American Coatings ASSOCIATION℠

September 15, 2025

The Honorable Pam Bondi
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Nicholas J. Schilling, Jr.
Supervisory Official
Office of Legal Policy
U.S. Department of Justice
950 Pennsylvania Avenue, NW
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RE: DOJ Docket No. DOJ-OLP-2025-0169 – Request for Information on State Laws Having Significant Adverse Effects on the National Economy or Significant Adverse Effects on Interstate Commerce

Dear Attorney General Bondi:

The American Coatings Association (ACA)[1] appreciates the opportunity to highlight those laws and regulations in the states that unduly burden interstate commerce, raise costs for suppliers and manufacturers, and/or otherwise result in barriers to innovation in the coatings industry.

ACA represents approximately 96% of the paint and coatings industry in the U.S., including paint and coatings manufacturers and their raw materials suppliers. The paint and coatings industry is a $32 billion dollar industry that employs over 312,000 Americans in the manufacturing, distribution, sale and application of a wide range of coatings products.

[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 and coatings science.

Coatings PROTECT.
Coatings PRESERVE.
Coatings PROVIDE.

Across the value chain, paint and coatings products are essential to our world. Almost every product in the built environment has a coating that is necessary to protect it, extend and enhance its service life, and maintain its value. Coatings not only protect our homes, cars, and smart phones, they protect the bridges and tunnels we travel, the medical devices and equipment that facilitate a healthier society, as well as the technology that we use every day to perform our work and provide recreation and enjoyment. Coatings can save energy by keeping a building cooler and helping ships glide through water. Coatings can eliminate or minimize the risks from bacteria with the use of antimicrobial technologies and keep food and beverages safe from contamination. Every manufacturing process for a consumer, commercial or industrial product includes a coating line. Paint and coatings are essential to our built environment.

Regulatory compliance efforts within the paint and coatings industry require significant efforts. Our industry is comprised of multinational companies as well as small and medium-sized enterprises that market their coatings products across the country and indeed, across the globe. The Cato Institute estimates that ". . . an average firm spends 3.33 percent of its total labor costs on performing regulation-related tasks per year." And further finds that "research shows that regulatory compliance costs of US businesses have grown by about 1 percent each year from 2002 to 2014 in real terms."[2] There is no doubt that the coatings industry is hard-hit by regulatory compliance costs, due in part by the patchwork of state regulations that duplicate federal requirements and are not uniform across the country.

ACA agrees with the Department of Justice that state level requirements can drive up costs for manufacturers and present barriers to innovation and market expansion. ACA highlights the following state laws and regulations as examples of burdensome regulatory requirements impacting interstate commerce:

1. Chemicals Management Laws
    a. PFAS Restrictions and Reporting requirements in Maine, Minnesota, etc.
    b. Safer Consumer Product laws in Washington and California
    c. Proposed Regulations for Microplastics in California
    d. Labeling laws such as Proposition 65 in California
2. Out of State Business Income Taxation
3. Extended producer responsibility (EPR) laws for packaging in California, Colorado, Maine, Maryland, Minnesota, Oregon, and Washington;
4. California's Accidental Release Prevention Program (CalARP);
5. California's Climate Corporate Data Accountability Act (SB 253) and Climate-Related Financial Risk Act (SB 261);
6. Volatile Organic Compound (VOC) regulations for architectural coatings and consumer products;
7. New York's registration and permitting requirements for anti-fouling paints regulated by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); and
8. Data Privacy Laws in the States

[2] The Cato Institute Research Briefs in Economic Policy, January 24, 2024 Number 367 *The Cost of Regulatory Compliance in the United States*

1. Chemicals Management Laws in the States

State chemicals management laws can present significant barriers to the flow of products in interstate commerce, often without clear public safety or environmental benefits. This is due to the regulatory approach taken by states involving three common policy positions:

- Regulating chemicals based on hazard and not risk.
- Regulating a broad set of vaguely defined chemistries as a "chemical."
- Regulating products generally without considering specific conditions related to a product that would affect safety and environmental impacts.

Several recent laws have either had an impact on commerce or will have an impact as restrictions are implemented. These are summarized below. As noted above, state regulators place a strong emphasis on hazard over risk profiles of products. A hazard is a *potential* source of harm, while a risk is the likelihood and severity of harm occurring from that hazard. Product manufacturers can minimize health and environmental risks through optimizing product formulations, complimented by instructions for safe use that include use of PPE (personal protective equipment) and handling instructions. State regulators do not consider product characteristics and use practices, instead preferring to regulate based on the mere presence of a hazardous chemical.

Examples of state requirements presenting significant barriers include:

1) State regulation of PFAS

Many states, including Maine, Minnesota, New Mexico, and Vermont have passed PFAS (per- and poly-fluoro alkylated substances) laws. These laws regulate products that contain chemicals with a fully fluorinated carbon atom, even though many chemicals covered under this broad definition are not associated with contamination or human health effects. None of these state requirements are harmonized in their approach, creating significant difficulties for manufacturers to distribute products in commerce. For example, states differ in their lists of products that are banned from including intentionally added PFAS, whether product packaging is in scope, PFAS testing requirements, reporting requirements, and more. New Mexico recently announced their plans to require product labeling, creating even further challenges to manage interstate commerce due to limited labeling space (see Prop 65 section below).

Maine, Minnesota and New Mexico have additionally passed laws that ban all products with intentionally added "PFAS" by January 2032, including diverse product categories such as medical devices, pharmaceuticals, industrial coatings, defense and military products, and electronics among other products. By banning this broad array of products in a handful of states, interstate commerce across multiple industries, including the coatings industry, is significantly disrupted.

State Safer Consumer Products Programs

The States of California and Washington implement *Safer Consumer Products Programs* that identify chemicals for regulation based on chemical hazard while subsequently identifying products containing

those chemicals for further regulation. In California, manufacturers are required to remove an identified product from market or substitute the chemical with an alternative. In Washington, the agency can implement a variety of regulatory actions, including product bans, reporting requirements or chemical substitution. Both states emphasize chemical substitution as a goal, while requiring product removal. Recent changes to California's program allow the regulatory authority to recognize a chemical alternative based on published studies, without an alternatives assessment from industry. The agency can recognize non-viable chemical alternatives. Frequently, this results in the agencies selecting alternatives that are impractical or ineffective in real-world settings.

For example, the Washington Department of Ecology selected paint and coatings products merely based upon the presence of certain chemicals without providing clear documentation that products themselves pose a human health or environmental risk. These types of chemical restrictions are misguided and present significant challenges for manufacturers that wish to distribute products nationally.

2) State regulation of microplastics

California is currently considering strategies to regulate microplastics such that broad categories of products could be unnecessarily restricted from sale in the state and be disrupted from interstate commerce. The term "plastic" or "microplastic" is not a scientifically defined term. These terms do not identify a discreet set of chemicals or a specific chemical. As such, California is poised to develop sweeping requirements that could impact a variety of polymeric raw materials used by the coatings industry that may loosely fall under a broad and vague definition of microplastics.

In June 2024, California proposed regulating microplastics under its *Safer Consumer Products Program*, by proposing a broad and vague definition of microplastics. California's *Safer Consumer Products Act* establishes important procedural guardrails to guide California's toxics agency towards addressing hazardous chemicals after identifying a specific toxicity endpoint, while providing the public and industry with notice related to chemical use. By listing microplastics, a category of vaguely defined materials, as a chemical, the agency forgoes the statute's procedural guardrails, indicating it will provide requisite specificity about chemicals at issue at later regulatory stages. This approach is not supported by the statute and lacks specificity of hazard identification to notify manufacturers and the public of candidate chemicals. Further, the listing does not provide product manufacturers with adequate notice regarding potential chemical use. Product manufacturers are not adding anything called *microplastics* to products.

3) California's Prop. 65 Labeling Program

California's *Safe Drinking Water and Toxics Enforcement Act*, commonly known by its ballot number, Prop. 65, was recently amended to expand current labelling requirements in a manner that imposes significant and unnecessary costs on industry placing products on the market in California. The general requirement of the law, as passed in 1986, is that product manufacturers must provide clear and reasonable warnings prior to exposing an individual to a listed reproductive toxin or carcinogen. Due to the extensive list of chemicals, most complex chemically formulated products contain at least one

listed chemical (often as a contaminant), forcing manufacturers to include Prop 65 warnings even if exposure to the chemical is not expected. The law also includes a citizens' suit provision, further encouraging manufacturers to label products as a protective measure.

During early phases of Prop. 65 implementation, industry filed suit alleging federal preemption. Although courts held that the State is *not* preempted, recent decisions have held that Prop. 65 warnings interfere with protected advertising under the First Amendment in some instances, where the State lacks an adequate basis to list a chemical as a carcinogen or reproductive toxin.
Recent changes to labeling requirements will become mandatory as of January 2028, requiring manufacturers to identify at least one Prop. 65 listed chemical in its Prop. 65 warning. Coatings manufacturers typically manufacture hundreds and sometimes thousands of varying product types. Costs associated with redesigning and affixing product labels is significant, across a varied product catalog. Existing product labels are carefully designed to provide users with required information to use a product safely while conveying any warnings. These labels comply with federal laws such as the *Federal Hazardous Substances Act* and the *OSHA Hazard Communication* standard, often conveying information in multiple languages. Existing labels also meet current state requirements, including the current Prop. 65. Changing such complex labels is a significant and unnecessary task, considering that listing a Prop. 65 chemical on a label does not convey meaningful safety information to a downstream user, especially on a coatings product where information about ingredients that affect risk is already available.

2. Out of State Business Taxation

The Interstate Income Act (P.L. 86-272), is a federal law that restricts a state from imposing a net income tax on businesses whose only activity within that state is the "solicitation of orders", such as the following:

- Only ask for orders of physical goods in that state ("soliciting"),
- The orders are sent out-of-state for approval, and
- They ship the goods sold from another state.

In 2021, the Multistate Tax Commission ("MTC") revised its official statement on Public Law 86-272 to address e-commerce, arguing that many commonplace website activities go beyond simple "solicitation" and thus nullify the law's protection. Consequently, many states are effectively challenging or narrowing the protections of Public Law 86-272 by the adoption of rules or positions based on the MTC's revised treatment of e-commerce, including: California, Minnesota, New York, New Jersey and Oregon. Although the California, New York and New Jersey adoptions are being challenged, the outcomes are uncertain.

Other states like Wisconsin and Hawaii have created rules similar to the MTC revised treatment of e-commerce activity to assess income tax presence to enterprises not located in the state. Other states that have not formally adopted the MTC revised guidance on e-commerce, are beginning to assess income tax on all e-commerce transactions as well as any income resulting from activity the state deems to be based upon a physical or "economic" presence created by activities that exceeds "soliciting" during

an income tax audits. Consequently, any enterprise engaging in basic, routine e-commerce activities[3] can be subject to state income tax under the MTC's standard.

Despite the fact that P.L. 86-272 was adopted in 1959 and was designed to protect interstate commerce by preventing states from taxing out of state corporations engaged in minimal activity within a state, states are ignoring this law and no enforcement mechanism exists to police this statute. And, no federal agency has undertaken the task of ensuring that states comply with this mandate.

Therefore, the MTC and individual states have been allowed to gradually erode the protections granted by the federal government, and businesses engaging in interstate commerce have been left with little or no practical recourse against state taxation that should be impermissible under P.L. 86-272.

3. Packaging EPR laws in California, Colorado, Maine, Maryland, Minnesota, Oregon, and Washington

In the U.S., the following states have enacted an EPR law that prohibits producers from selling, offering for sale, and/or distributing covered products in or into the state after a certain date, unless the producer is a member of either a producer responsibility organization (PRO) or stewardship organization (SO):

1. California's Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54);
2. Colorado's Producer Responsibility Program for Statewide Recycling (HB 22-1355);
3. Maine's Act to Support and Improve Municipal Recycling Programs and Save Taxpayer Money (LD 1423);
4. Maryland's Act Concerning Environment - Packaging and Paper Products - Producer Responsibility Plans (SB 901);
5. Minnesota's Packaging Waste and Cost Reduction Act (HF 3911);
6. Oregon's Plastic Pollution and Recycling Modernization Act (SB 582); and
7. Washington's Act Relating to Improving Washington's Solid Waste Management Outcomes (SB 5284).

While these laws have the overall goal of incentivizing producers to adopt more sustainable production and/or packaging methods, they have been inconsistently and obscurely implemented to members of the paint and coatings industry's detriment. Due to the lack of harmonization, paint and coatings manufacturers are not able to reasonably optimize product packaging to minimize reporting and fees across all states. ACA supports a preemptive federal law to manage packaging EPR.

[3] Routine e-commerce activities can include any or all of the following: post-sale support, use of internet cookies to collect information relative to customer behavior that assists inventory decisions, remote product fixes, online credit applications, web-based applications, and extended warranty sales.

a. The various states' packaging EPR laws' definitions lack both uniformity and clarity.

i. Lack of Uniformity

As described above, packaging EPR laws prohibit certain producers from selling, offering for sale, and/or distributing covered products in or into the state after a certain date. Accordingly, members of the paint and coatings industry must determine whether they are a 'producer' of a 'covered product' that is subject to the state's packaging EPR law and regulations.

Each state's packaging EPR law contains definitions for the term 'producer' and 'covered product.' In addition, each law contains several exemptions for both terms. And yet, despite the states' attempt to enact similar packaging EPR laws, there are major discrepancies between the states' laws that unduly burden ACA's members' tracking and compliance efforts. For instance, several states define the term 'producer' as either (1) the product manufacturer, (2) the individual that is licensed to manufacture and sell or offer sale a product with packaging displaying another entity's brand or trademark, (3) the individual who imports the product into the U.S. to be sold and/or distributed in the state, (4) the individual that first distributes the product into the state, or (5) the individual that packages and/or ships the product to the end consumer. HB 22-1355, on the other hand, defines the term as (in addition to several of the above) the individual who produces packaging material that is used to directly contain and/or protect the product. Moreover, while all states' packaging EPR laws contain an exemption for packaging materials that are subject to the state's paint stewardship program, the exemptions are phrased and interpreted differently. For instance, SB 582's exemption applies to packaging related to containers for architectural paint that *has been* collected by a PRO under the state's PaintCare program while SB 901's exemption applies to packaging for products *subject to* the state's PaintCare program. These variations significantly burden interstate commerce and raise costs by requiring members of the paint and coatings industry to tailor their products and/or packaging to seven different state laws. Given that packaging EPR is of growing interest to state legislatures, there soon could be several more packaging EPR laws enacted and more definitions for members of the industry to track and comply with.

ii. Lack of Clarity

Packaging EPR laws are enacted in part due to the state's overall goal of achieving more sustainable production and/or packaging methods, which will require producers transitioning to plastic-free packaging. Accordingly, members of the paint and coatings industry that are subject to the states' various packaging EPR laws must determine what constitutes plastic-free packaging to avoid stringent fees. This has proven to be a burden for ACA's members, as some of the states' laws do not provide adequate and/or clear definitions.

Under SB 54, certain packaging constitutes a covered product that producers are prohibited from selling, offering for sale, and/or distributing in or into the state of California. SB 54 defines the term 'packaging' as referring to, among others, "[p]ackaging components and ancillary elements integrated into

packaging, including ancillary elements directly hung onto or attached to a product and that perform a packaging function, except . . . element[s] of the packaging . . . with a de minimis weight or volume, which is not an independent plastic component. . . ." Moreover, SB 54 defines the term 'plastic component' as "any single piece of covered material *made partially or entirely* of plastic" (emphasis added). Although SB 54 provides examples of what is and what is not considered to be plastic,[4] these definitions nevertheless lack the necessary clarity for members of the paint and coatings industry to transition to plastic-free packaging and avoid the packaging EPR law's stringent fees.

b. Lack of Transparency

As described above, packaging EPR laws prohibit certain producers from selling, offering for sale, and/or distributing covered products in or into the state unless the producer is a member of either a PRO or SO that pays annual fees. Generally, producers' fees are based off the entity's contribution of covered products in or into the state during the previous year. Accordingly, members of the paint and coatings industry that are subject to the various states' packaging EPR laws and regulations are or will soon be burdened by seven different fee assessments. As if the (growing) number of fee assessments wasn't burdensome enough, ACA's members are also burdened by the lack of transparency in the various states' packaging EPR laws granting PROs the broad authority to assess producers' fees.

Under Oregon SB 582, the PRO has been given the broad authority to set producers' fees and establish a payment schedule. Circular Action Alliance, the state's PRO, has developed a program plan containing the organization's fee-setting methodology. However, that information has been deemed confidential and has only been shared with the Oregon Department of Environmental Quality. Excluding producers from viewing and/or providing input on the PRO's fee-setting methodology unduly burdens members of the paint and coatings industry by requiring companies to submit payments for invoices that were calculated using data/information they are not privy to.

4. CalARP

CalARP was established, in part, to prevent the accidental release of hazardous substances from stationary sources that pose a great risk of immediate harm to the public and surrounding environment. The program applies to stationary sources (including paint and coatings manufacturing facilities) with processes having more than a threshold quantity of a Table 1, Table 2, or Table 3 regulated substance. When a threshold quantity of a regulated substance has been met and/or exceeded, multiple reporting requirements are triggered. In addition, the stationary source that has either met and/or exceeded the threshold quantity of a regulated substance will be subject to inspections conducted by the state's Environmental Protection Agency (EPA) and/or the U.S. EPA. Several of CalARP's threshold quantities are

[4] SB 54 defines the term 'plastic' as "a synthetic or semisynthetic material chemically synthesized by the polymerization of organic substances that can be shaped into various rigid and flexible forms, and includes coatings and adhesives." The term does not include "natural rubber or naturally occurring polymers such as proteins or starches."

unreasonably low, with some being even lower than the federal Risk Management Program (RMP) threshold quantities. These low thresholds unreasonably burden members of the paint and coatings industry by subjecting ACA's members to additional reporting requirements and inspections. California's threshold quantities should conform with the federal RMP standards drafted and enforced by U.S. EPA.

5. California's Climate Corporate Data Accountability Act (SB 253) and Climate-Related Financial Risk Act (SB 261)

Under California SB 253, a company doing business in California with over $1 billion in total annual revenue is required to report its Scope 1 and Scope 2 greenhouse gas (GHG) emissions beginning in 2026 and its Scope 3 GHG emissions beginning in 2027. Under SB 261, a company doing business in California with over $500 million in total annual revenue is required to publish a biennial report disclosing its climate-related financial risks by January 1, 2026. Despite the laws' fast-approaching reporting deadlines, the California Air Resources Board (CARB) has yet to initiate the rulemaking process for SB 253 and SB 261. There are significant issues with the proposed rules, including how the agency will define 'total annual revenue' and the fee assessment formula.

ACA is also concerned about the growing list of California state rules that assess fees on companies to address similar air quality issues. Many members of the paint and coatings industry are already subject to other CARB reporting requirements and fee assessments. For instance, CARB imposes fees on certain architectural coatings manufacturers and consumer product manufacturers for volatile organic compound (VOC) emissions in the state of California. Similar fees are assessed in the South Coast Air Quality Management District as well. In addition, many companies are already subject to the requirements of AB 32, which requires a reduction in greenhouse gas emissions and fees to administer this program. This bewildering patch of requirements substantially burdens the movement of products otherwise compliant in the remainder of the U.S.

6. VOC regulations for architectural coatings and consumer products

State and local air districts that need emissions reductions to meet federal air quality requirements often target VOC emissions from architectural coatings and consumer products. Several states have implemented more stringent VOC restrictions for these products beyond U.S EPA's national rules[5] and the model rules adopted by the Ozone Transport Commission (OTC) or similar bodies. This has resulted in a patchwork of regulations for architectural coatings and consumer products throughout the country. To ensure compliance nationwide, coatings manufacturers are burdened with developing multiple product lines that can only be sold, supplied, or marketed for sale in certain parts of the country. For example, there are at least seven different architectural coatings rules and four different consumer products rules in effect in jurisdictions across the U.S. right now. The lack of consistency in architectural coatings and consumer products rules adds an unnecessary level of complexity for manufacturers, distributors, and end-users.

[5] See 40 CFR Part 59, Subpart C – National Volatile Organic Compound Emissions Standards for Consumer Products and 40 CFR Part 59, Subpart D – National Volatile Organic Compound Emissions Standards for Architectural Coatings.

A uniform approach to VOC emission rules would benefit the coatings industry tremendously. This can be accomplished by requiring states to adopt the OTC model rules without modifications or revising the national rules for architectural coatings and consumer products such that state rules would be unnecessary. Streamlining the regulations would also improve air quality in the U.S. while simultaneously easing industry's compliance concerns.

7. New York's registration and permitting requirements for anti-fouling paints regulated by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)

The State of New York is the only state that requires manufacturers of anti-fouling paints to obtain a state commercial permit (6 NYCRR Part 326) as a condition for sale. Once the permit has been obtained, it must be renewed every 2 years. As part of this ongoing permitting requirement, the manufacturer must have a certified technical applicator who is required to pass New York-specific certification test every 3 years (6 NYCRR Part 325). A further burdensome condition of the state's commercial permit is a requirement that a manufacturer file annual sales reports specific to New York.

FIFRA already provides an extensive system that applies nationwide to protect applicators of registered pesticides and pesticide-containing coatings such as anti-fouling paint. Additional layers of reporting, registration and permitting at the state level creates an economic and administrative burden, while largely replicating protections that already exist under federal law.

8. Data Privacy Laws in the States

State consumer privacy laws are not uniform and are extremely burdensome on companies operating digitally. To date, 19 states have passed such laws since 2020.[6] As more states begin to enforce consumer privacy laws, the privacy landscape has expanded in reach, and compliance has become more and more complex.

The elements of data privacy laws typically include a cure period, exemptions, inclusion of minors, and some states have included data minimization requirements. However, personally identifiable information has different definitions and different processing requirements as well as notice and retention obligations state by state. In addition, the data being regulated is not static and expands constantly. Websites, social channels, and other technologies process personal information every time there is interaction. Consequently, any business with an online presence has to consider every state law or be forced to limit the availability of their site or products to exclude certain states.

While there are technical "thresholds" in the privacy laws intended to clarify" a reasonable nexus" for purposes of determining application, companies expend significant resources for detailed tracking and expensive analysis (which is prone to miscalculation or misinterpretation given the extreme and often unpredictable flow of data) in order to determine compliance strategies.

[6] California, Virginia, Colorado, Utah, Connecticut, Delaware, Indiana, Iowa, Kentucky, Maryland, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, Oregon, Rhode Island, Tennessee, and Texas.

There are significant impacts to consumers as well. The average consumer does not understand the complexities and nuances of privacy data laws and may believe that their data is protected, when in fact, the particular activity may not meet the state's threshold. This disconnect leads to a high risk of litigation and a damaged reputation with customers.

This could be resolved by a federal privacy law applicable to all states which is written in consideration of and addresses how companies do business today in the global digital space.

This is a short sample of state rules or activities that result in barriers to innovation, high compliance costs, and an impairment of free commerce between the states. ACA is happy to continue this conversation and provide additional information on these and other state issues that could be addressed at the federal level.

Thank you for your consideration of ACA's comments. Please do not hesitate to contact me should you have any questions or require further clarification.

Best Regards,

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American Coatings Association, Inc.