Flexible Packaging Association
Connecting. Advancing. Leading.

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The Honorable Thomas Carper
Chair, Committee on Environment and Public Works
United States Senate
Washington, DC 20510

The Honorable Shelley Moore Capito
Ranking Member, Committee on Environment and Public Works
United States Senate
Washington, DC 20510

Dear Chairman Carper and Ranking Member Capito:

On behalf of the Flexible Packaging Association (FPA), I write to commend the Committee on Environment and Public Works (EPW) for its continued efforts to improve recycling across the U.S., including the March 6, 2024, hearing on Examining Extended Producer Responsibility Policies for Consumer Packaging. FPA and its members strongly agree with Senator Capito's sentiment during her opening statement that "acknowledging our continued reliance on plastic and working to prevent plastic pollution are not mutually exclusive." Toward this end, FPA remains committed to supporting the improvement and expansion of recycling and composting, therefore, provide our input on this important topic.

The Flexible Packaging Industry & FPA

I am Alison Keane, President and CEO of FPA, which represents flexible packaging manufacturers and suppliers to the industry in the United States. 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 take-out 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.

Flexible packaging is in a unique situation as it is one of the most environmentally sustainable packaging types from water and energy consumption, product-to-package ratio, transportation efficiency, food waste, and greenhouse gas emissions reduction standpoint; however, 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, but 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 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® ReNew® Program; and the University of Florida's Advanced Recycling Program. All these programs seek to increase the collection and recycling of flexible packaging. Increasing the recycled content of new products will not only create markets for the products but will also 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.

Flexible Packaging is the Sustainable Material of Choice

As Senator Capito pointed out, a common misconception our industry faces is that because the U.S. faces a plastic pollution problem, the material itself must be "unsustainable." This could not be further from the truth. Flexible packaging refers to a diverse set of highly engineered package types that tailor their chemistries to best protect a given product. These unique chemistries help preserve food and extend its shelf life through, for example, the use of modified air packaging so that less food is lost or wasted, while also lowering the greenhouse gas footprint of that loss and waste. A report by the Oregon Department of Environmental Protection on the role of packaging and food waste found for meat, for example, the average carbon footprint of food production was almost 12 times that of the carbon footprint of processing and packaging. Similar ratios were found in all food categories.

There is a reason why only about 50% of flexible packaging is mechanically recyclable—as 50% of flexible packaging is single material. The rest are multi-material laminates. Multiple materials are required to provide the appropriate barrier protection to prevent contamination, extend freshness, and ultimately protect the product by providing puncture, tear, and burst resistance and strength. When assessing sustainability or examining the full life cycle of packaging, flexible packaging wins hands down. Flexible packaging uses fewer

resources, generates fewer emissions, and creates less waste. This is because flexible packaging starts with using fewer materials and resources than other packaging types and can package the most product in the least amount of packaging possible, reducing energy use, water use, and greenhouse gas emissions in the manufacturing and transportation of the package and product.

For example, producing a flexible foodservice pouch requires 75% less energy and generates just 1/10 of CO2 emissions during production than a metal can for the equivalent amount of product. One and a half pounds of flexible packaging will package the same amount of beverage or liquid as 50 pounds of glass. Advancements in materials and production processes have reduced the weight of some flexible packaging by up to 50%. A study by the Natural Resources Defense Council shows that up to 40% of food in the U.S. is wasted; wasted food is the single largest source of greenhouse gas emissions from solid waste in the U.S. Flexible packaging reduces this waste by preserving the shelf life of food—bananas last 36 days in perforated polyethylene bags versus five days unpackaged, and the shelf life of beef is extended from four days to 30 days when vacuum packed in oxygen barrier film. These are just two of numerous examples where flexible packaging is helping to reduce food waste. Flexible packaging does the same for brick-and-mortar retail and e-commerce—by protecting and preserving the product during shipping and transportation with the least amount of packaging necessary, less waste and returns are generated.

Even when disposed of, flexible packaging has the advantage of having less waste than other packaging types. When comparing coffee in a steel can with a plastic lid versus a stand-up multi-material pouch, the recycling rate for the steel can (one of the most recycled products in the U.S.) would need to increase from **71%** to **93%,** and the plastic (LDPE) lid would need to go from **21%** to **75%** for the steel coffee can to have the same amount of landfilled material as the stand-up flexible pouch (assuming a **0%** recycling rate for the pouch). This is just one of six case studies FPA commissioned using the Environmental Protection Agencies' EcoImpact-COMPASS® lifecycle assessment tool. These case studies can be found at flexpack.org.

Finally, if the coronavirus pandemic taught us anything, it is the need to preserve sterile packaging for food, health and hygiene products, personal protective equipment, and medical and pharmaceutical goods. Therefore, all policy options must take into account the very real environmental and health benefits of today's packaging outside of its potential for recycling and composting alone. Banning these products could have serious unintended negative environmental and health consequences as substitutions and alternatives used may have a much larger environmental footprint. The picking of winners and losers, like banning materials and packaging, or setting arbitrary fees based solely on recyclability, discounts climate change, food safety and security, and potential innovations that could solve for both source reduction and recyclability/reuse.

EPR and Flexible Packaging

As Senators Capito and Carper pointed out during the hearing, the industry often caveats discussions about EPR with phrases like "if done correctly" and "the devil is in the details."

That is because EPR legislation has the potential to unleash the power of American business investment to improve our mismanaged recycling system or to ban materials based on a poor understanding of life cycle analysis. In addition to the varied policies within each EPR proposal, the patchwork and conflicting nature of state laws makes it difficult for our members to comply when designing packaging. Finally, some states combined labeling and toxics legislation that frequently conflicts with federal standards into their EPR proposals, further complicating implementation. FPA and its members generally believe that the Federal Government can play a part in harmonizing state EPR definitions, labeling laws, and preventing material bans. Some initial areas EPW may want to examine for federal legislation are:

- **Producer Definitions:** The primary responsibility for fee collection, remittance, and reporting must be on the consumer packaged goods companies (CPGs), which encompasses food manufacturers and retailers in their role as brand owners. They, and not the producers of the packaging (converters), have the ability to track consumer sales in a given jurisdiction and control how products are packaged. Packaging producers (converters) would have no way to determine where the packaging is sold and even in some cases to what brand/CPG packaging producers sell packaging to, which may then get used by multiple brands, brands within larger CPG portfolios, and ultimately sold throughout the country. Even when packaging is sold directly to a brand in a jurisdiction, packaging producers 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 with final sales data, in this case, CPGs who will then pass costs along the supply chain as economics allows.

- **Antitrust Protection:** EPR legislation requires producers to come together to discuss topics like market share, fees for differing packaging types, product design, and program innovations. 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 often advocate for a narrow antitrust exemption for the producer responsibility organization to be included in any potential EPR legislation to avoid a costly legal quagmire if anyone decides to challenge the program. This limited exemption, which comports to the State Action Doctrine, is included in the vast amount of EPR laws on the books today (i.e., paint, batteries, mattresses, and the four packaging laws already passed).

- **Critical Good Exemptions:** 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 guidelines 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, Americans would not be guaranteed access to life-

saving healthcare. FPA and its members often advocate for exemptions 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.

- **Labeling Restrictions:** FPA's members need clear directions for consumers on what is not yet recyclable to eliminate the significant contamination currently rendering many ready recyclable packaging formats unacceptable for recycling and instead destined for landfills. Product producers and their packaging manufacturers cannot be expected to produce a 50+ state labeling solution (and in some schemes, municipal-level requirements). We manufacture goods for the entire U.S., and in some cases, North America and globally. The environmental impacts and excess waste created by labeling products for individual states will be disastrous. In addition, critical goods will often not be able to travel across state lines due to differing labeling requirements, making a federal solution necessary to mitigate mass supply chain disruption.

- **Recycling:** Plastic is a newer material compared to the industrial-age materials commonly found in the recycling bin, and our nation's recycling system still caters to older materials due to a lack of modernization. Accounting for the ways our industry has innovated around this issue is of paramount importance in EPR law, and for the future of flexible packaging generally. Despite unanimous agreement from the hearing's witnesses that advanced recycling is an important and effective tool for our industry in addressing plastic pollution, some ill-informed groups are still trying to ban advanced recycling technologies in state law. In addition, many EPR laws leave the issue of including alternative collection sites like store drop-off programs up to state agencies – potentially excluding valuable material from EPR strategies. The federal government should ensure EPR programs are material-neutral in order to foster innovation and preserve the most effective packaging types while spurring investment in modernizing the U.S. recycling system to collect, sort, and process all packaging types.

- **Composting:** Compostable packaging is an important innovation that also needs to be supported with EPR. The U.S. industrial composting system is too scarce for the average consumer, with very few communities having access. In addition, most industrial composting programs for households do not accept the related food packaging, be it paper, biobased plastic, or another compostable format. Thus, composting options must be scaled across the nation with proper education provided to consumers, and the U.S. must spur investment in industrial composting and ensure that related packaging is accepted with the organics. The FPA supports the Recycling and Composting Accountability Act as it strives to improve our nation's recycling system from a material-neutral perspective.

FPA appreciates the opportunity to engage in the Committee's initial foray into federal EPR legislation. 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 akeane@flexpack.org.

Sincerely,

Alison Keane, Esq., CAE, IOM
President & CEO