

Testimony in Opposition
to
Legislative Bill 607
in the
Nebraska Natural Resources Committee

February 27, 2025

Dear Chair Brandt, Vice-Chair DeKay, and Members of the Natural Resources Committee,

The Flexible Packaging Association (FPA) appreciates the opportunity to submit testimony in opposition to Legislative Bill 607 (Bostar), which provides positive changes to Nebraska's advanced recycling definition, but directs the Department of Environment and Ecology to begin establishing an problematic EPR program, and establishes onerous minimum recycled content requirements on packaging.

I. Background on FPA and Flexible Packaging

FPA 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 and deeply committed to solving the plastic waste issue and increasing the recycling of all 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 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 was the first trade Association to support the Minnesota EPR law, which was the only successful EPR proposal to become law last year. It is with this background that FPA provides this testimony to oppose LB607.

II. FPA Appreciates the Author's Thoughtful Contributions to Advanced Recycling

FPA is strongly supportive of the author's changes to the advanced recycling definitions, their commitment to a mass-balance approach, and the use of third-party certification. 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.¹ 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 industries with the added benefit of no measurable lead or dioxin emissions.² All advanced recycling facilities are subject to the same Clean Air Act standards as mechanical recycling and often outcompete those facilities on environmental indicators.

In compiling evidence for the FTC's Green Guides, which are developed to ensure truth in advertising, the American Chemistry Council's plastics division partnered with Heart + Mind Strategies to field an independent nationally representative survey that showed a staggering 88%

¹ Ross Eisenberg & Craig Cookson, *Advanced Recycling: Remaking Plastics to Meet Sustainability Goals* (Washington D.C.: American Chemistry Council, 2023), 2-3.

² Eisenberg & Cookson, 3.

of Americans consider advanced recycling to be recycling.³ Our members know that consumers view advanced recycling as an important part of fixing our nation's woefully inadequate recycling system and have been proactively developing the technologies to address the resulting waste.

III. FPA Supports Well-Crafted and Data-Driven EPR

LB 607 directs the Department of Environment and Ecology to register and collect fees from packaging producers in order to inform a potential future EPR bill. In other states where EPR has been established, this data collection is led by a Producer Responsibility Organization that is responsible for keeping sensitive information confidential and implementing the program. FPA requests that the Nebraska program also be PRO-led.

In addition, FPA supports a comprehensive needs assessment process before the implementation of any EPR program for packaging in Nebraska, similar to the ongoing assessments in Maryland and Illinois. A needs assessment will provide a wholistic picture of the recycling landscape in Nebraska that accounts for traditional recycling, advanced recycling, and the drop-off programs that flexibles are often recycled through. FPA is a founding member of the Flexible Film Recycling Alliance, which has launched a film drop-off locator that can provide some of the necessary data that includes, for example, Targets, Walmarts, and Hy-Vees in Lincoln where film can be recycled. This data will provide the necessary information to base performance goals off of in a final EPR bill. FPA looks forward to supporting a future bill where this data is incorporated.

IV. FPA Strongly Urges the Exclusion of Flexibles From the 30% PCR Mandate

FPA opposes the inclusion of the potentially broad category of plastic overwrap in the Minimum Recycled Content Act. Without a narrow definition, these PCR requirements may apply a wide category of products that cannot tolerate 30% PCR. FPA does applaud the exemptions provided for food and medical packaging but requests a more product-targeted approach to PCR mandates. FPA is happy to work with the bill's authors on language that incentivizes PCR where possible while allowing for flexibility where technical challenges exist.

V. Conclusion & Next Steps

³ Matthew Kastner, *Advanced Recycling Is Recycling, 88% of Americans Say in Survey* (Washington D.C.: American Chemistry Council, 2023).

FPA is overall opposed to the current LB607 but does support the advanced recycling provisions. We are happy to discuss any of these issues with you and your staff before your vote. If we can provide further information or answer any questions in advance of your decision, please do not hesitate to contact me at (410) 694-0824 or jrichard@flexpack.org.

Respectfully,

A handwritten signature in black ink that reads "John J. Richard". The signature is written in a cursive style with a large initial "J" and "R".

John J. Richard
Director, Government Affairs
Flexible Packaging Association