

**Testimony in OPPOSITION
to
H779, S471, and S572
in
Massachusetts Joint Committee on Environment, Natural Resources, and Agriculture
on
June 14, 2023**

The Flexible Packaging Association (FPA) is submitting testimony in opposition to House Bill 779, Senate Bill 471, and Senate Bill 572 (herein referred to as MA EPR Bills), which all purport to establish extended producer responsibility (EPR) programs for packaging and paper.

I am Sam Schlaich, Counsel, Government Affairs of FPA, which represents flexible packaging manufacturers and suppliers to the industry in the U.S. Flexible packaging represents \$39 billion in annual sales; is the second largest, and fastest growing segment of the packaging industry; and employs approximately 78,000 workers in the United States. Flexible packaging is produced from paper, plastic, film, aluminum foil, or any combination of these materials, and includes bags, pouches, labels, liners, wraps, rollstock, and other flexible products.

These are products that you and I use every day – including hermetically sealed food and beverage products such as cereal, bread, frozen meals, infant formula, and juice; as well as sterile health and beauty items and pharmaceuticals, such as aspirin, shampoo, feminine hygiene products, and disinfecting wipes. Even packaging for pet food uses flexible packaging to deliver fresh and healthy meals to a variety of animals. Flexible packaging is also used for medical device packaging to ensure that the products packaged, diagnostic tests, IV solutions and sets, syringes, catheters, intubation tubes, isolation gowns, and other personal protective equipment maintain their sterility and efficacy at the time of use. Trash and medical waste receptacles use can liners to manage business, institutional, medical, and household waste. E-commerce delivery, which became increasingly important during the COVID-19 pandemic, is also heavily supported by the flexible packaging industry.

Thus, FPA and its members are particularly interested in solving the plastic pollution issue and increasing the recycling of solid waste from packaging. Unfortunately, we do not believe that the MA EPR Bills being heard today, as written, will accomplish these goals. Flexible packaging is in a unique situation as it is one of the most environmentally sustainable packaging types from a water and energy consumption, product-to-package ratio, transportation efficiency, food waste, and greenhouse gas emissions reduction standpoint, but circularity options are limited. There is no single solution that can be applied to all communities when it comes to the best way to collect, sort, and process flexible packaging waste. Viability is influenced by existing equipment and infrastructure; material collection methods and rates; volume and mix; and demand for the recovered material. Single material flexible packaging, which is approximately half of the flexible packaging waste generated, can be mechanically recycled through store drop-off programs, however, end markets are scarce. The other half can be used to generate new feedstock, whether through pyrolysis, gasification, or fuel blending, but again, if this is not considered recycling, which it would not be under the MA EPR Bills and there are no end markets for the products, these efforts will be stranded, and flexible packaging will never realize full circularity.

Developing end-of-life solutions for flexible packaging is a work in progress and FPA is partnering with other manufacturers, recyclers, retailers, waste management companies, brand owners, and other organizations to continue making strides toward total packaging recovery. Some examples include The Recycling Partnership (TRP); the Materials Recovery for the Future (MRFF) project; the Hefty® EnergyBag® Program; and the University of Florida's Advanced Recycling Program. All of these programs seek to increase the collection and recycling of flexible packaging and increasing the recycled content of new products that will not only create markets for the products but will serve as a policy driver for the creation of a new collection, sortation, and processing infrastructure for the valuable materials that make up flexible packaging.

FPA believes that a suite of options is needed to address the lack of infrastructure for non-readily recyclable packaging materials and promotion and support of market development for recycled products is an important lever to build that infrastructure. We also believe that EPR can be used to promote this needed shift in recycling in the U.S. In fact, FPA worked with the Product Stewardship Institute (PSI) and jointly drafted a set of principles to guide EPR for flexible packaging (<https://www.flexpack.org/end-of-packaging-life>). Massachusetts was part of this dialogue which

looked at the problems and opportunities for EPR to address the needs of the flexible packaging industry to reach full circularity. It is with this background that FPA provides this testimony to improve the MA EPR Bills so that any EPR program in the state provides the necessary elements for the improvement of collection and infrastructure investment and development of advanced recycling systems to allow for collection and recycling to a broader array of today's packaging materials, including flexible packaging; and quality sorting and markets for currently difficult-to-recycle materials.

As currently drafted, the **definitions of "Readily Recyclable," "Recyclable," and "Recycling" are overly restrictive** and problematic. The MA EPR Bills provide that advanced recycling technologies are not considered recycling. Furthermore, these bills not only prohibit advanced recycling technologies, including pyrolysis and gasification, from being considered recycling but prohibit new and novel processes that have yet to be developed, stifling progress and innovation. Advanced recycling technologies can process plastics that do not otherwise have strong end markets, thus enabling a more circular economy for plastics. In addition to benefiting the environment, advanced recycling provides important economic benefits. As the American Chemistry Council reports, more than \$7.5 billion in advanced recycling projects have been announced or are already operating in the United States, with the potential to divert 11.7 billion pounds of waste from landfills. And, while this technology may be new to Massachusetts, across the country, private companies are already manufacturing post-use plastics at a commercial scale into a versatile mix of valuable new products.

Advanced recycling enables our ability to remake many "hard-to-recycle" plastics which cannot be recycled through mechanical recycling operations. Advanced recycling helps us decrease plastic waste converting materials back into their basic chemical building blocks. It supports continued progress toward zero waste and sustainability goals for communities and states and it enables us to turn more plastics into a wide variety of new products—including highly regulated applications such as food-grade packaging— instead of landfilling them.

FPA is also concerned that the MA EPR Bills give **far too broad and prescriptive authority to the Department** to dictate much of what should be the Producer Responsibility Organization (PRO)'s responsibility. This includes producer fees to the PRO, including modulation of those fees and not only what costs are to be covered through service providers, but how much those service providers

will be paid. Further, the Department will dictate what is and isn't recyclable, presumably based on current infrastructure and end markets and the Department has to approve any investment in new infrastructure. FPA questions why a PRO is needed if the Department is going to make all the decisions. If the PRO is to be responsible for the program, it must have the authority to determine what the costs of the program will be, based on goals established in the plan, and then set its own fees to members and negotiate freely for service providers to accomplish goals. It appears that a substantial portion of the money collected on the PRO's products under the MA EPR Bills will largely go towards refill and reuse infrastructure and not to the advanced infrastructure needed to take all packaging products, and with the Department dictating the terms, there is very little ability for the wholesale change needed to the current system, let alone building the system of the future.

Another significant concern is that the MA EPR Bills stand to establish some of the most severe and **restrictive reduction and recycling rates** in the nation. Attempting to adopt and enforce the proposed rates in this measure would be devastating to Massachusetts's recycling efforts and economy. The rates and dates outlined are quite simply impracticable and in part unattainable given today's present recycling infrastructure and technology. In addition, these faulty targets are too rigid and fail to account for the unpredictable and at times volatile nature of markets and the economy.

FPA is also concerned about an **overly broad toxicity provision** in the MA EPR Bills. It does not appear to use any risk assessment or consider the specific use of a packaging component when determining whether or not a package would be deemed a health concern and/or non-recyclable, when there may be zero correlation between the listed chemicals in packaging and actual potential harm. One of the most concerning aspects of this provision is that it threatens to upend benefits provided by quality packaging by banning entire classes of chemistry that contribute to the unique properties of packaging materials that make them so effective. This proposal ignores a broad consensus between the scientific community and leading government authoritative bodies. For example, individual compounds within the respective PFAS and phthalate families are not the same. These chemical compounds have varying properties, uses, and environmental and health profiles. In fact, the Environmental Protection Agency (EPA), Food and Drug Administration (FDA), the Interstate Technology and Regulatory Council, and Organization for Economic Co-operation and Development (OECD) have all recognized this to be the case.

Finally, the antitrust protections for the supply chain implementing this new system, including fees on packaging, are not sufficient. Massachusetts cannot be less stringent than the federal antitrust regulations and **must comply with the “State Action Doctrine”** in order to give the PRO and producers the limited antitrust exemption needed to implement an EPR scheme.

For these reasons, FPA respectfully opposes the current MA EPR Bills but stands ready to assist in amending the bills so that any Massachusetts scheme comports with the PSI/FPA elements and supports a meaningful, effective EPR program for packaging, which would provide the necessary investment in new infrastructure and markets for all packaging, including flexible packaging.

In advance, thank you for your consideration. If we can provide further information or answer any questions, please do not hesitate to contact me at 410-694-0800 or SSchlaich@Flexpack.org.

Respectfully,

Sam Schlaich

Sam H. Schlaich, J.D.

Government Affairs Counsel, FPA