

Testimony in OPPOSITION
to
HB 1688
in
House Committee on Environment & Energy on
February 8, 2024

The Flexible Packaging Association (FPA) is submitting testimony **in opposition to HB 1688**, which directs the Department of Health to conduct a statewide recycling needs assessment in the State of Hawaii.

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 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. Unfortunately, we do not believe HB 1688 as written will provide a solid foundation for Hawaii's critical 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 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.

It is FPA's position 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. FPA also supports well-crafted EPR that 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>). The dialogue 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 HI needs assessment bill in order to support a well-crafted EPR program. A well-crafted EPR program in the state would provide the necessary elements for the improvement of collection and infrastructure investment and development of advanced recycling systems to allow 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

As currently drafted, the definition of *producer* is erroneous and could lead to the bill being unimplementable. Despite suggesting the brand owner as one of the entities selling packaging materials into the market, the definition does not necessarily preclude a packaging manufacturer within the value chain from being captured. 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 producer of the packaging in order for the EPR program to work.

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, which may then use it for multiple brands within their portfolio and sell throughout the country. Even when packaging is sold directly to a brand in Hawaii, 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.

III. Producer Responsibility Organizations & Their Role in EPR

HH 1688 directs the Department of Health to consult with producer responsibility organizations but provides no method or antitrust exemptions for creating them. U.S. law prohibits competitors from gathering to discuss price, costs, market shares, sales, and market allocation – some of which must be examined in order to form a producer responsibility organization. The first step to establishing a PRO is to provide an exemption for competitors to focus on the formation, fee schedule and cost allocations for a program. FPA also requests that a formal process be established to form a PRO be included in

the bill and that the assessment be conducted after its formation so that a complete picture of the necessary materials data can be obtained.

IV. Existing Collection Infrastructure & Equity

FPA strongly agrees with HB 1688's consideration of how extended producer responsibility could increase equity. As stated above, flexible packaging has led the way in reducing environmental impacts, such as energy and water use, greenhouse gas emissions and less packaging weight and waste; it is also significant in preventing food loss and waste.

HB 1688 directs the Department of Health to examine the critical issue of access to refuse, recycling, and compost collection services. Because many materials recovery facilities have not invested in newer mechanical recycling or advanced recycling technologies, flexible packaging is not often accepted through curbside collection programs. Many stores recognize the benefits of recycling bags and films and host store drop-off programs to combine and add value to their existing "back of the house" programs for products like pallet wrap and shipping materials. In order to get a complete picture of recycling access for plastics, these programs must be considered in the Department's needs assessment.

HB 1688 also directs the Department to examine whether sortation technology is up to date. While sortation is critical to reduce contamination, materials recovery facilities should be comprehensively examined for investments in the latest mechanical and advanced recycling technologies to determine where circularity investments need to be made.

V. Conclusion & Next Steps

For these reasons, FPA opposes the current HB 1688 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 cursive script that reads "John J. Richard".

John J. Richard
Director, Government Affairs
Flexible Packaging Association