



Oregon Department of Environmental Quality

# Topic paper: Exemptions from “covered product”

**RMA Rulemaking 3: Prepared for Rulemaking Advisory Committee discussion - Jan. 27, 2026**

## Summary of proposed amendments

DEQ is proposing to add exemptions for four categories of materials to the existing rule OAR 340-090-0840(2), which contains product-specific exemptions from “covered product.” Exemption from “covered product” means that producers need not pay fees to a Producer Responsibility Organization for the product in question.

## Background

ORS 459A.863(6)(a) defines covered product as (A) packaging; (B) printing and writing paper; and (C) food serviceware. Each of these items are in turn defined at ORS 459A.863(18), (20), and (7) respectively.

ORS 459A.863(6)(b) provides an itemized list of packaging, paper, and food serviceware products that are specifically exempt from the definition of a covered product. The statute also provides authority at ORS 459A.863(6)(b)(R) for the Environmental Quality Commission to approve additional product-specific exemptions in rule. DEQ conducted an exemption request period in October 2025 to allow interested parties to request an exemption. The Oregon Recycling System Advisory Council was invited to review materials submitted and to advise DEQ on potential exemptions. For more information, please see:

- DEQ’s exemption request [criteria](#),
- DEQ’s summary [analysis of all 29 exemption requests received](#), and
- The document “Recommendations on Exemptions from Covered Product,” which summarizes the Council’s recommendations to the department on the four exemptions recommended by DEQ.

## Proposed amendments

A description of each of the four recommended exemptions follows below:

### 1. Recommended exemption for labels that, if not removed, interfere with use of the product

DEQ is recommending an exemption for labels that, if not removed, interfere with use of the product, e.g. labels on the windshields of vehicles for sale, hang tags, produce stickers, etc. Windshield labels were used by the requestor whose request inspired this recommendation, the Alliance for Automotive Innovation, as an example of what they would like to see exempted.

Whereas shipping labels are clearly within scope of “covered product” pursuant to ORS 459A.863(18)(a)(C), where “packaging” is defined to include non-durable shipping materials, whether or not other types of labels are within scope of the Act was a source of producer confusion in the first year of supply reporting. DEQ has provided interpretation that, pursuant to ORS 459A.863(6)(a)(A), labels should be considered “packaging” if they are an integrated, or non-separable, part of the packaging that contains and protects a product. Labels

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that do not play a role of containment or protection, meanwhile, are not “packaging,” but could still be considered in scope as “printing and writing paper.” DEQ has concerns that this interpretation would perversely incentivize producers to switch from paper to plastic labels in order to avoid payment of EPR fees on labels. This proposed exemption would address this concern by placing such labels clearly outside of the scope of the law.

## **2. Recommended exemption for leased Reusable Plastic Containers (RPCs) used for the transportation of fresh produce**

In association with a request received from the Reusable Packaging Association (RPA), DEQ is recommending an exemption for leased Reusable Plastic Containers (RPCs) used for the transportation of fresh produce. These types of containers are often used in the transportation of produce from farm to distributor to retailer.

Inclusion of reusable packaging within the RMA program enables incentivization of reusables within the program (through ecomodulated fees), data-gathering on reusable packaging, and expenditure of waste prevention and reuse funds (which can only be spent on “covered products”) to encourage the production and use of such packaging. Inclusion of reusable packaging within the program also recognizes that such packaging does eventually reach end-of-life and must be disposed of, potentially imposing a cost on the commingled system and the PRO.

Through discussions with RPC providers, DEQ has found that producers in the produce industry who lease RPCs from providers (“providers” being the companies that manage the RPC pools and handle their washing and distribution) face some hurdles in EPR reporting that could amount to a disincentive to use RPCs. Namely, these producers need to keep track of new containers introduced into their pool of RPCs in a given year and therefore subject to EPR fees, containers that reached end of life and were set aside by the RPC provider for discarding outside of the state (e.g. if the washing and distribution pathway goes in and out of the state) and therefore are exempt from fee payment requirements pursuant to ORS 459A.863(6)(b)(J), and containers that reached end of life and were set aside by the RPC provider for discarding within Oregon and subsequently were privately-recycled by the RPC provider.

These are three sets of data that the RPC provider would need to provide to its clients to enable the clients’ comprehensive EPR reporting. The reporting burden associated with keeping track of these three sets of data compared with the comparatively lighter reporting burden of using single-use transport packaging could amount to perverse incentivization of produce companies to use single-use packaging, with greater environmental impact, instead of RPCs.

## **3. Recommended exemption for four formats of specialty packaging used exclusively in industrial or manufacturing processes**

DEQ is recommending an exemption for four specialty packaging formats used exclusively in industrial or manufacturing processes. This will effectively add four additional formats to the two formats already exempted in statute at ORS 459A.863(6)(b)(E)(i)-(ii).

During implementation of the first producer supply reporting cycle, DEQ found that some producers used an overly-broad interpretation of the statutory exemption. To provide maximum clarity to producers, DEQ agrees with Food Northwest, who requested this exemption, that putting additional, format-specific exemptions into rule is a good idea. DEQ will also consider any appropriate size, material, or definitional limitations that would ensure the exemptions are specific to materials very unlikely to go into Oregon’s commingled recycling system.

Based on those parameters, DEQ proposes four new recommended exemptions:

1. Drum containers of 10 gallons or more in volume,
2. Rigid Intermediate Bulk Containers, as defined at ISO 15867:2003, and Intermediate Bulk Container totes (e.g. inclusive of frames or protective cages that contain IBCs),
3. Flexible, Intermediate Bulk Containers as defined at ISO 21898:2004 and designed to hold at least 500 kg of product. These are also known as “supersacks”, are typically made from polypropylene and equipped with lifting devices in order to carry dry, flowable products, and
4. Gaylords – large, bulk-sized corrugated cardboard boxes with a volume of 33.8ft<sup>3</sup> (standard size) or greater designed for storing bulk materials.

Note: in previous iterations of DEQ’s recommendations prepared for the Recycling Council, DEQ separated “rigid IBCs” and “totes” into two separate formats, but their combination here reflects DEQ’s current understanding that “tote” refers to an IBC along with its frame and pallet.

#### **4. Recommended exemption for the proportion of garbage bags that go to disposal, provided that the producer markets no garbage bags in or into the state as fulfilling a recycling purpose**

DEQ is recommending an exemption for the proportion of garbage bags (e.g. bags marketed for the primary purpose of containing landfill-bound garbage) that go to landfill disposal after a single use. DEQ proposes to initially apply this exemption to 80 percent of producers’ garbage bag supplies, meaning each garbage bag producer would be able to deduct 80 percent of their supply when reporting to their PRO. Should industry data subsequently show that a different proportion of garbage bags goes directly to landfill in Oregon, this threshold could be adjusted.

This exemption is intended to address an inequity among producers of various types of bags. Garbage bags are unique in that they are designed and marketed for landfill disposal. As a result, many more garbage bags can be assumed to go to landfill than other types of bags. However, under the current regulations, garbage bag producers pay the same amount of fees as producers of other bags, despite imposing reduced costs on the PRO. And, as with other “packaging-like products” for which the producer must pay EPR fees on both the packaging and the product, the fees are not insubstantial.

The proposed approach, which essentially gives garbage bag producers “fee relief”, is intended to attribute the fee burden for the PRO’s management of bags/flexible packaging more equitably and to ensure that garbage bag producers do pay for the specific cost burden that garbage bag contamination imposes on the commingled system. To further address this problem of garbage bag contamination of the commingled system, DEQ additionally proposes to make this exemption contingent upon the producer having marketed no bags in or into the state as fulfilling a primary or secondary purpose of aggregating recyclables.

### **Outcomes of proposed amendments**

- Operations: Greater clarity for producers as to exemption status of materials around which there was some confusion as to their status in the first round of producer supply reporting.
- Fiscal or economic impacts: Fee relief for some producers whose products impose minimal costs on the PRO. Limited free ridership impacts for producers of other products needing to bear the minimal costs to the PRO to manage the exempt materials.
- Equity impacts: Greater equity for garbage bag producers vis a vis producers of other bags in terms of bearing the fee burden for PRO management of flexible plastics.

## Committee discussion questions

### Recommended exemption for leased Reusable Plastic Containers used for transportation of fresh produce

1. Is the logic underlying this recommended exemption sound?, i.e., are the challenges faced by produce producers that use leased RPCs out of measure with those faced by producers of other covered products, and would these challenges potentially lead to producers deciding not to use RPCs, e.g. a perverse outcome?

### Recommended exemption for four formats of specialty packaging used exclusively in industrial or manufacturing processes

2. Are the definition, size, and material limitations appropriate for limiting this exemption to materials unlikely to impose substantial costs on the PRO?

### Recommended exemption for garbage bags

3. This exemption generated a lot of discussion within the Recycling Council – many types of packaging mostly go to disposal but are still covered products, because 1. they enter the recycling system as contamination and therefore impose costs on the PRO, 2. despite the products not being recyclable, improvements to these products can be leveraged through the impact reduction element of the law (the law's secondary priority), and 3. the law is designed to not perversely incentivize switching from recyclables to non-recyclables (if only recyclables were charged fees, producers might switch to avoid fees). Does the fact that garbage bags are *designed and marketed for disposal* make them distinct from other types of packaging that mostly goes to disposal and meriting of this special treatment? Is there a risk that this exemption would serve as a precedent for producers of other products that mostly go to disposal to seek similar exemptions?
4. Do producers have sufficient control over the marketing of their products in order to make the garbage bag exemption contingent upon no marketing of bags for the purpose of aggregating recyclables?
5. Is “garbage bag” effectively defined in order to limit the exemption to garbage bags only and not stretch to bags more generally?
6. Is 80 percent a good starting point in terms of an estimate for the percent of garbage bags that are used to contain garbage and sent to landfill?
7. Is an estimate of the percent of garbage bags that go direct to landfill appropriate for use for the purpose of fee relief for garbage bag producers, or does this approach disregard the particular negative impacts of garbage bags on the recycling system (contamination and preventing products contained within from actually being recycled)?
8. Is an estimate of the percent of garbage bags that go direct to landfill appropriate for use for the purpose of fee relief for garbage bag producers, or should fee relief be higher for an initial several years to make up for three years (2025-2027 fee years) in which garbage bag producers had no fee relief?
9. To summarize the previous two questions, should the fee relief be more or less than the proportion of garbage bags that are sent to landfill, and if so, by how much?

## Contact

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