

Testimony in OPPOSITION
to
Senate Bill 2296 – Extended Producer Responsibility for Packaging
in
Rhode Island Senate Committee on Environment & Agriculture
on
March 30, 2022

The Flexible Packaging Association (FPA) is submitting testimony in **opposition to Senate Bill 2296** – Extended Producer Responsibility for Packaging, which would establish an extended producer responsibility (EPR) program for packaging, alter state labeling provisions, and establish impracticable rates for recycling and source reduction.

I am Sam Schlaich, Counsel, Government Affairs of FPA, which represents flexible packaging manufacturers and suppliers to the industry in the U.S. Flexible packaging represents over \$34 billion in annual sales; is the second-largest and fastest-growing segment of the packaging industry; and employs approximately 79,000 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, 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 have become 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, increasing the recycling of solid waste from packaging, and creating a working, circular economy. Unfortunately, we do not believe that SB 2296, as written, will accomplish these goals and feel compelled to highlight several concerns.

Extended Producer Responsibility

The flexible packaging industry 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, but again, if there are no end markets for the product, these efforts will be stranded.

Developing end-of-life solutions for flexible packaging is a work in progress and FPA is partnering with other 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; the Materials Recovery for the Future (MRFF) project; the Hefty® EnergyBag® Program; and the University of Florida's Advanced Recycling Program. 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 drivers for the creation of new collection, sortation, and processing infrastructure for the valuable materials that make up flexible packaging.

FPA believes 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. We also believe that EPR 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 have jointly drafted a set of principles to guide EPR for flexible packaging (<https://www.flexpack.org/end-of-packaging-life>). This dialogue looked at the problems and opportunities for EPR to address the needs of the flexible packaging industry to reach full circularity for over a year. It is with this background that FPA raises the following concerns to improve SB 2296, ensuring that it provides the necessary elements for the improvement of collection and infrastructure investment and development of advanced recycling systems, to allow for 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.

Definitions

First and foremost, a number of HB 2296's definitions are problematic, including; "Producer," "Post-Consumer Recycled Material," "Readily-Recyclable," "Recycling," and "Toxic Substance."

Producer - Overwhelmingly, EPR legislation defines "Producer" to mean consumer packaged goods companies (CPGs), who are the brand owners who use the packaging, whereas here, the language is ambiguous and may point to packaging manufacturers (converters). This would effectively render the entire stewardship program unworkable, as I shall explain.

The PSI/FPA principles suggest the following in order to ensure the responsible party is correctly identified:

"Producer – means a party that has legal ownership of the brand of a product for sale, use, or distribution in the state, including online retailers who sell into the state, that utilizes plastic packaging.

(1) For plastic packaging, producer shall be determined based on the following criteria:

(A) A person who manufactures a product under the manufacturer's own brand that uses plastic packaging

(B) If subparagraph (A) does not apply, a person who is not the manufacturer of a product under the manufacturer's own brand that uses plastic packaging, but is the owner or licensee of a trademark under which plastic packaging is used in a

commercial enterprise, sold, offered for sale or distributed in the state, whether or not the trademark is registered; or

(C) If subparagraphs (A) and (B) do not apply, a person who imports the product that uses the plastic packaging into the state for use in a commercial enterprise, sale, offer for sale or distribution in the state.”

This is because the primary responsibility for fee collection, remittance, and reporting must be on the CPGs, which encompasses food and goods manufacturers and retailers in their role as brand owners. They, and not the producers of the packaging (converters), control how products are packaged and can track consumer sales in a given jurisdiction. Packaging producers (converters) would have no way to determine where the packaging is sold and even in some cases to what brand – packaging producers sell packaging to CPGs, which then use it for multiple brands within their portfolios and sell throughout the country. Even when packaging is sold directly to a brand in Rhode Island, packaging producers have no way of knowing whether the final product (that uses the packaging) will be sold in or out of the state. Packaging can be more than one element as well, coming from multiple converters. Take, for example, Chobani yogurt, manufactured in the state of New York. The different components of a yogurt container, which include the ridged cup, the flexible peel off top, and in many cases the cardboard portion used to sell multi-packs, are coming from different packaging producers. Chobani as the CPG is the only producer, however, that knows where the item that uses the packaging, the yogurt itself, is distributed and sold in or out of the State. Thus, just as all EPR for packaging programs in Europe, Canada and the two bills that have passed in the US, the responsible party must be the brand owner or entity who uses the packaging and not the packaging producer or converter.

Post-consumer Recycled Material – Under the current definition, SB 2296 excludes materials produced through advanced recycling from consideration. Advanced recycling refers to several different technologies that convert post-use plastics into their original chemical building blocks for the production of products. These technologies complement traditional mechanical recycling methods incorporating more recycled plastics into their products. To date, fifteen other states have adopted policies that modernize laws and recognize advanced recycling technologies as manufacturing processes.

Readily Recyclable – SB 2296’s definition of “Readily Recyclable” requires the Department of Environmental Management (DEM) to determine on an annual basis what types of packaging materials are considered “readily recyclable” or “not readily recyclable.” Even if DEM can determine that for one year based upon entities processing recyclable materials, it will be an annual moving target for those materials and very possibly not hold true for the next year. Recycled material bale markets constantly shift within calendar years and within local markets in Rhode Island. Additionally, this restrictive approach does not allow or account for innovation.

Toxic Substance – The definition of “Toxics” in SB 2296 is far too broad and allows DEM to make a determination that a chemical substance is “toxic” without consideration of its specific use or any associated risk as a packaging component. Such a designation would arbitrarily deem a packaging material not “recyclable.”

Labeling

SB 2296 aims to establish specific labeling requirements unique to the State of Rhode Island. In today’s modern economy, products are packaged, marketed, transported, and sold nationally. In applying its own specific labeling requirements for packaging, Rhode Island is creating an onerous burden on businesses and directly interfering with interstate commerce. Furthermore, if other states were to similarly follow suit in adopting their own requirements, companies would find themselves paralyzed by a complete inability to navigate and comply with a patchwork or conflicting state mandates. Such a requirement will only serve to further strain the recycling system and frustrates the legislative intent of SB 2296.

Recycled Content, Recycling, and Source Reduction Rates

SB 2296 stands to establish, by far, the most severe and restrictive recycling rates in the nation. Attempting to adopt and enforce the proposed rates in this measure would be devastating to Rhode Island’s recycling efforts and economy. The rates and dates outlined are quite simply impracticable and in part unattainable given today’s present recycling infrastructure and technology. In addition, these faulty targets are too rigid and fail to account for the unpredictable and at times volatile nature of markets and the economy.

For these reasons, FPA must respectfully **oppose SB2296** but stands ready to assist in creating a measure that comports with the PSI/FPA elements and supports a meaningful EPR program for packaging; providing the necessary investment in new infrastructure and markets for all packaging, including flexible packaging, and addresses the evolving needs and concerns of Rhode Island.

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 410-694-0800 or SSchlaich@Flexpack.org.

Respectfully,

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