such as cores and wraps used in manufacturing processes
- items sold or used on a farm.

The law allows additional exemptions to be added through agency rulemaking. ([ORS 459A.863\(6\)\(b\)\(R\)](#)). During the second RMA rulemaking process in 2023-2024, five new product categories were exempted that were unlikely to appear in the commingled recycling system.

Examples of products exempted via administrative rule ([OAR 340-090-0840\(2\)](#)):

- Packaging used for the long-term storage of durable goods
- Packaging used in healthcare facilities for the management of infectious waste
- Packaging of some medical devices
- Packaging of some agricultural chemicals
- Packaging of some types of reusable/refillable pressurized cylinders.

Producers may also demonstrate to DEQ on an annual basis that a certain material they produce, or a portion of that material, is collected and recycled through a recycling collection service outside of the Opportunity to Recycle system and is thus exempt pursuant to [ORS 459A.869\(13\)](#). Examples of materials that are often collected and recycled outside of the Opportunity to Recycle system include corrugated cardboard and film plastic.

### **What options does DEQ have under the existing RMA statute to create new exemptions?**

More covered product exemptions can be added through rulemaking. DEQ is currently launching another rulemaking process that will take place during 2025-2027. DEQ solicited exemption requests through this [Covered Product Exemption Request Form](#).

DEQ is currently consulting with the Oregon Recycling System Advisory Council on the exemption requests received and will present draft covered product exemptions to the Rulemaking Advisory Committee in early 2026. There is also a public comment period associated with the rulemaking process.

### **What are the criteria that DEQ uses to determine whether or not to grant a request for an exemption?**

DEQ uses two criteria that it developed - in consultation with the Oregon Recycling System Advisory Council - for the consideration of additional exemptions in rule:

*1. Does the exemption request have a sound rationale?*

DEQ has considered the following three rationales used for some of the statutory exemptions to be sound:

- the material does not enter the commingled recycling system, as contamination or as an accepted material,
- the material is covered under a separate, state-operated product stewardship program,
- The material is discarded outside of the state.

*2. Will the requested exemption have minimal negative impacts?*

Here, DEQ particularly considers the impact of free ridership (producers of other products needing to pay the costs of managing the exempt material) and environmental impacts.

**Does the “recyclability” of a product/material affect whether or not it is exempted?**

Packaging, printing and writing paper, and food serviceware are covered products regardless of their recyclability status unless specifically exempt. Non-recyclables must pay into the program for three reasons:

- 1) If producers did not need to pay fees for non-recyclables and only for recyclables, the RMA would be perversely incentivizing switching to non-recyclable formats,
- 2) Non-recyclable materials enter the commingled system as contamination and thereby impose program costs, and
- 3) The Recycling Modernization Act incorporates a waste prevention and reuse component relevant to recyclables and non-recyclables, e.g. methods of reducing the impacts of covered products besides recycling.

**What is the difference between covered products and the list of materials that are accepted in curbside recycling or at recycling depots?**

Covered products are all packaging, printing and writing paper, and food serviceware that are not specifically exempt from the program.

In contrast, the law requires that there must be a strong underlying environmental and economic basis in order to add materials to a recycling acceptance list, requiring assessment against [twelve statutory criteria](#) (ORS 459A.914(3)) before materials can be added to an acceptance list via rulemaking.

Materials can also be “on-ramped” to the list of materials that can be collected commingled in curbside recycling or at depots through a PRO program plan. The “on-ramp” mechanism enables a PRO to make targeted investments to improve the performance of a material against the statutory criteria. For example, a PRO could make investments in the capacity of a responsible end market to ensure all of a certain material generated in Oregon could be recycled reliably and responsibly.

**Why, specifically, has DEQ not exempted raw protein packaging, berry PET clamshells and paint packaging from the RMA?**

The three materials do not perform well on the exemption criteria for the following reasons:

- Raw protein packaging – raw protein products are commonly used by residential and business consumers in Oregon, and the packaging enters the commingled system as contamination. While raw protein packaging is not currently accepted for recycling in Oregon, it is not inherently nonrecyclable and could be added to an acceptance list in Oregon in the future.
- Berry PET clamshells – berries in PET clamshell packaging are commonly consumed in Oregon, and the packaging enters the commingled system as contamination. PET clamshells are not currently accepted for recycling in Oregon because there are insufficient end markets. However, they are a particular focus of the program at this time, with the PRO conducting research to determine infrastructure investments needed to improve the material’s recycling performance against the listing criteria in statute. Exempting clamshells that contain berries would unfairly place the cost of these improvements on producers of other products in clamshells.
- Paint packaging – containers of leftover paint collected through the Paint Care program are already exempt pursuant to ORS 459A.863(6)(b)(I). All other paint packaging (e.g. empty or otherwise uncollected containers, and transport packaging of paint) commonly enters the commingled recycling system and imposes program costs on the PRO.