

Testimony in OPPOSITION
to
CA SB.682
in the
Senate Environmental Quality Committee
April 2, 2025

The Flexible Packaging Association (FPA) is submitting this testimony **in opposition to CA SB.682**, which directs the Department of Toxic Substances Control to prohibit the sale of food packaging with intentionally added PFAS by 2027, among other initiatives.

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 SB 682 would effectively eliminate PFAS usage in the State of California.

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. FPA remains committed to finding pathways to compliance for flexibles within the structure of California's EPR program, despite recent challenges at CalRecycle.

It is with this background that FPA provides this testimony to improve California's PFAS initiative.

II. SB 682 Goes Further Than Other Landmark Legislation

Various state-led initiatives to ban PFAS across different subsets of products have propelled PFAS to the forefront of toxics legislation across the country and FPA's members have long been identifying and removing PFAS from their manufacturing processes ever since the first ban. PFAS is not intentionally added to flexible packaging materials for any properties in the final package. Other landmark legislation, like Amara's Law in Minnesota allows flexibility for unintentionally added PFAS.

While there is no consistent definition of PFAS, the PFAS used in the manufacturing of flexible packaging are typically referred to as fluoroelastomers. These compounds have been used for years as polymer processing aids to improve the runnability for the production of films. The fluoroelastomer polymers used as processing aids are made from the monomers vinylidene fluoride, hexafluoropropylene, and/or tetrafluoroethylene. These substances are subject to the strictest scrutiny in the United States and is therefore authorized for food contact use by regulations 21 CFR 177.1380 or 177.1550 and various FCNs. The European Union and China have also approved this limited use.

The current test used for PFAS is a broad total fluorine test, often with a low de minimis level of 100ppm. The use of this test equating all fluorine to PFAS is not scientifically valid as fluorine is ubiquitous in the environment and the test does not accurately distinguish between types of fluorine. That said, our members are working to get out of these materials because of well-intentioned laws that wrap these chemistries up in broader bans. FPA requests a delay in the portion of the intentionally added definition that applies to processing aids and mold release agents until January 1, 2030 and for options to remain open for packaging manufacturers to petition for an exemption based on available substitutes.

IV. SB 682'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. SB 682 directs the Department of Toxic Substances Control to evaluate PFAS under its own chemicals of concern process, which is

separate from the Proposition 65 list. 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.

VII. Conclusion & Next Steps

For these reasons, FPA opposes the current SB 682 but stands ready to support a future version that allows for intentionally-added flexibility as manufacturers attempt to comply with the evolving EPR landscape in California. 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,

A handwritten signature in black ink that reads "John J. Richard". The signature is written in a cursive, flowing style.

John J. Richard
Director, Government Affairs
Flexible Packaging Association