

Topic paper 5: Clarifying “Covered Product” Exemptions for Packaging Recycled Without Assistance of the PRO

RMA Rulemaking 3: Prepared for Rulemaking Advisory Committee discussion – May 27, 2026

Covered Products OAR 340-090-0840

Responsible End Markets OAR 340-090-0670

Summary of proposed amendments

At the RAC meetings on Jan. 27 and March 30, 2026, DEQ discussed rule concepts relating to new proposed exemptions for five categories of materials to the definition of “covered product”: certain labels, leased reusable plastic containers, specialty packaging used exclusively in industrial or manufacturing processes, garbage bags, and a subset of meat packaging (through 2032 only). Exemption from “covered product” means that producers need not pay fees to a Producer Responsibility Organization for the product in question.

DEQ proposes to clarify covered product exemptions for two other classes of products which were previously granted exemptions:

- Rigid HDPE packaging of commercial-use pesticides, fertilizers, adjuvants, surfactants and agricultural amendments produced by members of the Ag Container Recycling Council (ACRC) and eligible for collection by ACRC
- Packaging that is exempted under ORS 459A.869(13).

Exemptions for both categories of materials were codified in OAR 340-090-0840 during prior RMA administrative rulemakings. DEQ now proposes to amend those rules to provide greater clarity.

Ag Container Recycling Council Exemptions

Background

OAR 340-090-0840(2)(d)(D) provides for the following exemption from the definition of “covered product”:

(D) Rigid HDPE packaging of commercial-use pesticides, fertilizers, adjuvants, surfactants, and agricultural amendments produced by members of the Ag Container Recycling Council or ACRC and eligible for collection by ACRC.

(i) This exemption does not apply in any year that ACRC fails to submit data to DEQ, in a form and procedure provided by DEQ, that demonstrates ACRC’s maintenance of a consistent collection rate and standard of convenience compared with a baseline year of 2023, and that ACRC is recycling the containers at responsible end markets.

(ii) Once every five years and beginning no later than in 2027, ACRC must corroborate its self-reporting by arranging and paying for a third-party audit of its collection program in Oregon and providing results to the department.

This exemption was granted during the second RMA rulemaking (2024), in response to a request from the ACRC, on behalf of its members. ACRC is a member-funded organization that provides for the collection and recycling of agricultural chemical packaging. DEQ agreed to the exemption request with the conditions provided by (i) and (ii), above, effectively making future exemptions conditioned on ACRC maintaining a baseline level of convenience and recycling, and periodically verifying that convenience and recycling standards are being met.

During the second half of 2025, DEQ began work to define the “form and manner” in which ACRC is required to submit data under OAR 340-090-0840(2)(d)(D)(i), and also began work with ACRC to assess and establish baseline levels of convenience and collection rates for 2023. These conversations continued into the first part of 2026 and led DEQ to conclude that the current exemption rule is difficult to implement and in need of clarification.

Challenges and Proposed Amendments

DEQ proposes the following five amendments to OAR 340-090-0840(2)(d)(D):

1. Change “collection rate” to “recycling rate” and provide a definition of the “recycling rate”

A “collection rate” is widely understood to equate to the quantity of material collected divided by the amount of material available for collection. That is consistent with the definition provided in OAR 340-090-0660(1).

However, in reviewing ACRC program performance data for 2023, 2024 and 2025, several complicating factors surfaced. First, the ACRC program for the Pacific Northwest states of Oregon, Washington and Idaho sends most materials for processing to AgriPlas in Brooks, Oregon. Historically, materials from all three states are mixed together. Processing of containers at AgriPlas results in non-trivial yield loss, such that the quantity of materials subsequently marketed onward is lower than the quantity collected. And because of AgriPlas’ operations, there is sometimes a considerable delay between when materials are collected and when they are actually sent onward for recycling. The ratio of materials marketed to materials collected is inconsistent across those three years.

DEQ proposes to amend OAR 340-090-0840(2)(d)(D)(i) to replace the term “collection rate” with the term “recycling rate”.

DEQ proposes to define “recycling rate” (for the purposes of this rule) as follows:

The recycling rate for Oregon-sourced materials will be expressed as a percentage and calculated as a numerator divided by a denominator.

- The numerator shall be the lesser of:
 - a) the mass of rigid HDPE packaging of commercial-use pesticides, fertilizers, adjuvants, surfactants and agricultural amendments *collected* by ACRC from users in Oregon for the purpose of recycling during the calendar year, or
 - b) the mass of such packaging from Oregon that was *sold* during the calendar year to an end user for use in producing a new product (such as a producer of a plastic product) or reclaimer (such as a producer of flake or pellet), regardless of when it was collected.
- The denominator shall be the mass of rigid HDPE packaging of commercial-use pesticides, fertilizers, adjuvants, surfactants and agricultural amendments produced by members of the ACRC and sold in or into Oregon.

DEQ proposes to allow ACRC to calculate the mass of packaging from Oregon sold during a calendar year using either physical segregation (where Oregon-sourced materials are always kept separate from materials from other states) or a proportional allocation method consistent with OAR 340-090-0640(6)(c)(ii).

Examples of such methods include controlled blending and mass balance rolling average percentage methodologies. Free allocation would not be allowed.

2. Define the “standard of convenience”

The current rule provides for an exemption if ACRC maintains a “standard of convenience” but that standard is not defined. In 2023, ACRC was providing a variety of collection opportunities that included differing levels of convenience. These included one-day collection events, permanent collection sites (typically at an agricultural chemical distributor that was willing to host an intermodal container for accepting containers), and “milk run” or “on-farm” collection services. ACRC has communicated to DEQ that on-farm services, while very convenient for individual generators, are also expensive to operate, and that it desires to reduce that service in order to free up program revenues to expand service elsewhere.

Service expansion would be beneficial. DEQ’s review of 2023 collection found a disproportionate level of service in counties in close proximity to Agri-Plas: more than half of all unique collection locations statewide were located in either Marion or Linn Counties (with 151 collection locations between them), while other counties with significant agricultural presence received much less service (for example, Umatilla and Morrow counties had only 22 collection locations combined and Klamath County had only 3).

After reviewing records detailing ACRC collections in 2023, DEQ proposes the following baseline standard of convenience:

A. In any given calendar year, collections from at least 132 unique sites, of which at least X (TBD) must be retail, government or similar locations that provide access to multiple generators (e.g., not limited to on-farm pickup).

By comparison, in 2023 ACRC provided collection from approximately 280 unique sites, but fewer of those were retail locations that provided access to eligible generators (their customers). DEQ’s proposed convenience standard would require ACRC to offer a larger number of those more-accessible sites (which serve a much larger number of generators), while allowing ACRC to improve system efficiency by reducing the number of generator-specific (on-farm) collections. The value of X is currently being discussed with ACRC based on DEQ analysis of historic events and a pending ACRC survey of retail locations.

The proposed benchmark of 132 unique sites was derived by reviewing 2023 collections (in 22 counties), reviewing the pounds collected per site for each county, filtering out counties with “less efficient” ACRC counties (those where average pounds collected per site was below the statewide average), and then calculating the average number of sites per county in the “more efficient” counties (six on average). That average (six sites per county in counties with “more efficient” ACRC service) was then multiplied by the standard of 22 counties proposed in standard B, below.

B. In any given calendar year, provide collection service in at least 22 Oregon counties with combined agricultural output (market value of agricultural products sold) equaling at least 85 percent of Oregon’s total combined agricultural output. The market value of agricultural products sold will be drawn from the most current USDA Agricultural Census available (published) as of December 31 of the prior calendar year.

These values approximate the level of service provided by ACRC in 2023. The use of “22 Oregon counties with combined agricultural output . . .” provides ACRC with flexibility to change service to other counties in Oregon, so long as it chooses counties with combined agricultural output (as a percentage of the state total) that come close to the 2023 baseline.

C. In each of those 22 counties (used to qualify for standard B), collection opportunities must be made available to all retail, government or similar locations that provide access to multiple generators (e.g., not limited to on-farm pickup) at a minimum of three unique sites.

This standard is intended to ensure that, if ACRC uses a given County to qualify for covered product exemption, service must be made available at more than one site in that County; ideally this will result in greater geographic distribution of sites, especially across counties where agricultural production is widespread and dispersed (e.g., Umatilla).

By comparison, ACRC in 2023 provided collection services in 22 Oregon counties and met this standard in all but four of them (Clatsop, Jackson, Josephine and Tillamook). However, it greatly exceeded this standard several others (averaging more than 12 unique sites per county in 22 counties). DEQ's proposed standard would encourage ACRC to add more service opportunities in counties where service is currently scarce or non-existent, providing for greater access in areas of the state that currently lack it.

3. Define how ACRC will demonstrate that the containers are recycled at responsible end markets

DEQ proposes to generally hold ACRC to definitions, standards and requirements as described in OAR 340-090-0670, the administrative rules on responsible end markets. However, some of those rules do not apply to this case; for example, a PRO has no obligations to assess or ensure that such materials are sent to responsible end markets, if they qualify for this exemption. DEQ proposes to modify the requirements of OAR 340-090-0670 so that the ACRC can demonstrate that materials are recycled at responsible end markets using the following two-step process:

- Self-attestation: Prior to any material being sent to a market or other downstream entity, the ACRC must first, using a screening assessment form provided by DEQ, receive and corroborate written verification from each end market and other downstream entity that it meets the standards set forth in OAR 340-090-0670(2).
- Certification: After the Environmental Quality Commission adopts starts a third-party certification program for verifying responsible end markets, the ACRC must ensure that Oregon-collected materials sent for recycling and being used to count towards the numerator of the "recycling rate" are only sent to end markets or other downstream entities that are certified against that certification program. This requirement will go into effect beginning in the year that begins 182 days after the effective date of the Commission's rule.
 - For example, if the Commission adopts rules allowing use of a third-party certification program in March of 2028, ACRC would need to ensure that end markets are certified against that program beginning in January of 2029.
 - But if the Commission adopts such rules in August of 2028, then ACRC would have until January of 2030.

4. Establish a deadline for ACRC to report to DEQ

CAA's standard schedule is to require producers to report by the end of May their supply of covered products for Oregon for the prior year. Those supply volumes are then aggregated for the purpose of calculating fee rates and fees that are paid in the following year.

In order to know whether or not this exemption is available to them for any given reporting year, DEQ must determine if the conditions of OAR 340-090-0840(2)(d)(D)(i) have been met, and that determination needs to be made before the end of May. However, in order to calculate the recycling rate, DEQ also needs to know the supply of materials available for recycling (the denominator of the recycling rate) for the prior year. Historically, ACRC has gathered that information through the use of a member survey that is conducted each spring and completed in the summer. ACRC has agreed to accelerate that survey in future

years, in order to make the supply quantities available to DEQ by April 1. DEQ proposes to establish a deadline for ACRC to report all relevant information for the prior year by April 1, in order to provide DEQ time to review the data, discuss any inconsistencies with ACRC, and determine whether ACRC members are eligible for this covered product exemption before CAA's supply reporting deadline of May 31.

In addition to these changes, ACRC has suggested that the baseline against which future recycling rates and levels of convenience are assessed should cover a multi-year period, as opposed to a single year (2023). DEQ supports ACRC's request and here proposes to make the following additional amendment, seen below, to OAR 340-090-0840(2)(d)(D).

5. Change the baseline for “recycling rate” and “convenience level” to the arithmetic mean of values for calendar years 2023, 2024, and 2025.

Agricultural chemical use varies from year-to-year based on changes in crops and weather, and performance of the ACRC recycling program also has changed from year-to-year based in part on recycling markets and the performance of ACRC's local implementation contractor, Agri-Plas. The use of a three-year average is recommended by ACRC to “smooth out” some of the year-to-year inconsistencies.

Covered Product that is Exempted Under ORS 459A.869(13)

Background

ORS 459A.869(13) allows producers to seek covered product exemptions for materials that meet three criteria:

- (A) Collected through a recycling collection service not provided under the opportunity to recycle;
- (B) Does not undergo separation from other materials at a commingled recycling processing facility; and
- (C) Is recycled at a responsible end market.

Administrative rules adopted in 2024 (OAR 340-090-0840(3)) clarified these three criteria, but subsequent experience implementing this exemption is leading DEQ to recommend additional clarifications to OAR 340-090-0840(3)(c), which defines what it means for a material to be “recycled at a responsible end market” in order to qualify for this exemption. The issue here is related to the similar exemption criteria provided to members of ACRC (see above) but in this case, producers have neither the PRO nor a PRO-like membership organization (ACRC) to confirm that material disposition is flowing only to responsible end markets.

DEQ also proposes additional language to clarify the process by which producers claim exemptions under ORS 459A.869(13).

Proposed amendments

1. Modify OAR 340-090-0840(3)(c) in cases where no third-party certification program is available and a PRO has not otherwise conducted verification.

In its current form, OAR 340-090-0840(3)(c) states that a material is recycled at a responsible end market if the end market has been verified as responsible by a PRO or certified responsible through third-party certification from an EQC-approved program.

Currently, no EQC-approved program exists and some end markets have not otherwise undergone verification by the PRO because those end markets are not being used for recycling of materials subject to the PRO REM requirement (ORS 459A.896(2), with four classes of subject covered products defined in ORS 459A.869(7)).

DEQ proposes to modify the existing rule to describe how a producer can demonstrate end market conformance with the REM standard in such circumstances.

- DEQ proposes that if no third-party certification has been approved by the Environmental Quality Commission and a PRO has not verified the supply chain facilities, that self-attestation of the entities downstream of collection through to the end market and any disposal facilities will be considered sufficient to demonstrate responsible status.
- DEQ further proposes waving the requirement for self-attestation by disposal facilities (in the case of the ORS 459A.896(13) exemption) until Jan. 1, 2030, recognizing that the materials likely qualifying for this exemption are already source-segregated and pose relatively low risk for contamination of downstream disposal sites. Potentially a new, CAA-sponsored and EQC-approved certification system will be adopted for use in Oregon before 2030, eliminating the need for individual producers to seek self-attestation from disposal sites altogether.
- DEQ also proposes to clarify that self-attestation alone will remain sufficient to demonstrate responsible status until the beginning of the second calendar year that begins following the 182nd day after the effective date of the Environmental Quality Commission adopting a third-party certification program for verifying responsible end markets. For example, if the Commission adopts a third-party certification program by rule that has an effective date of June 15, 2028, then producers would have until Jan. 1, 2030, to ensure that their end markets are verified against the adopted standard. In contrast, if the rule is effective on July 15, 2028, then producers would have until Jan. 1, 2031.

2. Add rules to clarify the process by which producers seek exemption.

DEQ proposes to add the following rules to OAR 340-090-0840(3):

(e) Producers shall demonstrate qualification for the exemption using a claim form provided by the department. The claims process shall follow the same timeline as that of producer 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 in the previous year.

Should DEQ possess adequate information about the total 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.

The purpose of these rules would be to clarify the process by which producers submit exemption claims and by which those claims are processed.

Outcomes of proposed amendments

- Operations: Greater clarity for producers about exemption status of materials around which there was some confusion in the first and second round of producer supply reporting.
- Fiscal or economic impacts: No new exemptions are being proposed.
- Equity impacts: None.

Committee discussion questions

1. Will the proposed amendments deliver the outcomes indicated – greater clarity for producers?
2. Do you have any other feedback regarding the proposed rule concepts.

Contact

Oregon DEQ: Materials Management Program

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