

## Summary of Oregon Packaging EPR Regulations – February 2025

### **Broad Context**

In August 2021, Oregon passed the Plastic Pollution and Recycling Modernization Act (hereinafter Act or Senate Bill 582). The Act, which became effective on January 1, 2022, aims to modernize Oregon's outdated recycling system via the development of an extended producer responsibility (EPR) program for food serviceware, printing and writing paper, and packaging. Beginning on July 1, 2025, the Act requires certain producers who sell, offer to sell, or distribute packaging in the state of Oregon to register with and begin paying annual membership fees to a producer responsibility organization (PRO) that administers an approved producer responsibility program (PRP). Senate Bill 582 defines PRP as “a statewide program for the responsible [end-of-life] management of covered products.” In December 2024, Circular Action Alliance (CAA) submitted a final draft of its PRP plan and is awaiting approval from the Oregon Department of Environmental Quality (Oregon DEQ). More information can be found using the following link: <https://circularactionalliance.org/circular-action-alliance-oregon>.

In November 2024, Oregon DEQ finalized regulations that are meant to help clarify and implement the Act under the following Divisions: (1) Recycling and Waste Reduction, and (2) Enforcement Procedure and Civil Penalties. Below is a summary of rules that may be relevant to American Coatings Association (ACA) members.

### **Summary**

Relevant portions of the regulations have been summarized below. In order to view the full text of the regulations, please refer to Chapter 340 of the Oregon Administrative Rules (OAR) using the following link: <https://secure.sos.state.or.us/oard/processLogin.action>.

### **Division 90 – Recycling and Waste Reduction**

The regulations are organized by the corresponding chapter, division, and rule number. Under Chapter 340, Division 90 of the OAR, Rules 840, 860, 870, 620, 630, 700, 900, 910, and 920 may be relevant to ACA members. As such, relevant portions of the rules have been summarized below.

- **Rule 840 – Covered Products**

This rule identifies what is and what is not considered to be a covered product under the Act. While the Act defines the term ‘packaging’ as being inclusive of (1) materials that are used for the containment or protection of products; (2) single-use bags; and (3) nondurable materials that are used in storage, shipping, or moving, Rule 840 clarifies what does and what does not constitute as packaging. Namely, the rule provides that the term includes the following:

- Materials that are used in storage,
- Service packaging, and
- Materials that are used for shipping or moving (i.e., secondary and tertiary packaging).

In addition, Rule 840 adds to the list of products that are not covered under the Act.<sup>1</sup> Specifically, the rule provides that the following are not covered products:

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<sup>1</sup> Under the Act, the definition of the term ‘covered product’ provides an exemption for “[p]ackaging related to containers for architectural paint . . . that has been collected by a producer responsibility organization under the [architectural paint stewardship] program. . .” OR. REV. STAT. § 459A.863(6)(b)(I). This exemption was not explicitly stated and/or referred to in Rule 840. ACA and PaintCare are continuing to engage with Oregon DEQ and CAA and will inform ACA members of any developments.

- Packaging that is used for the storage of a durable good for a period equal to five or more years;<sup>2</sup>
- Packaging of certain medical devices as defined in the Federal Food, Drug, and Cosmetics Act;
- Packaging that is used in various healthcare related facilities for the purpose of managing infectious waste;
- Packaging of certain agricultural chemicals, including but not limited to pesticides that are classified as restricted-use under the Federal Insecticide, Fungicide and Rodenticide Act; and
- Pressurized cylinders that are (1) any size of either pure hydrogen or oxygen, (2) equal to or larger than ten cubic feet of acetylene, and (3) equal to or greater than five pounds of carbon dioxide.

Rule 840 also clarifies the portion of the Act that exempts certain types of material from having to complete the various requirements for covered products if certain prerequisites have been met. Under the Act, a material may be deemed exempt from having to fulfill the requirements of a covered product if the material meets the following criteria:<sup>3</sup>

- “Is collected through a recycling collection service not provided under the opportunity to recycle,”
- “Does not undergo separation from other materials at a commingled recycling processing facility,” and
- “Is recycled at a responsible end market.”

Subsequently, Rule 840 provides that a collection service not provided under the opportunity to recycle includes but is not limited to the following: (1) collection from certain types of commercial generators that is not being used by a local government to comply with its statutory obligations, and (2) collection from certain types of residential generators that is not being used by a local government that does not send out materials to a commingled recycling processing facility before they are sent to end markets to comply with its statutory obligations. Furthermore, Rule 840 clarifies that the term ‘separation’ refers to two or more commingled materials being separated from one another as well as the removal of a contamination from a material that was not commingled with another. Finally, this rule provides that a material will be deemed to be recycled at a responsible end market if either the PRO has verified that the end market is responsible or if the end market has been certified as responsible through third-party verification from an Oregon DEQ approved program.

- **Rule 860 – Producer Definitions**

This rule identifies who is considered to be a producer under the Act.

First, as it concerns items that are sold in packaging at an existing store, the Act provides that “[i]f the item is sold in packaging under the manufacturer’s own brand or is sold in packaging that lacks identification of a brand, the producer of the packaging is the person that manufactures the packaged item.” Rule 860 clarifies this portion of the Act by providing the following:

- “A person that manufactures a packaged item includes a person that directs the manufacturing of the item, including setting specifications for an item’s packaging,” and

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<sup>2</sup> The term ‘durable good’ refers to “[t]angible products that can be stored or inventoried and that have an average life of at least three years.” Bureau of Econ. Analysis, *Durable goods*, BUREAU OF ECON. ANALYSIS, <https://www.bea.gov/help/glossary/durable-goods> (last modified Apr. 13, 2018).

<sup>3</sup> Notably, materials that are collected via an established recycling collection service and used by a PRO to meet any applicable convenience standards cannot be deemed exempt from having to complete the various requirements for covered products under the Act.

that “[p]urchasing or ordering an item for retail sale in the normal course of business is not directing manufacturing.”

- “The manufacturer’s own brand includes any brand or trademark that the manufacturer wholly owns or co-owns according to the United States Patent and Trademark Office.”

Second, Rule 860 lists criteria for how the producer of a storage item that is sold at an existing store in Oregon should be determined. Producers of storage items will be determined using the following criteria:

- “If the storage item is sold under the manufacturer’s own brand or is sold without identification of a brand, the producer of the storage item is the person that manufactures the storage item.”
- “If the storage item is manufactured by a person other than the brand owner, the producer of the storage item is the person that is the licensee of a brand or trademark under which the storage item is used in a commercial enterprise, sold, offered for sale[,] or distributed in or into [Oregon], whether or not the trademark is registered in [the] state.”
- “If there is no person . . . within the United States [matching the descriptions above], the producer of the storage item is the person that imports the storage item into the United States for use in a commercial enterprise that sells, offers for sale[,] or distributes the item in [the] state.”

Third, Rule 860 lists criteria for how the producer of shipping or moving items that are sold at an existing store in Oregon should be determined. Producers of materials that are used for shipping or moving will be determined using the following criteria:

- “If the shipping or moving item is sold under the manufacturer’s own brand or is sold without identification of a brand, the producer of the shipping or moving item is the person that manufactures the shipping or moving item.”
- “If the shipping or moving item is manufactured by a person other than the brand owner, the producer of the shipping or moving item is the person that is the licensee of a brand or trademark under which the shipping or moving item is used in a commercial enterprise, sold, offered for sale[,] or distributed in or into [Oregon], whether or not the trademark is registered in [the] state.”
- “If there is no person . . . within the United States [matching the descriptions above], the producer of the storage item is the person that imports the shipping or moving item into the United States for use in a commercial enterprise that sells, offers for sale[,] or distributes the item in [the] state.”

Fourth, Rule 860 provides that for service packaging that is sold at an existing store in Oregon, the producer “is the person that first sells the packaging in or into [the] state.”

Lastly, Rule 860 clarifies that for the purpose of determining who is and who is not a large or small producer under the Act, the term ‘producer’ is inclusive of associate producers. Consequently, this rule provides the definition for the term ‘associate producers’ and mandates that “[a]ssociated producers’ data on covered product[s] sold in or into the state and gross annual revenues must be aggregated for the purpose of applying the large producer and small producer definitions [under the Act]” as well as for “determining producer eligibility for uniform fees.”

- **Rule 870 - Producer Pre-Registration**

This rule mandates that certain producers intending to sell, offer for sale, and/or distribute covered products into the state of Oregon either on or after July 1, 2025, must pre-register with a PRO by March 31, 2025. In addition to pre-registering with the PRO, the producer must submit certain data on covered products that the producer sold and/or distributed into the state of

Oregon in 2024. Importantly, a producer’s failure to pre-register with the PRO will not preempt them from registering as a member with and paying annual fees to a PRO beginning in July 2025.

- **Rule 620 – Effective Date**

This rule establishes the effective dates for the Act’s regulations.<sup>4</sup> The following rules take effect when the PRO files with the Secretary of State:

- OAR 340-090-0720<sup>5</sup>
- OAR 340-090-0750<sup>6</sup>
- OAR 340-090-0840
- OAR 340-090-0860
- OAR 340-090-0870

Rule 620 also provides that the following rules take effect on July 1, 2025: (1) previously unidentified rules from OAR 340-090-0630 to 0830, and (2) OAR 340-090-0900 to 0940.<sup>7</sup>

- **Rule 630 – Recycling Acceptance Lists**

This rule provides that covered products on the PRO Recycling Acceptance List will not be made subject to the requirements of section 459A.070(1) of the Oregon Revised Statutes (ORS), which permits collection services and/or disposal sites to “charge a person who source separates recyclable material and makes it available for reuse or recycling less, but not more, for collection and disposal of solid waste and collection of recyclable material than the collection service charges a person who does not source separate recyclable material.” Rather, another rule, OAR 340-090-0650(1)(b), provides that a PRO cannot issue charges for either the collection of and/or associated costs of collecting covered products on the PRO Recycling Acceptance List “to users of any depot or drop off services, collection events[,] or collection services.”

Relevant materials that are either currently or will be on the PRO Recycling Acceptance List include:

- Aerosol cans made of steel and/or aluminum;
- Aluminum foil and/or other products made out of pressed aluminum foil;
- Certain types of polyethylene film and packaging;
- Certain types of plastic buckets and pails, including the lids, made of high-density polyethylene (#2) or polypropylene (#5);
- Glass containers (e.g., bottles and jars);
- “Block white expanded polystyrene;”
- Lids and caps made from polyethylene and polypropylene;
- High-density polyethylene package handles; and
- Pressurized cylinders.

- **Rule 700 – Market Share**

The term ‘market share’ refers to “a producer’s percentage of all covered products sold in or into [Oregon], as calculated in accordance with this rule.” Rule 700 provides how market share will be calculated, specifying that it will be determined by dividing the total weight of the covered

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<sup>4</sup> While Rule 620 contains the effective dates for more regulations than are listed above, the effective dates of Rules 720, 750, 840, 860, and 870 were mentioned as these regulations may be relevant to ACA members.

<sup>5</sup> This rule outlines the relevant PRP plan timeline. More specifically, Rule 720 provides that the first PRP plan will operate for a period of three years while subsequent PRP plans will operate for a period of five years.

<sup>6</sup> This rule outlines when updating and/or revising approaches to determining a producer’s membership fees to a PRO requires a PRP plan amendment.

<sup>7</sup> While Rule 620 provides that July 1, 2025, is the effective date for more regulations than are listed above, these rules were identified because they may be relevant to ACA members.

products a producer claims to have sold and/or distributed into Oregon over a year by the total weight of the covered products all producers claim to have sold and/or distributed into Oregon during the same year. If Oregon DEQ approves more than one PRO, financial obligations related to implementing the Act will be allocated among the PROs by the modified market share as determined under this rule.

This rule requires producers to submit annual market data, including a description of the producer's methodology, to the PRO that outlines the total weight of the covered products the producer claims to have sold and/or distributed into Oregon throughout the year. Producers are also required to submit any necessary corrections to the market data. Importantly, Rule 700 outlines how various types of market share used by the PRO will be used to set producer fees.

- **Rule 900 – Life Cycle Evaluation Definitions**

This rule contains definitions for terms that appear throughout the life cycle assessment rules (OAR 340-090-0900 to 0940), which contain guidelines that are applicable to certain types of producers for evaluating and disclosing their covered products' environmental impacts.

Relevant definitions include the terms 'refillable packaging product'<sup>8</sup> and 'reusable packaging product.'<sup>9</sup>

- **Rule 910 – Scope and Applicability**

This rule outlines the scope and applicability of the life cycle assessment rules. Rule 910 makes clear that the life cycle assessment rules are only applicable to large producers of covered products. Under the rule, large producers will be required to evaluate the life cycle impacts of at least one percent of covered products that the large producer has either sold and/or distributed into the state of Oregon and submit final life cycle evaluations to Oregon DEQ and the PRO on a biennial basis beginning in 2026. Rule 910 also describes how large producers are meant to determine the one percent of covered products chosen for evaluation and disclosure.

This rule also describes how some producers who choose to perform a voluntary evaluation and disclosure of their covered products' life cycle impacts will be eligible for a fee reduction from the PRO.<sup>10</sup>

- **Rule 920 – Project Report**

This rule describes how a large producer's life cycle evaluations are required to be documented in a project report. Notably, a large producer will be required to create two project reports. One of the project reports will contain confidential information and will be provided to both Oregon DEQ and the PRO, and the other project report will have all confidential data redacted and will be made available to the public. Rule 920 also describes the various content that must be provided in a project report as well as how the life cycle evaluations of a large producer's covered products will be verified by an independent third-party.

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<sup>8</sup> Rule 900 defines the term 'refillable packaging product' as a packaging product that is meant to be refilled by users several times for either the same and/or similar purpose and is actually refilled by users without any third-party support and/or assistance.

<sup>9</sup> Rule 900 defines the term 'reusable packaging product' as a packaging product that is meant to be reused by users several times for either the same and/or similar purpose and is actually reused by users with third-party support and/or assistance.

<sup>10</sup> ACA members that are either required or choose to complete a life cycle evaluation for their covered products are encouraged to refer to Rules 930 and 940. Rule 930 outlines how life cycle evaluations ought to be completed, and Rule 940 describes information that must be included in an evaluation as well as penalties a producer might face for incorrectly reporting certain information.

## **Division 12 – Enforcement Procedure and Civil Penalties**

Under Chapter 340, Division 12 of the OAR, Rules 98 and 140 may be relevant to ACA members. As such, relevant portions of the rules have been summarized below.

- **Rule 98 – Classification of Violations for ORS 459A.860 to 459A.975 and related rules**

This rule establishes a hierarchical system of violations under the Act by creating two distinct classes of violations.

Relevant violations for ACA members that are specified in Class I include:

- Neglecting to either register with or become a member of a PRO

Relevant violations for ACA members that are specified in Class II include:

- Neglecting to submit required information to Oregon DEQ
- Violating any other existing, unclassified requirements under the Act

- **Rule 140 – Determination of Base Penalty**

This rule adds enforcement language to portions of the ORS concerning the Act. Namely, Rule 140 establishes the base penalty amount for committing any of the violations described above. This rule clarifies that determining a base penalty amount is achieved by looking to the relevant class and magnitude of the violation as well as the relevant penalty matrix.

Violations of the Act that have been committed by (1) a PRO, (2) a producer, (3) an operator of either a commingled recycling processing facility or limited sort facility that either has or should have a permit, or (4) a local government with a population equal to or greater than 25,000 persons fall within the \$12,000 penalty matrix. As such, the base penalty amount for committing (a) a *major* Class I violation is \$12,000, (b) a *moderate* Class I violation is \$6,000, and (c) a *minor* Class I violation is \$3,000. In addition, the base penalty amount for committing (a) a *major* Class II violation is \$6,000, (b) a *moderate* Class II violation is \$3,000, and (c) a *minor* Class II violation is \$1,500.

Violations of the Act that have been committed by persons not identified under another penalty matrix fall within the \$1,000 penalty matrix. As such, the base penalty amount for committing (a) a *major* Class I violation is \$1,000, (b) a *moderate* Class I violation is \$500, and (c) a *minor* Class I violation is \$250. In addition, the base penalty amount for committing (a) a *major* Class II violation is \$500, (b) a *moderate* Class II violation is \$250, and (c) a *minor* Class II violation is \$125.