

Testimony in OPPOSITION
to
HB 1630
in
House Environment and Agriculture
on
January 8, 2024

The Flexible Packaging Association (FPA) is submitting testimony in opposition to HB1630, which purports to establish an extended producer responsibility (EPR) program for packaging and paper.

I am Alison Keane, President and CEO of 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, 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. We do not believe that the bill being heard today, 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.

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 the 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 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

NH EPR bill so that any EPR program in the state provides the necessary elements for the improvement of collection and infrastructure investment and development of advanced recycling systems to allow for collection and recycling to a broader array of today's packaging materials, including flexible packaging; and quality sorting and markets for currently difficult-to-recycle materials.

As currently drafted, the definition of a producer is not clear in HB1630. Upon first glance, it appears to accurately define the producer as the user of the packaging, the brand owner or licensee of the product that uses the packaging, which is correct. However, in other places in the bill, it appears to call out the producer of the packaging instead. For example. In 149-M:66 it states that the producer should annually report the amount of packaging material sold, offered for sale, or distributed for sale. Consistent with the definition of producer, this should read "the amount of packaging used for a product sold, offered for sale, contained, protected, delivered, presented or distributed in the state." As this happens in several areas, the bill's language needs to be edited for consistency in this regard.

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 itself can 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 the 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 New Hampshire, packaging producers have no way of knowing whether the final product (that uses the packaging) will be sold in or out of the state.

FPA is also concerned that HB1630 gives far too broad and prescriptive authority to the Department to dictate much of what should be the Packaging Reduction Organization's (PRO) responsibility. This includes producer fees to the PRO, including modulation of those fees and not only what costs are to be covered through service providers, but how much those service providers will be paid. FPA questions why a PRO is needed if the Department is going to make all the decisions. If the PRO is to be responsible for the program, it must have the authority to determine what the costs of the program will be based on the results of the needs assessment and

the goals established in the plan and then set its own fees to members and negotiate freely for service providers to accomplish the goals. It appears that the money collected on the PRO's products under HB1630 will merely go towards the current infrastructure and not to the advanced infrastructure needed to take all packaging products, and with the Department dictating all the terms, there is very little ability for the wholesale change needed to the current system, let alone building the system of the future.

In addition, the dates for implementation are far too aggressive; it takes no less than 13 different rulemakings to adopt; it has unrealistic packaging reduction goals; and overly broad toxicity provisions. The sheer number of rulemakings alone makes the implementation dates infeasible, not to mention that the program implementation dates conflict with the needs assessment, a report which should be used to shape the program, before, and not after, the fact. The packaging reduction goals are overly broad and do not consider product protection and the unintended environmental and health consequences of less packaging and reuse/refill systems. FPA is also concerned about an overly broad toxicity provision in the bill that does not appear to use any risk assessment when determining whether or not a package would be deemed a health concern and/or non-recyclable; when there may be zero correlation between the listed chemicals in packaging and actual potential harm.

Finally, there are no antitrust protections for the supply chain implementing this new system, including fees on packaging. New Hampshire cannot be less stringent than the federal antitrust regulations and must comport with the "State Action Doctrine" in order to give the PRO and producers the limited antitrust exemption needed to implement an EPR scheme.

For these reasons, FPA opposes the current HB1630 but stands ready to assist in amending the bills so that any New Hampshire scheme comports with the PSI/FPA elements and supports 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 410-694-0800 or akeane@flexpack.org.