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Mr. Nicholas J. Schilling, Jr.
Supervisory Official
Office of Legal Policy
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

RE: Request for Information on State Laws Having Significant Adverse Effects on the National Economy or Significant Adverse Effects on Interstate Commerce [Docket No. OLP-182]

Dear Mr. Schilling:

The Independent Lubricant Manufacturers Association (ILMA or Association) submits these comments on the above-referenced Request for Information. ILMA and its members appreciate President Trump and his Administration's efforts to alleviate unnecessary regulatory burdens and costs imposed on American businesses and consumers. As discussed below, state "extended producer responsibility" (EPR) laws for plastic and paper packaging "undermine federalism by projecting the regulatory preferences of a few States onto all States."[1]

I. Introduction of ILMA

ILMA represents 350 lubricant manufacturers, suppliers, and distributors of lubricants and related products in North America. Our Manufacturing Members — most of which are small and mid-sized businesses according to the U.S. Small Business Administration size standards — produce more than 25% of the automotive lubricants, 40% of the industrial lubricants, and 75% of the metalworking fluids sold in North America. What makes the Association's Manufacturing Members "independent" is that they are neither owned nor controlled by the companies that explore for or refine crude oil to produce lubricant base oils. Base oils are purchased from refiners and re-refiners, while lubricant additives are purchased from chemical companies. Independent

[1] Executive Order 14260 (Protecting American Energy from State Overreach) (90 Fed. Reg. 15513 (April 14, 2025)).

lubricant manufacturers combine these raw materials to manufacture high-quality, often specialized lubricants. A 2025 study of the U.S. lubricants market by S&P Global reveals that independent lubricant manufacturers in 2024 had $15.2 billion in sales activity, contributed $7.8 billion to GDP, and maintained 25,000 jobs that paid a total of $2.6 billion in wages.

Lubricants may not be highly visible, but our members' products are critical enablers of productivity, reliability, and safety across the U.S. economy. Lubricants are essential to keeping nearly every sector of our economy running. For example, the transportation sector (passenger cars, trucks, buses, aircraft, ships, and rail) depends on lubricants to support efficiency, lower emissions, and longer equipment life.

II. Introduction of Extended Producer Responsibility

EPR is a regulatory scheme intended to shift the responsibility for the end-of-life costs of a product's lifecycle (*i.e.,* disposal) from local governments and landfills to the producers themselves. To encourage a circular economy, the concept of EPR is to incentivize eco-conscious packaging design by producers, bolster recycling infrastructure, and reduce the amount of waste going into local landfills.

Originating in Europe and operating for many years in Canada, EPR legislation in the U.S. aims to *force* systemic environmental gains by forcing the sale of products at a price that accounts for the full cost of protecting the environment.[2] These EPR laws are modeled to mandate that producers join a "Producer Responsibility Organization" (PRO), a non-governmental entity that sets fees and manages the recycling program in the state. Producers register with, report to, and pay the PRO for their covered products. The PRO, in turn, distributes the collected fees to cover the costs of the municipalities' recycling programs. Unfortunately, rather than fostering sustainability and placing responsibility and enforcement on the stages of circularity that would have the most direct impact, especially consumer decisions on recycling empty plastic and paper packaging, EPR laws instead shift the punitive financial burdens up the supply chain to producers.

The challenge for ILMA members from EPR is with the packaging of lubricants and associated products in plastic bottles, jugs, pails and other containers up to 15 gallons in size. Because of the petroleum residues left in the plastic packaging after use, such packaging cannot be handled in the normal recycling stream with other plastics and often ends up in landfills.

The current state-level EPR laws that include lubricant products in covered plastic packaging represent an existential threat to the continued financial viability of independent lubricant manufacturers. Current fee structures, established by the privately run PRO without an open, transparent process, are unsustainable for small and medium-sized ILMA members, who typically operate on thin margins for commodity products, such as passenger car motor oils.

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[2] ILMA and its members have long been associated with end-of-life management of lubricants. The Association led the coalition in the 1980s and early 1990s that developed today's nationwide used oil recycling programs, creating a healthy re-refining industry and market for re-refined base oils.

As discussed in our detailed comments below, Federal action on EPR would provide national consistency (including cost allocation), reduce regulatory complexity, protect interstate commerce, and support sustainability and recycling goals. Without a Federal framework, ILMA members risk being disadvantaged in both domestic and global lubricant markets.

III. DOJ Should Take Action to Stop the Enforcement of State EPR Laws that Significantly Burden Interstate Commerce.

To date, seven states have enacted packaging EPR laws, each with significant variation in definitions, targets, reporting tools, and fee structures:

- Maine (2021): Fees and municipal reimbursement phases begin mid-2026 to 2027.
- Oregon (2022): EPR program has started with PRO registration and reporting already underway.
- California (SB 54, 2022): Ambitious targets with 25% packaging reduction, 65% recycling rate, 100% recyclability/compostability by 2032. Requires producer fee payments via the Plastic Pollution Mitigation Fund (up to $500 million annually). Rulemaking continues amid implementation pauses and efforts for a lubricant "carve out" and separate EPR program.
- Colorado (2022): Full EPR roll-out started in July 2025 with PRO registration and fee collection beginning in January 2026.
- Minnesota (2024): Producers to fund 50% of recycling costs by 2029, rising to 90% by 2031. By 2032, all packaging must be recyclable, reusable, compostable, or refillable.
- Maryland and Washington (2025): Recent legislative enactments; expected to set up PROs and create fee systems by mid-2026.

Other states — New York, New Jersey, Illinois, Tennessee, Rhode Island — are actively considering EPR or related packaging materials legislation.[3] In New York, for example, proposals include packaging reduction targets *(e.g.,* 30% by 2035), while in Tennessee, EPR legislation is labeled as a jobs creation bill. EPR advocates claim that one to two states per year will enact EPR programs.

The proliferation of state-level EPR laws presents a clear risk of impermissible burdens on interstate commerce under the Constitution's Commerce Clause,[4] which prohibits state legislation that unduly burdens national markets or regulates extraterritorial commerce. For the lubricants industry, which depends on multi-state distribution networks, consistent supply chains, and

[3] Vermont is implementing a "household hazardous waste" law that mirrors EPR in many ways and includes automotive and auto care products.
[4] Article I, Section 8, Clause 3 of the U.S. Constitution.

standardized packaging, fragmented EPR requirements — including differing definitions, reporting obligations, and fee structures — create significant compliance complexity and inevitably burden interstate commerce. For example, ILMA members, as producers, must develop or overhaul their accounting systems to track SKU-level packaging data (including on a state-by-state basis), assign accurate material classifications, estimate weight-based fees, and maintain auditable records as they attempt to interpret and comply with the evolving and fragmented state-specific EPR mandates.

The Department of Justice (DOJ) should consider legal actions to invalidate state EPR laws because they discriminate against interstate commerce or unduly burden interstate commerce. Often such burdens are the result of inconsistent regulation of activities that inherently are national in scope or require a uniform system of regulation. *See, e.g., Nat'l Ass'n of Optometrists & Opticians v. Harris,* 682 F.3rd 1144, 1148 (9th Cir. 2012).

State EPR laws discriminate against out-of-state producers in several ways in violation of the Commerce Clause. States with EPR laws dictate to out-of-state producers that the *only* way to do business in the state is to contract with the private PRO, pay the non-reviewable fees, and make the reports mandated by the PRO.[5] These state EPR laws have the effect of compelling the producer to alter its packaging design and sourcing decisions in the non-EPR states in which it does business, thereby impeding the free flow of packaged products across state lines.[6] Here, for ILMA members operating in multiple states, the burdens created on them by the state EPR laws, as well as the disruption to national markets, is not outweighed by speculative and likely marginal reductions to in-state disposal.[7] *See, e.g., National Pork Producers Council v. Ross,* 598 U.S. 356, 374 (2023).

In addition to the burdens on producers, EPR also places additional burdens on national distribution networks for lubricants. For example, the definition of a "producer" varies across the EPR states, so there are conflicts about the party responsible for reporting and paying the fees. Further, if a producer does not have a distribution center in a particular EPR state, but the company sells its products to a customer who then distributes the products into an EPR state, the producer becomes accountable even though it had no knowledge of, or influence on, where the product was eventually sold. The reporting requirements under the EPR law also place a burdensome requirement on the distributor to force its customers to provide confidential business information

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[5] State EPR laws contain a "small business" exemption; however, the sales revenue and plastic packaging thresholds are too low to be meaningful for independent lubricant manufacturers.

[6] This is complicated by states (*e.g.,* California and New Jersey) that mandate increasing use of "post-consumer resin" (PCR) in plastic packaging. If an ILMA member must make a 30% PCR bottle for California, and a 50% PCR bottle for New Jersey, the company is going to make a 50% PCR bottle because it cannot control where its product goes after it enters the distribution system. Similarly, if an ILMA member in California sells a 30% PCR bottle online to a customer in New Jersey, the product instantly is non-compliant in New Jersey. Apart from this problem, the higher percentage of PCR in a lubricant bottle creates structural integrity and compatibility issues, leading to higher potential for leakage, creating waste and safety issues because a particular state decides the "magic number" as the PCR percentage.

[7] State EPR laws not only reshape U.S. markets, but also affect global trade flows, supply chains, and demand for materials. It turns state regulators into global ones.

(*i.e.,* customer sales into an EPR state). It only takes one refusal to make the distributor non-compliant, as would be the case with the producer up the supply chain.

EPR is a textbook example of where involvement by the Federal government is warranted. For example, an ILMA member may sell products in 25 states, but the company cannot easily redesign its packaging to meet California's EPR law while at the same time complying with different rules in Oregon and Colorado. In effect, and as noted above, a state patchwork approach disrupts the uniformity of the lubricants supply chain from packaging to distribution. These burdens are particularly excessive when weighed against the speculative and unquantified environmental benefits claimed by the states. The likely balkanization from the varied state EPR programs means that independent lubricant manufacturers will not be competing on a level playing field when they need to navigate the growing maze of state-specific EPR requirements. These EPR laws deprive ILMA members from making competitive decisions, instead forcing them to make product packaging and design, sourcing, and distribution decisions consistent with the standards set by the PRO in a particular EPR state.

IV. DOJ Should Scrutinize the Fee Setting Process by PROs Under the Antitrust Laws.

Beyond constitutional concerns related to interstate burdens, EPR programs threaten competition and inflate costs for consumers, such as in engine oils markets. Fee structures determined by private PROs, influenced by a few major stakeholders, disproportionately impact small-and mid-sized lubricant manufacturers and should be scrutinized by DOJ under Federal antitrust laws.

Under Colorado's EPR program, the Lubricant Packaging Management Association (LPMA) was created by four major oil companies (ExxonMobil, Chevron, Shell and BP/Castrol) and Valvoline, supposedly to be a less expensive, non-profit alternative PRO to another PRO, the Circular Action Alliance (CAA). ExxonMobil, Shell and Chevron (who are Supplier Members of ILMA) sell base oils to the Association's Manufacturing Members and then directly compete against them in the finished products market.

Before Colorado's Department of Public Health and Environment gave its final approval to LPMA on September 10, 2025, as an approved PRO for lubricant products sold in the State, LPMA has set its implementation fee of $0.56 per gallon for lubricant products packaged in any type of container up to 15 gallons.[8] This flat fee ignores the actual amount of packaging material used and fails to recognize source reduction or lightweighting measures already undertaken by manufacturers. For many ILMA Manufacturing Members producing commodity lubricants, such as passenger car motor oils, their gross margin per gallon is less than $0.56. That means the EPR fee effectively eliminates their ability to sell competitively in Colorado, creating a regulatory barrier to market participation. The large integrated oil companies, by contrast, can absorb or pass

[8] Interestingly, Colorado's enabling statute required all producers to join a PRO by July 1, 2025, even though neither LPMA nor CAA were approved by that date. Colorado's statutory scheme imposes compliance burdens and potential penalties on producers before the State has even adopted an EPR program with quantifiable and objective requirements.

through the implementation fee by rolling it into the pricing of their base oils or other product lines, effectively squeezing out their smaller competitors and shifting the demand away from "Main Street."

LPMA's implementation fee for Colorado was set behind closed doors by a handful of major oil companies without comment from either affected producers doing business in the State or the public. There is no evidence that LPMA considered equitable factors, including the likely effect of a $0.56 per gallon implementation fee on competitors of all sizes.[9] The only apparent way for a registrant to challenge the $0.56 per gallon implementation fee is through a confidential arbitration with LPMA. The result in Colorado is going to be a lubricant market where independent manufacturers are squeezed out, product diversity shrinks, and consumers will face rising prices not because of product innovation or efficiency, but because the State's EPR framework unfairly distorts competition. Reduced competition inevitably diminishes pricing discipline and creates conditions for higher retail prices, particularly where consumer choice is already limited.

CAA also deserves scrutiny. It is the only approved PRO in all EPR states, and it has disproportionately and discriminatorily applied EPR fees to the lubricants industry, creating an inequitable burden by effectively forcing independent lubricant manufacturers to subsidize the fees owed by consumer products, food and beverages, and other household product industries. CAA is largely comprised of major consumer brands that primarily sell food and beverages and household goods. CAA's current EPR fee in Oregon for plastic lubricant containers is $2.73 per pound, while the EPR fees for other household rigid plastics range from $0.17 to $0.55 per pound of plastic.[10] In addition to the non-transparent fee structure established by LPMA in Colorado, CAA's 16x multiple on EPR fees in Oregon for lubricant industry containers is further proof that an antitrust investigation by DOJ is warranted.

V. Preempting State EPR Patchwork Through a National Framework is the Most Effective Solution to Address Interstate Burdens.

While supportive of the goals of circularity, ILMA opposes state EPR laws that create inefficiencies and unnecessary compliance and financial burdens on independent lubricant manufacturers, contrary to President Trump's Executive Orders 14192, 14219, 14270, and 14260. These laws effectively act as a tax that is unevenly applied. State EPR laws transfer responsibility for waste streams and recycling from municipalities to producers without any form of political accountability. Citizens continue to demand services, municipalities reduce their budgets, and producers are left to foot the bill where there is no control over how the citizens handle their waste, as none of the EPR laws do anything to incentivize or address in any manner environmentally

[9] LPMA's implementation fee of $0.56 per gallon in Colorado apparently was set without an analysis of the direct and indirect costs of EPR implementation within the State, and without regard to the statutory cap on program administrative costs. Indeed, it appears that LPMA's flat, per-gallon fee in Colorado is the same as at least five other states, demonstrating a lack of a defensible program-specific analysis.
[10] One larger ILMA member estimates its first-year EPR cost in Oregon alone to be approximately $4 million.

responsible behaviors by consumers.[11] Thus, EPR blurs the lines between public and private responsibility for what has long been a core function of local governments. Municipalities decide how to allocate resources for collection, recycling, and landfill use, and citizens can hold their local officials accountable for those choices.

Federalism is designed to balance the authority of the states with the powers of the Federal government. While states are free to regulate within their borders, and as discussed above, they cannot do so in a manner that imposes extraterritorial mandates or erects significant obstacles to the free flow of commerce among the states. State EPR laws threaten this balance by effectively imposing national obligations through state legislation. The practical effect of a single state EPR law is to dictate business practices well beyond its borders.[12] That is not the role envisioned by the states under the Constitution.

EPR laws are promoted as innovative environmental policy, but they are in fact an end-run around federalism. They conscript private industry into performing what is traditionally a public function, while distorting the constitutional balance between state authority and national economic unity. If policymakers wish to pursue producer-funded recycling, the appropriate venue is Congress, not a patchwork of state legislatures acting without regard to constitutional limits.

What began as a commendable policy tool to promote recycling and circularity has become a source of intense regulatory fragmentation, uncertainty, and rising costs, with major financial impacts expected to cascade through supply chains to consumers. Thus, ILMA urges the Administration to consider supporting the establishment of a national framework that would bring uniformity to EPR and would preempt state action.

VI. The U.S. Environmental Protection Agency Has the Subject-Matter Expertise to Manage a National Waste Reduction Program for Packaging.

The U.S. Environmental Agency (EPA) is uniquely positioned to administer a national program under its existing statutes, including the Resource Conservation and Recovery Act. The Administration can work with Congress and EPA to set consistent standards for packaging management, data reporting, and end-of-life responsibility.

ILMA stands ready to work with the Trump Administration and Congress to ensure a cohesive system can achieve the environmental objectives of EPR in the lubricants industry in a harmonized fashion. After all, a harmonized framework minimizes burdens on interstate commerce and allows small and medium-sized manufacturers to remain competitive, maintain

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[11] The typical objection of local recyclers for curbside collection of lubricant containers is that they do not have the necessary wastewater permits to manage oily residues in their recycling processes. There should be potential deregulation or alternate pathways to enable better curbside management of plastic lubricant containers.
[12] State-by-state challenges by private litigants is available, and a case is already pending in Oregon (*Nat'l Ass'n of Wholesalers-Distributors v. Oregon Dept. of Environmental Quality, et al.,* Case No. 3:25-cv-1334 (D. Ore.)). However, such litigation places as additional financial burden on affected producers and is far less efficient than Federal intervention.

efficient supply chains, and continue supplying essential products to our economy nationwide without being subject to conflicting state mandates.

VII. Conclusion

EPR may be well-intentioned, but such intentions do not override constitutional design. Federalism exists not to frustrate environmental policy but to ensure that such initiatives are designed in ways that respect both local autonomy and national unity. To date, state EPR laws fail this test. They function as extraterritorial regulations, unduly burden interstate commerce, and erode the public accountability inherent in traditional municipal waste management. Further, the Trump Administration's goal of strengthening the U.S. economy is undermined by this growing myriad of state laws that would disproportionately impact this country's small-and mid-sized lubricant manufacturers. Instead of a patchwork of conflicting state EPR mandates, if producer-funded waste management is to exist at all, it must be debated and enacted by Congress. This is the only way to ensure uniformity, fairness, and accountability consistent with our constitutional system of federalism.

ILMA appreciates this opportunity to comment. We would welcome the opportunity to meet with DOJ and other Executive branch representatives to discuss this important matter for independent lubricant manufacturers.

If you have any questions regarding this letter, please contact the Association's General Counsel, Jeffrey Leiter (jleiter@bmalaw.net), or Regulatory Counsel, Jorge Roman (jroman@bmalaw.net).

Sincerely,

ILMA CEO

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