



# AmericanCoatings

ASSOCIATION<sup>SM</sup>

August 26, 2024

Brian Beneski  
Maine Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333-0017

*Via email: rulecomments.dep@maine.gov*

**RE: ACA Comments on Maine's Reposted Draft Rule on the Stewardship Program for Packaging**

Dear Brian Beneski,

The American Coatings Association (ACA) submits the following comments to the Maine Department of Environmental Protection for consideration regarding Maine's Extended Producer Responsibility Program for Packaging. 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. The ACA represents approximately 96% of the paint and coatings products manufactured in the United States, including architectural, industrial and specialty coatings.

The \$32 billion paint and coatings industry manufactures a wide variety of coatings products for consumers, businesses, and manufacturing establishments alike. Except for 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 increased adoption of packaging laws across the country, ACA members will be required to evaluate all of the packaging used by their products, where their products are shipped and sold, and then, determine which laws apply. Consequently, ACA has a significant interest in assisting our industry in compliance with any regulatory requirements.

ACA recognizes that Maine is one of several states that have passed extended producer responsibility (EPR) laws for packaging. Other states that have adopted similar EPR laws for packaging include California, Colorado, Oregon, and (most recently) Minnesota. Although these EPR laws are similar, there are notable differences within each of these states' EPR laws that will be extremely problematic and burdensome for the coatings industry. The coatings industry manufactures products for a nationwide customer base and routinely ships and transports these products across state lines. This requires these companies to comply with both federal and all the individual state laws where these products are being transported into or through. To add to that complexity of tracking shipments and

products on a state-by-state basis, the variance in state regulatory schemes can become overly burdensome and prohibitive for commerce.

To promote and streamline compliance within the paint and coatings industry, ACA proposes the following recommendations for Maine to adopt in its Stewardship Program for Packaging.

**1. Amend the definition of “consumer.”**

In Maine’s proposed draft, the definition of “consumer” refers to “an entity that uses a product, including an entity that uses product to create a new product or includes its use in a service it provides. A consumer does not include an entity that only distributes, delivers, installs, sells a product at retail, or undertakes any combination thereof.” ACA recommends Maine consider using a definition that aligns with another existing regulation. Under the Colorado regulations in 6 C.C.R. 1007-2 Part 1 Section 18.1.6, it defines consumers as “any person who purchases or received covered materials in the states and is located at a covered entity.” The term “covered entity” is then defined to mean “all single-family or multi-family residents and nonresidential locations, such as public places, small businesses, hospitality locations, and state and local government buildings.” By aligning Maine’s definition of consumer to an already existing EPR regulation would help to harmonize the regulatory requirements and promote compliance by the industry. ACA recommends that Maine use a definition that would align with Colorado’s definition in its recently promulgated regulations.

**2. Amend the definition of “durable product.”**

In Maine’s proposed draft regulations, the definition of “durable product” refers to as a “product that wears out over an average lifespan of at least 5 years. A durable product is not depleted through use.” The last sentence stating “a durable product is not depleted through use” would contradict the purpose of a durable product. Paints and coatings are manufactured to be durable and can be stored up to 10 years.<sup>1</sup> The proper containment and storage of paint allows the product to be usable for years. As such, paints are expected to be used and therefore depleted as it is used.<sup>2</sup>

Aligning definitions to existing regulations would promote and streamline requirements for encouraging compliance. As mentioned previously, several states have passed EPR laws for packaging. Most recently, Colorado promulgated their EPR regulations on July 31, 2024. Colorado defines “durable product” to mean a product that remains useable for its intended purpose for at least five years. (see 6 C.C.R. 1007-2 Part 1 Section 18.1.6). Aligning Maine’s definition for durable product to Colorado’s definition, which is already been promulgated, would streamline requirements for industry. This helps ease the regulatory burden by reducing the complexity industry currently faces with each state passing their own version of EPR laws and regulations. Therefore, ACA recommends Maine only define “durable product” as simply a “product that wears out over an average lifespan of at least 5 years.”

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<sup>1</sup> Haniya Rae and Tanya A. Christian, *How Long Does Leftover Paint Last?*, Consumer Reports (March 23, 2022), <https://www.consumerreports.org/home-garden/paints/how-long-does-leftover-paint-last-a6297036499/>.

<sup>2</sup> ACA submitted comments to the Maine Department of Environmental Protection on October 31, 2023 that included this same argument to amend the definition of durable product. See <https://www.paint.org/advocacy/letters-comments/>.

### **3. Include the definition of “intentionally added.”**

The term “intentionally added” is used in a few places throughout the redrafted rules on the Stewardship Program for Packaging. While this term of art is used in conjunction with toxics or specific chemicals and may be defined in those regulations that are referenced in the reposted draft rules. It would be beneficial to either include a citation to the other state regulation that defines this term or to include the definition here to minimize any potential misinterpretation. Thus, ACA recommends that the term “intentionally added” be added to the list of definitions.

#### **Conclusion**

In conclusion, ACA appreciates the opportunity to provide comments on this issue, and we look forward to working cooperatively with the Maine Department of Environmental Protection to assist in implementing the Extended Producer Responsibility Program for Packaging. Please do not hesitate to contact us if you have any questions or require additional clarification.

Sincerely,

/s/

Heidi K. McAuliffe  
Vice President, Government Affairs

/s/

Suzanne Chang  
Counsel, Government Affairs

*\*\*Sent via email\*\**