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Testimony in Favor
of
SP.0579/LD.1423
in the
Joint Standing Committee on Environment and Natural Resources
Maine Legislature
April 23, 2025

Dear Chairs Tepler, Doudera, and Members of the Joint Standing Committee on Environment and Natural Resources,

The Flexible Packaging Association (FPA) is submitting this testimony **in favor of Maine SP0579/LD.1423**, which provides much-needed structure and consistency with other states, to the packaging extended producer responsibility (EPR) program administered by the Maine's Department of Environmental Protection (DEP).

I. Background on FPA and Flexible Packaging

FPA represents flexible packaging manufacturers and suppliers to the industry in the United States. 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 and deeply committed to solving the plastic waste issue and increasing the recycling of all packaging. Unfortunately, we do not believe Maine's packaging EPR program will provide Mainers with a durable, effective EPR program without the fixes provided by LD.1423.

Flexible packaging is in a unique situation as it is one of the most environmentally sustainable packaging types from water and energy consumption, product-to-package ratio, transportation efficiency, food waste, and greenhouse gas emissions reduction standpoints. But circularity options for flexible packaging are currently 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. 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 primarily through store drop-off programs; however, end markets are scarce. The other half can be used to generate new feedstock, through pyrolysis and gasification.

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; the Consortium for Waste Circularity; and the Flexible Film Recycling Alliance (FFRA). All these programs are seeking to increase the collection and recycling of flexible packaging. Also, increasing the recycled content of new products, including packaging, will not only create markets for the products, but will also 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 previously 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 was the national trade association in the U.S. to support the Minnesota EPR legislation in 2024 before it was signed into law and was an early supporter of the EPR bill that is set to become law in Maryland.

It is with this background that FPA provides this testimony to improve the first-in the nation EPR law in Maine. If passed, LD.1423 would provide Mainers with the necessary elements to improve collection and infrastructure investment and development of advanced recycling systems, allowing 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.

II. FPA Requests an Exemption for Pathogen-Contaminated Packaging

FPA's members produce specialty packaging the keeps meat, cheese, and other proteins fresh on grocery store shelves. Without this packaging and modern refrigeration, these products would not have the shelf life that our modern food system requires. FPA's members utilize technologies, such as portion control, reclose features, perforated plastics, film toughness, and modified atmosphere packaging (MAP) to ensure the preservation of food. Flexible packaging's unique characteristics provide food loss and waste reduction benefits to every segment of the food supply chain, including after purchase by consumers. These characteristics include barrier properties of the materials used in flexible packaging which extend transport as well as shelf life, reclosability features, enhanced product evacuation, and the optimization of product to package ratios.

Flexible Packaging has led the way in preventing food loss and waste through the use of modified atmosphere packaging. The principle of MAP is the replacement of air in the package with different fixed gas mixtures and the use of flexible films to control the dispersion of gas into and out of the package. An FPA report entitled "The Role of Flexible Packaging in Reducing Food Waste" summarized peer-reviewed scientific studies highlighted that meats generally stay safe to eat for an additional nine days, with the largest increase in freshness being ground beef at 17 days, when utilizing

flexible packaging. FPA's report only had peer-reviewed data for one type of cheese—provolone, which was safe to eat for a staggering 90 additional days. Because of the unique role flexible packaging plays in the protection of protein, FPA requests that the legislative language in Maryland's EPR bill be included in LD.1423 to temporarily exempt protein packaging from the performance goals, while leaving it subject to the program at large, until the proper recycling infrastructure is developed that cam process flexible material contaminated by protein products.

III. Technical Correction to the Definition of Producer

As currently in statute, the definition of "producer," in cases where products are sold or distributed to consumers via remote sale or distribution, is unimplementable. Following other packaging EPR programs throughout the country and internationally, 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 manufacturer (or converter) of the packaging.

The primary responsibility for fee collection, remittance, and reporting must be on the entities that can track the amount of product in a given jurisdiction and control how products are packaged. The responsibility should not be placed on packaging converters or manufacturers who will have no way to determine where the packaging is sold and even in some cases to what shipping company. Packaging converters sell packaging, which may then be used for product lines within their portfolio and sold throughout the country. Even when packaging is sold directly to a company in Maine, packaging converters have no way of knowing whether the final product (that uses the packaging) will be sold in or out of the state. Therefore, for an effective EPR program to work, producers must correctly be defined as the entities responsible for getting products to consumers and in this case, the entity responsible for shipping the products.

FPA supports the clarification of producer being amended, as it is in LD.1423, to correctly identify the shipping company as the producer of packaging materials in a way that mirrors the brand owner being the responsible entity for physical retail locations.

IV. Data Driven Performance Goals to Inform Reasonable Costs to Producers

As stated above, FPA and its members support well-crafted EPR that can be used to promote a needed shift in recycling in the United States. While FPA's members are wholly committed to addressing plastic waste, asking producers to pay for Maine's recycling system in-full with no maximum payment threshold is unreasonable and threatens the long-term success of the EPR program. It is likely to also lead to unintended policy consequences along the waste supply chain. LD.1423 addresses this by clarifying the current definition of "manage" to better align with other EPR programs passed throughout the nation so that producers only pay for direct recycling costs—in accordance with Organization for Economic Co-operation and Development (OECD) norms. FPA strongly supports this legislative fix.

The prescriptive producer fees and performance goals currently in statute have locked in a highly punitive structure on Maine companies. LD.1423 provides greater flexibility to the producer responsibility organization (PRO) and Maine DEP to set a budget and appropriate producer fees that are not based on arbitrary performance goals to avoid the fee multipliers of 2x, 3x, 4x and 5x if those goals are not met. FPA also strongly supports this correction.

VII. Conclusion & Next Steps

For the reasons above, FPA strongly supports **and urges an Ought to Pass Report on LD.1423** that will create a stronger foundation for a meaningful EPR program for packaging in Maine, incentivizing 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.

Respectfully,

John J. Richard

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Flexible Packaging Association