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September 15, 2025

Nicholas J. Schilling, Jr., Supervisory Official
Office of Legal Policy
U.S. Department of Justice
950 Pennsylvania Ave. NW
Washington, DC 20530

Submitted electronically via <https://www.regulations.gov>

Re: Request for Information on State Laws Having Significant Adverse Effects on the National Economy or Significant Adverse Effects on Interstate Commerce (Docket No. OAG182)

Dear Mr. Schilling,

The Flexible Packaging Association (FPA) appreciates this opportunity to comment on the U.S. Department of Justice **Request for Information on State Laws Having Significant Adverse Effects on the National Economy or Significant Adverse Effects on Interstate Commerce** published in the *Federal Register* on August 15, 2025 (Docket No. OAG182). The RFI “seeks information pertaining to State laws, regulations, causes of action, policies, and practices (collectively, State laws) that adversely affect interstate commerce and business activities in other States.”

The FPA represents flexible packaging manufacturers and suppliers to the industry in the United States. Flexible packaging represents \$42.9 billion in annual sales and employs approximately 83,000 workers in the United States. Flexible packaging is produced from compostable or non-

compostable paper, plastic, film, aluminum foil, or any combination of these materials, and includes bags, pouches, labels, liners, wraps, roll stock, and other flexible products.

In response to the RFI, following are the FPA's thoughts on existing state laws causing significant burden on commerce in other states and between states, whether those laws may be preempted by existing Federal authority, whether there may be federal legislative or regulatory means for addressing those state laws, and which federal agencies have subject-matter expertise to lawfully address those concerns.

Extended Producer Responsibility (EPR)

Extended producer responsibility (EPR) laws shift accountability for product end-of-life management from consumers and local government to producers. FPA strongly supports EPR for packaging. However, the rapid emergence of U.S. state packaging EPR Laws with significant variability in scope, definitions, and requirements has become problematic. This complexity raises the cost of compliance without improving outcomes and creates barriers to interstate commerce due to the misalignment of schemes and conflict with the role of solid waste management for the U.S. Environmental Protection Agency (EPA) under the federal Resource Conservation and Recovery Act.

This is particularly problematic in states that combine EPR with other policy initiatives that can make compliance even more challenging. For example, California has a packaging EPR law that is intended to build out new recycling infrastructure for materials that are not being adequately addressed by the status quo. California has a separate but associated recyclability labeling law that is based on the status-quo of a sampling of aging, traditional recycling infrastructure, limiting a producer's ability to effectively communicate to consumers information needed to make the most of the new infrastructure intended to be developed under the packaging EPR law.

These laws are also not consistent in what materials are covered materials, how covered materials are categorized, or even how "producer" (the entity responsible for paying the fees) is defined.

This can be particularly challenging for intermediate packaging manufacturers that might be included in the producer definition, even though they have no way to identify where a final product is sold. FPA supports packaging EPR that correctly define the “producer” of an item as the brand owner of the item that is being sold. Flexible packaging manufacturers do not control the design of a package that is sold into an individual state. Similarly, the brand owners that sell the same product in multiple-states face significant hurdles, as they cannot reasonably design different packaging for each state without a significant cost increase to consumers. Therefore, the more state EPR laws deviate from one another, the more they burden interstate commerce. Federal intervention to drive EPR harmonization could support the goals of improving recycling while reducing the burden to interstate commerce.

Labeling

The U.S. Federal Trade Commission (FTC) Guides for the Use of Environmental Marketing Claims (“Green Guides”) provide interpretations of the FTC Act to help companies make truthful and non-misleading environmental claims on their products. However, state level labeling laws that prohibit claims permitted under the Green Guides promote consumer confusion and cause interstate commerce issues. Because packaging manufacturers have no control over where products in their packaging are sold, and even brand owners would face significant challenges, as the companies that distribute their products are often separate from the brand itself. State laws and regulations that conflict with one another prevent brand owners and packaging manufacturers from reasonably being able to comply. For example, since 1992 Delaware has required the display of a resin identification code (RIC) inside a “chasing arrows” symbol for various plastic packaging formats (Delaware Code Title 7, Chapter 60, Subchapter VII, Section 6092). A new California law (California Public Resources Code, Division 30, Chapter 5.7, Section 42355.51) that is set to go into full effect in October 2026 will require the removal of chasing arrows from packaging based upon the capabilities of California infrastructure and the recycling habits of its citizens. These two laws are incompatible with interstate commerce and, if both are in full effect at the same time, will place significant burdens on manufacturers, are likely to lead to supply chain disruptions, and are likely to increase cost or reduce choice for consumers.

Counterintuitively, the California “truth in labeling” law is likely lead to consumer confusion and more—not less—packaging going to landfill if allowed to go into full effect next year, as it will immediately conflict with up to 30 other states with different requirements for recyclability labeling. There are several other states considering their own “truth in labeling” laws, and FPA is opposed to these state-level efforts.

One solution FPA strongly supports is a federal law, such as proposed in the Packaging Claims and Knowledge (PACK) Act being shepherded by AMERIPEN—the American Institute for Packaging and the Environment—and is awaiting introduction into Congress. The PACK Act would establish federal requirements for the labeling of packaging for compostability, recyclability, and reusability, with oversight by the FTC that already maintains jurisdiction over guidance for product marketing claims through the Green Guides. A key feature of the PACK Act is that it would preempt these conflicting state laws that place undue burdens on interstate commerce. We believe this approach, which will also support existing national labeling programs such as How2Recycle and the Biodegradable Product Institute (BPI) certification program for compostable labeling, will prevent an interruption of interstate commerce, and will lead to more consumers properly handling flexible packaging at its end of life.

Chemicals and Materials in Packaging

There is also a growing patchwork of state laws related to chemicals and packaging. FPA recommends regulation for these materials continue under the direction of federal agencies, such as the U.S. Food and Drug Administration (FDA) Office of Food Chemical Safety that has primary control over chemical safety in packaging for food, drugs, cosmetics, and medical devices under the Federal Food, Drug, and Cosmetic Act. Having a patchwork of state toxics laws with varying degrees of scientific validity outside of existing federal processes places a significant burden on interstate commerce.

FPA recommends a single science-backed process to provide clarity to supply chains and consumers alike. Unfortunately, this can be a challenge at the state level. A notable example from the most recent session of the New York State Legislature is A.1749 – a packaging EPR proposal. The proposal would have established a New York Department of Environmental Conservation (DEC) standard for adding substances to the state toxic list that requires some semblance of scientific support and a separate list of substances that the bill’s authors desired to see banned, that had not gone through that process. Neither of those two processes conforms to the separate, more science-backed process put forward in 2019’s S.501B for toxic chemicals in children’s products that emphasized working with expert scientists, identifying high-priority chemicals, and making decisions on those chemistries when warranted by the best available risk assessment science on thousands of products. Manufacturers need a single national framework to provide scientific rigor and economic certainty while preventing interstate commerce issues.

Banning on a state-by-state basis highly-specialized chemistries and packaging formats that have gone through rigorous scientific evaluation and federal approval places undue burdens on interstate commerce. This problem is magnified when bans occur and there is no approved replacement chemistry or packaging material or format, which may lead to supply chain interruptions.

Recycled Content Mandates and Use

There is a strong desire and need for flexible packaging converters (manufacturers) and brand owners to use more recycled content in their packaging products, whether to meet stated company or organizational (e.g., Ellen MacArthur Foundation Global Commitment) sustainability goals or to meet emerging state EPR or recycled content requirements for packaging. FPA believes there is an opportunity to ensure we direct higher value material to the right processes, and an opportunity for government to support and incentivize the use of durables for lower grade recycled content, including through government procurement, while supporting R&D investments made for higher grade uses.

FPA is generally supportive of helping its members increase recycled content in their packaging products, but not through unachievable or unreasonable government requirements that treat all packaging the same and therefore do not recognize certain unique attributes or needs of some flexible packaging (i.e., for food and medical) that may need to limit the use of recycled content.

A good example of proposed legislation that does not properly differentiate products is California 2025 Assembly Bill 973, which would have required all “packaging overwrap and shrink wrap”, “lawn and garden plastic film bags,” “industrial plastic film bags,” and “plastic trash bags” in California to meet ambitious 30% post-consumer recycled (PCR) content of plastic by weight goals. These broad categories were undefined in the proposal and would have affected a wide range of flexible packaging products. While it is true a 30% threshold can be used in some applications of the products these categories were trying to target, it is also true that there are several applications where a 30% PCR content will result in package failure and the destruction of the items being protected. In the case where a product cannot meet a 30% PCR content goal for those reasons, it would be banned in the state of California, leading to interstate commerce issues when products cannot be properly packaged for shipping.

Another example is that of California 2022 Senate Bill 1013 that added wine and distilled spirits sold in boxes, bladders, pouches or similar containers to be added to the California Redemption Value (CRV) program associated with California 2023 Senate Bill 353 that subjects this plastic packaging to a minimum PCR content of 25-50%. New Jersey also has a law requiring the use of PCR content in certain containers and packaging products. While rigid beverage containers made from polyethylene terephthalate (PET) plastic are capable of including PCR content, there are insufficient quantities of PCR content materials approved for food contact to allow flexible pouches and bladders to comply with these laws.

To prevent interstate commerce issues, state-led PCR content laws should be targeted at highly specific product categories for uses that are technically feasible and have proper exemptions for federally regulated products in statute. For example, the FDA uses a Letter of No Objection (LNO)

program to assess suitability of recycled content for food-contact use. FPA believes this should be incorporated as specific uses and exemptions if a state legislature passes a PCR content law for food-contact packaging. If broad categories and high PCR rates are to be included, an easily navigable waiver process must be included for products with valid technical reasons to not have this requirement apply.

An additional interstate commerce issue that would arise out of a packaging ban is when a PCR content law may interact with a toxics in packaging ban. State level programs that mandate recycled content for packaging materials potentially conflict with other states that ban materials, including recycled materials that may contain PFAS and can conflict with federal regulations covering use of recycled content. States should provide PCR content exemptions in state-driven toxics laws if trace amounts of targeted substances can be found in recycled content in order to prevent a de facto ban on packaging.

Advanced Recycling

FPA is supportive of advanced recycling—sometimes also referred to as chemical or molecular recycling. Common advanced recycling technologies, such as pyrolysis, gasification, and depolymerization, can convert used plastics that would otherwise be considered waste into high-value recycled plastic using methods that are regularly deployed in other industries. Despite being a relatively nascent industry for recycling applications, compared to recycling technologies that have had decades to figure out how to process certain packaging formats and materials for a more circular economy, according to the American Chemistry Council the global petrochemical industry has voluntarily invested over \$7 billion into these new recycling technologies, leading to a massive 21 billion pounds of plastic waste being diverted from landfills each year.

With Wyoming being the 25th state to proactively regulate advanced recycling as a manufacturing process, half of our states have a proper regulatory framework for plastic recycling. Several states like Illinois, Ohio, Texas, and Kansas recognize advanced recycling as “recycling” along with recognizing third-party certified mass balance allocation for recycled materials. Conversely, other

states have or are attempting to incorrectly classify these processes as waste disposal instead of recycling. These contradictions can limit markets for both companies that want to sell sorted material for recycling and companies that want to source material for recycling. It also discourages possible customers from purchasing recycled material for use in their packages because of the patchwork of regulations to ease interstate commerce issues that arise from the states with no regulatory or conflicting regulatory frameworks, federal laws and regulations should prevent new state-based restrictive frameworks that would hinder investment, by proactively defining advanced recycling as a valid form of recycling. FPA therefore recommends creating a national standard for advanced recycling.

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Thank you in advance for your consideration of FPA's comments regarding the Department of Justice Request for Information on State Laws Having Significant Adverse Effects on the National Economy or Significant Adverse Effects on Interstate Commerce (Docket No. OAG182), and please don't hesitate to contact me at (410) 694-0825 or dfelton@flexpack.org if we may be of any further assistance.

Sincerely,



Dan Felton

President & CEO

Flexible Packaging Association