State of Oregon
DEQ Department of Environmental Quality

Topic Paper: Clarifying Rules on the Process for Claiming Exemptions Under ORS 459A.869(13)

RMA Rulemaking 3: Prepared for Rulemaking Advisory Committee Discussion, Nov. 13, 2025

Exemptions for privately-recycled material (ORS 459A.869(13), clarified at OAR 340-090-0840(3))

Summary of proposed amendments

DEQ is proposing to add language to the existing rule OAR 340-090-0840(3), which clarifies the statutory exemption for materials collected and responsibly-recycled outside of Opportunity To Recycle (e.g. privately) under ORS 459A.869(13).

The statutory exemption at ORS 459A.869(13)(a), cross-referenced by ORS 459A.863(b)(G), allows producers to claim an exemption for the proportion of their material that:

- 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
- Is recycled at a responsible end market

The rules adopted in November 2024 clarified the three qualifying criteria for the exemption. In the current rulemaking, DEQ proposes to add details of the claims process. Note that, unlike other exemptions from "covered product" at ORS 459A.863(6)(b), the statutory language for this exemption calls for the producer to "demonstrate" to the department that its materials meet the three criteria.

Proposed amendments

Specifically, DEQ proposes to add rules to OAR 340-090-0840 that will articulate the following process for producers to claim the exemption:

- Producers shall demonstrate qualification for the exemption under ORS 459A.869(13) using a claims form provided by the department.
- The claims process will follow the same timeline as that of PRO fee-setting stipulated under OAR 340-090-0700(4)(b) – information provided by producers on private collections and recycling two years prior to a given fee year will inform the exemptions granted for that fee year. For example, exemptions for the 2029 fee year will be granted on the basis of private collections and recycling that occurred in 2027.
    - Claims for exemptions under ORS 459A.869(13) for the subsequent fee year will be solicited during the first quarter of each year, with producers populating the claims form with information about the collection, sorting and processing of their material from the previous year.
- DEQ may assign to the PRO the task of receiving the claim form submissions from producers and conducting initial processing and review.

    - If DEQ assigns these tasks to the PRO, upon completion of the initial processing and review, the PRO will send all claims documentation and results of its review to DEQ, who will then make final decisions on each exemption request.
- Should DEQ possess adequate information about the volume of a specific material that is privately-recycled statewide, DEQ may provide a simplified, alternative process to producers for claiming the exemption for that material.

Outcomes of proposed amendments

- Operations: Producers will have more clarity regarding the process for claiming exemptions under ORS 459A.869(13).
- Fiscal or economic impacts: n/a
- Equity impacts: Codification of the process for claiming the exemptions will provide a level playing field for producers and uphold fairness.

Committee discussion questions

1. Will the proposed process deliver the outcomes indicated – more clarity for producers and greater fairness?

Contact

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