

## Topic Paper: Exemptions from “Covered Product”

### RMA Rulemaking 3: Prepared for Rulemaking Advisory Committee discussion – March 30, 2026

#### Summary of proposed amendments

At the RAC meeting on Jan. 27, 2026, DEQ presented a [rule concept](#) that proposes addition of 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.

In the following, DEQ proposes to modify the original rule concept and broaden three exemptions for leased Reusable Plastic Containers; gaylords; and garbage bags. DEQ also proposes an additional exemption for a subset of protein packaging.

DEQ is not updating the exemptions previously proposed for a subset of labels and for four formats of specialty packaging used exclusively in industrial or manufacturing processes.

#### 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 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

DEQ is presenting three revised exemption proposals, updated since the presentation in January 2026, and one new exemption proposal for this rule concept.

##### 1. Recommended exemption for leased Reusable Plastic Containers (RPCs)

DEQ proposes to expand the exemption for leased RPCs to include those used for any application.

## Background

After evaluating a request received from the Reusable Packaging Association (RPA), DEQ previously recommended an exemption for leased Reusable Plastic Containers (RPCs) used for the transportation of fresh produce.

In response to feedback received from the Rulemaking Advisory Committee during and after its Jan. 27, 2026, meeting, DEQ is revising its initial proposal.

- During the meeting a RAC member commented that industries besides produce - such as the baking industry - use leased RPCs. These industries face similar challenges as those faced by the produce industry such as getting necessary supply, private recycling, and out-of-state discard data from the RPC providers to the obligated producers to enable them to accurately report.

## Rationale

DEQ originally proposed this exemption out of concern that the reporting burden associated with keeping track of data on RPCs compared with the lighter reporting burden of using single-use transport packaging may inadvertently incentivize single-use packaging. However, this concern does not appear limited to the produce industry and is shared by all industries using leased RPCs.

### **2. Recommended exemption for four formats of specialty packaging used exclusively for industrial or manufacturing purposes, including gaylords with a volume of 33.8 ft<sup>3</sup> (standard size) or greater**

DEQ proposes to expand the exemption to include gaylords made of any material, rather than limiting the exemption to corrugated cardboard gaylords.

#### **Background and rationale**

DEQ understands that some gaylords are made of plastic and does not see a policy rationale for limiting the exemption to cardboard gaylords.

### **3. Recommended exemption for garbage bags if the producer does not market any garbage bags in or into the state for the purpose of recycling**

DEQ proposes an exemption for garbage bags (i.e. bags marketed for the primary purpose of containing landfill-bound garbage).

- This is a full exemption of all a producer's garbage bags.
- This exemption remains contingent upon the producer not marketing bags in or into the state as fulfilling a recycling purpose. That means, if a producer markets bags in or into the state for recycling, they would need to report and pay fees for all of their garbage bags.

## Background

After evaluating requests received from Berry Global and Poly-America, DEQ initially proposed to limit the exemption to the proportion of garbage bags that go to landfill disposal after a single use.

- Initially DEQ proposed to use 80 percent as a placeholder for that proportion (meaning each garbage bag producer would be able to deduct 80 percent of their supply when reporting to their PRO), with potential to adjust that threshold when/if industry data might subsequently show that a different proportion of garbage bags goes directly to landfill in Oregon.

- After considering feedback from the Rulemaking Advisory Committee and reviewing existing data characterizing disposition of garbage bags DEQ modified its proposal.

## **Rationale**

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.

- 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.
- However, DEQ has recently estimated that between only 1.2% to 3.8% of garbage bags go into Oregon’s recycling system. (See Appendix 1, Analysis of Garbage Bags in Oregon’s Recycling System).

Therefore, with garbage bag producers paying the standard rate for plastic bags/polyethylene film in the 2025-2027 program years, they will have paid many times more than their share, and therefore DEQ is comfortable with granting full exemption, effective from the 2028 program year onward.

Related to the marketing contingency, DEQ understands that garbage bags reach consumers in Oregon through three primary routes:

1. Sale at physical retail (with a contract in place among the producer and retailer),
2. Remote sale via e-commerce platform where the producer sells directly to the consumer (either the producer’s own platform or a third-party platform that enables direct sale), and
3. Retail or remote sale by third-party vendors without direct contract with the producer.

Garbage bag producers have varying degrees of control over how their products are marketed via these three routes. Therefore, DEQ proposes to structure the marketing contingency as follows:

DEQ proposes that a producer may claim the exemption for its supply of garbage bags in or into the state provided it meets the following three criteria:

- None of the producer’s bags sold in or into Oregon via sale at physical retail are marketed in packaging that indicates that the bags are intended to fulfill a recycling purpose,
- None of the producer’s bags sold in or into Oregon by remote sale via an e-commerce platform that enables a producer to sell directly to the consumer are marketed, neither on the packaging itself nor on the product landing page on the platform, as intended to fulfill a recycling purpose, and
- If the producer has become aware of a third-party vendor selling its bags in or into Oregon in packaging that indicates that the bags are intended to fulfill a recycling purpose, then the producer has submitted a request to the vendor asking the vendor to stop selling the product in or into Oregon.

## **4. Recommended exemption for a subset of meat packaging through 2032**

DEQ proposes a time-limited exemption for film and flexible plastic packaging used in direct contact with raw meat. This exemption would not apply to trays. A second option is proposed for committee feedback.

### **Background**

DEQ evaluated a request received from the Coalition for Protein Packaging for all packaging in direct contact with raw protein. DEQ did not initially recommend an exemption on the basis of this request due to its performance on the exemption criteria. Specifically:

- The criteria particularly prioritize for exemption products that do not enter the commingled system, neither as items accepted for recycling nor as contamination (and therefore do not impose system costs onto the PRO), and for which exemption would not result in substantial negative impacts such as cost-shifting onto other producers.
  - Meat packaging does enter the commingled system, mostly as contamination, and its exemption will shift costs to manage the packaging to other producers.
  - While meat packaging comprises a small proportion of the commingled inbound stream, the same is true for many other types of packaging.

Since DEQ’s initial evaluation of the Coalition for Protein Packaging’s exemption request, the 2026 Legislature considered legislation (HB 4030) to introduce new exemptions related to packaging for certain berries and meat, poultry, fish and seafood. DEQ engaged in conversations with legislators and interested parties on the topic. DEQ then revisited the Coalition for Protein Packaging exemption request to explore alternative pathways to address the issues raised by interested parties, with a focus on harmonization among states. Harmonization is appealing due to several factors:

- In 2025, producers only had to meet reporting obligations for two states (Colorado and Oregon).
- In 2026, producers will begin meeting reporting obligations for six states (California, Colorado, Maryland, Minnesota, Oregon and Washington).
- Producers are experiencing challenges navigating the differences among the laws in terms of their scope.

## Rationale

Meat packaging is a reasonable product for pursuing harmonization with other states.

- Among products for which producers are asking for harmonization among states, meat packaging is on the lower end of the spectrum in terms of negative environmental and financial impacts. Therefore taking action to harmonize Oregon’s rules for meat packaging with those of other states would have a relatively minimal impact on the program.
- Comparatively, exemptions for other products would have more considerable impacts. For example, multiple requestors sought wholesale exemption of commercial packaging. This could shift - for some materials - as much as a third of costs from producers of commercial packaging to producers of residential packaging. Such a shift could substantially reduce PRO contributions to local governments for system expansion to meet new commercial collection requirements that come online in 2027, and to commingled recycling processing facilities for their operations.

## Options

Upon review of laws in other states, there are two pathways by which Oregon could harmonize with other states around an exemption for meat packaging. DEQ seeks Rulemaking Advisory Committee feedback about which of the following are preferred:

- a) An exemption for film and flexible plastic packaging used in direct contact with raw meat. This exemption would not apply to trays.
  - This exemption would roughly align to one in Washington’s statute (RCW [70A.208.020\(19\)\(g\)](#)) although Washington’s exemption is limited to non-compostable film.
  - DEQ does not see a policy rationale for imposing a similar limitation in Oregon’s context; or
- b) A petition pathway whereby producers could seek exclusion of their meat packaging from “covered product” from DEQ on the grounds that it is infeasible to comply with both Oregon’s law and with USDA or FDA regulations.

- Such a pathway exists in Washington’s statute (RCW [70A.208.260](#)) and is proposed for adoption in California’s ongoing regulatory process (proposed rule CCR [18980.2\(a\)\(2\)](#)).
- Note: DEQ would structure such a petition process to render exclusions valid upon DEQ approval (following Washington’s example) as opposed to validity upon producer submission of the petition (California’s example).

Among these two options, DEQ favors option a), as DEQ doubts that there are actual conflicts among the Recycling Modernization Act and federal regulations, meaning that option b) could generate a lot of labor for both producers and DEQ without meaningful results. Please note that the RMA does not contain redesign mandates, meaning there is no likelihood of conflict with federal regulations. In addition, limiting the exemption to film rather than encompassing additional formats such as rigid trays (which weigh more and likely enter the commingled in greater quantities) would limit free ridership impacts to a minimum.

DEQ also proposes implementing whichever exemption Oregon chooses to pursue on a temporary basis (e.g. 2027-2032). This would prompt reconsideration when more information is available on the implementation landscape across states, enabling optimized harmonization. For example, California’s redesign mandate of 100% recyclability and compostability must be met by 2032, and therefore at the very latest California will make important decisions about how its law applies to meat packaging by 2032.

## Outcomes of proposed amendments

- Operations: Greater clarity for producers about exemption status of materials around which there was some confusion in the first round of producer supply reporting.
- Fiscal or economic impacts: Fee relief for some producers.
- Equity impacts: Greater equity for garbage bag producers related to producers of other bags in bearing the fee burden for PRO management of flexible plastics. Some limited equity losses for other producers of film needing to bear the costs of managing garbage bags and film used to package raw meat that enters the commingled system.

## Committee discussion questions

1. Do you support broadening the exemption for leased Reusable Plastic Containers to encompass leased RPCs used by any industry? Why or why not?
2. Do you support broadening the exemption for gaylords to encompass gaylords of any material? Why or why not?
3. Do you support broadening the exemption for garbage bags from partial to full exemption, provided a producer does not market garbage bags into the state for fulfillment of a recycling purpose? Why or why not?
4. Which of the two options for an exemption for meat packaging do you prefer? Why?

## Contact

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## Appendix 1 - Analysis of Garbage Bags in Oregon's Recycling System

DEQ's proposal to broaden the exemption amount from 80% to 100% of bags is informed by a review of agency data on the proportion of garbage bags that goes to landfill and into the recycling stream, respectively. Specifically, garbage bags were broken out as a separate category of material in both the [2023 waste composition survey](#) and the [2023 inbound commingled recycling study](#). DEQ reviewed this data to see if it would be possible to generate an estimate of the proportion of garbage bags that went into the recycling system in 2023. Generation of this figure involves several assumptions, including:

- Accurate estimation of the weight of garbage bags going to each destination – DEQ applied a 95% confidence interval to either side of these estimates to generate three scenarios, low, medium and high (proportion of garbage bags going to landfill),
- A contamination factor used in the waste composition survey to subtract out what was contained within garbage bags that went to landfill and result in the estimated weight of clean, dry bags that went to landfill,
- Estimation of the proportion of the weight of garbage bags containing garbage that went to commingled recycling processing facilities that is accounted for by the clean, dry, garbage bag alone (whereas garbage bags containing recyclables were emptied, cleaned and weighed in the inbound commingled recycling surveys, garbage bags containing garbage were not emptied but rather weighed with the garbage remaining inside,
- Estimation of the amount of garbage bags that would be collected empty, as a subset of polyethylene film collection, at PRO collection points once they are up and running at the level required to meet the convenience standard (DEQ entered placeholders for the three scenarios – low, medium and high – in the absence of data from collection points, something that CAA has offered to provide through its audit center if necessary). The placeholders that DEQ used for anticipated volumes of depot collection were 1%, 5% and 10% of the weight of garbage bags going into the commingled system.

If garbage bags create economic impacts on the system proportional to film plastics (which seems unlikely because full garbage bags are being proactively pulled out of the inbound stream at commingled recycling processing facilities rather than entering sorting equipment where they cause adverse impacts), then producers' payment of full fees for 2025-2027 program years are sufficient to cover the impact of garbage bags for a period of 79 (low scenario) - 250 (high scenario) years.

On the basis of this analysis, understanding that garbage bag producers have already paid their share of the impacts of their products for both the present time and considerably into the future, DEQ proposes a complete exemption for garbage bags.