

**Input on Discussion Draft:
PRODUCER RESPONSIBILITY FOR PRODUCT AND PACKAGING WASTE**

11/21/2019

Thank you for the opportunity to submit input on the Udall/Lowenthal discussion draft legislation: Producer Responsibility For Product And Packaging Waste (Discussion Draft). I am Alison Keane, President and CEO of the Flexible Packaging Association (FPA). FPA is the voice of U.S. manufacturers of flexible packaging and their suppliers. The Association's mission is connecting, advancing, and leading the flexible packaging industry. Flexible packaging represents over \$31 billion in annual sales in the U.S. and is the second largest, and fastest growing segment of the packaging industry. The industry employs approximately 80,000 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, candy, salty snacks, yogurt, and beverages; as well as sterile health and beauty items and pharmaceuticals, such as aspirin, shampoo, feminine hygiene products and shaving cream. Flexible packaging is also used for medical device packaging to ensure that the products packaged, such as absorbable sutures, human tissue, and artificial joints, maintain their sterility and efficacy at the time of use. Even packaging for pet food and treats uses flexible packaging to deliver fresh and healthy meals to a variety of animals.

FPA appreciates the opportunity to submit input on potential legislation proposing an extended producer responsibility (EPR) program in the U.S. for packaging. In this regard, FPA has some overall objectives for any proposed EPR program. First, FPA would oppose any legislation that would give the Environmental Protection Agency (EPA) unfettered power to institute regulations to impose an extended producer responsibility program. FPA believes the specifics of the program should be outlined in the legislation itself. FPA would also oppose a program based on arbitrary goals of solid waste reduction and that would impose arbitrary compliance dates. Legislation enacting an EPR program for packaging must take into account full life-cycle implications of packaging materials, not just end-of-life, including the principles of sustainable materials management. In addition, the legislation must provide clarity for industry on what items are covered, who is responsible, the oversight roles, and most importantly, be tied to specific and reasonable goals to achieve the outcome desired – recovery and recycling of packaging waste in the U.S.

Federal Preemption

Any federal program must cover all packaging types, including packaging already regulated by local and state laws, so that there is one system and not the myriad of state and local government systems that exist today. Thus, the legislation must provide for federal preemption of state and local laws. It will be difficult enough to provide for packaging goals that are federally mandated, when packaging is a global commodity; but impossible if industry is also subjected to various state, county and city laws as well.

Reimbursements

FPA does not support merely “reimbursement” to any entities, whether state, local, or private for solid waste collection, management and recycling. If the purpose of the legislation is to truly establish a federal solid waste system for packaging that will be the responsibility of

the producers of the products and packaging, instead of state and local governments, producers must have the ability to contract freely for the management and payment of services for their system. If, according to the Discussion Draft, the program must provide “reimbursement of not less than 100 percent of the cost to the entity of managing the covered material, including, as applicable, administrative costs, sorting, and reprocessing.” FPA would suggest that the legislation does not envision an actual EPR program. As written now, the Discussion Draft is merely a new funding mechanism for state and local solid waste infrastructure under the guise of EPR and without regard to taxes already paid for such by U.S. residents. Importantly, the Discussion Draft does not address how government entities receiving this 100% reimbursement will account for taxpayer funding for the current system and what should be the reduction of these taxes considering a new system covering all the costs.

Again, if the program is to truly be the responsibility of the producers – they must also be able to set the fee rates for different types of packaging based on the true costs of recovery and management, and not be tied to the an arbitrary fee system as suggested by Discussion Draft, setting fees based only on recyclability and non-recyclability. The Discussion Draft’s attempt to impose different rates for current end-of-life outcomes for current packaging will have the opposite effect of its apparent goal of encouraging packaging design based only on recyclability. Instead, this legislation will not only stifle innovation, but most likely result in negative impacts to the environment, including increases in greenhouse gas emissions. In fact, replacing plastics in packaging and consumer products with alternative materials simply based on recyclability could raise environmental costs nearly fourfold, according to the Alliance to End Plastic Waste.

Advisory Committee

FPA believes the Advisory Committee envisioned by the Discussion Draft is fraught with potential conflicts of interests, particularly when members might be paid for participation. The EPA is ultimately responsible for the oversight of the program and producer responsibility. As such, having EPA sit on the Advisory Committee is also troubling. The purpose of the Committee(s) is unclear and appears to merely add a layer of unnecessary bureaucracy over and above EPA's established authority outlined in the Discussion Draft.

Anti-trust Protection

Finally, while FPA appreciates the attempt to provide for anti-trust protection in the Discussion Draft, it does not appear to give the specificity necessary to exempt any producers or a producer organization that work collectively with competitors and the supply chain from federal and state anti-trust laws.

End-of-Life Management

FPA understands the importance of reducing and recycling solid waste to minimize litter and optimize landfill space to truly achieve a circular economy. There is no single solution that can be applied to all communities when it comes to the best way to collect, sort, and process packaging waste, particularly 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 through store drop-off programs. The other half can be used to generate new feedstock, whether through pyrolysis, chemical recycling, gasification, or fuel blending. Developing other end-of-life solutions is a work in progress and FPA is partnering with other manufacturers, recyclers, retailers, waste management companies, brand owners, and additional organizations to continue making

strides toward total packaging recovery. Some examples include the Materials Recovery for the Future or MRFF project; the Hefty® EnergyBag® Program; and the University of Florida's Advanced Recycling Program.

Materials Recovery for the Future or MRFF project

The mission of the MRFF project is simple – flexible packaging material is recycled and the recovery community derives value from it. The project has piloted tweaks to current material recovery facility (MRF) infrastructure to help establish methods and equipment protocol for flexible packaging. This year, the project embarked on a full-scale demonstration at a MRF in Pennsylvania. The results of this could be used by MRFs across the country to mechanically recycle flexible packaging, particularly multi-material laminates. The project is also working on downstream uses for the materials generated through recovery. Analyzing the economics of recycling flexible packaging is just as important as proving the technical capacity to separate and process this material. As there is very specific work being done on the end-of-life management options for flexible packaging through this program, any legislation introduced should not mandate reduction, recovery, recycling, and composting of packaging materials where there not a robust infrastructure or outlet for. In fact, hard to recycle packaging should be reserved from any recommendation unless and until collection, recycling, and end-use markets for these materials are commercially viable and available to all residents of the U.S.

Hefty® EnergyBag® Program

Another program that is successful, and supported financially by FPA as well as a host of manufacturers and consumer product companies, is the Hefty® EnergyBag® program. This program is making strides in the collection and recovery of flexibles and utilizing energy recovery solutions for end-of-life management for hard to recycle multi-laminates. Energy recovery often has a negative connotation, when in reality, it should be an option for any

sustainable recycling system. Energy recovery solutions are rightly on the hierarchy of materials management and could be an immediate answer to end-of-life solutions for hard to recycle packaging materials, while necessary infrastructure for recovery, recycling, and composting of these materials is being built. As such, meeting one of the primary goals of recycling – eliminating litter, and reducing solid waste going to landfills, while deriving benefit from collected materials – is achieved.

The first EnergyBag® Program was a pilot in Citrus Heights, California. The pilot proved the theory, with 1/3 of targeted homeowners participating, approximately 8,000 EnergyBags® were collected in three months, and 512 gallons of synthetic crude oil was produced. The second program, in Omaha, NE, launched in 2016 for 6,000 local households and has expanded across the Omaha area (189,000 households) to Bellevue (15,600 households), Louisville (550 households), Ralston (3,400 households – included within the Omaha City program), Papillion (7,500 households), and La Vista (7,100 households). Retail programs are also available in each community. As of September 2018, the Hefty® EnergyBag® Program has collected more than 82,174 bags in the Omaha area and diverted 47 tons of plastic, the equivalent of approximately 225 barrels of diesel fuel, from landfills. The program then expanded to Boise, ID, where the City began distributing the first year's supply of Hefty® EnergyBag® orange bags to 73,000 households in April 2018. For the first time in a major metropolitan area, Cobb County, GA (Atlanta) began a program in late 2018 with 9,000 households registering in December alone. This year, Keep America Beautiful is participating in a Phase 2 launch with a grant to add more households. The hard to recycle packaging will go towards making low sulfur fuel, oils, and waxes.

The message is simple, if you are able to recycle a plastic material in your regular curbside recycling program, then continue to do so. If you cannot, rather than throwing that material in

the trash, put it in your Hefty® EnergyBag® orange bags to be recovered as an alternative energy resource. Households can include many plastic and multi-material items that cannot be recycled in existing recycling program, such as:

- Potato chip bags and other snack bags
- Candy wrappers
- Granola bar and energy bar wrappers
- Plastic and foam cups, plates and bowls
- Shredded cheese packages
- Salad bags
- Plastic pet food bags
- Frozen fruit & vegetable bags
- Pudding cups
- Stand-up pouches
- Squeezable baby food pouches
- Foam to-go boxes
- Packing peanuts
- Plastic utensils
- Plastic straws and stirrers
- Cake mix liners and other dry powder mix liners
- Plastic toothpaste tubes
- Condiment packets

Not only does the program divert packaging from the landfill and as a potential litter source, the program also cuts down on contamination of other material streams by separating out the flexibles and hard to recycle packaging from readily recyclable materials at curbside. The program is set to expand again with grants to new interested communities as well as guidance for municipalities to mimic its success on their own. FPA urges governments to take advantage of this program before supporting any costly and burdensome extended producer responsibility program, as may be the outcome of the Discussion Draft

University of Florida's Center for Advanced Recycling

The University of Florida's Center for Advanced Recycling is in its infancy, but the goal of the program is to present a unique solution using plasma gasification to achieve a true circular economy for ALL packaging waste (sorting and traditional recycling optional, depending on

demand for materials). In its first meeting this year, the purpose was to propose a plan that leads to selection and investment in infrastructure that solves issues related to all packaging waste. FPA supports this goal as the benefits of achieving such would include:

- Reduction/elimination of landfills and associated harmful emissions
- Reduced greenhouse gas (GHG) emissions
- Reduced reliance upon fossil fuel feedstocks
- Reduction/elimination of ocean and terrestrial litter
- Continued realization of benefits from packaging without compromise
- Simple household waste disposal that does not require sorting (single stream waste collection and treatment)

Recycling Infrastructure

FPA believes that a suite of options is needed to address the lack of infrastructure for non-traditional packaging materials, but investment in that infrastructure is necessary before new mandates and unrealistic goals are set for both manufacturers and consumers. Any packaging legislation must address infrastructure needs first and the Discussion Draft addresses this in only a cursory way. Any fees collected through the system should be based on achievable recovery and recycling goals. Manufacturers can make all the recyclable and compostable packaging envisioned, but if there is no infrastructure and end use markets, landfilling will still be the only solution, and litter and potential marine debris will still be the problem.

RECOVER Act

FPA is supporting the bipartisan HR 5115, Realizing the Economic Opportunities and Value of Expanding Recycling Act (Recover Act), recently introduced by Representatives Cardenas and Bucshon. We cannot expect to have any waste management and recycling system, whether federal, state or local if we do not have the infrastructure to manage it. Current infrastructure is not adequate to process even the readily recyclable packaging that is being produced, let alone the flexible packaging that has emerged over the last two decades. The Recover Act will

address the need to expand recycling infrastructure in the U.S. and create end-markets, making the system envisioned by the Discussion Draft unnecessary.

Sustainability

There is a reason only about 50% of flexible packaging is mechanically recyclable – as 50% of flexible packaging is single material. The rest is multi-material laminates, which creates less waste, while still providing the necessary product protection. Not all flexible packaging is created the same, just as not all plastics are created the same. Different products require different types of protection. Multiple materials are required to provide the appropriate barrier protection to prevent contamination, extend freshness, and ultimately protect the product by providing puncture, tear, and burst resistance and strength. When assessing sustainability or examining the full life cycle of packaging, flexible packaging wins hands down. Flexible packaging uses fewer resources, generates fewer emissions, and creates less waste. Flexible packaging starts with using fewer materials and resources than other packaging types and has the ability to package the most product in the least amount of packaging possible, reducing energy use, water use, and greenhouse gas emissions in the manufacturing and transportation of the package and product.

For example, producing a flexible foodservice pouch requires 75% less energy and generates just 1/10 of CO₂ emissions during production than a metal can for the equivalent amount of product. 1.5 pounds of flexible packaging will package the same amount of beverage or liquid as 50 pounds of glass. Advancements in materials and production processes have reduced the weight of some flexible packaging by up to 50%. The Natural Resources Defense Council reports that up to 40% of food in the U.S. is wasted; wasted food is the single biggest source of greenhouse gas emissions from solid waste in the U.S. Flexible packaging reduces this waste by preserving the shelf-life of food – bananas last 36 days in

perforated polyethylene bags versus 5 days unpackaged and the shelf-life of beef is extended from 4 days to 30 days when vacuum packed in oxygen barrier film. These are just two of numerous examples where flexible packaging is helping to reduce food waste. Flexible packaging does the same for brick and mortar retail and e-commerce by protecting and preserving the product during shipping and transportation with the least amount of packaging necessary, less waste and returns are generated.

Even when disposed of, flexible packaging has the advantage of having less waste than other packaging types. When comparing coffee in a steel can with a plastic lid versus a stand-up multi-material pouch, the recycling rate for the steel can (one of the most recycled products in the U.S.) would need to increase from **71%** to **93%**, and the plastic (LDPE) lid would need to go from **21%** to **75%** for the steel coffee can to have the same amount of landfilled material as the stand-up flexible pouch (assuming a **0%** recycling rate for the pouch). This is just one of six case studies FPA commissioned using the EcoImpact-COMPASS® lifecycle assessment tool. The case studies can be downloaded at <https://www.flexpack.org/sustainable-packaging/lca-case-studies/>

Any legislation regarding packaging waste must consider the very real environmental and health benefits of today's packaging, outside of its potential for recycling and composting, which the Discussion Draft does not. Without this understanding and acknowledgement, the unintended negative environmental and health consequences of substitutions and alternatives used will be the legacy. The picking of winners and losers, like setting arbitrary fees based solely on recyclability, discounts climate change, food safety and security, and potential new innovations, which could solve for both source reduction and recyclability/reuse.

Consumer Engagement

FPA also believes that legislation and any program resulting from such, must have a robust consumer engagement component. Ultimately, any program hinges on the consumer actually utilizing it and doing so correctly. Thus, consumer engagement and education is needed before additional regulations and or mandates on producers are established. For all packaging types, we need consumer engagement and programs like the Sustainable Packaging Coalition's "How2Recycle" label, to inform residents of the opportunities to recycle and where to recycle. We also need clear directions for consumers on what is not yet recyclable, to eliminate the significant contamination currently rendering many ready recyclable packaging formats unacceptable for recycling and instead destined for landfill disposal.

In addition, most grocery stores and other retailers provide receptacles where consumers can easily deposit plastic bags, dry cleaning bags, bread bags, protective pillows and films, and other product wrappings, which most consumers do not know about. Educating and encouraging consumers to make environmentally-conscious decisions about single material flexible packaging is a practical solution and one that could make a big dent in reducing the amount of solid waste packaging material going to landfill and increasing the amount going for recycling before any new mandates are put in place.

Similarly, any program must address the litter issue. Legislation must provide incentives for consumers to utilize the existing infrastructure. Putting all the onus on producers and retailers to change consumer behavior is unrealistic. Any legislation purporting to fix the problem of waste in the environment should contain provisions for fines and enforcement of not only outright litter but of consumers not utilizing the recovery and recycling infrastructure at all or incorrectly. The Discussion Draft does not adequately address labeling and consumer engagement.

Conclusion

Flexible packaging manufacturers are responding to key issues and industry pressures affecting their customers as well as the demands of consumers and retailers. Safety and product protection; prevention of food waste and contamination; freshness and extended shelf life; consumer convenience; ease of transportation, storage, and use; and source reduction and sustainability are all issues manufacturers are designing for. The Discussion Draft does not recognize any of these issues and only focuses narrowly on end-of-life management. Packaging legislation must provide real evidence of solving the lack of solid waste management and recycling infrastructure in the U.S., let alone litter and marine debris. It should promote policies and programs that look at the entire life cycle of packaging; that recognize energy recovery and chemical recycling as viable options; and that promote new infrastructure for today's packaging types, versus establishing a new funding mechanism for the current recycling infrastructure in the U.S., which is clearly not working.