

New York State Assembly
Standing Committee on Codes
LOB 623
Albany, NY 12248

May 7, 2024

Dear New York State Assembly Codes Committee Members,

The Flexible Packaging Association (FPA) is **strongly opposed to NY A 5322B**, which directs the Department of Environmental Conservation to establish a flawed Extended Producer Responsibility program in the State of New York.

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 A 5322B as written will provide New Yorkers 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 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 New York extended producer responsibility bill in order to support a well-crafted EPR program. This would provide New York 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” in cases where products are sold or distributed to consumers via remote sale or distribution is 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 have the ability to 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 York, 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 entity responsible for shipping the products.

FPA requests that the definition of producer be amended to correctly identify the shipping company as the producer of packaging materials in a way that mirrors the brand owner being the responsible entity for physical retail locations.

III. 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.

A common myth that our Association constantly must dispel is that advanced recycling is just burning plastic waste through incineration; in reality, this type of recycling relies on cutting-edge technologies that purposefully operate with little to no oxygen (allowing for the recovery of material). Furthermore, advanced recycling produces emissions equal to or lower than similar facilities in other industries with the added benefit of no measurable lead or dioxin emissions. All advanced recycling facilities are subject to the same Clean Air Act standards as mechanical recycling and often outcompete those facilities on environmental indicators. If manufacturers of flexible packaging are expected to meet arbitrary recycling targets of 75% by 2050, innovative recycling methods should be encouraged rather than banned.

The Flexible Packaging Association requests that advanced recycling be included in the definition of “recycling” and “post-consumer recycled material.” FPA also requests that recycling should be developed following the establishment of an EPR law and with proper study of the recycling system or markets in New York through a statewide needs assessment, potentially using the ongoing study by the Center for Sustainable Materials Management and SUNY College of Environmental Science and Forestry for reliable, expedient goal-setting.

IV. A 5322B’s Processes for Determining Toxic Substances Are Inconsistent

In order to prevent a patchwork of state toxics lists that may contradict each other, the FPA recommends adopting the Federal Toxic Substances Control Act Chemical Substances Inventory as a working list of “toxic substances.” In the case where a state desires to add substances with less scientific evidence of toxicity than the TSCA Inventory, FPA recommends a single science-backed process to provide clarity to supply chains and consumers alike. A 5322B establishes a Department of Environmental Conservation standard for adding substances that require some semblance of scientific support and a separate list of substances that the bill’s authors desire to see banned. Neither of these processes conforms to the separate, more science-backed process put forward in 2019’s S501B 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. FPA strongly recommends a single

science-backed process for determining toxicity for substances that do not have the scientific consensus required for the TSCA inventory.

V. Needs Assessment, Equity, and Education

FPA strongly agrees with A 5322B'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 increasing food access while preventing food loss and waste. Any needs assessment must consider impacts to food access, food waste, and the overall lifecycle of products that any plastic packaging reduction will have. All educational efforts should help consumers make informed decisions on packaging using an unbiased set of metrics and should instruct consumers on the benefits of and how to use innovative packaging technology like modified atmosphere packaging.

VI. Reasonable Costs to Producers

As stated above, 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 York's recycling system in full with no maximum payment threshold is unreasonable and threatens the long-term success of the EPR program. It is likely also lead to unintended policy consequences along the waste supply chain.

VII. Conclusion & Next Steps

For these reasons, FPA opposes the current A 5322B 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,



John J. Richard
Director, Government Affairs
Flexible Packaging Association