



American Coatings ASSOCIATIONSM

June 30, 2023

Kathleen George
Oregon Environmental Quality Commission, Chair

Dan Felton
Oregon Recycling Council

RE: ACA Recommended Exemptions for Oregon's EPR Covered Products

Dear Kathleen George and Dan Felton:

The American Coatings Association (ACA)¹ submits the following comments to the Oregon Environmental Quality Commission and the Oregon Recycling Council regarding possible exemptions allowed under the Plastic Pollution and Recycling Modernization Act (referred to as “the Act” henceforth). The ACA represents approximately 96% of the paint and coatings products manufactured in the United States, including architectural, industrial and specialty coatings.

The \$29.5 Billion paint and coatings industry manufactures a wide variety of coatings products for consumers, businesses, and manufacturing establishments alike. With the exception of powder coatings, most paint and coatings products are in liquid form and utilize containers in a range of sizes. The sizes range from small containers of less than a liter or pint to large containers that hold several hundred gallons. These containers are typically either metal, plastic, or a hybrid of metal and plastic. With the proliferation of packaging laws across the country, ACA members will be required to evaluate all of the packaging in use and determine which laws apply. Consequently, ACA has a significant interest in assisting our industry in compliance with any regulatory requirements.

Currently, Maine, California, Colorado and Oregon have passed extended producer responsibility (EPR) laws for packaging, with Oregon having been one of the earlier states to do so in 2021. The differences within each of these states' EPR laws will be extremely problematic and burdensome for industry. Developing compliance plans for companies that manufacture products for a coast-to-coast customer base will be extremely difficult. Furthermore, the coatings industry routinely conducts interstate transactions where their products are shipped across state lines, which thereby requires these companies to comply with applicable federal and state laws. It can be extremely difficult to track product shipments on a state-by-state basis. In order to promote compliance within the paint and coatings industry, ACA recommends that Oregon adopt the following exemptions under Oregon's Plastic Pollution and Recycling Modernization Act in order to harmonize packaging requirements across the United States.

¹ ACA is a voluntary, nonprofit trade association working to advance the needs of the paint and coatings industry and the professionals who work in it. The organization represents paint and coatings manufacturers, raw materials suppliers, distributors, and technical professionals. ACA serves as an advocate and ally for members on legislative, regulatory, and judicial issues, and provides forums for the advancement and promotion of the industry through educational and professional development services.

1. Exempt materials intended for the long-term storage or protection of a durable product that is expected to be used for a period of at least five years.
2. Exempt packaging material intended solely for use in business-to-business transactions.
3. Exempt plastic packaging materials classified for transportation of dangerous goods or hazardous materials under Title 49 of the Code of Federal Regulations (CFR) Part 178.
4. Exempt packaging used to contain hazardous or flammable products regulated under the 2012 Federal Occupational Safety and Health Administration Hazard Communications Standard within 29 CFR Part 1910.1200.

Each of the other three states' EPR laws (California, Maine, and Colorado)² include an exemption for long-term storage or protection of a durable product for at least five years. However, Oregon's Act currently does not include such a provision. Furthermore, ORS 459A.863(6)(b)(E) excludes specialty packaging used exclusively in industrial or manufacturing process; however, Colorado also extends an exemption to business-to-business transactions.

California currently provides exemptions to appropriate packaging under 49 CFR and 29 CFR.³ Additionally, under 49 CFR §199.9, it states that "...this part preempts any State or local law, rule, regulation, or order to the extent that: (1) Compliance with both the State or local requirement..." Based on the preemption clause within 49 CFR, the federal regulation would prevail when compliance to both the state requirement and the federal requirements is not possible. In addition, an exemption for packaging used to contain hazardous or flammable products regulated under 29 CFR Part 1910 aligns with the current exemption for packaging of toxic or hazardous products under ORS 459A.863(6)(b)(Q)(i), since these types of packaging may likely not be able to be recycled because of the contents within those containers.

ACA appreciates the opportunity to provide comments on this issue and we look forward to working cooperatively with the Oregon Environmental Quality Commission and the Oregon Recycling Council as well as other regulatory and industry stakeholders to implement the Plastic Pollution and Recycling Modernization Act.

Sincerely,

/s/

Heidi K. McAuliffe
Vice President, Government Affairs

/s/

Suzanne Chang
Counsel, Government Affairs

Sent via email

² This exemption in the other states' EPR laws can be found in: California's Act in Section 42041(e)(2)(F); Colorado's Bill in Section 25-17-703(13)(b)(I); and Maine's Program in Section 2146(1)(I)(1).

³ California's Act in Section 42021 (e)(2)(C).