

Testimony in OPPOSITION
to
HB 1900
in
House Committee on Environment & Energy on
January 11, 2024

The Flexible Packaging Association (FPA) is submitting testimony **in opposition to HB 1900**, which aims to prohibit the sale, distribution, and import of certain products marketed as recyclable unless the Department of Ecology determines that products are widely recycled in the State of Washington.

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 that HB 1900 as written will accomplish these goals.

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 – but again, if this is not considered recycling, it would not be under the bill's framework and if there are no end markets for the products, these efforts will be stranded and flexible packaging will never realize circularity.

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 (TRP); the Materials Recovery for the Future (MRFF) project; the Hefty® EnergyBag® Program; and the University of Florida's Advanced Recycling Program. 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.

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 well-crafted 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 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 the WA labeling bill, particularly when many of the issues that HB1900 attempts to correct would be better suited in a well-crafted EPR program. A well-crafted EPR program in the state would provide the necessary elements for the improvement of collection and infrastructure investment and development of advanced recycling systems to allow 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, thus diminishing the need for a state-only labeling scheme that would only create more confusion and waste.

II. State-Led Labeling Frameworks Complicate Efforts to Recycle

In today's modern economy, products are packaged, marketed, transported, and sold nationally. In applying its own specific labeling requirements for packaging, Washington state would be creating an onerous burden on businesses and directly interfering with interstate commerce. Additionally, 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 requirements will only serve to further strain the recycling system and frustrate the legislative intent of WA 1900. Finally, the Federal Trade Commission's (FTC) Green Guides are a product of extensive comments and stakeholder meetings that already serve as a workable industry standard on recyclability claims. These Guides are currently in the process of being updated and should be followed to ensure national harmonization of labeling for recyclability.

III. The Target Recycling Rates for Flexible Packaging are Not Feasible

The proposed recovery rate requirements to be considered recyclable are likely unworkable for many materials that are in fact widely recycled. According to the Recycling Partnership's latest recycling rate data for the State of Washington, not a single material would qualify under the 75%

recycling rate outlined by HB 1900.¹ Labeling the most common items in the recycling bin as non-recyclable will run counter to years of progress in educating Washingtonians on effective recycling systems that have led to one of the nation's highest rates of recycling for packaging and printed paper. It is FPA's position that recycling rate targets should be set by material and use the best available data to inform target implementation dates. This is again something that would be addressed in a well-crafted EPR system.

IV. Producer Definition

As currently drafted, the definition of *producer* is erroneous. Instead of pointing to the brand owner of the item using the packaging, it defines the producer as the manufacturer of the packaging itself. Following other packaging EPR programs throughout the country and internationally, as well as Washington state's own definition in its currently drafted EPR bill, HB 2049, the definition of the producer should be the owner of the item that uses packaging to protect, contain, transport, or serve the item and not the producer of the packaging.

The primary responsibility for fee collection, remittance, and reporting must be on the consumer packaged goods companies (CPGs), which encompasses food manufacturers and retailers in their role as brand owners. They, and not the producers of the packaging (converters), have the ability to track consumer sales in a given jurisdiction and control how products are packaged. Packaging producers (converters) would have no way to determine where the packaging is sold and even in some cases to what brand/CPG packaging producers sell packaging to, which may then use it for multiple brands within their portfolio and sell throughout the country. Even when packaging is sold directly to a brand in Washington state, packaging producers have no way of knowing whether the final product (that uses the packaging) will be sold in or out of the state.

V. Producer Registration Equates to EPR Lite

As the House Committee on Environment and Energy considers this legislation, the similarities to HB 2049 cannot be overstated. If both bills are passed, there will be several conflicting fees levied by the Department of Ecology on consumers via brands and their supply chains. EPR legislation

¹ The Recycling Partnership, *Increasing Recycling Rates with EPR Policy: How Extended Producer Responsibility Law for Packaging and Printed Paper Creates High-performing Recycling Programs* (Washington D.C., 2023). Page 16.

is too critical from a materials management perspective to be done piecemeal with segments potentially coming into conflict with one another.

For these reasons, FPA opposes the current HB 1900 but stands ready to assist with HB 2049 in crafting a meaningful EPR program for packaging, which would 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.