

July 26, 2024

State of Oregon Department of Environmental Quality
Plastic Pollution & Recycling Modernization Act, Rulemaking 2
Submitted Electronically at recycling.2024@deq.oregon.gov

The Flexible Packaging Association (FPA) is submitting in response to the Department of Environmental Quality's Plastic Pollution & Recycling Modernization Act Second Rulemaking, which aims to implement the extended producer responsibility (EPR) program outlined in the Plastic Pollution and Recycling Modernization Act of 2021.

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 \$43 billion in annual sales; is on par with corrugated cardboard as the largest and fastest growing packaging type in the U.S.; and employs over 81,000 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. While FPA greatly applauds the progress the Department of Environmental Quality has made, there are still several changes necessary to provide Oregonians 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 for the best way to collect, sort, and process flexible packaging waste. Existing equipment and infrastructure influences viability; 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; the Consortium for Waste Circularity, and the Flexible Film Recycling Alliance (FFRA). All of 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.

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 ([FlexPack.org/end-of-packaging-life](https://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 these comments to improve the Plastic Pollution and Recycling Modernization Act rulemaking.

II. Life Cycle Analysis Should Utilize Unbiased Metrics

As currently drafted, the regulation correctly identified life cycle analysis as the best method for determining material fees and impacts. Unfortunately, OAR 340-090-0930's Table of Weighting Factors includes metrics that specifically evaluate plastic when all materials could be evaluated equally. For example, the category "plastic physical impact on aquatic biota" is important, but all materials should be subject to the same evaluation. Aluminum, paper, and glass all have well-documented effects on marine life and should be evaluated similarly to provide the best data to regulators.^{1,2,3} FPA and its members request that the categories be made material-neutral in the Department's next draft.

III. "Credible Evidence" of Unintentionally Added PFAS Should Be Further Defined

Because the threshold for the Department of Environmental Quality (DEQ) to presume PFAS as intentionally added is "any total fluorine," the onus is on producers to document and provide evidence that PFAS has only been used as processing aids, mold release agents, and in other non-material applications. FPA and its members request further explanation on the documentation that DEQ will consider "credible evidence" before these regulations are finalized.

IV. "Ready to Eat" Definition for Food Serveware is Vague & Difficult to Implement

OAR 340-090-0840 (1)(b)(D)(d) defines food serveware as "used to contain or consume food or drink that is ready to eat." In order to identify which products would be subject to the EPR framework, a clear definition of "ready to eat" must be provided. While some products like uncooked meat are self-

¹ U.S. EPA, "Aquatic Life Criteria – Aluminum," (Washington D.C., 2024). <https://www.epa.gov/wqc/aquatic-life-criteria-aluminum>.

² Sing & Chandra, "National Institutes of Health: Pollutants released from the pulp paper industry: Aquatic toxicity and their health hazards" (Washington D.C., 2019). <https://pubmed.ncbi.nlm.nih.gov/31029991/>.

³ Kumari, Agarwal, and Khan, "Micro/nano glass pollution as an emerging pollutant in near future" (Washington D.C., 2022). <https://www.sciencedirect.com/science/article/pii/S2772416622000201>.

explanatory, fresh fruit and vegetables pose a more difficult challenge. It is also important to note that FPA's members sell film to grocery stores and have no knowledge of how that film is used or on what products. Being multiple steps removed from the actual application of the material makes it nearly impossible to accurately quantify our members' obligation as a producer of this material.

IV. Trash Bags Are Fundamentally Incompatible With EPR

FPA and its members strongly support EPR programs to create much-needed infrastructure for our products to achieve circularity. In OAR 340-090-0840 Covered Products (1)(a), DEQ interprets Section 2 (18)(a)(C) of the Plastic Pollution and Recycling Modernization Act to include garbage bags as "packaging" by listing them as "materials used in storage." This is antithetical to the principles of EPR. The OECD, UN, WWF, and Ellen MacArthur Foundation all agree that EPR is not a tax, but rather a fee that pays for a service.⁴ Trash bags are by their nature destined for landfill and should not have to pay a fee for recovery infrastructure unless the Department of Environmental Quality is pioneering a program to collect and recycle bags from landfills. FPA and its members request that they be removed from the packaging covered under Oregon's EPR program.

VII. Conclusion & Next Steps

We welcome the opportunity to connect with you in order to achieve these changes. 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,



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⁴ OECD Environment Policy Paper No. 41, "Extended Producer Responsibility: Basic facts and key principles," (Paris, 2024). https://www.oecd.org/en/publications/extended-producer-responsibility_67587b0b-en.html