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Testimony
on
Washington Senate Bill 5284
in the
Washington House Committee on Environment & Energy

March 17, 2025

Dear Chair Doglio, Vice-Chair Hunt, Ranking Member Dye, Assistant Ranking Member Klicker, and Members of the Washington House Committee on Environment & Energy,

The Flexible Packaging Association (FPA) appreciates the opportunity to submit testimony on Senate Bill 5284 (Lovelett), which would establish an Extended Producer Responsibility (EPR) for packaging program in the State of Washington. While we appreciate the intent of the legislation and the work that has gone into it, we are not able to support it as this time and welcome additional amendments.

I. Background on FPA and Flexible Packaging

FPA 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 and deeply committed to solving the plastic waste issue and increasing the recycling of all packaging. FPA commends Senator Lovelett, Rep. Berry and their staff on the efforts made to improve SB 5284 from previous versions of packaging EPR legislation we have seen considered in Washington State.

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 standpoints. But circularity options for flexible packaging are currently 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. 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 primarily through store drop-off programs; however, end markets are scarce. The other half can be used to generate new feedstock, through pyrolysis and gasification.

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 these programs are seeking to increase the collection and recycling of flexible packaging. Also, increasing the recycled content of new products, including packaging, 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 packaging 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 SB 5284 even further. This will provide Washington State 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. FPA Sees Marked Improvement in EPR Bill From Last Session

When SB 5284 was introduced last session as SB 6005, FPA requested technical corrections to how "producer" would be defined within the bill and is pleased to see those changes have been made. In addition, FPA is also pleased to see that the bill is now aligned with federal antitrust regulations and the "State Action Doctrine" to give the producer responsibility organization (PRO) and producers the limited antitrust exemption needed to implement an effective and successful packaging EPR program.

III. FPA Requests Timeline Adjustments to Ensure Funds Are Invested in Infrastructure

As FPA pointed out last session, while the proposed EPR program is scheduled to start collecting fees from covered producers on September 1, 2026, the PRO plan and program is not scheduled to start until 2030. The $5 million a year, in addition to registration and regulatory reimbursement to the Washington State Department of Ecology, is not for implementation of the program and instead would go to the Department for unspecified "financial assistance" to various entities for reuse programs. FPA requests that the timelines and dates in HB 1150 be updated to ensure a cohesive program that ties these funds more directly to recycling infrastructure.

IV. FPA Requests Material Neutrality as Best Practice in EPR Laws

FPA follows established best practices for designing and implementing packaging extended producer responsibility programs. As packaging EPR is actively considered and implemented in the U.S., it is critical to keep in mind that EPR is not about picking winners and losers through over aggressive performance goals, including source reduction, but about bringing economic externalities back to producers and letting the market decide the best packaging for the job. The Organization for Economic Co-operation and Development (OECD) goes further, stating that at its core, EPR is "**Not a tax**, EPR

compliance schemes may trigger a fee for producers, but the fee **pays for a service.**"[1] In fact, the OECD does not approve source reduction in any of its policy recommendations surrounding EPR because it violates those market principles that allow for the funding of public infrastructure with private dollars. An unbiased set of metrics should guide eco-modulation fees that go directly into funding infrastructure for those materials. FPA requests the material-specific source reduction requirements be stripped from the bill.

V. Producers Should Be Free to Build Recycling Infrastructure

This session, SB 5284 has included a section that would prohibit entities deemed "producers" from fully or partially owning recycling infrastructure in which the PRO invests. FPA's members have been hard at work developing and investing in solutions for historically under recycled materials. Many have developed solutions that work for their products and this provision could cause a chilling effect on innovation in Washington State's recycling sector while punishing those most committed to circularity. FPA requests that manufacturers who have prioritized circularity be allowed to fairly compete for infrastructure investments in such.

VI. Advanced Recycling Should Be Subject to the Same Requirements as Traditional Recycling

Common advanced recycling technologies like pyrolysis, gasification, and depolymerization convert used plastics that would otherwise 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 decades to figure out how to design for a circular economy, the advanced recycling industry has voluntarily invested over $7 billion in the U.S., which has led to a massive 21 billion pounds of plastic waste being diverted from landfills across the nation each year.[2] 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, when 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

[1] Jo Tindall, OECD Policy Perspectives: "Extended Producer Responsibility: Basic facts and key principles." (Washington D.C., 2024).

[2] America's Plastic Makers: "Advanced Recycling Can Help Us Recycle A Lot More Plastics" (Washington D.C., 2024).

industries, with the added benefit of no measurable lead or dioxin emissions.[2] All advanced recycling facilities are subject to the same federal Clean Air Act standards as mechanical recycling and often outcompete those facilities on additional environmental indicators. FPA therefore requests that advanced recycling be treated the same as traditional recycling in any packaging EPR legislation that advances Washington State.

VII. Conclusion & Next Steps

For reasons outlined above, FPA stands ready to work towards and support an amended future version of SB 5284 that will create a sound and strong foundation for a meaningful and successful EPR program for packaging in Washington State. FPA and its members wish to note that the authors of this bill have gotten a lot right, from antitrust protection for the PRO, to the producer definition, to PRO-led performance goals. We look forward to working with you to 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