

Testimony in OPPOSITION
to
NJ S.208
in the
Senate Environment and Energy Committee
May 13, 2024

The Flexible Packaging Association (FPA) is submitting testimony **in opposition to NJ S.208** which directs the Department of Environmental Protection to establish an extended producer responsibility (EPR) mandate in the State of New Jersey.

I. Background on FPA & Flexible Packaging

I am John Richard, Director of Government Relations at FPA, which represents flexible packaging manufacturers and suppliers to the industry in the U.S. Flexible packaging represents \$42.9 billion in annual sales; is the second largest and fastest-growing segment of the packaging industry; and employs approximately 85,000 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, like 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. Carry-out and takeout food containers and e-commerce delivery, which became increasingly important during the pandemic, are 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 NJ S.208 as written will provide consumers in New Jersey with a durable, effective EPR program.

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.

Developing end-of-life solutions for flexible packaging is a work in progress, and FPA is partnering with 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® ReNew® Program; and the Consortium for Waste Circularity. All of these programs seek to increase the collection and recycling of flexible packaging and increase 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.

It is FPA's position that a suite of options is needed to address the lack of infrastructure for non-readily recyclable packaging materials. Promoting and supporting market development for recycled products is an important lever to build that infrastructure. FPA also supports well-crafted EPR that can be used to promote this needed shift in recycling in the U.S. 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>). The dialogue looked at the problems and opportunities for EPR to address the needs of the flexible packaging industry to reach full circularity.

With this background, FPA provides this testimony to improve the New Jersey extended producer responsibility bill to support a well-crafted EPR program. This would provide New Jersey with the

necessary elements to improve collection and infrastructure investment and development of advanced recycling systems, allowing for the collection and recycling of a broader array of today's packaging materials—including flexible packaging—and quality sorting and markets for currently difficult-to-recycle materials.

II. Producer Definition Renders EPR Unimplementable

As currently drafted, the definition of “producer” is vague, potentially targeting upstream converters who do not know where packaging is sold and thus rendering the program unimplementable. Following other packaging EPR programs throughout the country and internationally, the definition of the producer should be the owner of the item that uses packaging to protect, contain, transport, or serve the item and not the manufacturer (or converter) of the packaging.

The primary responsibility for fee collection, remittance, and reporting must be on the entities that can track the amount of product in a given jurisdiction and control how products are packaged, not the packaging converters. Packaging manufacturers would have no way to determine where the packaging is sold, and even in some cases, to what shipping company. Packaging converters sell packaging, which may then be used for product lines within their portfolio and sold throughout the country. Even when packaging is sold directly to a company in New Jersey, packaging converters have no way of knowing whether the final product (that uses the packaging) will be sold in or out of the state. Therefore, for an effective EPR program to work, producers must correctly be defined as the entities responsible for getting products to consumers, in this case, the brands responsible for manufacturing the products.

III. Necessary Exemptions for Critical Goods & Realistic Performance Goals

While FPA supports extended producer responsibility to drive circularity and improve environmental outcomes, several critical products must be exempted from EPR programs. The Sterilization Packaging Manufacturers' Council develops rigorous medical device packaging specifications that adhere to ASTM International standards to ensure the integrity of flexible barrier materials. If these types of packaging were forced into the recycling system or if they were subject to recycled content requirements, New Jerseyans would not be guaranteed access to life-saving healthcare. FPA and its members request an amendment to the bill that provides an exemption for medical device packaging from the EPR program. This exemption should also apply to animal biologics for many of the same reasons. FPA and its members also urge consideration of exemptions for other critical goods like infant formula, medical food, and packaging regulated by the Federal Insecticide, Fungicide, and Rodenticide Act. Any post-

consumer recycled content mandate should have to weigh the tradeoffs in food safety against any increase in PCR before being applied to food packaging.

S.208 correctly directs the Department of Environmental Protection to consult with producers to identify a minimum post-consumer recycled content rate but subsequently mandates an arbitrary and staggering 75% for single-use packaging products. Depending on the packaging type and what it is protecting, a 75% recycled content mandate could structurally impair the packaging, potentially damaging and contaminating the packaged item. Rates should be set ideally after a comprehensive needs assessment, but at a minimum in consultation with producers and not via an arbitrary threshold set in legislation.

IV. Advanced Recycling Should Be Utilized to Accomplish Science-Based Recycling Goals

Common advanced recycling technologies like pyrolysis, gasification, and depolymerization convert used plastics that would be considered waste into high-value materials using methods that are regularly deployed in other industries. Despite being a nascent industry compared to other materials that have had centuries to figure out how to design for a circular economy, our industry has voluntarily invested over \$7 billion, which has led to a massive 21 billion pounds of plastic waste being diverted from landfills across the nation each year. In time, we are confident that engineers and chemists will be able to definitively make the case for a circular plastics economy.

The Flexible Packaging Association requests that advanced recycling be included in the definition of “recycling” and “post-consumer recycled material.” FPA is encouraged by the inclusion of a process to develop alternative recycling infrastructure for newer, more effective materials like flexible packaging.

V. Reasonable Costs to Producers

FPA and its members support well-crafted EPR that can be used to promote this needed shift in recycling in the United States. While FPA’s members are wholly committed to addressing plastic pollution, asking producers to pay for New Jersey’s recycling system for covered materials in full with no maximum payment threshold threatens the long-term success of the EPR program. It is likely also to lead to unintended policy consequences within the waste supply chain. Ideally, FPA supports EPR schemes where the taxes on items using packaging would pay for the collection, sortation, and infrastructure that supports that packaging type.

VI. Producer Responsibility Organizations Require Antitrust Protections

S.208 indicates that groups of producers will be required to come together to reduce packaging through product design and program innovations while collectively designing and implementing innovative reuse processes. Anytime competitors are in the same room, they are prohibited by antitrust law from discussing or agreeing on anything to do with price—and strategies impacting market share are central to pricing. FPA and its members request that an antitrust exemption limited to the specific purposes of the producer responsibility organization be included in the legislation to avoid a costly legal quagmire when funds would be better spent reclaiming our materials.

VII. Conclusion & Next Steps

For these reasons, FPA opposes the current S.208 but stands ready to support a future version that creates a strong foundation for a meaningful 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 (443) 534-3771 or jrichard@flexpack.org.

Respectfully,

A handwritten signature in black ink that reads "John J. Richard". The signature is written in a cursive, flowing style.

John J. Richard
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Flexible Packaging Association