S. HRG. 118–759

# EXAMINING EXTENDED PRODUCER RESPONSIBILITY POLICIES FOR CONSUMER PACKAGING

## HEARING

BEFORE THE

## COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

## UNITED STATES SENATE

ONE HUNDRED EIGHTEENTH CONGRESS

SECOND SESSION

MARCH 6, 2024

Printed for the use of the Committee on Environment and Public Works

Available via the World Wide Web: http://www.govinfo.gov

U.S. GOVERNMENT PUBLISHING OFFICE

62–429 WASHINGTON : 2026

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ONE HUNDRED EIGHTEENTH CONGRESS
SECOND SESSION

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# C O N T E N T S

# EXAMINING EXTENDED PRODUCER RESPONSIBILITY POLICIES FOR CONSUMER PACKAGING

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**WEDNESDAY, MARCH 6, 2024**

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
*Washington, DC.*

The committee met, pursuant to notice, at 10:02 a.m. in room 406, Dirksen Senate Office Building, Hon. Thomas R. Carper (chairman of the committee) presiding.

Present: Senators Carper, Capito, Kelly, Padilla, Ricketts.

## OPENING STATEMENT OF HON. THOMAS R. CARPER, U.S. SENATOR FROM THE STATE OF DELAWARE

Senator CARPER. Good morning, everyone. Today, we are here to discuss a sustainability policy called Extended Producer Responsibility (EPR) and how these programs can improve recycling infrastructure and recycling practices.

What exactly is Extended Producer Responsibility? Extended Producer Responsibility establishes a system in which the financial responsibility for products through the end of their lives is shifted upstream to producers of those products.

How do Extended Producer Responsibility policies work? Well, States or countries adopt policies that may require producers to pay a fee that is associated with their goods to a producer responsibility organization, and then these organizations can use the revenues for the expansion of recycling infrastructure and for consumer education.

Consumer packaging materials, like plastic, like cardboard, or aluminum, as we know, vary greatly with respect to their recyclability. Some materials, such as paper, have more viable markets for repurposing than others. We are pretty good in this Country at recycling paper. Extended Producer Responsibility policies can consider these differences in materials in their fee structures, which can incentivize producers to make more packaging sustainable.

For example, in Colorado they are working to establish a program where fees will be assigned to goods based on their environmental impact. Products that are more easily reused or recycled may have a lower associated fee for the producer to pay.

Difficult to recycle packaging, like plastic films, may have a higher associated fee. In order to pay a lower fee into the system, in

Colorado, producers can make packaging that has a lower environmental cost.

Programs in several other States have also shown real potential. Among them, California, Oregon, and Maine have recently established Extended Producer Responsibility policies for packaging, regardless of the material type. As more States adopt these policies, it is critical that the Federal Government understands how to support Extended Producer Responsibility efforts moving forward.

We are hoping that today's discussion sheds light onto some of the activity going on in our States and what the proper role of the Federal Government should be.

Extended Producer Responsibility Policies can also help drive recycling rates up, since Producer Responsibility Organizations and governments can use the revenue they generate to improve recycling infrastructure for hard to recycle materials and to expand access to recycling in communities, including rural communities.

Right now, consumer packaging makes up approximately a third of all plastics produced. I will say that again: consumer packaging makes up approximately a third of all plastics produced. Sadly, as we know, plastics are not commonly recycled in America.

According to the EPA, in 2018, less than 9 percent of plastics were recycled in the U.S. Let me just say that again: less than 9 percent of plastics were recycled in the U.S., just a couple of years ago. To put that figure into perspective, it is even smaller than the national recycling rate for all materials, which is roughly 32 percent.

As the members of this committee have heard me say more times than they want to remember, I like to say find out what works; do more of that. These policies actually can work. For example, the Extended Producer Responsibility Program in British Columbia was able to achieve an impressive residential recycling material rate of 86 percent in 2022, up from 37 percent in 2004, pretty amazing, before the program was implanted in that country.

As we will hear today, there has also been a surge in private sector support for Extended Producer Responsibility policies. Why is that? We know that most Americans want to make sustainable purchasing choices, and that number is growing. According to a 2020 survey conducted by McKinsey, more than 60 percent of respondents said they would pay more for a product with sustainable packaging.

Large consumer brands have noticed. Many companies, for example, have established ambitious sustainability goals, such as using a minimum amount of recycled content in their packaging, and Extended Producer Responsibility policies can help producers meet those goals.

However, it is worth noting that the Extended Producer Responsibility policies on their own will not fix our waste management system. These policies must work in tandem with other investments in infrastructure and education and data collection. Fortunately, Congress has a track record of success in making such investments.

As you may recall, a part of the Bipartisan Infrastructure Law, which was actually written in this committee, and managed on the floor by this lady right here and yours truly, and became law in

November 2021, our committee worked to secure $350 million to strengthen recycling infrastructure and provide recycling education grants across the USA.

Our bipartisan work to strengthen our Nation's recycling systems doesn't stop there. Last year, this committee adopted two other pieces of bipartisan recycling legislation at the urging of Senator Capito, Senator Boozman, and myself, legislation which would help gather much-needed data about our recycling system and improve access to recycling infrastructure in rural and disadvantaged communities.

This Congress, Senator Capito, Senator Boozman, and I are committed to seeing both of these bills move across the finish line.

In closing, let me just say that we know that recycling is a win-win. It benefits our environment, and it can also benefit, at the same time, our economy. That is the kind of win-win situation that I think we all look for. That is why our committee continues to consider further opportunities to support better recycling practices.

We are looking forward to hearing from our witnesses today. Before we do, and we welcome you all, thank you for joining us. It looks like you brought your family. That is SRO, they are in the EPW committee.

Let me turn to our Ranking Member, Senator Capito, and thank her for her efforts and leadership. We look forward to your remarks. Thank you.

## OPENING STATEMENT OF HON. SHELLEY MOORE CAPITO, U.S. SENATOR FROM THE STATE OF WEST VIRGINIA

Senator CAPITO. Thank you, Senator Carper, and good morning to all of you. It is nice to be here this morning.

This committee's continued focus on sustainability and waste management have underscored the fact that we have a waste problem, both here in this Country and around the world.

Like any complex issue, it is kind of easy to sit here and list out all the problems, but it is very, very difficult to start finding realistic solutions. We have one crowd saying we need to end all plastic production tomorrow. That position just doesn't make sense.

Acknowledging our continued reliance on plastic and working to prevent plastic pollution are not mutually exclusive. Private sector sustainability goals and international regulatory developments, like the global plastic treaty currently under negotiation, indicate the waste management policy landscape is very much in flux. U.S.-based companies with global footprints are staring down an uncertain regulatory and economic future.

My primary focus in evaluating Extended Producer Responsibility policies under consideration is making sure that they are grounded in reality and consider the downstream impacts to everyday consumers, including regressive costs that could be passed down, but especially in rural areas, where current recycling programs are more limited and the cost of standing up ones are more expensive.

Companies cannot operate efficiently if they must conform to international standards that do not have American interests in mind or if they have to conform with 50 different packaging and

disposal requirements to sell their products if every State had their own provisions.

Past experience in other environmental areas has shown us that States with the biggest populations and the most stringent restrictions will become the regulatory floor. Those States' policies can then unfairly dictate the national market to States like mine that have structural impediments to recycling access and limited resources to funding that necessary infrastructure.

Preventing this outcome, and a recurrence of the state-on-State fight over vehicle emissions standards and its market uncertainties, is why we need to bring these types of conversations about nationwide impacts of EPR policies.

As sustainability shifts from marketing buzzword to a potential revenue driver and a competitive advantage, industry, government, and the environmental community must work together to achieve outcomes that protect both the environment and grow the economy.

For that outcome to become achievable, we must be, in my opinion, technology-agnostic and avoid mandates around EPR or circularity that may have some unintended consequences.

If draconian Federal standards are imposed, it may chill growth in any emerging sector. We see this happening in how IRS guidelines, for instance, on hydrogen tax credits, with no basis in law, are stifling the development of that market that is particularly hitting my State and my hydrogen hub. That is why I bring it up.

The same cannot be allowed to happen in the recycling and waste management spaces. During today's hearing, we are likely to hear statements such as, "the devil is in the details," or, "if done correctly." These precautionary labels will frequently arise in our EPR discussions. They emphasize the need to discuss all the potential consequences, both intended and unintended.

Done correctly, EPR could significantly improve domestic recycling, the rates, reduce the waste, and provide new opportunities economically. Equally so, a poorly crafted EPR scheme could laden regressive financial burdens on consumers, privilege large companies over smaller companies, and open the door for targeted bans for materials out of favor, such as plastic.

While I can understand the rationale behind EPR, I have yet to see a proposal that adequately is addressing all of these concerns. That is why we are here today.

To start, any EPR scheme that fails to recognize the importance of chemical recycling will never meaningfully improve recycling rates. We must carefully consider what stakeholders should have a role in decisionmaking, such as the waste management industry, who is often left out.

We also need to think about the appropriate role of government. The last thing U.S. companies need is another layer of bureaucracy to navigate, so I look forward to hearing the panel.

Thank you, Mr. Chairman, for having this hearing.

Senator CARPER. Thank you, Senator Capito.

Now, we are going to hear from each of our three witnesses. We are pleased to welcome each of you to our committee today. I think we are going to hear first from Dr. H. Fisk Johnson. What does the "H" stand for?

Mr. JOHNSON. Herbert.

Senator CARPER. OK. Mr. Johnson is the Chairman and CEO of S.C. Johnson and Son. S.C. Johnson makes products many of us have in our homes and households, including Mrs. Meyer's hand soap, and Windex cleaner, which I have not used since yesterday.

Senator CAPITO. I told him I used it last weekend.

[Laughter.]

Senator CARPER. They also have ambitious sustainability goals to make their products more recyclable and reusable.

Dr. Johnson, thank you for joining us today. You are welcome to begin your testimony at this time.

Thank you.

**STATEMENT OF H. FISK JOHNSON, PH.D., CHAIRMAN AND CEO, S.C. JOHNSON AND SON, INC.**

Mr. JOHNSON. Thank you. Well, thank you, Chairman Carper and Ranking Member Capito, and the distinguished members of the committee for the opportunity to talk today.

This is an incredibly important topic. I am a scientist by education, but I have spent the last 37 years of my career in the packaged goods industry. As a CEO of a large, global consumer goods company that is a big user of plastic, I see plastic in two very different ways.

On one hand, I see it as one of the most useful, versatile, and cost-effective materials developed in the last century that has brought extraordinary benefits to human life and well-being on this planet. On the other hand, as a lifelong conservationist, I am also seeing how plastic has become one of the most profound emerging global pollutants that is affecting planetary, animal, and human health.

The challenge is reconciling those two perspectives. How we as a society can and should and most practically, most economically, and least disruptively preserve many of the benefits that plastic has brought to humanity while preventing the vast amounts of plastic that end up in landfills, or even worse, end up in the environment where it can affect animal and human health.

Our company has a long history of environmental leadership, and I have long seen our company's plastic and packaging waste as one of our top environmental issues. It is something that we have been working on for a very long time. We launched our first 100 percent recycled plastic bottle 33 years ago, back in 1990. We have continued to take numerous actions and launch many other initiatives to reduce our plastic footprint, and we are going to continue to do so, whether that is improving PCR, Post-Consumer Recycled, content in our products, providing reuse-refill options, or other initiatives.

However, for all of our company's work and ambition on plastic, I can't say I can raise my hand and say I feel good about the progress that we have made. No matter how many innovations one company can try, or efforts we can take, individual voluntary actions can only go so far.

It is incredibly difficult for an individual business, or even businesses as a whole, to make unilateral progress on plastic waste. It takes everyone in the plastic ecosystem working collectively together, from plastic manufacturers, packaged goods companies like ourselves, retailers, recyclers, waste haulers, to individual users of

plastic products all coming together, working collectively, because scale matters. Scale at retail, scale in recycling infrastructure, scale and supply, scale and education programs, scale through everyone in the package and value chain working together holistically. Without scale, we tend to get expensive, ineffective piecemeal approaches.

That is why I believe the only way to have an effective program is through a government regulatory framework. We believe Federal EPR is the way to go for several reasons. For one, as you said, Americans want the government to lead on plastic waste.

Two, there is a complex web of State regulations emerging, which are going to drive significant complexity, cost, and dysfunction unless there is Federal regulation that creates a national approach.

We need Federal regulation to avoid overregulation. Efficiencies of scale matter and can only come through a National regulatory framework, and continuing to accumulate landfill waste is unsustainable.

We also believe there is some urgency to get started. It is important to get ahead of emerging State regulation. But the sooner regulation is enacted and clear goals are set, and the more time that is given to achieve those goals, the less disruption there will be to business, the economy, and consumers. Time allows for product innovation; it allows for recycling technology innovation. It allows for education programs; it allows for investment and capacity and recycling infrastructure and many other things.

Many organizations have been working to support EPR. I think what the World Wildlife Fund has done, in particular, has created some excellent work to educate on EPR and how it is workable.

In closing, I would just like to say that I believe plastic waste is a critical issue that needs to be addressed in a practical, good way to make substantive progresses through a National regulatory framework, where you can achieve scale with producers taking responsibility for the life cycle of their products. I think the sooner clear goals and expectations are set for industry and time is given to meet those goals, the better.

Thank you.

[The prepared statement of Mr. Johnson follows:]

Written Testimony of H. Fisk Johnson, Ph.D.
Chairman and Chief Executive Officer
S. C. Johnson & Son, Inc.

Before the Senate Committee on Environment and Public Works
*Examining Extended Producer Responsibility Policies for Consumer Packaging*
March 6, 2024

I would like to thank Chairman Carper, Ranking Member Capito and the distinguished members of the committee for the opportunity to testify at this hearing on Extended Producer Responsibility Policies for Consumer Packaging. It is an honor and privilege to be with you today.

This is an incredibly important topic, and I am glad the committee is having this public dialogue.

As a scientist by education, and as a CEO of a large global consumer goods company that is a big user of plastic, I see plastic in two very different ways. On one hand, I see it as one of the most useful, versatile, and cost-effective materials developed in the last century; one that has brought extraordinary benefits to human life and well-being on this planet. I also know how important and integral it has been to our products and packaging.

On the other hand, as a lifelong conservationist, I also have seen how plastic has become one of the more profound emerging global pollutants that is affecting planetary, animal, and human health.

Reconciling those two perspectives is sometimes not so easy. The challenge as I see it – how do we practically, most economically, and least disruptively preserve the benefits that plastic has brought to humanity, while preventing the vast amounts of plastic that end up in landfills or, even worse, end up in the environment where it can affect animal and human health.

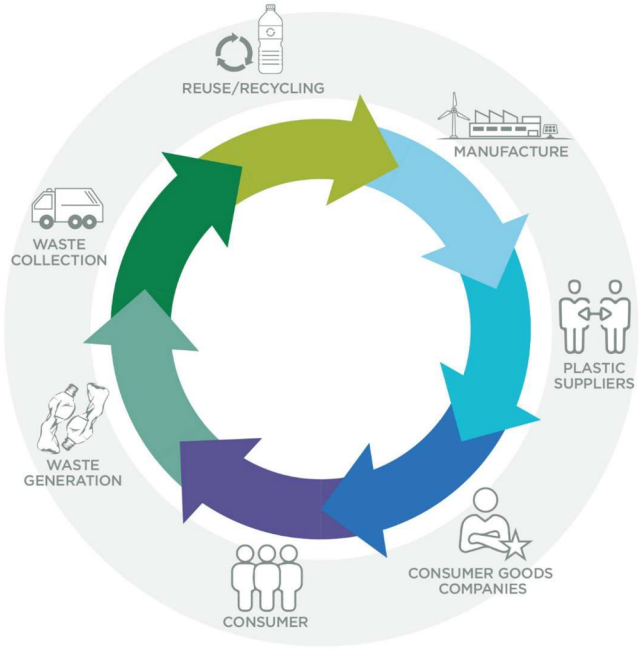
SCJ Johnson has had a long history of leadership on environmental issues. For example, under my father's leadership, SC Johnson was the first to remove chlorofluorocarbons (CFCs) from all its aerosol products because they might harm the ozone layer. We did it 10 years before the Montreal Protocol required it. For more than 30 years, we have been working on reducing our carbon footprint and greening our chemistry. We were recipients of an EPA Lifetime Atmospheric Achievement Award in 2003, recipient of the Presidential Green Chemistry Award in 2006, among many other environmental awards.

We have specifically been working to address plastic waste for many years. We launched our first 100% recycled plastic bottle 33 years ago – back in 1990. Twelve years ago, we offered our first concentrate – a small packet of concentrated Windex that could be added to an empty Windex bottle with water, enabling consumers to reuse their spray bottles dozens of times. We have continued to take numerous actions and launch many other initiatives to reduce our plastic footprint.

And while we have made significant progress with our company's overall work on sustainability, for all of our company's work and ambition on plastic, I can't raise my hand and say I feel good about the progress we have made.

Few of our product innovations have sold very well. Plastic waste is just not top of mind enough for most people to want to go to the minor inconvenience or pay a few cents more for the refill/re-use options we have offered. And while we have made good strides to reduce plastic in our packaging, cost can be a limiting factor. For example, incorporating recycled plastic in our products can put us at a competitive disadvantage when the cost of recycled plastic is significantly higher than virgin plastic. We will be at 25% PCR in our packaging globally by next year.

The fact is that voluntary actions only can go so far. It is incredibly difficult for an individual business, or even businesses as a whole, to make unilateral progress on the plastic waste issue. It takes everyone in the plastic ecosystem ( from plastic manufacturers, packaged goods companies, retailers, recyclers, waste haulers, to individual users of plastic products), to work collectively together in order to make significant progress and capture economies of scale.




<u>If one or more of the packaging value chain stakeholders in the circular economy cycle is not contributing... the whole thing loses effectiveness.</u>

In our view, the only practical way to get every stakeholder in the plastic ecosystem working collectively together and drive scale is a government regulatory framework. All companies of sufficient size in the ecosystem have to be a part of it for it to work and to drive the right economics and change.

There are excellent examples of where regulation has worked, and recycling rates are high. British Columbia, which has had EPR in place for more than 10 years, is a good model, with one of the highest recovery rates and recycling rates in the world.

I would like to share 5 reasons why we believe stronger regulation is warranted. And then come back to what we feel is the best kind of regulation and what works for the practical implementation of it.

1. **Americans want stronger plastic regulation**: Based on a recent survey we conducted, 79% of Americans today believe the government should be leading the way in dealing with plastic waste. Only 11% of plastic in the U.S. that could be recycled is recycled. And yet, it's not because Americans aren't putting the plastic in their bins, too much of what people try to recycle ends up in landfills.

2. **Without federal regulation a complex web of state regulations is emerging which will drive significant cost and dysfunction**: Today several states (California, Oregon, Washington, Colorado, Maine) have already passed EPR regulation, and nearly a dozen states are in various stages of considering legislation. We're already seeing different states offering conflicting definitions of what constitutes "packaging," who counts as a "producer," and what it means to be "recyclable." They have different fee structures, different targets, and varying timetables. While well-meaning and good progress – assuming more and more states do this, we will end up with a spider web of differing plastic regulations across the U.S. that will inevitably drive a massive increase in complexity and cost, and pose a significant compliance burden for 50-state marketers like SC Johnson. We need a federal solution that is consistent country-wide, and provides the scale and efficiencies needed to truly tackle this issue.

3. **Regulation is necessary to get everyone in the plastic ecosystem working effectively together and at scale:** Voluntary actions don't work very well. Business cannot solve this problem alone. It takes all the stakeholders in the plastic ecosystem working together to make all parts of the recycling ecosystem work effectively together and to drive economies of scale. If one part of the recycling loop is not effectively operating, the whole system doesn't work efficiently.

4. **Continuing to accumulate landfill waste is unsustainable**: A federal EPR framework can help address the pressing issue of landfill overcrowding, which is becoming increasingly unsustainable. The U.S. produces over 292 million tons of municipal solid waste annually. By 2030, it's estimated that U.S. landfills could reach their maximum capacity. EPR incentivizes packaged goods companies to design products with better end-of-life management, thus reducing the amount of waste sent to landfills.

5. **The environmental impact of virgin plastic is greater than recycled plastic**: EPR can significantly reduce the environmental impact of the reliance on virgin plastic, such as its carbon impact, as well as the environmental issues associated with the extraction of oil and production processes.

Time is of the essence in establishing a federal EPR framework.

There are two primary reasons why we believe the sooner regulation is implemented the better.

1. It's vitally important to get ahead of emerging state regulations before they become too overlapping and drive complexity, significant cost and dysfunction.

2. The sooner regulation is enacted, clear goals are set, and the more time that is given to achieve those goals, the better. This will allow a smoother transition towards sustainable plastic management and will best minimize disruptions to businesses, the economy, and consumers. Time allows for product innovation (in recyclability, recycled content, re-use/refill). It allows for innovations that eliminate the use of plastic and moves to alternate materials where practical. It allows for improvement of recycling technologies. It allows for consumer education programs and behavior change. The sooner clear goals are set for industry the better. Waiting to enact legislation until it becomes more of a crisis and then expecting significant progress in short order can only create significant disruption.

There are excellent examples of where regulation has worked, and recycling rates are high. As mentioned, the regulatory framework in British Columbia is a very effective program where packaged goods companies and brand owners like SC Johnson assume financial and operational responsibility for collecting, sorting, and recycling of their packaging through the complete recycling loop. There are target collection and recycling rates; incentives to continuously improve environmental outcomes, product makers cover a significant portion of the recycling service's cost; and a governance structure in which the government retains an oversight role. It's a sound system and framework.

In the U.S., Colorado's new EPR program for packaging and paper products, which has many of the same elements as British Columbia's, is also a good working framework that is largely consistent with the design principles for optimal EPR developed by the Consumer Goods Forum, which SC Johnson helped write and has endorsed.

One important element that is not part of current EPR frameworks but should be considered are ways that help promote re-use and refill opportunities. Refill or re-use options have significant environmental benefit in that they keep plastic out of the recycling loop and waste stream. It can also help make alternatives to plastic such as aluminum or glass more practical in certain applications. An example of re-use/refill that I mentioned is the concentrates to use to refill our Windex bottles. Another is refill stations where you can bring in your laundry detergent bottle and refill it in store. Some European countries are putting refill/re-use incentives into their regulatory structure. Today, one of our SCJ brands, Ecover, has 700 retail refill stations in the UK, Germany, and Belgium. Though it should be noted that this effort has had some success as Europeans tend to be much more attuned to the necessity of eliminating plastic waste.

When we talk about plastics, another looming issue, while not core to EPR, is microplastics. The presence of microplastics, and even nanoplastics, in food, water and within the human body is a growing problem with not a lot of known consequences. These studies are going to continue to come, and with that will come an increase in public concern. Whether as part of EPR, or in other ways, it's an issue that we're going to have to come to terms with.

In closing, I'd like to reiterate that I see EPR, when done right, as a pragmatic practical solution that can be implemented with the least disruption to the economy and consumers.

By holding packaged goods companies accountable for managing the end-of-life of their products, EPR encourages innovation and investment in alternatives. This approach allows changes to occur where opportunities for improvement are most significant, fostering the adoption of more efficient and less expensive substitutes for plastics. This is especially the case if stakeholders in the packaging value chain are given time to adapt. Sudden changes to supply or stretch goals with short time frames can alternatively be quite disruptive. It also avoids the risk of unintended consequences such as shortages or increased costs for essential plastic products, like those used in medical settings.

Again, thank you for holding this hearing and beginning a federal dialogue on EPR. It is critically important. I appreciate having the opportunity to add my voice and the efforts of SC Johnson to the conversation and eventual legislation on this critically important topic. We want to continue to play a helpful role in getting to a pragmatic solution.

**Senate Committee on Environment and Public Works**
**Hearing Entitled *"Examining Extended Producer Responsibility Policies for Consumer Packaging"***
**March 6, 2024**
**Responses to Questions for the Record for Dr. Fisk Johnson**

**Chairman Carper:**

1. In many Extended Producer Responsibility (EPR) programs, the role of the government is to ensure transparency and accountability from industry, but the government may have other roles to play as well. What do you think is the proper role of the government in an EPR scheme?

   In my view, the two most important roles for government in an EPR system are ensuring transparency and accountability from industry. Government should establish the process for creating the PRO (producer responsibility organization), should approve the PRO's stewardship plan, and hold industry accountable to delivering that plan. It's best when the government is working directly with the PRO to establish the process and ensure accountability.

   a. How might the federal government be able to provide harmonization and standardization across EPR programs?

      Harmonization of standards is always helpful from a business perspective. Products such as ours flow freely across state borders through complex distribution chains. To avoid conflict with state-by-state regulation and to maintain economies of scale, there needs to be common standards. Anything related to the physical characteristics of products (labeling, packaging, anything specific to a product) should have a national consistency and scope. There are other parts of the overall process, such as collection and recycling, that could be implemented locally, as long as they're in line with federal standards.

   b. From the perspective of a global business, what have been some of the challenges that S.C. Johnson has faced when it comes to complying with different international and national laws? How could the federal government address those challenges?

      As a company, we are committed to complying with regulations and government standards around the world. That does not mean it's easy, and in some ways could be less complicated. One huge step forward would be if the Federal Government provided uniform labeling requirements. To date, the single biggest challenge, and biggest driver of complexity and cost in the European Union (where EPR is fairly well established) is complying with differing packaging label requirements across EU countries. In the US, I gave the example of the chasing arrows during my testimony. In California, part of EPR labeling laws will prevent the chasing

arrows symbol in most cases. On the other hand, 30 other states have laws that mandate the chasing arrows. As a national manufacturer, it is not possible to comply with labeling requirements that are that directly contradictory. Our products flow freely across state borders, and, in practice, manufacturers cannot provide different products state by state to accommodate these differing requirements without significantly increased costs.

2. The United Nations (UN) is currently negotiating an internationally binding agreement to address plastic pollution. The fourth session of the Intergovernmental Negotiating Committee is scheduled for next month, and country representatives from United Nation member countries will gather to discuss these issues. How could Extended Producer Responsibility policies play a role in these negotiations and in our efforts to address the plastic crisis on an international level?

   It is great that countries around the world are coming together to address the problems of plastic pollution. EPR policies are a good solution for national programs to address the plastic waste crisis that meet the unique challenges of each country, and a treaty could set global standards for such national programs. In my perspective, what we need most from a treaty is policies to address issues that transcend country borders. How do we help prevent plastic waste from entering the ocean? Certainly, a financing mechanism to aid in building greater waste collection and recycling systems in developing countries would be a positive step. And while it hasn't gotten as much attention as other parts of the treaty, I believe it is critical that a final treaty address microplastic pollution. It is present everywhere in the world and is a growing threat to human and animal health.

3. Through EPR, producers come together to form a collective Producer Responsibility Organization (PRO). The PRO is responsible for managing the system, funding programs, collecting materials, contracting with municipalities or haulers. S.C. Johnson was a founding member of the Circular Action Alliance, which has been named the PRO in Colorado and California. Why would producers be incentivized to join the PRO? What benefit do they receive for being at the table in planning for recycling, and how are they held accountable to produce results?

   The success of an Extended Producer Responsibility program relies on strong engagement from producers. Their engagement is critical to insure effective implementation of EPR, establishing a level playing field and to maximize economies of scale. In fact, for EPR to work, it is necessary that all producers above a certain size participate. There will be strong incentives for major companies to participate in order to have a major hand in developing the stewardship plan and informing details of the program. All of this will be done with government oversight and approval. Many producers, particularly global ones, have been involved in informing the development of legislation in other countries, as well as the states that have already passed legislation such as Colorado and California.

a. Do you believe that the waste management sector has a sufficient role in the PRO? Why or why not?

The primary responsibilities that the PRO has under an EPR program are delivering expanded services, education and required circularity outcomes, such as meeting PCR targets. The PRO works very closely with each municipality in a given state to determine investments needed in depots, equipment, waste collection systems, and consumer education. It does not need to take away the important responsibility of waste management.

4. How does EPR respond to consumer desire to purchase more sustainable products?

EPR programs can definitely advance a consumer desire for more sustainable products by increasing the number of cost-effective refill options and ensuring that single-use products have the highest possible recycled content and are more easily recycled. The best and most effective EPR programs have a strong eco-modulation component that incentivizes producers to develop products that have better environmental attributes. Examples include:

- Reduced fees associated with Refill/Reuse products to promote development and sale of highly circular options.
- Reduced fees on packaging materials that contain PCR content to reduce virgin plastic usage by producers.
- Higher fees on hard to recycle materials to incentivize producers to leverage readily recyclable materials in future product design.

**Senator Whitehouse:**

1. In your testimony, you argue that EPR laws should have a long implementation runway so that companies have time to innovate for sustainable plastic management and design. What innovations do you think are possible with more time?

A successful circular economy has many participants – producers, manufacturers, consumers, waste collection, recycling and the transition of recycled plastic back into reusable material. Getting that collective process to work effectively and efficiently is not something that can happen with a short implementation period. A reasonable runway can provide the time for development of better recycling/separation technology, advancements in materials that allow for greater recyclability, and advancements that can help drive greater recycled content. Importantly, there is a consumer education and behavior change component that takes time. Plus, all of these changes have to happen in concert among all stakeholders in the plastic recycling ecosystem. One part of the system cannot move forward without other parts coming along. None of this can happen efficiently, or cost effectively, without a reasonable runway.

a. How do we ensure that this implementation runway doesn't just serve as a means for industry to keep producing and distributing plastic as long as they can?

No, that would not happen. EPR legislation has to set clear goals with clear time limits that must be met along the way and measures for strong accountability. As a company, we are committed to reducing the amount of virgin plastic in our packaging over the shortest reasonable time frame.

2. There seems to be a rising tide of industry support for EPR. You have said you support a federal EPR framework and would like to work with this committee to craft it. What business incentives motivate private industry to support EPR laws?

EPR is already here. Several states have passed legislation and many more are considering it. As I stated in my testimony, I believe a strong driver for industry support for a federal EPR program is to avoid the spiderweb of conflicting state requirements.

In addition, many companies, like SCJ, believe addressing plastic waste is a critical issue and support programs like EPR because it's simply the right thing to do.

a. What are some examples we can look to for models of EPR?

There are two models that I would encourage the Committee to consider when developing a potential federal EPR program: British Columbia's (Canada) program is the first full EPR program for packaging and paper products (PPP) in North America, where producers are responsible for financing and operating the province-wide recycling system. It's considered a best-in-class model for efficient and effective residential PPP management. In 2022, the program achieved an 86.2% recovery rate, and 98% of plastic collected was sent to recycling end markets — with more than 99% of households having access to recycling services.

In the U.S., Colorado's EPR program is a good working framework and is mainly consistent with the Consumer Goods Forum's Optimal EPR design principles (which SC Johnson endorsed):

- Producers, via a non-profit PRO, fund plans for target collection, recycling and content rates.
- Producers cover 100% net recycling service costs and are responsible for PRO management.
- Fee structure includes eco-modulation fees to incentivize sustainable packaging design.
- The state retains an oversight role via a stakeholder advisory board that will review and advise on the PRO program plans and has final approval and enforcement authority.

Both of these models could be further improved with the addition of extra incentives for refills and reusable products.

**Senator Sullivan:**

1. Alaskans are eager to recycle, but our state's recycling rate is low because we can collect it, but we don't have the infrastructure to recycle it. Today, recycling in Alaska hinges on shipping waste thousands of miles from where it is produced – largely inefficient and ineffective. This brings unintended consequences for individuals and communities with limited financial means and transportation access. Dr. Johnson, as a business leader, you've thought a lot about the balance between circularity and costs for businesses. But how would an EPR system impact consumers, particularly rural ones, and not simply pass costs on to them?

   I agree that the needs of rural and remote communities should be taken into consideration when EPR programs are developed. It's critically important that residents in rural areas have access to effective recycling services. British Columbia is a good example as they have implemented EPR in an area that has a large rural population. They have created collection capabilities in an efficient, cost-effective way and the cost isn't on the consumers. It's a good model of how to implement EPR while making sure people who live in communities who can least afford the changes aren't left behind.

   This is one of the reasons we support Senator Capito's "Recycling Infrastructure and Accessibility Act" and were pleased to see the Senate approve the bill. We hope the House of Representatives will take it up soon.

2. Would the fees charged at the time of purchase be better used to incentivize manufacturers to design their products to be easier to recycle or to reimburse the consumer upon collection for the EPR fee?

   Typically, in EPR programs, fee rates are directly linked to the packaging material choices of the manufacturer (e.g., plastic, paper, metal) and weights of those materials used, and are paid directly by the manufacturers to the PRO. These fees go into consumer education programs and funding for municipal programs.

   A program that is charged at the point of sale would result in either a "simple average fee model," which risks losing the benefit of true cost and transparency of design choices, or a "complex model" where a different rate would need to be determined for every item in a store, perhaps as many as 50,000 for a traditional retailer. This could be impractical for both retailers and manufacturers to administer.

3. Is a Producer Responsibility Organization (PRO) just another layer of (unaccountable) bureaucracy? Why couldn't a city, county or state impose a fee to accomplish the same objectives as a PRO?

In EPR the PRO **IS** held accountable by the state. The least bureaucratic is when there is no layer between the State and the PRO. A city on its own can't effectively engage all the companies and all the stakeholders in the plastic ecosystem. It is not a small task and is best managed by those in the plastic ecosystem who have to do the work. A simple implementation of a fee can't replace what is needed here, which is a comprehensive effective system that involves all stakeholders in the plastic ecosystem from producers, retailers, consumers, recyclers, and waste haulers working together to enable and create economies of scale in a circular economy.

Senator CARPER. Dr. Johnson, thank you for leading us off.

We will now turn to Erin Simon for her comments. She is Vice President and head of Plastic Waste and Business at the World Wildlife Fund. Ms. Simon has been with the World Wildlife Fund since 2011, leading efforts to engage with the private sector to reduce plastic pollution.

Ms. Simon, welcome. You are recognized for the next 5 minutes or so. Thanks so much for joining us.

**STATEMENT OF ERIN SIMON, VICE PRESIDENT, PLASTIC WASTE AND BUSINESS, WORLD WILDLIFE FUND**

Ms. SIMON. Thank you. Thank you, Chairman Carper and Ranking Member Capito and other distinguished members of the committee for the opportunity to testify today.

Before I came to WWF, World Wildlife Fund, I was a packaging engineer and material scientist working at Hewlett-Packard for 10 years.

Senator CARPER. Really?

Ms. SIMON. Yes. I spent a lot of time designing packaging for products both that were large format and went to copy rooms and stuff that ended up on Walmart shelves. When we talk about this topic today, not only am I passionate about it, but I can talk about it from a few different perspectives.

Senator CARPER. Good, good. I think that is maybe why we invited you to come.

[Laughter.]

Ms. SIMON. World Wildlife Fund is one of the world's leading science-based conservation organizations. We have been around for over 60 years, and our mission is really to protect the world's resources for future generations and to help address some of the biggest challenges facing our planet today, like plastic pollution.

Plastics are essential to modern life. They have helped us to overcome some insurmountable challenges. But the cost of that innovation has been quite extreme.

The U.S. is generating most of the plastic waste in the world. It is ending up in our rivers, our coastlines, and our communities. It is estimated that globally, there is 11 million metric tons of plastic pollution entering our oceans every year. Just a little bit of perspective, that is a dump truck per minute. Just in the hour we might be talking, that will be 60 dump trucks heading into our oceans.

Those plastics are ending up everywhere, from these essential ecosystems we are trying to protect to our city sidewalks, disproportionately impacting local communities and economies, and of course, leading to the growing health crisis of microplastics in our food and water.

To be clear, WWF is not anti-plastic. We believe plastics can be a cornerstone to many of the innovations that frame life, but they don't have any place in nature where they are ending up. Currently, we depend too heavily on the linear, single-use economy, where we make, use, and get rid of plastics. We need to turn this system, this linear economy, into a circular economy. That is going to require a multifaceted approach that protects the communities, protects the environment, and our economies.

We see this, and our partners, some big consumer brands, as a huge untapped opportunity for the U.S. in the form of leadership so massive that if we were to start today to transform our plastic linear economy into a circular one, we could save more than $4 trillion in direct environmental and social costs by 2040.

Policies like Extended Producer Responsibility can be a critical part of that solution. We know EPR is responsible for robust recycling rates in other parts of the world. It creates powerful incentives for companies to reduce their plastic footprint and design for recyclability and mitigate the risk of that leaking into the environment.

EPR shifts that responsibility of end of life to the producer, and the objective is really for this physical, organizational, and financial structure to be shared between the producer and the government. It creates a more effective structure that increases the end of life collection, allows for better environmentally sound treatment of collected products and waste, and provides incentives to manufacturers to design more resource efficiently and invest in infrastructure.

WWF has EPR principles that are broadly supported by industry and other NGO's and really include an industry-led governance model. This flexible framework is sensitive to regional differences but would ideally be established at the Federal level.

In this type of model, governments have the oversight over the system, but hand the day-to-day management and funding obligations to an industry-led producer responsibility organization, or PRO. In my written testimony, I provide more details of that and our recommended parameters for a successful EPR system.

WWF hopes that the conversation this committee is leading today will help pave the way for Congress to develop and enact EPR legislation. We are not alone in that. We have a proven track record working with companies to improve their footprints and advocate for policy.

In my written testimony, I elaborate on our work with companies like Coca-Cola, Mars, and Walmart. These companies support well-designed Federal EPR, as well as corporations further up the line, like Dow.

Policymakers can also act knowing the American public is firmly behind you. I know there were some stats listed, but soon to be released from WWF some public polling will show that 85 percent of the public agree that plastic waste pollution is a serious and concerning problem that requires immediate political action to solve.

This issue is one we can all agree on, and ultimately, a circular economy is the only sustainable way forward. EPR can help us to get there, and both government and industry align on the need for the best-in-class system.

Here in Congress, we have seen the passage of Save Our Seas, and members of this committee have introduced the Recycling and Compostability Accountability Act and the Recycling Infrastructure and Accessibility Act and the Break Free from Plastic Act. These efforts demonstrate the bipartisan recognition of this growing problem and the keen interest in addressing it. We believe well-designed Federal EPR provides another opportunity for Congress to pass bipartisan legislation.

Thank you for the opportunity to testify today, and thank you for the committee's leadership.

[The prepared statement of Ms. Simon follows:]

**Written Testimony of Erin Simon**
**Vice President and Head, Plastic Waste and Business**
**World Wildlife Fund**
**on**
**"Extended Producer Responsibility"**
**for the**
**Senate Committee on Environment and Public Works**

**March 6, 2024**

Chairman Carper, Ranking Member Capito, and members of the Committee, thank you for the opportunity to testify on the topic of Extended Producer Responsibility commonly referred to as EPR. My name is Erin Simon, and I am the Vice President and Head of Plastic Waste and Business at World Wildlife Fund (WWF). Before my time at WWF, I was a packaging engineer at HP for 10 years, responsible for the design and implementation of laser jet printer and media packaging. The topic of today's hearing is one that is near and dear to my heart and one that I can speak to from several different perspectives.

As the world's largest science-based conservation organization, WWF has been working to help both people and nature thrive for over 60 years. Our international network of offices works across 100 countries to deliver on this mission through our efforts to conserve and restore nature; to reduce humanity's environmental footprint; to ensure the sustainable use and management of natural resources; and to help address the biggest global environmental challenges, including the increasingly pressing challenge of plastic pollution.

WWF works at every level, collaborating with governments, local communities, and some of the world's biggest companies to deliver innovative solutions that protect both nature and the people who depend upon it.

## The Challenge of Plastic Pollution

The topic of today's hearing is critically important. I believe we can all agree that plastics are essential to modern life, enabling us to solve once insurmountable challenges. But the price for this innovation is staggering. Plastic pollution levels are rapidly reaching unsustainable levels. It is estimated that 11 million metric tons of plastic waste enter our oceans every year. To put that number in context, it is the equivalent of a dump truck of plastic waste every minute.[1] Without effective action to address this problem, the environmental, economic, and health costs will continue to mount and may become unfixable.

Plastic is now everywhere. It can be found in nearly every corner of the planet – from your city sidewalk to the depths of the ocean. Plastic pollution is harming some of the world's most fragile marine ecosystems, like coral reefs and mangroves, and more than 2,000 species around the world have been found to encounter plastic pollution in their natural habitats. It is estimated that up to 90% of seabirds and 52% of sea turtles have mistakenly eaten plastic.[2]

Plastic pollution also places a significant toll on local economies, and it is increasingly clear that it is a public health threat. As plastic breaks down into microplastics, it finds its way into our water and food – and into our bodies. Microplastics have been found in more than 100 aquatic species, including fish, shrimp, and mussels – many of which end up on our dinner plates. While we don't yet know the full impact of plastic pollution on our health, research increasingly shows that there is real cause for concern.

This is also an issue that most Americans agree on: at a time when we seem divided on most topics, there is an overwhelmingly consensus that plastic pollution is a significant concern. WWF just commissioned new public polling on this issue. It has not yet been released, but I want to share a preview of its findings. 85% of the public strongly or somewhat agree that "Plastic waste pollution is a serious and concerning problem that requires immediate political action to solve." It also shows that while the majority of the respondents are doing what they can in their daily lives to reduce plastic pollution, 71% of the public thinks that the Federal government and manufacturers of plastic products have a clear responsibility for solving this problem.

WWF believes plastic is a cornerstone for many of the innovations that frame modern life. But plastic has no place in nature, where it too often ends up. We most commonly rely on plastic as a single-use resource in a linear system where products and packaging are created, used, and thrown away. We need to transition away from this linear, business-as-usual model to a circular economy. This will require a multi-faceted approach that protects our environment, our communities, and our economies. It is also an untapped opportunity for the United States to lead in the creation of a circular economy for plastics use. The U.S. generates the most plastic waste in the world; it can also lead the way in innovating solutions that the rest of the world can emulate.

If we invest now to transform our plastics economy from a disposable one to a circular one, we can save more than $4 trillion in direct, environmental, and social costs by 2040.[3] And this helps to explain why there has been a groundswell of initiatives in recent years, led by companies, cities, states, and civil society organizations such as my own to reduce and ultimately prevent plastic waste. We are increasingly seeing major corporations leading the way, including many that WWF partners with on efforts to reduce plastic waste in their operations and supply chains.

But a truly circular economy – one that is regenerative and restorative – calls for us to reimagine the way we create, use, source, design, and dispose of products and packaging. For that to happen in the United States, the solutions can't just be driven by the private sector. We need comprehensive policies to address circularity on a national scale.

Among the most effective policies for achieving these outcomes is Extended Producer Responsibility (EPR), which is responsible for robust recycling rates in countries around the world and creates powerful incentives for companies to reduce their plastic footprint, design for recyclability, and mitigate the risk of plastic leakage into the environment. Several U.S. states have adopted EPR legislation or are in the process of considering it, notably Colorado and California. And these state-level systems are providing the models and the lessons learned that can inform a federal approach to EPR, which is what is ultimately needed.

Currently, the United States operates a patchwork of largely ineffective recycling systems, which has resulted in our embarrassing honor of having the lowest recycling rates of any developed country in the world. While the U.S. generates the most plastic waste in the world, it only recycles roughly 9% of it. Progress is being made, but federal leadership – particularly from Congress – could significantly accelerate this process and serve as a catalyst for holistic system change. A clear and coordinated federal framework would enable companies to deploy circular solutions more effectively while providing us an opportunity to invest in comprehensive circular solutions more broadly.

EPR and policies like it are the only mechanisms that will generate the billions of dollars required to address the recycling infrastructure challenges we experience in the United States and establish a truly circular economy. Federal policies – not a hodgepodge of state policies – will be what ultimately drives collective action that ensures that the public and private sectors collaborate in the management of packaging waste in a manner that is beneficial to communities and the environment.

There has been a surge in support for EPR, both by state policymakers and private sector actors, and the time is ripe for federal leadership to nurture this moment and take it from a potential solution to accepted practice. In addition to organizations such as my own, you have a community of partners from all industry sectors asking for your help and willing to provide you with an array of resources to continue building on that momentum. Following, I outline how and why EPR works as a solution to plastic pollution, the principles of good EPR from WWF's perspective, and the various benefits that EPR can yield, aside from just increased recycling rates.

**Extended Producer Responsibility**

In business, there is a commonly held principle of "Global Producer Responsibility," "which states that the producers are responsible both for the production and safe use of their product. Extended Producer Responsibility (EPR) follows a similar approach and is defined as the additional shift of responsibility for the end-of-life management of products and materials to the producers.[1] The objective of EPR is to share the physical, organizational, and/or financial responsibility for waste management between producers and the government, thus reducing the burden on municipalities. This creates more resourceful and effective schemes that increase the end-of-life collection, allow for environmentally sound treatment of collected products and waste reuse and recycling; and provide incentives for manufacturers to design resource-efficient and low-impact products.[2]

As a result, EPR creates positive impact up and down the value chain, making them an ideal tool to push the economy towards circularity. To close the loop towards plastic circularity, it is necessary to both end the disposal of end-of-life plastics and stop the use of virgin feedstocks by

[1] Lifset, R. et al. (2013) Extended Producer Responsibility. National, International and Practical Perspectives
[2] E. Watkins, S. Gionfra, J-P. Schweitzer, M. Pantzar, C. Janssens and P. ten Brink (2017) EPR in the EU Plastics Strategy and the Circular Economy: A focus on plastic packaging

reducing plastic production in the first instance and by replacing virgin feedstocks with secondary raw materials. These systems have been implemented in packaging since the late 1980s, but a significant increase in adoption can be seen in the last decade. Nearly 400 different systems have been adopted in several countries around the globe and in some U.S. states.[3] The introduction of EPR has shown pronounced increases in collection and recycling rates and can reduce the need for virgin feedstocks and lower costs for secondary raw materials. The components for EPR schemes include:

- Materials and products included in the scheme
- Producers subject to EPR regulation
- Obligations companies must comply with
- Organization of the EPR scheme
- Setting of collection, reduction, and recycling targets
- Establishment of a fee system and for factors such as product recyclability and proportion of recycled material in products

The coverage of costs for collection, sorting, and recycling has been identified as one of the major strengths of EPR systems because they can ease the burden on the public. While EPR cannot be considered a silver bullet, it has been most effective with different policy tools, such as disposal regulation and tax incentives. There are several factors which can hinder the effective roll-out of EPR schemes, including lack of alignment among stakeholders, lax enforcement and social safeguards, inadequate recycling targets, as well as social and cultural factors including lack of public awareness.

Overall, the establishment of EPR systems has contributed to the introduction of efficient separate collection schemes for specific waste streams, including plastic packaging. EPR shifts the investment and operational costs for waste management of used packaging at least partly to industry.

**EPR Benefits More than Just Recycling**

EPR can create positive environmental, social, and economic outcomes by transitioning the way products are designed and manufactured to maximize natural resource value and recyclability or reusability.

It's also an issue where consumers are engaged on this issue and want to act. Individuals need the ability to make sustainable choices that fit with their everyday lives. Governments and business have the responsibility to be good stewards of our resources and ensure that consumers can access products and services that allow them to live their values.

1. **Economic Outcomes:**
    - **Cost Savings:** EPR can result in cost savings for governments, businesses, and consumers by internalizing the environmental and social costs associated with product disposal and pollution. By shifting responsibility and financial burden back to

[3] Daniel Kaffine and Patrick OReilly (2015): What have we learned about Extended Producer Responsibility in the past decade? A survey of the recent EPR economic literature

producers, EPR encourages them to adopt more sustainable practices, ultimately reducing the overall cost of waste management and environmental remediation.

- **Market Innovation and Competitiveness:** EPR encourages product innovation and design optimization to minimize environmental impact throughout the product lifecycle. American companies gain a competitive global advantage by reducing regulatory compliance risks, environmental impacts, and tapping into growing consumer demand for sustainable products and practices.
- **Reduced Risk:** EPR supports design standards and increased consistency and quality in secondary materials. This reduced risk often results in more private investment in the system.
- **Job Creation and Economic Opportunities:** The implementation of EPR programs stimulates job growth and economic development in sectors related to waste management, recycling, and resource recovery. By investing in new technologies and modalities, infrastructure upgrades, and workforce training, EPR fosters the emergence of new employment opportunities and supports local economies.
- **Recycling Market:** EPR ensures that waste management industry is audited to make sure that material collected gets recycled. It can develop markets for hard-to-recycle materials.
- **Strengthened Domestic Supply Chains:** EPR will create stronger supply chains for domestic materials by giving producers access to high-quality recycled content. Reliance on imported materials or exported recyclables will ensure that existing American products become new American products and reduce dependency on volatile materials markets.

2. **Environmental Outcomes:**
   - **Waste Reduction:** EPR incentivizes producers to design products with end-of-life considerations in mind, promoting recyclability and access to recycling services, and potentially advancing uptake of reuse systems. Producers pay for the net cost of collecting and recycling the packaging they put on the market, internalizing the system's performance into their operations. Producers are also incentivized to design products and select materials with a circular economy in mind through ecomodulation – bonus or malice fees that reward innovative design and penalize system disruptors. This leads to a reduction in the amount of waste generated and an increase in sustainable practices while fully funding and investing in responsible recycling systems.
   - **Resource Conservation:** By encouraging recycling and recovery of materials from products at the end of their life cycle, EPR reduces the demand for virgin resources. This helps conserve natural resources such as timber, minerals, and fossil fuels, leading to a more sustainable use of finite resources.
   - **Pollution Prevention:** EPR aims to reduce the environmental impact associated with the disposal of products and packaging. Through effective recycling programs, EPR helps mitigate pollution of air, water, and soil.

3. **Social Outcomes:**
   - **Equitable Access to Waste Management Solutions:** EPR programs ensure that all communities, regardless of their socio-economic status or geographic location, have

access to convenient and efficient recycling services. This promotes environmental justice by addressing disparities in access to essential services and minimizing the burden of waste on marginalized communities.

- **Environmental Justice:** By reducing waste and advancing producer accountability, EPR advances environmental justice by reducing the amount of waste sent to landfills or incinerated, beginning to rectify the legacy impacts of waste often placed on underserved communities. Producer responsibility must also ensure that new and expanded infrastructure accounts for and minimizes community-level impacts.
- **Better Product Transparency:** EPR systems with design standards require more product transparency for overall system efficiency. Better product transparency means there is greater visibility into problematic and toxic chemicals. With better visibility, the opportunity to reduce use and exposure is easier to advance and monitor.

**Ecomodulation as an Aspect of an EPR System**

EPR is a holistic solution that does more than simply fund and improve recycling systems. It can also be a supporting framework for ensuring quality of materials to match recycling technology and enhancing the quality and consistency of end markets. This is done through a key element of EPR called ecomodulation. Ecomodulation is a fee structure that rewards companies for 1) using less plastic and more sustainable material and 2) designing materials that can be efficiently processed through recycling infrastructure. When ecomodulation is included in an EPR scheme, the program requires companies to pay fees for their packaging material and incentivizes them to be more sustainable. This provides the potential for them to pay significantly less into the EPR scheme for using more sustainable material. Ecomodulation also disincentivizes the use of problematic materials and designs that decrease the quality of all materials being recycled. Ultimately, this creates powerful financial incentives for producers to transform their packaging portfolio. For example, in some Canadian provinces, the material used for shopping bags costs almost three times more than their paper alternatives, and plastic to-go packaging costs six times more that its paper counterpart[4]. To avoid paying high EPR fees, companies will pursue cost savings by using less plastic, designing packaging for recyclability, and using more sustainable material. International companies are already using significantly less plastic in countries with EPR than they do in the United States.

**Principles of Good EPR**

The concept of EPR is not new, as other countries around the world have been utilizing it as a recycling and packaging solution for decades. There is a solid evidence base of what has worked and what hasn't, based on the experience of these other countries.

We have learned that in the case of EPR, the interests of industry and governments are completely aligned. They both share a goal to build a best-in-class recycling system and prioritize efficiency. To aid in this effort, WWF has developed a set of principles that are broadly supported across industry and the NGO community, including an industry-led governance model.

[4] 2023 Canada Circular Materials National Provincial Material Fee Rates

A flexible EPR framework, sensitive to regional differences, would ideally be established at the Federal level. This framework would steer the transition from a linear to circular economy nationally and link policies to increase the quality and quantity of recyclables collected with goals for the use of those materials in new products. This means establishing material-specific, numeric targets for recyclability, recovery, and use of recycled content. The EPR framework should optimize the performance of recovery systems and promote coordination with related initiatives such as tipping fee surcharges, deposit return systems, and new infrastructure financing programs. The overarching principles for a successful system are one that:

- Generates strong environmental, social, and economic outcomes in an efficient and accountable manner
- Provides convenient service to consumers
- Creates a financially sustainable model
- Offers producers access to recovered material for closed loop recycling
- Supports environmental justice objectives in recycling systems

In this type of model, governments still have full control over the system but hand the day-to-management and funding obligations to an industry-led Producer Responsibility Organization (PRO). Right now, Colorado's EPR system is the closest to our principles that we have in the United States. We anticipate that Colorado will become the model for what good EPR looks like in this country. By contrast, poorly designed EPR programs that do not create incentives for improvements are instead designed to fund status quo recycling operations. These systems often cost over twice as much without meaningful results. Below are the program parameters for a successful EPR model.

**Clear Scope of Products Affected and Programs Funded**

In a successful EPR program, products include all types of consumer goods packaging and printed paper with products labeled clearly, simply, and consistently for consumers to indicate recyclability and the appropriate manner for disposal and recycling. The list of materials that can be recycled is consistent across the jurisdiction, in this case the United States.

The program funds 100 percent of the net cost (net of scrap value) for residential recycling of packaging and printed paper including both single- and multi-family dwellings. This also includes education and outreach programs. However, it excludes costs for industrial, commercial, and institutional waste management and for disposal of residential material. Ideally, the fee setting principle should outline this explicitly and should not include any additional charges (e.g. a per-item or unit tax). Ecomodulation is usually described in the PRO section of legislation.

Legislation also states the overall program performance objectives, with initial recovery targets for packaging and printed paper of 50 to 60 percent. These objectives depend on the region and ramp up over time. Recyclability targets should be set to both eliminate package components that hinder recycling and encourage design for recycling, along with recycled content requirements

that complement program objectives. Overall, it is important to set targets with reasonable yet ambitious timelines.

**Centralized Program Management**

A single, non-profit PRO composed of the responsible parties that create any covered product for commercial use, sale or distribution manages the funding system for the entire jurisdiction, with professional staff answerable to a producer-led board of directors. Complementary systems such as deposit return programs could have their own PRO and should work together to maximize overall system performance. There are instances where it is ideal to opt for a multi-PRO model. Policymakers can and should guide alignment on this, including through legislation.

The PRO develops and implements a plan to achieve the program goals stated in legislation, developed in consultation with other stakeholders and usually mapped out over five to seven years. The legislation spells out timeframes and parameters for regular plan updates and review.

After plan approval, the PRO sets fees for producers following the cost principles below, implements needed recycling system changes, and coordinates infrastructure financing sources to modernize systems. Additionally, the PRO establishes funding and reimbursement arrangements with recyclers, evaluates and reports on performance, and markets recycled materials. Obligated producers have the "right of first refusal" to their share of recovered material at market terms.

The PRO does not typically operate recovery vehicles and facilities, but contracts for those services either directly or through reimbursement of private sector or municipal costs to provide the services.

**Transparent Cost Principles**

The PRO sets producer fees by material type (e.g., PET, aluminum, corrugated cardboard) based on the cost to recycle the material minus its value in the scrap market. Because costs and commodity values change over time, fees are reset typically once per year.

Producers pay fees based on these net costs with fees assessed based on the weight of various materials sold, with a de minimis threshold set to relieve the smallest producers of obligation. Producers typically update sales annually and the data is treated confidentially. It makes sense to exclude producers from these programs with less than a certain amount of sales yearly.
The PRO modifies fees based on environmental and social factors (i.e., ecomodulation) to incentivize product design decisions. Fee reductions might be considered, for instance, for products that are the most recyclable, contain recycled content, or have a low carbon footprint. Surcharges, or disruptor fees, may apply to difficult to recycle materials with the highest fees charged to materials that cannot be recycled.

The overhead costs of running the PRO and the government's cost of rulemaking, oversight, and enforcement are also embedded in the producer fees.

**Defined Role for Government**

Enabling legislation should set the scope of the EPR program and its goals to assure a level playing field among producers of consumer goods packaging and printed paper. The legislation also specifies the role of government and how those activities are funded. The designated government agency evaluates and approves the PRO's plan for achieving program goals, monitors program progress, and provides enforcement.

Similarly, government agency costs for rulemaking, plan approval, oversight, and enforcement activities are reimbursed by the PRO, with those costs embedded in the producer fees. No additional government funds are drawn from the producer organization, other than reimbursements to local and regional governments for recycling services as noted above. The amount of government reimbursement is publicly available as is the way government funds are allocated.

**Policy Solutions are Needed at All Levels**

We have already seen some strong progress at the state-level towards EPR and recommend that the federal government works with states that have taken the lead while seeking to create more consistency across the U.S. where possible. There is an opportunity for federal policy to create a precedent where state policy is not progressing. In some instances, states are already out in front. Following advocacy by corporate leaders, NGOs, and other stakeholders, Colorado enacted the United States' first full EPR legislation in June 2022. Colorado is now leading the nation in implementing EPR for all packaging, which will make collection easy for consumers, incentivize best practices for sorting and processing, and pair producer responsibility with access to high quality materials. The EPR model in Colorado shows a path forward that other states can follow, and one which we hope will eventually be embraced across the nation.

California's Plastic Pollution Prevention and Packaging Producer Responsibility Act, SB54, will require an analysis of necessary action to address the impacts of single use plastic packaging, establish measures to track progress on removing some of the most problematic packaging, and require that packaging be recyclable in practice. SB54 is the first legislation to require numeric amounts for source reduction by number and by weight by 25% by 2032, reflecting the fact that tracking and data are crucial to the creation of a circular economy.

Both Colorado and California provide examples for Congress to learn from as it considers what a federal approach to EPR could look like. WWF hopes that the conversation this Committee is leading will help pave the way for Congress to develop and enact such federal EPR legislation and call attention to the considerations and advantages of reduction, reuse, as well as material alternatives to plastics as we seek to address the problem of plastic waste and pollution. WWF is not alone in this desire – our proven track record working with the private sector to improve their footprints and advocate for sound policy speaks to a broader alignment on this vision.

**Growing Corporate Leadership**

In 2019, WWF launched ReSource: Plastic, an activation hub to support companies that want to translate their plastic commitments into tangible change in their business practices. A key element was the establishment of an analytical tool, the ReSource Footprint Tracker, to measure corporate action and progress year over year.[5] Businesses have made real progress to reduce waste within their own supply chains. For instance, Colgate-Palmolive is making significant progress in transforming toothpaste packaging through its recyclable tube technology that it is freely sharing with other companies and industry stakeholders. This is the type of redesign of difficult-to-recycle packaging that we need to see more of, and sharing the details of the technology is helping to move the entire system. The Coca-Cola Company has also made strides to lower their plastic footprint, announcing an industry-leading goal to have at least 25% of its beverage volume worldwide sold through reuse systems by 2030 and delivering 14% of its total beverage volume in reusable packaging in 2022. The scaling of reuse is a critical step to ultimately reduce our dependency on single-use plastic, and we expect more companies to follow suit in the coming years.

However, despite many large, influential businesses stepping up and doubling their initiatives to fight plastic waste, plastic pollution continues to grow. While companies can make progress addressing plastic pollution through individual action, we need to target the root cause of the issue in order to address the plastic crisis at the scope and scale necessary: we have a linear materials system when it should be circular. Achieving this broader goal will require advocating for wide scale, holistic systemic change and driving collective action through coalitions. We need smart plastic policy, on both the national and global levels, to enable the frameworks that allow voluntary initiatives to be even more impactful. Business is critical to helping us get there. We also need collaboration across industry that ensures we do not have one company succeeding in a vacuum and instead prioritizes pre-competitive sharing of solutions.

After years of work on business transformation, companies acknowledge that voluntary action is not sufficient to fix our broken system. To meet this challenge, many U.S. companies have come together in the United States to form a united front in the fight to end plastic pollution, such as with the U.S. Plastics Pact in 2020 and OneSource Coalition in 2021. Through the U.S. Plastics Pact, companies work together with NGOs, government agencies, and research institutions toward impactful national targets focused solution-driven actions that adapt the U.S. systems that produce, use, recover, and process plastic. Via OneSource, WWF brings together 25 non-governmental and private sector organizations in support of Extended Producer Responsibility, environmental justice and international leadership on policy advancements that address plastic waste.

In September 2022, WWF and Ellen MacArthur Foundation launched the Business Coalition for a Global Plastics Treaty with 85 organizations committed to raising ambition for corporate action and support for the upcoming global treaty. The Coalition, now with over 200 organizations, develops ambitious policy recommendations, engages with treaty negotiators, and brings business cases for benefits and necessity of an effective treaty that sets common goals, rules, and

[5] For more information see *Transparent 2022 Annual ReSource: Plastic Progress Report*

obligations to be implemented in national jurisdictions. For businesses and investors, this means creating a level playing field and preventing a patchwork of disconnected solutions.

Many of these companies have been vocal in their support of EPR.[6] See below for some sample quotes from consumer products companies on EPR:

*"As part of our vision to build a world where packaging never becomes waste, PepsiCo actively supports policies used to promote a more sustainable, circular economy for packaging. We believe that Extended Producer Responsibility (EPR) programs are one good example. EPR, if properly designed and funded, can provide significant support to recycling systems. PepsiCo was proud to champion the EPR legislation that recently passed in Colorado as an example of something that we believe will work for all key stakeholders."*

*- Lauren Cotter, Head of Global Sustainable Packaging, PepsiCo*

*"We need well-functioning, standardized recycling systems to increase the collection of our bottles and cans, so we can reuse the material back into our packaging. We appreciate the opportunity to partner with WWF, our industry colleagues, NGOS and others to help advance well-designed EPR systems and build a circular economy for our packaging."*

*– Kurt Ritter, Vice President of Sustainability, Coca-Cola North America*

By continuing the surge of collective action and putting in place the right policies that will create an environment for corporate actors to implement sustainable practices, government stakeholders can help companies achieve their plastic reduction objectives and enable them to go even further.

**Conclusion**

We must mend the broken and complex system that has gotten us to where we are today, built on high demand for unnecessary virgin plastic and ineffective waste management. To address the plastic crisis at the scope and scale necessary, we need holistic systemic change and smart plastic policy on both the national and global levels. We need an all-in approach – from policymakers to industry leaders, from cities to individual consumers – so the plastics and materials that we manufacture, and use can be recycled into valuable products that we use again and again.

Ultimately, a circular economy is the only sustainable way forward. It begins with a reevaluation of our use and disposal of plastic that centers both environmental justice and human health outcomes. It will require the elimination of unnecessary plastic, substantial increases in the reuse, recycling, and composting, and a shift to sustainable inputs and new production and consumption models for the remaining, necessary materials.[7] Though this reality may seem ambitious, there are policies and changes we can work toward today to create more efficient systems that will ensure current and future generations produce and consume goods with minimal impact. EPR is

[6] https://www.worldwildlife.org/blogs/sustainability-works/posts/why-companies-support-epr-for-better-recycling-systems

[7] For more information see *WWF Position: The Role of Reuse in a Circular Economy for Plastics*

an effective policy mechanism that allows for significant economic, health, and environmental benefits. There is strong evidence from abroad and from the pilot program in Colorado that it works.

The American public wants to see action to address plastic pollution. Leading American businesses are calling on EPR at the federal level. While plastic pollution is a crisis, it is an eminently solvable one, with the right policies in place. Congress can help by providing the economic incentives and policy landscapes that will speed their deployment. Already, we have seen the passage of the Save Our Seas Act and Save Our Seas 2.0, and Members of this Committee have introduced the Recycling and Composting Accountability Act, the Recycling Infrastructure and Accessibility Act, and the Break Free From Plastic Pollution Act, which includes the Protect Communities from Plastics Act. These efforts demonstrate the bipartisan recognition of a growing problem and the keen interest in addressing it. We believe that federal EPR provides another opportunity for Congress to pass bipartisan legislation – and a potentially transformational one in our efforts to address plastic pollution. As we can see with today's discussion, and through other hearings and legislation, there is growing interest in convening stakeholders to work together on this issue. I believe I speak for many of our partners when I say we are grateful for your Committee's leadership and guidance on this vital issue, and we look forward to working with you to advance real and effective policy solutions to this challenge.

There is no time to waste if we want to achieve the vision of a more resilient future in which we protect human and environmental health and eliminate plastic in nature.

Thank you for the opportunity to testify today and thank you for the Committee's leadership in moving this conversation forward. We are happy to assist in any way that we can as this dialogue continues.

**Senate Committee on Environment and Public Works**
**Hearing Entitled *"Examining Extended Producer Responsibility Policies for Consumer Packaging"***
**March 6, 2024**
**Questions for the Record for Erin Simon**

**Chairman Carper:**

1. In many Extended Producer Responsibility (EPR) programs, the role of the government is to ensure transparency and accountability from industry, but the government may have other roles to play as well. What do you think is the proper role of the government in an EPR scheme?

    a. How might the federal government be able to provide harmonization and standardization across EPR programs?

    WWF believes that design standards are critical to setting EPR programs up for success. The federal government can play a helpful role by helping set design standards that are agreed upon by experts in the field (this would be in partnership with the PRO). By designing products from the start for optimized recycling, we can ensure a consistent, high quality secondary material market. One of the biggest barriers to reducing plastic pollution has historically been the limited access to consistent secondary materials when compared to more readily accessible virgin plastic; effectively designed EPR could therefore bridge this gap by helping grow the market value for recycled material. The federal government can also put measures into place to establish standardized reporting, which will be essential to support transparency around what goes into the creation of these products. Reporting can highlight important factors that might need addressing, such as the use of problematic chemicals or design elements, as well as create cost incentives based on alignment to predetermined harmonized standards. National EPR legislation could include both design and reporting standards to ensure EPR works at scale and would harmonize EPR programs across the country.

2. The United Nations (UN) is currently negotiating an internationally binding agreement to address plastic pollution. The fourth session of the Intergovernmental Negotiating Committee is scheduled for next month, and country representatives from United Nation member countries will gather to discuss these issues. How could Extended Producer Responsibility policies play a role in these negotiations and in our efforts to address the plastic crisis on an international level?

    The harmonization of design standards and transparency is not only necessary in the United States, but at the global level. When designed thoughtfully and implemented effectively, EPR can provide a solution and should thus play a critical role in the upcoming international negotiations. EPR can also support long-term economic opportunity by ensuring any development dollars or catalytic investments in infrastructure are matched with the proper equipment and policy regulations to create a long-term funding model. The need for non-plastic producing countries to invest in recycling infrastructure is just a

starting point. Long-term financial viability of that infrastructure depends on ensuring the products sent to those countries are compatible with their infrastructure. Additionally, an effective EPR policy can create a solid operating budget moving forward.

A minimum level of harmonization of EPR systems around the world is critical for both multinational corporations as well as Small and Medium-sized Enterprises (SMEs) that do not have the resources or capacity to screen and manage compliance risks across markets. Effective EPR systems would also help increase the supply of recycled plastics that currently many companies lack access to. EPR legislation based on regulatory requirements shared by UN member states will enable a global agreement in which UN member states can achieve their obligations under the agreement and support circular economy objectives, which include most notably (1) scaling the collection and recycling of plastic products and packaging; and (2) ensuring the availability and quality of recycled feedstocks to replace the use of virgin materials. Ideally, EPR will be embedded in the agreement with a complementary set of policies to ensure that EPR systems are implemented in a fair, socially just, and inclusive way and to give sufficient incentives to promote solutions for waste reduction and reuse.

3. The World Wildlife Fund's One Source Coalition brings together the environmental community and private sector companies to work together on recycling issues, like EPR. Would you please share more information on your organization's engagement with the private sector?

   In 2019, WWF launched ReSource: Plastic, an activation hub to support companies that want to translate their plastic commitments into tangible change in their business practices. A key element was the establishment of an analytical tool, the ReSource Footprint Tracker, to measure corporate action and progress year over year.[1] Businesses have made real progress to reduce waste within their own supply chains. For instance, Colgate-Palmolive is making significant progress in transforming toothpaste packaging through its recyclable tube technology that it is freely sharing with other companies and industry stakeholders. This is the type of redesign of difficult-to-recycle packaging that we need to see more of, and sharing the details of the technology is helping to move the entire system. The Coca-Cola Company has also made strides to lower their plastic footprint, announcing an industry-leading goal to have at least 25% of its beverage volume worldwide sold through reuse systems by 2030 and delivering 14% of its total beverage volume in reusable packaging in 2022. The scaling of reuse is a critical step to ultimately reduce our dependency on single-use plastic, and we expect more companies to follow suit in the coming years.

   However, despite many large, influential businesses stepping up and doubling their initiatives to fight plastic waste, plastic pollution continues to grow. While companies can make progress addressing plastic pollution through individual action, we need to target the root cause of the issue in order to address the plastic crisis at the scope and scale necessary-- we have a linear materials system that should be circular instead. Achieving this broader

[1] For more information see *Transparent 2022 Annual ReSource: Plastic Progress Report*

goal will require advocating for wide-scale, holistic systemic change and driving collective action through coalitions. We need smart plastic policies, on both the national and global levels, to enable the frameworks that allow voluntary initiatives to be even more impactful. Business is critical to helping us get there. We also need collaboration across industry that ensures we do not have one company succeeding in a vacuum and instead prioritizes pre-competitive sharing of solutions.

After years of work on business transformation, companies acknowledge that voluntary action is not sufficient to fix our broken system. To meet this challenge, many U.S. companies have come together in the United States to form a united front in the fight to end plastic pollution, such as with the U.S. Plastics Pact in 2020 and OneSource Coalition in 2021. Through the U.S. Plastics Pact, companies work together with NGOs, government agencies, and research institutions toward impactful national targets focused solution-driven actions that adapt the U.S. systems that produce, use, recover, and process plastic. Via OneSource, WWF brings together 25 non-governmental and private sector organizations in support of EPR, environmental justice, and international leadership on policy advancements that address plastic waste.

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Many of these companies have been vocal in their support of EPR. Please review this link for some sample quotes from consumer products companies on EPR.

4. If chemical recycling is pursued as a solution to deal with hard-to-recycle plastics, what criteria or considerations should be addressed when it comes to regulating the health and environmental impacts of these facilities?

   If chemical recycling is pursued as a solution to deal with hard-to-recycle plastics, EPR policies should develop outcome-based standards for any technology used for recycling including:

   - Strong, impartial evidence that these technologies, or the relevant subset of them, deliver environmental and social benefits.
   - An implementation plan and safeguards that ensure technology is adding a unique value, and not derailing upstream and transformational efforts, nor displacing existing mechanical recycling, which is a better performer on climate change.
   - Avoiding negative impacts to local communities, and demonstrating their operation is safe for human health.

On the topic of chemical recycling, WWF has published detailed principles which align with the points above. They are summarized below, and for more detailed information please see WWF's Chemical Recycling Implementation Principles.

**WWF's Chemical Recycling Implementation Principles**

1. Chemical recycling must not divert resources from priority efforts to address global plastic pollution.
    - This is critical to ensure that the most impactful efforts are not deprioritized. Furthermore, it's not enough to have theoretical alignment on this issue, we must have practical, enforceable safeguards which will guarantee that these technologies won't be implemented in a way that derails progress on upstream, transformational efforts.
    - Assurances of intention are not enough on this point.
2. Chemical recycling must prove a reduced carbon footprint compared to virgin plastic.
    - At scale, this reduction should be in line with what it would take for the sector as a whole to meet the 1.5 C climate threshold target.
3. Chemical recycling must not negatively impact local communities and must demonstrate their operation is safe for human health.
    - Environmental justice principles must be observed and implemented.
4. Safeguarding nature – chemical recycling technologies must not adversely impact our environment.
    - Equally as important as climate impacts, it is critical to call these impacts out separately.
5. The use of chemical recycling should be complementary to existing waste management systems and not compete for feedstocks with mechanical recycling.
    - Chemical recycling should only be considered for materials that cannot be recycled mechanically. It should be additional, expanding the total amount of material that gets recycled, not cannibalizing material from existing recycling systems.
6. Plastic waste streams must be matched to the most environmentally efficient technology available.
7. Only material-to-material applications of chemical recycling should be considered as recycling and part of a circular economy.
    - Chemical recycling only contributes to a circular material system when it is applied to material-to-material production.
    - Activities such as plastic-to-fuel are not recycling and are not part of the circular economy. Only plastic-to-plastic applications offset virgin plastic entering the system.
8. Chemical recycling systems must not transform recyclable material into non-recyclable material, which does not support circularity.
9. Claims made in regard to chemical recycling should be true, clear, and relevant.
    - Chemically recycled content should be distinguished from mechanically recycled content and claims made on mass balance should be distinguished from claims made on segregated supply.
10. Plastic recycled with chemical recycling technologies should be verified with chain of custody because there is no independent test to distinguish this content from virgin plastic. Credible 3rd party verification is needed.

5. Packaging is often littered or discarded. It ends up on roads and highways, filling local waterways and discarded in landfills or incinerators. These are valuable materials that could be recycled and reused, reducing our need to return to the planet to extract raw materials. How does EPR create positive environmental impacts?

    a. How do requirements for recyclability and investment in recycling systems create better environmental outcomes?

    Positive environmental impacts from EPR include:

    - **Waste Reduction:** EPR incentivizes producers to design products with end-of-life considerations in mind, promoting recyclability and access to recycling services, and potentially advancing uptake of reuse systems. Producers pay for the net cost of collecting and recycling the packaging they put on the market, internalizing the system's performance into their operations. Producers are also incentivized to design products and select materials with a circular economy in mind through ecomodulation – fees can be adjusted that reward innovative design and penalize system disruptors. This leads to a reduction in the amount of waste generated and an increase in sustainable practices while fully funding and investing in responsible recycling systems.
    - **Resource Conservation:** By encouraging recycling and recovery of materials from products at the end of their life cycle, EPR reduces the demand for virgin resources. This helps conserve natural resources such as timber, minerals, and fossil fuels, leading to a more sustainable use of finite resources.
    - **Pollution Prevention:** EPR aims to reduce the environmental impact associated with the disposal of products and packaging. Through effective recycling programs, EPR helps mitigate pollution of air, water, and soil.

6. The EPA's National Recycling Strategy identified five objectives to move toward a more circular economy: "improve markets for recycled commodities, increase collection and improve materials management infrastructure, reduce contamination in the recycled materials stream, enhance policies and programs to support circularity, and standardize measurement and increase data collection." How can EPR help the U.S. achieve these objectives set out in the National Recycling Strategy?

    Ideally, an effective EPR system would support all these objectives. The design guidelines would be a key driver for several success factors. First, they would drive a consistent higher quality material input for the system. This would make it easier for consumers to know what is recyclable and easier for material recycling facilities to invest in the right technology and infrastructure to process that portfolio of materials. The result would be better efficiency and output of more consistent and higher quality secondary materials. Ultimately, this sustained consistency will create a high economic value for those materials, too. Finally, the process of transparent reporting for ecomodulation and processing creates much better visibility into what is moving through the system, allowing for more measurable progress and improvement in data management.

**Senator Whitehouse:**

1. As you know, negotiations are underway on a global plastics treaty to reduce plastic pollution worldwide. I understand you have been involved with the treaty process, and I plan to travel to Ottawa in April to attend the negotiations. What should the U.S. propose or insist on at the global plastics negotiations to lead the world towards a strong treaty?

   At INC-4, WWF is urging member states to focus on the following priorities:

   - Prioritize negotiations in areas of greatest significance to ending plastic pollution, including mobilizing broad support for the following:
     - Binding global bans, phase-outs, and phased reductions to eliminate high-risk and avoidable plastic products and materials.
     - Binding global requirements on product design and performance to ensure reduction, reuse, and safe recycling for all plastic products.
     - Strong implementation support, including a holistic finance package utilizing all possible sources, technology transfer, technical assistance, capacity building, and a robust financing mechanism for the implementation of specific binding measures.
     - Provisions on monitoring and reporting, periodic assessments, mechanisms for scientific recommendations, and decision-making by Parties to continue strengthening the agreement over time.
   - Broaden existing majority support on text options and agree on an intersessional workplan for the following top priorities:
     - Criteria to assess and list problematic and avoidable plastic products, and chemicals and polymers of concern, and for prohibitions and phased reductions.
     - General and sector-specific criteria and requirements for product design and performance towards non-toxic circularity.
     - Implementation measures, including compliance, reporting, and assessment; financial mechanisms.
   - Mandate the development of a full draft of the agreement text before INC-5.

2. The public's confidence in recycling is justifiably low, given that our current recycling system is an abysmal failure. EPR schemes have the potential to improve the effectiveness of recycling and waste management systems, but consumer participation will be essential to their success. How can we win back consumers' faith in the system and encourage them to participate in recycling?

   a. Can an EPR scheme address this?

   There is a lack of confidence in our recycling systems. WWF conducted a survey of more than 1,000 Americans, representative of the general population of the United States. A few takeaways from this survey:

   - The majority of Americans (85%) think that plastic waste pollution is a serious and concerning problem that requires immediate political action to solve.
   - Most Americans would support legislative action that enforces corporate accountability on plastic pollution.

- A majority of people would be in favor of laws that: incentivize companies to reduce plastic waste (87%); make companies responsible for the plastic waste they create (84%); and penalize companies for creating waste (78%).

When we asked, "would you be more likely to undertake any of the following actions if there was *more assurance it was beneficial to the environment*" respondents said the following:

- 94% said they were "somewhat to much more likely" to **recycle plastics.**
- 92% said they were "somewhat to much more likely" to **choose products that are made from recycled plastics.**
- 91% said they were "somewhat to much more likely" to **make use of reusable and/or refillable products in place of single-use plastic items.**

A strong EPR system would provide such assurances, and consumers would feel confident that their individual actions were making a difference.

3. In your testimony, you go into depth on how fees can be used in an EPR system to incentivize more sustainable product development and deployment. My REDUCE Act, which places a 20-cent per pound fee on the sale of virgin plastic used for single-use products such as straws or takeout containers, attempts to use a similar financial incentive to encourage the industry to produce and use less plastic. Can you discuss the importance and effectiveness of financial incentives in tackling the plastics problem?

   EPR is a holistic solution that does more than simply fund and improve recycling systems. It can also be a supporting framework for ensuring the quality of materials match recycling technology and enhancing the quality and consistency of end markets. This is done through a key element of EPR called ecomodulation. Ecomodulation is a fee structure that rewards companies for (1) using less plastic and more sustainable material; and (2) designing materials that can be efficiently processed through recycling infrastructure. When ecomodulation is included in an EPR scheme, companies are incentivized to use more sustainable material and transform their packaging portfolio. For example, in some Canadian provinces, the material used for shopping bags costs almost three times more than their paper alternatives, and plastic to-go packaging costs six times more that its paper counterpart. To avoid paying high EPR fees, companies will pursue cost savings by using less plastic, designing packaging for recyclability, and using more sustainable material. International companies are already using significantly less plastic in countries with EPR than they do in the United States.

**Senator Sullivan:**

1. Alaskans are eager to recycle, but our state's recycling rate is low because we can collect it, but we don't have the infrastructure to recycle it. Today, recycling in Alaska hinges on shipping waste thousands of miles from where it is produced – largely inefficient and ineffective. This brings unintended consequences for individuals and communities with limited financial means and transportation access. Ms. Simon, in your position you've thought a lot about the balance between circularity and costs for businesses. But how

would an EPR system impact consumers, particularly rural ones, and not simply pass costs on to them?

The cost of waste management and waste in the environment is already the burden of the public. Those who have access to recycling already pay for it through local taxes or recycling fees, and those who don't must foot the bill for their trash pickup—where recyclables end up in the landfill or worse, in nature. Cost modeling in Washington state has shown that EPR for packaging provides significant economic benefits. It saves households $60-300 per year as they no longer have to pay for these collection services themselves (either directly or indirectly). The savings would likely be much higher in states like Alaska—local recycling would save the costs of shipping waste thousands of miles. By expanding recycling access, these programs will be more efficient to operate and will create lower costs over time. The Washington state cost modeling also shows that EPR could contribute over $200 million to the state's economy by creating jobs and recovering valuable materials. In states like Alaska, EPR would enable communities to have their own local recycling systems that offer quality jobs and create recycled content material that can be sold.

2. Similarly, under EPR practices, a fee is charged at the purchase of a product to cover the costs of administering a Producer Responsibility Organization (PRO), public education, and the collection and recycling of used products and packaging. How does EPR incentivize a purchaser to return or responsibly dispose of a product or packaging, (e.g., a reimbursement)?

   EPR is designed to transfer the burden from the public to the producer and governments. By incentivizing investments in more effective and more accessible collection and recycling infrastructure and improved product design to maximize recyclability, EPR benefits the public by ensuring that all communities, regardless of their socio-economic status or geographic location, have access to convenient, efficient, and effective recycling services. This helps address disparities in access to essential services and minimizes the burden of waste management on local communities and municipal governments, significantly reducing costs that local taxpayers currently bear. In addition to this, EPR can make recycling easier for the consumer by driving better designed products for recycling and simpler labeling. EPR can also fund public education efforts to ensure consumers know how to responsibly and easily dispose of a product or packaging.

   Deposit Return System (DRS) is a policy that is a type of EPR but specific to beverage containers. In DRS, a refundable deposit is placed on beverage containers when they are purchased, which consumers can later reclaim when they return the containers for recycling and/or reuse. Refund/reimbursement policies such as DRS that are considered a type of EPR do incentivize consumers to return products through the deposit that they pay at the

point of purchase. DRS can be complementary to an EPR for packaging policy. Working together, EPR for packaging and DRS for beverage containers can provide strong incentives for both producers and consumers to take actions that support more effective, efficient, and accessible recycling systems.

3. Would the fees charged at the time of purchase be better used to incentivize manufacturers to design their products to be easier to recycle or to reimburse the consumer upon collection for the EPR fee?

   Fees in EPR policies incentivize manufacturers by supporting the processing of their secondary materials. Manufacturers are working to increase the use of recycled content in their products due to mandatory or voluntary commitments. A successful EPR system would be a clear mechanism to facilitate consistent access to quality recycled content. In parallel, an EPR system with clear design guidelines would help increase the ease of recycling for the public – increasing access to recycling and making it simpler to know what can be recycled and what is landfilled.

4. Is a PRO just another layer of (unaccountable) bureaucracy? Why couldn't a city, county or state impose a fee to accomplish the same objectives as a PRO?

   EPR schemes are organizational mechanisms for the prevention and management of waste that concern certain types of products and are primarily based on the polluter-pays principle. According to this principle, producers, i.e., the legal persons responsible for placing certain products on the market (namely producers, brand owners, and importers), with government oversight, are made responsible for financing and organizing the reduction, prevention, and management of waste from these products at the end of their life. In that respect, it must be emphasized that the EPR scheme is not a tax.

   Contributions from producers are thus directly used by the PRO to improve the environmentally responsible end-of-life management of the product they cover. This contribution does not require additional budgetary resources from governments and is not "absorbed" into the overall public expenditure. In order to meet the principles of EPR, producers usually organize themselves collectively to fulfill their obligations within the framework of PROs using different business models (single-provider or PRO in competition, non-profit/for-profit) which are all authorized by responsible government oversight bodies. The mission of these PROs is to meet the challenges of reduction, reuse, and recycling in the circular economy, thus playing a key role to the fight against climate change, the preservation of resources and biodiversity, and the reduction of the carbon impact of product placed on the market. The PROs have several complementary missions:

   - Waste-prevention and awareness-raising among private consumers.

- Limiting littering via collecting and subsequently recycling packaging waste.
- Improving eco-design of the combination of product and packaging in order to meet the climate-biodiversity challenges of lifecycle analyses and new consumer habits.
- Collection and sorting in cooperation with the municipalities and waste management producers depending on the administrative, geographical and demographic structures.
- Support for the development of new circular economy sectors focusing on reduction, reuse, and recycling through research and development to enhance the material value chain from collection to recycling.

5. How would a PRO be held accountable? Who would provide oversight over the PRO? Who/how would enforce any illegal or unethical issues?

   In this type of model, governments still have full control over the system but hand the day-to-day management and funding obligations to an industry-led PRO. Enabling legislation should set the scope of the EPR program and its goals to assure a level playing field among producers of consumer goods packaging and printed paper. The legislation also specifies the role of government and how those activities are funded. The designated government agency evaluates and approves the PRO's plan for achieving program goals, monitors program progress, and provides enforcement.

   Similarly, government agency costs for rulemaking, plan approval, oversight, and enforcement activities are reimbursed by the PRO, with those costs embedded in the producer fees. No additional government funds are drawn from the PRO, other than reimbursements to local and regional governments for recycling services as noted above. The amount of government reimbursement is publicly available as is the way government funds are allocated.

Senator CARPER. Thanks so much.

Thank you for, it sounds like, a lifetime of leadership in the private sector and again in the nonprofit sector. Thank you.

Finally, we are going to hear from Dan Felton. My sister and I grew up in Danville, West Virginia. One of my favorite places in Delaware is Felton, Delaware, just south of Dover. They have a fire company there. We have a lot of volunteer fire companies. I am sure my colleagues have in their States.

People ask me, they say, where should I go to dinner in Kent County, Delaware, which is greater Dover? I always say, the Felton Fire Hall. I just want you to know where your name is revered in our State. We are honored that you are here with us today. I understand that you are Executive Director at, how do you pronounce that?

Mr. FELTON. AMERIPEN.

Senator CARPER. AMERIPEN. AMERIPEN represents a wide range of stakeholders in America's packaging supply chain, and we are delighted that you are here. Thanks, please proceed.

Let me just say, our witnesses can't see this, but we are having an interesting movement of people that keeps coming into this committee hearing room, the likes of which I have not seen in a long time. A lot of them are young people. It looks like they may be college or high school age.

I think they are interested in recycling. That is a sight, that is a beautiful thing. We are happy to see this. By their presence, they are saying that this is good stuff, and we agree. Please proceed.

**STATEMENT OF DAN FELTON, EXECUTIVE DIRECTOR, AMERIPEN**

Mr. FELTON. Good morning, Chairman Carper, Ranking Member Capito, and members of the committee. I am Dan Felton, Executive Director of AMERIPEN, the American Institute for Packaging in the Environment.

I very much appreciate the opportunity to testify before you today on this important topic of Extended Producer Responsibility for consumer packaging. This is a core issue for AMERIPEN, and it is a core issue right now for the U.S. packaging industry. All stakeholders must work together to craft and implement effective shared responsibility solutions for packaging recovery and recycling. AMERIPEN supports that.

AMERIPEN is the only material-inclusive trade association representing the entire packaging value chain in the U.S. That is material suppliers, packaging manufacturers, brand owners who use that packaging, retailers, and end of life material managers. Our membership also includes a broad array of industry, product, and material-specific trade associations who are essential to the fabric of AMERIPEN.

We focus on science and data to support our public policy positions, and our advocacy and engagement is based on rigorous research rooted in our deep commitment to achieve sustainable packaging policies.

Packaging plays a vital role in the United States, ensuring the quality of consumer goods as they are manufactured, shipped,

stored, and used, protecting the health and safety of the Americans who handle and use those products.

Packaging has value throughout its life cycle, and none of it belongs in roadways, waterways, or landfills. We know how to recover it and be recycled and reused, and no one knows better how to do that than the AMERIPEN members who design, supply, produce, distribute, collect, and reprocess that packaging. They are driving innovation, designing packaging for better environmental performance to boost recovery and recycling and evolve the existing infrastructure.

AMERIPEN supports public policy positions that are results-based, effective and efficient, and equitable and fair. This has been the bedrock of our advocacy work as four States have now enacted full packaging EPR laws, and two additional States have enacted groundwork laws.

We will support thoughtful packaging EPR proposals that properly balance the needs of all stakeholders. We will not support poorly designed packaging EPR proposals that we believe are not based in reality and will not result in positive environmental change and greater packaging recovery and recycling.

We were deeply involved in the legislative process for each of the States that have now enacted EPR packaging laws, and we are now deeply engaged in their implementation. There is, unfortunately, a lack of consistency between these emerging laws and the additional proposals we are seeing come forth in the U.S., causing concern for many, including brand owners who will be the primary responsible party for funding those programs. More detail on this is included in my full written testimony submitted for the record today.

A deeper discussion is now merited on how uniformity may be achieved if packaging EPR continues to expand in the U.S., and whether something could or should be done at the Federal level. To that end, AMERIPEN would be pleased to work with Federal policymakers and other stakeholders to explore the potential need and design for any Federal framework or program.

While AMERIPEN is not currently suggesting there is an immediate need for a Federal program or framework, any consideration must balance multiple public policy priorities and stakeholder needs to effectively improve packaging recovery and recycling throughout the U.S., alongside the need to keep existing systems and infrastructure operational and profitable.

A national nonprofit producer responsibility organization, a PRO, would likely be needed to manage the organizational structure for any program that moves forward for producers to develop a national program plan, pool resources, and provide program funding. A Federal Government entity, such as the Environmental Protection Agency, will likely need to have oversight of the PRO and the organizational mechanisms to coordinate with States and their existing management of solid waste and recycling.

Phasing in interested States through an opt-in process to receive Federal support might also be appropriate to allow the continued planning and management of solid waste and recycling at the State and local levels. Such an opt-in process should establish national standards for terms, data, measurement, and reporting and the use

of producer funds to which in-State stakeholders must adhere in order to receive that funding.

This type of framework that retains State and local planning, while also providing greater funding, consistency, and efficiency through national standards, could provide a workable approach to integrating aspects of packaging EPR across the Country without creating a national takeover of local recovery and recycling programs.

I hope these thoughts from AMERIPEN offer some perspective today on any national packaging framework or program that might be considered. I very much appreciate the opportunity to appear before the committee today, and I would welcome any questions you may have. Thank you.

[The prepared statement of Mr. Felton follows:]

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**Statement of**
**Dan Felton, Executive Director**

**AMERIPEN**
**American Institute for Packaging and the Environment**

**before the**

**U.S. Senate Committee on Environment and Public Works**

**Hearing:**
**Examining Extended Producer Responsibility Policies**
**for Consumer Packaging**

**Wednesday, March 6, 2024**

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Chairman Carper, Ranking Member Capito and Members of the U.S. Senate Environment and Public Works Committee.

**AMERIPEN** – the American Institute for Packaging and the Environment – very much appreciates the opportunity to appear before the Committee to discuss with you our positions and views on extended producer responsibility for packaging in the U.S. This is a critical core policy issue for **AMERIPEN** and the packaging industry in the U.S., and we must all work together to craft effective approaches.

**AMERIPEN** is a trade association dedicated to improving packaging and the environment. We are the only material-inclusive packaging industry trade association in the U.S. representing the entire packaging supply chain. This includes material suppliers, packaging manufacturers, consumer packaged goods companies, retailers, and end-of-life materials managers.[1] Our membership also includes a robust array of industry, material, and product-specific trade associations who are essential to the **AMERIPEN** fabric.[2] We focus on science and data to support our public policy positions, and our advocacy and policy engagement is based on rigorous research rooted in our commitment to achieve sustainable packaging policies. Our mission is to be the leading voice for the packaging industry, using science to inspire, create, and advocate for sustainable solutions for the packaging value chain, and our vision is for packaging to be recognized for all its benefits, including preventing waste and driving a circular economy.

The packaging industry is a dynamic part of the U.S. economy, accounting for nearly $538 billion in total economic output annually, equivalent to roughly 2.50 percent of GDP. Packaging product manufacturers touch companies in all 544 sectors of the U.S. economy through their production and distribution linkages and the industry directly or indirectly supports nearly 1.7 million American jobs. These workers earn nearly $118 billion in wages and benefits, and members of the industry and their employees pay nearly $43.5 billion in direct federal, state, and local taxes, not including state and local sales taxes imposed on packaging products.[3]

Packaging plays a vital role in the United States, ensuring the quality of consumer goods as they are manufactured, shipped, stored, and consumed, protecting the health and safety of Americans who consume, use, and handle those products. Packaging has value, and none of it belongs in landfills, roadsides, or waterways. We need to recover it to be recycled and reused, and no one knows better how to do that than the **AMERIPEN** members who design, supply, produce, distribute, collect, and process it. They are driving innovation, designing packaging for better environmental performance to boost recycling and evolve the recycling infrastructure.

[1] https://members.ameripen.org/company-members/FindStartsWith?term=%23%21.
[2] https://members.ameripen.org/associate-members/FindStartsWith?term=%23%21.
[3] AMERIPEN (2021), U.S. Packaging Industry Economic Impacts Study.

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**PACKAGING EXTENDED PRODUCER RESPONSIBILITY POLICY IN THE U.S.**

Extended producer responsibility (EPR) is a policy mechanism intended to shift the financial, and sometimes operational, responsibility of the end-of-life (EOL) management of products from consumers and government to the producers (generally brand owners) of those products. Sometimes referred to as product stewardship, EPR has existed in the U.S. for decades for many harder to recycle products, including beverage containers, batteries, carpet, electronics, paint, and tires, among others. While EPR for packaging has only begun to emerge in the U.S. in recent years, it has existed elsewhere in the world for decades, including in Europe for more than 30 years and in Canada for more than 20 years. Given the unique attributes and needs of packaging in the U.S., **AMERIPEN** prefers to call it packaging producer responsibility.

**AMERIPEN** supports policy solutions, including packaging producer responsibility, that are:

- **Results Based.** Designed to achieve the recycling and recovery results needed to create a circular economy.
- **Effective and Efficient.** Focused on best practices and solutions that spur positive behaviors, increase packaging recovery, recapture material values and limit administrative costs.
- **Equitable and Fair.** Focused on all material types and funded by shared cost allocations that are scaled to make the system work and perceived as fair among all contributors and stakeholders.

Our packaging producer responsibility principles, objectives, and policy were finalized in late 2020 after a lengthy development and approval process with our members. These have been the bedrock of our advocacy work on this issue in the states since then and have withstood the test of time. The principles, objectives, and policy include the following provisions:

Covered Materials and Shared Responsibility. Packaging producer responsibility programs should cover all recyclable and compostable packaging materials (i.e., glass, metal, paper, plastic, and combinations thereof). Exemptions for packaging materials and formats, and certain products utilizing packaging, should be limited and not create "free riders" whose packaging materials in the system are subsidized by other packaging producers funding the system. The ideal packaging producer responsibility program should operate under a shared responsibility model whereby all stakeholders in the packaging recovery and recycling system – packaging producers, composters and recyclers, local government, and even consumers – take some responsibility – financial and/or operational – to ensure fairness and success.

Role of Producers and Others. Packaging producer responsibility programs should be run by producers directly through a non-profit producer responsibility organization (PRO) or stewardship organization (SO) with strong government oversight. While PROs will need to be established and operate at the state level, that should not preclude establishment of regional or national PROs, if merited and needed. Those who are not producers funding the system (i.e., local government, community-based organizations, composters, recyclers, industry trade associations, environmental

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non-profit organizations, etc.) should be given an opportunity to make non-binding recommendations on development, implementation, and maintenance of the producer responsibility program through establishment of a program advisory board or council.

Statewide Recycling Needs Assessment. The ideal packaging producer responsibility program should not merely fund the packaging recovery and recycling levels and systems that exist today, but should drive expansion, improvement, and innovation of those systems, where needed, to increase recovery and recycling of current and future packaging. A statewide needs assessment should be conducted early in the development of any packaging producer responsibility program to identify, at minimum, current packaging recovery and recycling service and system availability, capacity, contamination, infrastructure, performance, processing, pricing, and gaps. The needs assessment is a critical tool to help understand what exists today and what may be needed in the future to build and maintain a successful packaging producer responsibility program.

Producer Performance Goals. **AMERIPEN** feels strongly that packaging producer responsibility enabling statutes should not codify specific "rates and dates" for performance goals (i.e., recovery and recycling rates, use of recycled content) that producers may be required to meet. Rather, the specifics of any performance goals should only be proposed by the PRO in their program plan and approved by the governing body after completion of the statewide packaging recovery and recycling needs assessment. Performance goals must be reasonable, based on what is possible over time, and ultimately not lead to packaging material bans or restrictions if not met.

**AMERIPEN** also feels strongly that packaging producer responsibility enabling statutes, and ensuing programs, must not eliminate or harm existing efficient and effective recovery and recycling infrastructure and investments as producers begin to provide funding into the systems. Furthermore, we believe any enabling statutes and regulations should in no way limit any current and future recovery and recycling technologies, mechanical or otherwise. Finally, enabling statutes and regulations should not be a vehicle for policies not directly related to establishing and maintaining effective and efficient packaging producer responsibility program. These types of policies (i.e., packaging claims and labeling, recycled content mandates, toxics in packaging) should be addressed in separate statutes and regulations.

Since 2020, **AMERIPEN** has been actively engaging in numerous states to advocate for the principles, objectives, and policies outlined above. We have aggressively opposed proposed packaging producer responsibility legislation in some states, while at the same time have gone so far as to aggressively support proposed legislation in other states. In all cases, we have always been willing to sit at the table with policymakers and stakeholders to discuss concerns and ideas about this complicated policy and seek solutions to satisfy everyone to the greatest extent possible. In this regard, we have become a respected and trusted partner and subject matter expert who is willing and able to fairly negotiate and compromise. It is one thing to say you support packaging producer responsibility, as **AMERIPEN** has been able to do, but it is an entirely different thing to truly work on

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the core critical principles for packaging producer responsibility, as **AMERIPEN** has consistently done, to develop laws, regulations and programs that will drive fair and real change.

**STATE PACKAGING EXTENDED PRODUCER RESPONSIBILITY ACTIVTY**

Since 2021, four states – California, Colorado, Maine, and Oregon – have enacted laws establishing full packaging producer responsibility programs, whereas two more states – Illinois and Maryland – have enacted what **AMERIPEN** characterizes as groundwork laws to establish such programs.

**Maine** was the first state to enact a packaging producer responsibility law in July 2021 (Maine Law 2021 Chapter 455 – LD 1541). The law covers primary, secondary and tertiary packaging for consumer transactions, with notable exemptions for the packaging for beverage containers included in the state's existing deposit return system (DRS, aka bottle bill), frozen blueberries and small producers. Maine's packaging producer responsibility program will be based on 100% financial responsibility from producers, but the selection of the PRO – known as the SO in Maine – is unique in that it will be done through a state-run request for proposal (RFP) process where a single entity will be selected and awarded a ten-year contract with the state. This and other provisions within the law, including the establishment of producer fees, gives the state more, and producers less, influence and responsibility over the packaging producer responsibility program. Producers will be required to belong to the state contracted SO and could start paying fees into it as soon as late 2026. The law requires the SO to conduct a statewide recycling needs assessment and does not establish any type of advisory board or council.

The Maine Department of Environmental Protection (DEP) has hired program staff and completed stakeholder outreach on rule development, releasing three conceptual draft rules in late 2023. This was followed by Maine DEP officially posting draft rules in early February 2024, marking the beginning of the formal rulemaking process. These draft rules are currently in a public comment period that ends on March 18, 2024. Routine/technical rules are scheduled to be adopted by the Maine Board of Environmental Protection (BEP) in Summer 2024, with provisional adoption of major substantive rules with final adoption scheduled for 2025. It is anticipated that the state will award the SO contract by mid-2026, with producer payments to the SO beginning 180 days later.

**Oregon** was the second state to enact a packaging producer responsibility law in August 2021 (Oregon Law 2021 Chapter 681 – SB 582). The law covers primary, secondary, and tertiary packaging for consumer and commercial transactions, given how residential and commercial recycling is commingled throughout the state. Unlike Maine, Oregon's law also covers printed paper materials and food serviceware. Beverage containers included in the state's existing bottle bill are exempt from the law, as well as several other products, including over-the-counter and prescription medications. Oregon's law is unique in that producers will be funding an expansion of the state's existing packaging recovery and recycling system, estimated to be just less than 30% beyond what exists today. Multiple PROs may be established from the start, and while the law requires significant involvement and oversight by the state, it also allows for significant producer engagement on

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program development, implementation, and maintenance. Producers are required to belong to a PRO in the state and start paying fees by July 2025, and the law specifies that the PRO must achieve recycling goals for plastic materials, ranging from 25% by 2028 to 70% by 2050. Periodic needs assessments are required in statute, to be funded by the PRO but conducted by the state, and Oregon's law established a 17-member Recycling System Advisory Council (RSAC) on which **AMERIPEN** holds a seat.

The Oregon Department of Environmental Quality (DEQ), working with the RSAC and two different Rulemaking Advisory Committees (RACs) for two phases of rulemaking, has released and finalized its first rules package and initiated a second rulemaking process, reviewed exemption requests, and released a statewide collection list. Both the RACs and RSAC will continue meeting in 2024, with the second draft rules package set to be considered by the Oregon Environmental Quality Commission (EQC) in late 2024, following a public comment period. PROs hoping to have a packaging producer responsibility program plan approved in Oregon were required to submit a letter of intent to Oregon DEQ in Fall 2023, and four entities did so. Three of the four subsequently withdrew their intent, leaving Circular Action Alliance (CAA) as the sole entity that appears prepared to submit a proposed program plan to the state by the deadline of March 31, 2024. Under the law, the state must then approve the program within 120 days. Oregon DEQ completed the initial statewide recycling needs assessment in Summer 2023.

**Colorado** enacted its packaging producer responsibility law in June 2022 (Colorado Session Law 2022 Chapter 337 – HB 1355). It covers primary, secondary, and tertiary packaging for consumer transactions, as well as paper products. Like Oregon, the law exempts over-the-counter and prescription medications, as well as several other federally regulated products. But unlike Oregon, the law establishes a 100% packaging producer responsibility system whereby producers will fund 100% of packaging recovery and recycling in the state, giving them significant involvement in development and implementation of the program, and likely far greater operational control over packaging recovery and recycling systems as well. Only one PRO may be established at the start, with the possibility of additional PROs being established after 2029 if it is deemed necessary to increase the rates of recycling, expand recycling services, or further provide recycling for a specific material. The implementation timeline of Colorado's law is aggressive, with producers required to belong to the PRO in the state and start paying fees by July 2025 – the same time as Oregon, even though the Oregon law was enacted nearly a year earlier. A statewide recycling needs assessment is required to be carried out by a third party, chosen and paid for by the PRO and with approval by the state. Additional needs assessments are required every five years after 2029. Colorado's law established a 15-member Producer Responsibility Advisory Board.

The Producer Responsibility Advisory Board has met more than 20 times since its establishment in late 2022. In May 2023, Colorado became the first state to select a PRO, approving the application of Circular Action Alliance (CAA), which then quickly worked with a third party to complete the requisite statewide recycling needs assessment for which results were released in early 2024. In December 2023, the Colorado Department of Public Health & Environment (CDPHE) released the

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first draft of four rule concepts for implementing the state's packaging producer responsibility law. Following a public comment period, the CDPHE released second drafts of the rule concepts in February 2024. Following another comment period for the revised draft rules, another revision is expected to be released in Spring 2024. Final adoption of Colorado's regulations is anticipated ahead of the targeted July 2024 effective date.

**California** became the fourth and most recent state to enact a full packaging producer responsibility law – in June 2022 (California Statutes 2022 Chapter 75 – SB 54). It covers all single use packaging and food serviceware, including secondary and tertiary packaging for consumer transactions. Notable exemptions include beverage containers covered by the state's existing bottle bill, flammable/hazardous products, and medical devices/drugs/products for both humans and animals. Like Colorado, the law establishes a 100% packaging producer responsibility program with significant producer involvement in development and implementation of the program – but with greater state control and oversight than in Colorado. Also, like Colorado, only one PRO may be established at the start, with the possibility of additional PROs being established after 2030. Producers are required to belong to the PRO in the state and start paying fees by January 2027.

Unique to California are several performance goals. All covered materials must be recyclable or compostable by 2032. All plastic covered materials must be recycled at a rate of 30% by 2028, 40% by 2030, and 65% by 2032, and by 2032, producers must source reduce covered materials 25% by weight and 25% by number of plastic components. Also unique to the California packaging producer responsibility law is a requirement for the PRO to pay an additional $500 million annually into the California Plastic Pollution Mitigation Fund for at least 10 years. The funding will pay for the monitoring and mitigation of plastic pollution through various state agencies and is in addition to fees that producers will pay to the PRO for their covered materials within the packaging recovery and recycling system. The PRO is required to fund a statewide recycling needs assessment to be conducted by the state every five years, either as an assessment of all materials or as multiple material-specific assessments. California's law established a 16-member Advisory Board.

CalRecycle hosted a series of informal stakeholder meetings throughout 2023 before releasing in December 2023 a report to the Legislature on SB 54, draft regulations, and a covered materials categories list with supplemental material. The draft regulations are currently in a period of public review, after which they will be submitted to California's Office of Administrative Law (OAL), signaling commencement of the formal rulemaking process with a 45-day public comment period. In January 2024, CalRecycle selected Circular Action Alliance (CAA) as the initial PRO for the packaging producer responsibility program. CAA will fund a two-phased needs assessment to be conducted by CalRecycle and scheduled to be released in late 2025.

**Maryland** was the first state to enact what **AMERIPEN** characterizes as a packaging producer responsibility groundwork law in May 2023 (Maryland 2023 Chapter 465 – SB 222). In laying the groundwork for potential passage of a full packaging producer responsibility program law in the future, this law commissions a statewide recycling needs assessment while also selecting a PRO and

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establishing a 21-member Producer Responsibility Advisory Council to assist with review of the needs assessment and provide advice and make recommendations regarding establishing and implementing a packaging producer responsibility program in the state. Circular Action Alliance (CAA) was selected as the PRO in October 2023 and the Producer Responsibility Advisory Council was announced in February 2024. **AMERIPEN** holds a seat on the Council. At the same time, the Maryland Department of the Environment opened an RFP for the statewide recycling needs assessment that must be completed before July 2024. The Producer Responsibility Advisory Council must issue a report and recommendations to the state by December 2024.

**Illinois** was the second state to enact a packaging producer responsibility groundwork law in July 2023 (Illinois Public Act 103-0383 – SB 1555). In laying the groundwork for potential passage of a full packaging producer responsibility program law in the future, this law commissions a statewide recycling needs assessment and establishes a 30-member Statewide Recycling Needs Assessment Advisory Council to provide advice and recommendations to the state in the drafting, amendment, and finalization of the needs assessment and to make recommendations regarding establishing and implementing a packaging producer responsibility program in the state. The Statewide Recycling Needs Assessment Advisory Council was announced in February 2024. The final needs assessment must be completed by May 2026, and the Statewide Recycling Needs Assessment Advisory Council must submit its report to the state by December 2026.

## LESSONS LEARNED IN THE U.S. AND WHERE TO GO FROM HERE

There is not great consistency among the emerging packaging producer responsibility laws in the U.S. There are several drivers for this inconsistency, including state's rights; competing government, industry, producer, and non-governmental organization interests; and who the primary proponent is taking the lead on drafting and advancing packaging producer responsibility in any given state. This emerging patchwork of state laws is causing concern and questions not only for the packaging industry, including brand owners who will be the primary party responsible for funding the new packaging producer responsibility programs, but also for the states implementing these laws that are seeking opportunities and pathways to work with each other to establish the most effective and efficient programs.

As those states that have passed packaging producer responsibility laws are implementing them and other states are seeking to enact new laws, several issues have emerged or gained more attention that have added to the debates and inconsistencies. These include: if and how needs assessments should be conducted; how many PROs should exist in a given state; if and how to include general or specific performance goals in statute and/or PRO program plans; how to best preserve and protect industry investments in packaging recovery and recycling infrastructure; who might own or have access to recovered and recycled packaging materials; and how to most clearly define "producer" in statute or regulations.

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There are not necessarily easy answers or solutions to address all these and other related concerns and questions, but their existence has begun to fuel a discussion about whether something could and should be done at the federal level to, at a minimum, provide some relief from the pressures we are experiencing at the state level. In 2023, AMERIPEN monitored nearly 40 bills in at least 15 states related in one way or another to packaging producer responsibility. We are seeing a similar trend in 2024, and while it is difficult to predict when or where additional state laws will be enacted, we are all but certain that some new state laws will be enacted within the next couple of years.

**AMERIPEN** has worked diligently to promote and collaborate on well-designed packaging producer responsibility, and packaging recovery and recycling policy in general, at the state level aligned with our key policy principles stated earlier. We do not currently have an official policy or position on federal packaging producer responsibility, but we do believe the time has come to give this issue some more focused consideration and discussion at the federal level, and **AMERIPEN** is very willing and able to work with federal policymakers, and other stakeholders who are willing to collaborate and do the hard work with us, to explore further any potential need and mechanics for a federal program. Following are some specific thoughts.

## FEDERAL PACKAGING EXTENDED PRODUCER RESPONSIBILITY CONSIDERATIONS

Under the Resource Conservation and Recovery Act (RCRA),[4] management of municipal solid waste and recycling in the U.S. is organized at the state level with implementation of services at the local level. Further, RCRA Subtitle D encourages states to develop comprehensive state solid waste management plans for nonhazardous industrial solid waste and municipal solid waste, sets criteria for municipal solid waste landfills and other solid waste disposal facilities, and prohibits the open dumping of solid waste. However, the implementation of this provision varies greatly from state-to-state, which further complicates considerations of packaging producer responsibility at the national level. Some states organize their municipal solid waste and recycling activities regionally, while other "local control" states have these functions organized by each city, town, or county.

For packaging producer responsibility to effectively work at the national level, greater consistency between how states manage solid waste and recycling must be developed, while balancing the need to keep existing systems and infrastructure operational and profitable. Additionally, under any type of potential federal packaging producer responsibility program, states will likely still have different needs to improve packaging recovery and recycling. More densely populated states would have fewer hurdles to establishing service but might have significant contamination issues, while less densely populated states would need greater access to recycling and greater transportation infrastructure to bring packaging materials to a market that can accept them for recovery or recycling. Another challenge with any potential federal packaging producer responsibility program that might attempt to manage packaging materials across all 50 states, conceivably all at once at some date in the future, would be the incredibly complex organizational planning that would be

[4] 42 U.S.C. §6901 et seq. (1976)

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necessary and that could be potentially damaging to existing recycling infrastructure and markets throughout the U.S. The likely astronomical cost would also be a significant factor that would need to be considered.

**AMERIPEN** suggests that there must be a balance in creating any national packaging producer responsibility program to address the policy priorities above while phasing in a more consistent national program. Such an approach would likely need to utilize a national PRO to create the organizational structure for producers to create a national program plan, pool resources and provide funding to support a national packaging producer responsibility program. The U.S. Environmental Protection Agency (EPA) would likely need to have oversight of the PRO and the organizational mechanisms to engage with states and their management of solid waste and recycling.

Were such a national framework structure to be created, phasing in states that wanted to that participate in that through an opt-in process to receive federal packaging producer responsibility funding might be appropriate to allow the continued planning and management of municipal solid waste and recycling at the state and local levels. Such an opt-in process should also establish national standards and consistency factors that must be achieved for states to receive funding to support local packaging recycling, composting, and other management activities. This type of framework that retains state and local planning of municipal solid waste and recycling while also providing greater funding, consistency and efficiency via national standards could provide a workable approach to integrating aspects of packaging producer responsibility nationally without creating a national takeover of local recovery and recycling programs.

Inherent in such an approach would be the need to have greater harmonization and standardization of terms, data and measurement of activities that are occurring within municipal solid waste and recycling systems. Currently, many states have conflicting definitions of what is considered “recycling,” “recyclable,” “compostable” and other critical terms and measures of their systems. The lack of consistency from state to state makes it very difficult to measure national progress on recycling and solid waste management goals. Such harmonization and standardization will be crucial if any type of national packaging producer responsibility is to be successful. An effective program, which ultimately is an efficient recovery recycling system, involves multiple stakeholders doing their part (consumers, producers, resin manufacturers, converters, waste management companies, etc.). Any action on packaging producer responsibility, be it at the federal or state level, needs to be based on a better understanding of current recovery and recycling access and material flows (what’s being collected, where is it going, etc.).

Additionally, if national funding is flowing out to states and local governments and recycling providers, there must be accountability for those funds and a clear reporting of how they are spent to improve the recovery and recycling of packaging materials. Finally, under any national program, performance data from states and local governments and providers must flow up to EPA and the national PRO to accurately measure what is occurring in the system nationally.

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We hope these thoughts from **AMERIPEN** offer some perspective on any concepts that might be considered for a national packaging producer responsibility framework that creates greater recovery, recycling, and solid waste management performance.

## ADDITIONAL POLICY CONSIDERATIONS AND TOOLS

Packaging producer responsibility, if developed and executed properly, could be an effective policy mechanism to increase packaging recovery and recycling in the U.S. But it is not and should not be the only "tool in the toolbox" to accomplish this and other stakeholder goals related to packaging recovery and recycling to create a more circular and sustainable economy. The following are some additional approaches **AMERIPEN** encourages the Committee and others to consider.

### Federal Funding and Data

**AMERIPEN** greatly appreciates recent efforts by Congress to advance legislation focused on supporting increased recycling in the states and provide those states with additional related federal data and funding. These include the Infrastructure Investment and Jobs Act (H.R. 3684); the Recycling Enhancements to Collection and Yield through Consumer Learning and Education (RECYCLE) Act of 2021 (S. 923 / H.R. 2159); the Realizing the Economic Opportunities and Value of Expanding Recycling (RECOVER) Act (H.R. 2357); and the Save Our Seas 2.0 Act (S. 1982).

In this spirit, since 2022 **AMERIPEN** has also been actively supporting passage of the Recycling Infrastructure and Accessibility Act (S. 1189/H.R. 6159) that would provide grants for projects to make recycling programs more accessible to rural and disadvantaged communities, and the Recycling and Composting Accountability Act (S. 1194/H.R. 4040) that would require the EPA to collect, maintain and publish data on recycling and composting rates across the country. These types of federal initiatives are critical bipartisan steps Congress can take now to improve recycling in the U.S. These bills will play a critical role in increasing recycling and composting access and rates and reducing waste as the EPA seeks to increase the national recycling rate to 50 percent by 2030 under its National Recycling Goal. We believe this keen focus will also improve the accessibility of better baseline data for packaging and product designers and procurement decision makers as they look to better understand how materials are being collected, sorted, and processed and are then made available for incorporation into new packaging and products following their prior life. We applaud this Committee for approving both bills in June of last year, and we remain optimistic that a pathway remains for Congress to enact them before the end of this year.

### Assessment Tools

When setting goals for packaging recovery and recycling policies, including packaging producer responsibility, **AMERIPEN** believes it is important to evaluate solutions holistically. You cannot distribute many products without packaging, and if packaging fails in its role to deliver and protect, that creates damaged products, food waste or other losses that can ultimately result in greater

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environmental damage than the package itself. This is also true for recovery and recycling strategies for packaging. When investing in recovery and recycling, we must ensure that the methods used and the end markets for materials create highest and best use scenarios for materials management. In Europe and some U.S. states, the use of tools like lifecycle analyses (LCAs) and the EPA's Waste Reduction Model (WARM)[5] are being utilized to help decide how materials are best collected or remanufactured to ensure these efforts do not inadvertently create unintended environmental burdens through increased climate emission, packaging pollution or chemical migration, for example. While **AMERIPEN** does not endorse any specific models or tools to help assess environmental and other impacts, we believe such models and tools could benefit from further federal guidance and accessibility, and we urge policymakers, as innovation in packaging and recovery advances, to give them consideration in legislation and regulation and allow for flexibility to adopt the strategies that create the highest and best uses of packaging materials.

State Recycling Market Development

**AMERIPEN**'s vision is for packaging to be recognized for all its benefits including preventing waste and driving a circular economy. We have been dedicated to supporting packaging circularity through our work on state recycling market development. In 2020, we launched a State Recycling Market Development Taskforce which, to the best of our knowledge, was the first time states with recycling market development programs started meeting collectively since the EPA paused its work on recycling market development in the early 2000s. Over the past four years, this taskforce has produced a best practices guide[6]; an assessment of demand, supply, and capacity for plastics in the U.S.[7]; and an economic impact study on state recycling market development centers.[8]

Today's recycling market development successes are widely attributable to the EPA and their 1994 initiative, *Recycling Means Business: EPAs Recycling Market Development Strategy*.[9] Federal support to help drive the growth of recycling businesses through the 1990s was instrumental to the development of the robust recycling and remanufacturing industries we see today, with many of the current state-based programs part of that initial EPA initiative or more recently developed from the program's original model. We believe a *revised* recycling market development initiative through the EPA, designed for the 21st century, could provide a beneficial and complementary federal role to support packaging producer responsibility in the U.S., and we are encouraged that the EPA has included some focus on recycling market development within its National Recycling Strategy released in 2021.

**AMERIPEN** encourages federal policymakers to embrace recycling market development as a necessary objective that is complementary to packaging producer responsibility, and we believe the

[5] https://www.epa.gov/warm.
[6] AMERIPEN, RRS (2021), Best Practices for State Recycling Market Development Centers.
[7] AMERIPEN (2021), U.S. Company Recycled Plastic Content Goals Analysis – Supply and Demand.
[8] AMERIPEN (2023), Economic Impact of State Recycling Market Development Programs: 1990-2023.
[9] https://archive.epa.gov/wastes/conserve/tools/localgov/web/pdf/01888.pdf.

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EPA can play a significant role in convening and leveraging other federal agencies, along with the private sector, to help support recycling market development and expand solutions for packaging recovery and recycling. The REMADE Institute,[10] supported by the U.S. Department of Energy (DOE), is a great example of an effective public-private partnership that is advancing recycling with federal leadership. Support to maintain, and possibly expand, this initiative could help create a culture of innovation for reprocessing of packaging materials within the U.S. Additional efforts to help coordinate and expand recycling market development programs at the state and regional levels could also provide significant opportunities to drive system efficiencies.

As **AMERIPEN** encourages further federal focus on recycling market development, we also note that in addition to a focus on recycling technology such as REMADE is pursuing, research and development is also needed to advance end market development opportunities. Innovators need support to help scale innovative solutions, including HydroBlox,[11] which can take multi-material films, that are currently widely viewed as unrecyclable and use them to manufacture storm water management systems, and Continuus Materials,[12] which remanufactures multi-material cartons into high performance construction materials. A recent U.S. Chamber of Commerce Foundation study noted most plastic remanufacturers wanted to see additional support in the stage between proof of concept and scaling to commercialization.[13] Emerging state packaging producer responsibility laws are acutely focused on responsible end markets and can help somewhat with this, but additional resources to help with business development, facility approvals and siting, etc., are all needed. These are the types of services often provided by state recycling market development centers.

Additional Research

As an organization focused on informing public policy through science and data, **AMERIPEN** works closely with the academic community to understand the complex interplay between packaging, recovery and recycling methods, and policy. In 2023, we launched an Education and Research Advisory Group (ERAG) to help us develop a national research agenda to support packaging policy. Sixteen academics across North America with backgrounds in packaging, waste, consumer behavior, and extended producer responsibility are working with us to identify key areas of research to support evidence-based packaging policy and to help align data collection efforts to inform best practices. We are hopeful the results of their efforts will be made public later this year. We believe much of this work could help the U.S. harmonize data at the federal level as it relates to packaging producer responsibility and how best to potentially drive efficiencies and best practices across the country.

[10] https://remadeinstitute.org/.
[11] https://www.hydroblox.com/.
[12] https://www.continuusmaterials.com/.
[13] US Chamber of Commerce Foundation (2022) The State of Innovation and Investment into Sustainable Plastics in the U.S.

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Value of Packaging

Packaging has a relatively small impact on the overall environmental impacts (mining, agriculture, water use, etc.) of providing consumers with the products they need and want. When implementing packaging producer responsibility programs, we must be cautious to ensure that the fees, objectives, and performance goals assigned to these programs do not diminish the value of packaging and its role in improving our lives. Source reduction strategies inherent in some packaging producer responsibility programs, for instance, must balance reducing unnecessary material use with the role of packaging in providing product delivery and protection. Should a package fail and food spoils or a product is damaged, the environmental impact may be increased to a greater extent than that of a heavier or larger packaging format in the first place. This equally applies when we assign value to packaging materials or formats, by prioritizing some over others due to recyclability or compostability rather than recognizing their role across the entire packaging value chain. Changing the packaging for a product from a rigid packaging format used in retail to a flexible format for the same product in ecommerce, for example, may make more sense to reduce product damage, since ecommerce causes additional movement, vibration, and physical handling due to its more distributed delivery system.

Additionally, we also need to ensure that packaging producer responsibility strategies to assign fees on packaging materials or formats, or even to encourage reuse, do not impose additional financial restrictions on lower-income communities or communities that may be more reliant on packaging for hygiene and food access. Packaging for distribution of products in food deserts, for example, helps ensure efficient and safe transportation of those products to consumers in those areas and helps ensure the availability and use of fresh products for longer periods of time. Thoughtful packaging design and implementation can also make life more accessible for those with mobility or accessibility challenges, and it can provide necessary safety mechanisms to reduce harm through inadvertent access. When applying fees or design modifications through packaging producer responsibility, we must be cognizant that packaging is an essential tool in helping our modern society stay active and healthy.

**#  #  #**

In conclusion, **AMERIPEN** appreciates the opportunity to appear before the Committee to discuss with you our positions and views on extended producer responsibility for packaging in the U.S. We are committed and look forward to working with you, other policymakers, and all stakeholders within the packaging value chain, to explore balanced policies and mechanisms to increase packaging recovery and recycling throughout the U.S. while recognizing the important value of that packaging in ensuring the quality of consumer goods as they are manufactured, shipped, stored, and consumed, protecting the health and safety of Americans who consume, use, and handle those products.

**Oral Testimony of Dan Felton**
**Executive Director of AMERIPEN**

**United States Senate**
**Committee on Environment and Public Works**

**Examining Extended Producer Responsibility Policies for Consumer Packaging**

**March 6, 2024**

Good morning, Chairman Carper, Ranking Member Capito, and members of the Committee. I am Dan Felton, Executive Director of **AMERIPEN** – the American Institute for Packaging and the Environment. Thank you for the opportunity to testify today on this important topic of extended producer responsibility policies for consumer packaging. This is a core issue for **AMERIPEN** and the U.S. packaging industry. All stakeholders must work together to craft and implement effective shared responsibility solutions for packaging recovery and recycling. We can support that.

**AMERIPEN** is the only material-inclusive trade association in the U.S. representing the entire packaging industry supply chain, including material suppliers, packaging manufacturers, consumer packaged goods companies, retailers, and end-of-life material managers. Our membership also includes a robust array of industry, material, and product-specific trade associations who are essential to the fabric of **AMERIPEN**. We focus on science and data to support our public policy positions, and our advocacy and engagement is based on rigorous research rooted in our commitment to achieve sustainable packaging policies.

Packaging plays a vital role in the United States, ensuring the quality of consumer goods as they are manufactured, shipped, stored, and consumed – protecting the health and safety of Americans who handle and use those products. Packaging has value throughout its life cycle, and none of it belongs in landfills, roadsides, or waterways. We need to recover it to be recycled and reused, and no one knows better how to do that than the **AMERIPEN** members who design, supply, produce, distribute, collect, and reprocess that packaging. They are driving innovation, designing packaging for better environmental performance to boost recovery and recycling and evolve the existing infrastructure.

**AMERIPEN** supports public policy solutions that are results based, effective and efficient, and equitable and fair. This has been the bedrock of our advocacy work as four states have now enacted full packaging EPR laws, and two additional states have enacted groundwork laws. We will support thoughtful packaging EPR proposals that properly balance the needs of all stakeholders. We will not support poorly designed packaging EPR proposals that we believe are not based in reality and will not result in positive environmental change and greater packaging recovery and recycling.

We were deeply engaged in the legislative process for each of the laws that have now passed in the U.S., and we are now deeply engaged in their implementation. There is unfortunately a lack of consistency between these emerging laws and additional proposals we are seeing in the U.S., causing concern for many, including brand owners who will be the primary responsible party for funding these new programs. More detail on this is included in my full written testimony submitted today for the record.

A deeper discussion is merited on how uniformity may be achieved if packaging EPR continues to expand in the U.S., and whether something could or should be done at the federal level. To that end, **AMERIPEN** would be pleased to work with federal policymakers and other stakeholders to explore the potential need and design for any federal framework or program.

While **AMERIPEN** is not currently suggesting that a national packaging EPR framework or program must be implemented, any consideration must balance multiple public policy priorities and stakeholder needs to effectively improve packaging recovery and recycling in the U.S., alongside the need to keep existing systems and infrastructure operational and profitable. A national non-profit producer responsibility organization – a PRO – would likely be needed to manage the organizational structure for producers to develop a national program plan, pool resources, and provide program funding. A federal government entity, such as the Environmental Protection Agency, would likely need to have oversight of the PRO and the organizational mechanisms to coordinate with states and their existing management of solid waste and recycling.

Phasing in interested states through an opt-in process to receive federal support might also be appropriate, to allow the continued planning and management of solid waste and recycling at the state and local levels. Such an opt-in process should establish national standards for terms, data, measurement, and reporting – and the use of producer funds to which in-state stakeholders must adhere to receive program funding. This type of framework that retains state and local planning, while also providing greater funding, consistency, and efficiency through national standards, could provide a workable approach to integrating aspects of packaging EPR across the country without creating a national takeover of local recovery and recycling programs.

I hope these thoughts from **AMERIPEN** offer some perspective on any national packaging EPR framework or program that might be considered. I very much appreciate the opportunity to appear before the Committee today, and I look forward to answering any questions you may have.

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April 3, 2024

The Honorable Tom Carper, Chairman
Senate Committee on Environment and Public Works
United States Senate
513 Hart Senate Office Building
Washington, DC 20510

The Honorable Shelly Moore Capito, Ranking Member
Senate Committee on Environment and Public Works
United States Senate
172 Russell Senate Office Building
Washington, DC 20510

**RE: *"Examining Extended Producer Responsibility Policies for Consumer Packaging"***

Dear Chairman Carper and Ranking Member Capito,

On behalf of **AMERIPEN** – the American Institute for Packaging and the Environment – I very much appreciated the opportunity to appear before the Senate Committee on Environment and Public Works on March 6, 2024, for the hearing titled, *"Examining Extended Producer Responsibility Policies for Consumer Packaging,"* to present and discuss our positions and views on extended producer responsibility for consumer packaging in the U.S. This is a critical core policy issue for **AMERIPEN** and the packaging industry in the U.S., and we must all work together to craft effective approaches. I also very much appreciate the opportunity within this letter to respond to the follow-up questions for the record (QFRs) received from you on March 20, 2024.

**AMERIPEN** is a trade association dedicated to improving packaging and the environment. We are the only material-inclusive packaging industry trade association in the U.S. representing the entire packaging supply chain. Our members include material suppliers, packaging manufacturers, consumer packaged goods companies, retailers, and end-of-life materials managers.[1] Our membership also includes a robust array of industry, material, and product-specific trade associations that are essential to the **AMERIPEN** fabric.[2]

We focus on science and data to support our public policy positions, and our advocacy and policy engagement is based on rigorous research rooted in our commitment to achieve sustainable packaging policies. Our mission is to be the leading voice for the packaging industry, using science

[1] https://members.ameripen.org/company-members/FindStartsWith?term=%23%21.
[2] https://members.ameripen.org/associate-members/FindStartsWith?term=%23%21.

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to inspire, create, and advocate for sustainable solutions for the packaging value chain, and our vision is for packaging to be recognized for all its benefits, including preventing waste and driving a circular economy.

The packaging industry is a dynamic part of the U.S. economy, accounting for nearly $538 billion in total economic output annually, equivalent to roughly 2.5 percent of GDP. Packaging product manufacturers touch companies in all 544 sectors of the U.S. economy through their production and distribution linkages, and the industry directly or indirectly supports nearly 1.7 million American jobs. These workers earn nearly $118 billion in wages and benefits, and members of the industry and their employees pay nearly $43.5 billion in direct federal, state, and local taxes, not including state and local sales taxes imposed on packaging products.[3]

Packaging plays a vital role in the United States, ensuring the quality of consumer goods as they are manufactured, shipped, stored, and consumed, protecting the health and safety of Americans who consume, use, and handle those products. Packaging has value, and none of it belongs in landfills, roadsides, or waterways. We need to recover it so it can be recycled and reused, and no one knows better how to do that than the **AMERIPEN** members who design, supply, produce, distribute, collect, and process it. They are driving innovation, designing packaging for better environmental performance to boost recycling and evolve the recycling infrastructure.

**AMERIPEN** supports policy solutions, including packaging producer responsibility, that are:

- **Results Based.** Designed to achieve the recycling and recovery results needed to create a circular economy.
- **Effective and Efficient.** Focused on best practices and solutions that spur positive behaviors, increase packaging recovery, recapture material values, and limit administrative costs.
- **Equitable and Fair.** Focused on all material types and funded by shared cost allocations that are scaled to make the system work and perceived as fair among all contributors and stakeholders.

The following responses to the QFRs reflect these principles, as well as our packaging producer responsibility objectives and policy.

[3] AMERIPEN (2021), U.S. Packaging Industry Economic Impacts Study.

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**Chairman Carper**

1. In many Extended Producer Responsibility (EPR) programs, the role of the government is to ensure transparency and accountability from industry, but the government may have other roles to play as well. What do you think is the proper role of the government in an EPR scheme?

    a. How might the federal government be able to provide harmonization and standardization across EPR programs?

**AMERIPEN Response:**

We believe that the proper role of government within packaging EPR is to ensure transparency and accountability from the packaging industry, recycling service providers and state and local governments through strong government oversight. Program development and implementation, including performance goals, should be performed by the packaging producers through a non-profit and industry-run producer responsibility organization (PRO).

In terms of how the federal government might be able to provide harmonization and standardization across EPR programs, greater consistency between how states manage solid waste and recycling must be developed while balancing the need to keep existing systems and infrastructure operational and profitable. Such an approach would likely need to utilize a national PRO to create the organizational structure for producers to create a national program plan, pool resources, and provide funding to support a national packaging producer responsibility program. The U.S. Environmental Protection Agency (EPA), given its issue expertise, would likely need to have oversight of the PRO and the organizational mechanisms to engage with states and their management of solid waste and recycling. Such oversight could include ensuring proper implementation of, and compliance with, the national program plan, including any reporting requirements.

Were such a national framework structure to be created, phasing in states that wanted to participate through an opt-in process to receive federal packaging producer responsibility funding might be appropriate to allow for the continued planning and management of municipal solid waste and recycling at the state and local levels. Such an opt-in process should also establish national definitions and standards and consistency

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factors that must be achieved for states to receive funding to support local packaging recycling, composting, and other management activities. Such standards could include minimum performance goals established by the PRO; universal collection lists; and minimum collection, sorting, and processing requirements that service providers must meet to receive expense reimbursements from the PRO. This type of framework that retains state and local planning of municipal solid waste and recycling while also providing greater funding, consistency, and efficiency via national standards could provide a workable approach to integrating aspects of packaging producer responsibility nationally without creating a national takeover of local recovery and recycling programs.

Inherent in such an approach would be the need to have greater harmonization and standardization of terms, data, and measurement of activities that are occurring within municipal solid waste and recycling systems. Currently, many states have conflicting definitions of what is considered "recycling," "recyclable," or "compostable," and of other critical terms and measures of their systems. The lack of consistency from state to state makes it very difficult to measure national progress on recycling and solid waste management goals. Such harmonization and standardization will be crucial if any type of national packaging producer responsibility is to be successful. An effective program, which ultimately is an efficient recovery recycling system, involves multiple stakeholders doing their part (consumers, producers, resin manufacturers, converters, waste management companies, etc.). Any action on packaging producer responsibility, be it at the federal or state level, needs to be based on a better understanding of current recovery and recycling access and material flows (what's being collected, where is it going, etc.).

Additionally, if national funding is flowing out to states, local governments and recycling providers, there must be accountability for those funds and a clear reporting of how they are spent to improve the recovery and recycling of packaging materials by both recycling service providers and state and local governments. Finally, under any national program, performance data from states, local governments, and recycling providers should be reported to the EPA and the national PRO to provide accurate representation of what is occurring in the system nationally.

2. The United Nations (UN) is currently negotiating an internationally binding agreement to address plastic pollution. The fourth session of the Intergovernmental Negotiating Committee is scheduled for next month, and country representatives from United Nation member countries will gather to discuss these issues. How could Extended Producer

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Responsibility policies play a role in these negotiations and in our efforts to address the plastic crisis on an international level?

**AMERIPEN Response:**

While many of our members have been monitoring and engaging in the UN's global plastics treaty negotiations, **AMERIPEN** has not engaged given the material inclusive nature of our organization and our dedicated focus on U.S. packaging policy. To that end, we have not given focused consideration to how EPR policies might play a role in the negotiations and efforts to address plastics on an international level. However, any EPR programs would still likely need to be implemented at national and local levels, as that is generally how solid waste is managed across the globe. But properly balanced EPR principles at the international level could help set the stage for effective EPR implementation at the national and local levels.

3. In order to improve our nation's recycling systems, we need better data. Would you please explain the importance of data collection as the first step to improving recycling in the U.S.?

    b. Why is accurate data critical to inform the development of EPR policies?

**AMERIPEN Response:**

Accurate data is critical and fundamental to the success of any packaging EPR policy and ultimate improvements to recovery and recycling systems. All four states with packaging EPR laws (California, Colorado, Maine, and Oregon) require a "statewide needs assessment" to evaluate the status of their recycling systems and the areas requiring investment and development to implement their new EPR programs successfully. These comprehensive reviews of recycling capacity then give guidance to the PRO so that it can plan for and execute its EPR program plan in the respective states. Without a needs assessment, EPR programs risk being developed and implemented in a haphazard and inefficient manner.

Equally important, a successful EPR program requires accurate reporting of material flows, from producers to recyclers to reclaimers. This information informs the fees that ultimately fund the program. It also allows stakeholders to assess the performance of

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collection and recycling infrastructure and identify opportunities for improvement and investment.

4. **AMERIPEN** represents a wide range of stakeholders across the packaging supply chain. In your view, what are certain aspects of EPR policies that your members can agree on and support?

**AMERIPEN Response:**

**AMERIPEN**'s packaging producer responsibility principles, objectives, and policy were finalized in late 2020 after a lengthy development and approval process with our members. These have been the bedrock of our advocacy work on this issue in the states since then and have withstood the test of time. The principles, objectives, and policy include the following provisions:

Covered Materials and Shared Responsibility. Packaging producer responsibility programs should cover all recyclable and compostable packaging materials (i.e., glass, metal, paper, plastic, and combinations thereof). Exemptions for packaging materials and formats, and certain products utilizing packaging, should be limited and not create "free riders" whose packaging materials in the system are subsidized by other packaging producers funding the system. The ideal packaging producer responsibility program should operate under a shared responsibility model whereby all stakeholders in the packaging recovery and recycling system – packaging producers, composters and recyclers, local government, and even consumers – take some responsibility – financial and/or operational – to ensure fairness and success.

Role of Producers and Others. Packaging producer responsibility programs should be run by producers directly through a non-profit producer responsibility organization (PRO) with strong government oversight. While PROs will be established and operate at the state level, that should not preclude establishment of regional or national PROs, if merited and needed. Those who are not producers funding the system (i.e., local government, community-based organizations, composters, recyclers, industry trade associations, environmental non-profit organizations, etc.) should be given an opportunity to make non-binding recommendations on development, implementation, and maintenance of the producer responsibility program through establishment of a program advisory board or council.

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Statewide Recycling Needs Assessment. The ideal packaging producer responsibility program should not merely fund the packaging recovery and recycling levels and systems that exist today, but should drive expansion, improvement, and innovation of those systems, where needed, to increase recovery and recycling of current and future packaging. A statewide needs assessment should be conducted early in the development of any packaging producer responsibility program to identify, at minimum, current packaging recovery and recycling service and system availability, capacity, contamination, infrastructure, performance, processing, pricing, and gaps. The needs assessment is a critical tool to help understand what exists today and what may be needed in the future to build and maintain a successful packaging producer responsibility program.

Producer Performance Goals. **AMERIPEN** feels strongly that packaging producer responsibility enabling statutes should not codify specific "rates and dates" for performance goals (i.e., recovery and recycling rates, use of recycled content) that producers may be required to meet. Rather, the specifics of any performance goals should only be proposed by the PRO in their program plan and approved by the governing body after completion of the statewide packaging recovery and recycling needs assessment. Performance goals must be reasonable, based on what is possible over time, and ultimately not lead to packaging material bans or restrictions if not met.

AMERIPEN also feels strongly that packaging producer responsibility enabling statutes and regulations, and ensuing programs, must not eliminate or harm existing efficient and effective recovery and recycling infrastructure and investments as producers begin to provide funding into the systems. Furthermore, we believe any enabling statutes and regulations should in no way limit any current and future recovery and recycling technologies, mechanical or otherwise. Finally, enabling statutes and regulations should not be a vehicle for policies not directly related to establishing and maintaining effective and efficient packaging producer responsibility programs. These types of policies (i.e., packaging claims and labeling, recycled content mandates, toxics in packaging) should be addressed in separate statutes and regulations.

**Senator Whitehouse:**

1. There seems to be a rising tide of industry support for EPR. You have said you support a federal EPR framework and would like to work with this committee to craft it. What business incentives motivate private industry to support EPR laws?

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a. What are some examples we can look to for models of EPR?

**AMERIPEN Response:**

As stated in our written comments to the Committee on March 6, 2024, **AMERIPEN** does not currently have an official policy or position on federal packaging producer responsibility. But we do believe the time has come to give this issue some more focused consideration and discussion at the federal level, and **AMERIPEN** is prepared to work with federal policymakers, and other stakeholders who are willing to collaborate and do the hard work with us, to explore further any potential need and mechanics for a federal program.

In terms of what business incentives may motivate private industry to support EPR laws, properly constructed and executed EPR programs, that include all stakeholders and clearly define responsibilities, may help companies meet their own or mandated packaging sustainability goals, including increased recycling, composting, and reuse rates for packaging, and greater use of recycled content in packaging.

When evaluating existing EPR models, **AMERIPEN** urges some caution. Packaging EPR is not a new concept, with programs having begun in Europe (Germany) in the early 1990s, spreading into Canada more than 20 years ago and now also found in Asia and South America. Even those programs that have been in existence for 20-30 years are continuing to evolve, responding to changes in the "evolving ton" of recyclables in the marketplace that includes packaging materials, and responding to technological innovations in packaging recovery and recycling. There are certainly elements of various packaging EPR policies and programs throughout the world that we can look to as packaging EPR emerges in the U.S., but **AMERIPEN** also believes we need to consider unique approaches here in the U.S. given how our federal law cedes a significant amount of authority and control to the states and local government for solid waste management.

**Senator Sullivan:**

1. Alaskans are eager to recycle, but our state's recycling rate is low because we can collect it, but we don't have the infrastructure to recycle it. Today, recycling in Alaska hinges on shipping waste thousands of miles from where it is produced – largely inefficient and

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ineffective. This brings unintended consequences for individuals and communities with limited financial means and transportation access. Mr. Felton, in your position you've thought a lot about the balance between circularity and costs for businesses. But how would an EPR system impact consumers, particularly rural ones, and not simply pass costs on to them?

**AMERIPEN Response:**

A well-constructed and executed packaging EPR program in Alaska would ideally increase packaging recovery and recycling infrastructure for all Alaskans at the local level. Producers would likely be prohibited by statute from adding visible fees directly to consumers' purchases and would therefore likely integrate those costs into their overall operations to meet EPR program requirements and any of their own corporate sustainability goals established for packaging.

2. Under EPR practices, a fee is charged at the purchase of a product to cover the costs of administering a Producer Responsibility Organization (PRO), public education, and the collection and recycling of used products and packaging. How does EPR incentivize a purchaser to return or responsibly dispose of a product or packaging, (e.g., a reimbursement)?

**AMERIPEN Response:**

To be clear, true packaging producer responsibility does not charge a fee at the purchase of a product to cover the costs of administering its packaging within a packaging EPR program. Rather, producers of the covered packaging pay a fee directly to the PRO to administer the end-of-life management of the packaging. This is different than most existing product stewardship programs throughout the U.S. for other products (i.e., batteries, beverage containers, carpet, lightbulbs, paint, tires) where the consumer may be charged a stewardship fee at the purchase of a product that may or may not be refundable to the consumer when the product is returned for recycling at the end of its useful life.

There are several ways a well-constructed and executed packaging EPR program may incentivize a purchaser to responsibly dispose of packaging for their products. One method is for the program to establish statewide or uniform collection lists to which all

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municipalities seeking service reimbursement from the PRO must adhere to receive reimbursement. The establishment of such lists will aid consumers in identifying what is or isn't recyclable or compostable within their community or elsewhere in their state, since it will ideally be the same everywhere.

Furthermore, well-constructed and executed packaging EPR programs should provide greater access to new producer-funded packaging recovery and recycling infrastructure that can offset government and ratepayer (consumer) costs. Such infrastructure could include new recycling and composting bins and depot or drop off locations.

As suggested in the question above, a well-constructed and executed packaging EPR program should also have a significant public education component to help educate and incentivize purchasers to actively participate in the end-of-life management of packaging through proper disposal, recovery, or recycling streams. And finally, jurisdictions receiving funding under a packaging EPR program should be encouraged to enforce anti-littering policies that exist in their states and encourage recycling.

3. A decisive lack of national data on U.S. recycling infrastructure and its current performance exists, inhibiting the potential for effectiveness of programs designed to improve the recycling system. National data pinpointing gaps within the current infrastructure and highlighting key targets for resources to develop materials recovery is crucial to improving circularity throughout the U.S. How can a national needs assessment, or similar tool, encourage the acquisition of this data, and in what ways is a needs assessment fundamental to the effectiveness of any extended producer responsibility program?

**AMERIPEN Response:**

The ideal packaging producer responsibility program should not merely fund the packaging recovery and recycling levels and systems that exist today, but should drive expansion, improvement, and innovation of those systems, where needed, to increase recovery and recycling of current and future packaging. The needs assessment is a critical tool to help understand what exists today and what may be needed in the future to build and maintain a successful packaging producer responsibility program. A national needs assessment, or similar tool, would ideally identify, at minimum, current packaging

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recovery and recycling service and system availability, capacity, contamination, infrastructure, performance, processing, pricing, and gaps.

4. By many estimates, there are currently more than nine thousand local recycling programs throughout the U.S., many with different lists of what is or is not recyclable. How does this lack of standardization or discord limit the recovery of materials throughout our recycling system, and how can this be addressed?

   **AMERIPEN Response:**

   The variability in recycling and composting acceptance across programs nationwide is a two-sided issue. For consumers, it can result in confusion about how to dispose of their goods, particularly when traveling across jurisdictions with different sets of accepted materials. For recyclers, it leads to contamination of the waste stream, where consumers place a material into the recycling bin that they assume is recyclable or compostable but is not actually accepted locally.

   This challenge can be addressed program-by-program through more extensive consumer outreach and education, including efforts to develop best practices and measure effectiveness. Additionally, EPR can offer a solution by ideally harmonizing acceptance lists across an entire state (or perhaps even a region or country), taking the pressure off consumers and service providers alike to figure out how to handle a given material.

5. The U.S. currently has four states with extended producer responsibility programs for consumer packaging. Generally, within this structure producers finance these programs in order to develop recycling infrastructure, increase consumer access, and recovery. Each of the four state EPR structures have varying levels of a producer responsibility organization, also known as PRO, engagement and operational authority.

   a. What level of PRO involvement will be most effective in enabling the success of an EPR program in achieving its intended circularity goals?

   b. How can producers contribute to the implementation and operation of an EPR program in aspects in which a local, state, or national government environmental agency may be limited?

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**AMERIPEN Response:**

**AMERIPEN** feels very strongly that a PRO must be deeply involved in the development, implementation, and maintenance of any packaging producer responsibility program to ensure success in achieving its intended or mandated circularity goals. This includes the PRO, rather than government, establishing any performance goals. The level of operational control of packaging recovery and recycling systems a PRO may undertake should likely be commensurate with how much they are funding the systems. **AMERIPEN** advocates for a shared responsibility model whereby the PRO ideally does not fund 100% of existing or new packaging recovery and recycling systems, and does not take over the operation of existing or new systems. As a PRO is potentially required to fund more – potentially even 100% – of existing or new systems, then greater control over operations of the systems may be merited.

In terms of how producers can contribute to the implementation and operation of an EPR program in aspects in which a local, state, or national government environmental agency may be limited, this is one potential advantage of a well-constructed and implemented packaging producer responsibility program managed by a strong producer-driven and perhaps ideally "national" PRO. Leaving the nuts and bolts of developing and implementing a program to the producers who know their packaging, along with active participation by stakeholders up and down the packaging value chain, should not put significant constraints on local, state, or national government environmental agencies whose resources may be limited. As stated earlier, effective government oversight of packaging producer responsibility programs is likely merited; however, that doesn't mean the programs need to be bureaucratic or overbearing for anyone.

6. EPR management and implementation can be handled several different ways. Options range from a cost reimbursement model similar to the program adopted in Maine and a semi-autonomous adaptive management model run by producers like in Colorado. What are some of the attributes that make up a good producer responsibility organization (PRO) and how can its design result in program efficiencies that result in higher recycling rates with limited program overhead?

**AMERIPEN Response:**

See response above to Question #4 from Chairman Carper.

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7. Is a PRO just another layer of (unaccountable) bureaucracy? Why couldn't a city, county or state impose a fee to accomplish the same objectives as a PRO?

   **AMERIPEN Response:**

   A PRO may be another layer of (unaccountable) bureaucracy, especially if producers are given little to no opportunity to actively participate in the government-run PRO and use it to develop and implement an effective and efficient packaging producer responsibility program to address their needs and actually increase packaging recycling and recovery. **AMERIPEN** believes this to be the case with the Maine packaging EPR law. **AMERIPEN** believes a strong industry/producer controlled and driven PRO does not have to be bureaucratic or unaccountable. As mentioned earlier, accountability can include a government-administered packaging producer responsibility program advisory board or council comprised of local government, community-based organizations, composters, recyclers, industry trade associations, environmental non-profit organizations, etc., that can make non-binding recommendations on development, implementation, and maintenance of the program.

   Cities, counties, and states across the U.S. have imposed fees and restrictions – sometimes even bans – on packaging in the name of purportedly accomplishing the same objectives as a PRO. But these types of penalties or taxes on industry and consumers are typically nothing more than that and more often a veiled attempt to eliminate certain types of packaging formats and materials – something **AMERIPEN** does not support. While **AMERIPEN** is not actively advocating for packaging producer responsibility to be enacted in states or at the national level, it's likely a more appropriate public policy mechanism than bans, penalties, or taxes if it creates greater access to recycling and preserves the ability to use necessary packaging for certain products.

8. How would a PRO be held accountable? Who would provide oversight over the PRO? Who/how would enforce any illegal or unethical issues?

   **AMERIPEN Response:**

   Well-designed and implemented packaging producer responsibility programs typically have a strong government oversight component to help execute robust and successful needs assessments, review and approve initial and annual PRO program plans and reports

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and administer other attributes of programs that may be out of the scope of the PRO because of statutory provisions and enabling regulations.

As stated earlier, those who are not producers funding the system (i.e., local government, community-based organizations, composters, recyclers, industry trade associations, environmental non-profit organizations, etc.) can also play a PRO oversight role by making non-binding recommendations on development, implementation, and maintenance of the producer responsibility program through establishment of a program advisory board or council.

Regarding enforcement of any illegal or unethical issues, we are unaware of what those might be at this time. Any PRO that is created must create strong rules to prevent conflicts of interest and work within the bounds of relevant consumer protection laws.

9. Would the fees charged at the time of purchase be better used to incentivize manufacturers to design their products to be easier to recycle or to reimburse the consumer upon collection for the EPR fee?

   **AMERIPEN Response:**

   As stated earlier, true packaging producer responsibility does not charge a fee at the time of purchase of a product to cover the costs of administering the product's packaging within a packaging EPR program. There can be components within packaging EPR programs that may incentivize manufacturers to design their packaging to be more recyclable, compostable, or reusable. This can include producer-established performance goals to increase recycling, composting, and reuse, and eco-modulation whereby the PRO may assess producers lower (bonus) fees or higher (malus) fees on their covered packaging to potentially incentivize those producers to design their packaging to be more recyclable, compostable, or reusable.

10. At this point, the recycling industry tells us that it has had very limited success with EPR programs both in terms of collection and quality. Probably the most important concern is that 85-90% of recycling is NOT municipal or residential but industrial and commercial and the focus on most EPR programs is at the municipal and residential streams. We would not want to harm the 85-90% that are working by trying hard to fix the 10-15% that isn't working as well. Municipal and residential recycling is very different because it relies

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on the voluntary participation of citizens who do not always understand what is correct for their stream, so the stream is full of contaminants that lower the quality of the final products. How do we ensure the continued success of industrial and commercial recycling while focusing on municipal and residential recycling?

**AMERIPEN Response:**

While **AMERIPEN** does not have a formal public policy position on Industrial, Commercial and Institutional (IC&I) packaging recovery and recycling within the context of packaging producer responsibility, it is our general belief that producer responsibility should be focused primarily on residential packaging recovery and recycling. It should not be overly aggressive to include IC&I that often already have dedicated separate and successful recovery and recycling systems that are funded by businesses and entities within those sectors. Residential recycling programs currently offer the greatest potential for improvement in recycling systems and therefore warrant the most energy and attention.

**#  #  #**

In conclusion, **AMERIPEN** appreciates the opportunity to share with you our positions and views on extended producer responsibility for consumer packaging in the U.S. We look forward to working with you, other policymakers, and all stakeholders within the packaging value chain, to explore balanced policies and mechanisms to increase packaging recovery and recycling throughout the U.S. It is equally important to recognize the value of packaging in ensuring the quality of consumer goods as they are manufactured, shipped, stored, and consumed, protecting the health and safety of Americans who consume, use, and handle those products.

Please feel free to contact me or James Bayot with VNF Solutions (BayotJ@vnfsolutions.com) with any questions on extended producer responsibility for consumer packaging or other issues.

Sincerely,

Dan Felton
Executive Director

Senator CARPER. Again, we welcome each of you today. Thanks for your life's work. Thank you for sharing your thoughts with us and our colleagues and our guests.

We are going to provide 5 minutes per member for questioning. I will try to keep us close to that, but offer opportunities for multiple rounds, I hope.

I would just say to Ms. Simon and Dr. Johnson, with respect to fee setting, we have heard in your testimoneys that a system that assigns fees based upon the environmental impact of a product is an important aspect of an Extended Producer Responsibility policy.

For example, difficult to recycle plastic films may have a higher fee than a recyclable cereal box. We will start with Ms. Simon, if you would. Would you expand for us, please, on how this fee setting process can work as a tool and Extended Producer Responsibility policies to support both a downstream and upstream changes in our recycling system?

Ms. SIMON. Absolutely. When we talk about this fee setting, the term that is being used often today is called eco-modulation.

Senator CARPER. What is it called?

Ms. SIMON. Eco-modulation. I don't know if it is a real word.

[Laughter.]

Senator CARPER. I have words like that, too.

Ms. SIMON. Spell-check does not like it. What it essentially is about is sort of a fee modulation around criteria for the packaging. So, if we want to improve our recycling system, we need to start by making sure that we are standardizing the design of those materials to match the technology and the infrastructure.

By doing that, you get better efficiency on the back end, higher quality materials. They will have a higher value to have longer term contracts. So to incentivize that, to incentivize design for that, you can create a fee modulation system or an eco-modulation, where you incentivize producers to design for that system or design above that, use recycled content. Use less.

And it can also disincentivize. You can disincentivize problematic materials, problematic colorants, labels, additives, so that they pay a higher fee. That way, they are no longer, if they are degrading the quality of that feedstock, they are paying to degrade it.

Additionally, it can create the need for transparency in the system, which can help avoid some of the concerns around toxic chemicals in recycling. There is better transparency; the material recycling facility will have the ability to opt out of those materials, and it will give us the opportunity to have better visibility of how we improve upon reducing those problematic chemicals in the future.

Fee modulation is a way to take a tool that could be just for financing recycling and use it for a bit more than that.

Senator CARPER. Thank you.

Dr. Johnson, would you please share with us any views that you have regarding the same topic?

Mr. JOHNSON. Yes, I would just simply say that I would support as a key tenet of EPR this kind of eco-modulation. What we have seen in some EPR schemes is they create a pollution prevention hierarchy, the worst being plastic going into landfill, wasted energy,

downcycling to recycling, to reuse-refill, and fees are based on where the end of life of your product is relative to that hierarchy.

I think it is a good incentive system for companies like ourselves to make our products more recyclable, to improve our PCR content, and just have continuous improvement in the system. A number of EPR schemes don't have that, but we would certainly promote having that kind of system in EPR.

Senator CARPER. Great, thanks.

Senator Capito?

Senator CAPITO. Thank you. Thank you all for being here. There is a fundamental chicken-and-the-egg issue here that is preventing us from moving on. Insufficient collection infrastructure hampers our recycling efforts, and the low demand for recycled materials discourages investment. That is why I think Extended Producer Responsibility could really be viewed as a potential solution here, which is good.

Ms. Simon just mentioned something that I mentioned in my opening statement. Mr. Felton, I would like to ask you, is it even feasible for producers to comply with anticipated recycling content mandates without the integration of some chemical recycling? Where does chemical recycling fit into this? Because obviously, it is a major part of the materials that are produced?

Mr. FELTON. Yes, thank you, Senator. It is a great question. While AMERIPEN doesn't have an official public policy position on advanced recycling, chemical recycling, molecular recycling, we will say it is a tool in the toolbox. We would not want any program at the State or the Federal level to move forward that would take a tool that is able to increase packaging recycling and recovery. That would include new emerging technologies for mechanical recycling. As well, we believe that would include these new technologies, newer technologies, to support advanced or chemical recycling.

Senator CAPITO. Dr. Johnson, do you have an opinion on that as well?

Mr. JOHNSON. Yes. I would support the fact that it is an important tool in the toolbox, especially for hard-to-recycle plastics. You would hope, over time, that as EPR works, you get out of those hard-to-recycle plastics, and you put more into the recycling loop and maybe there is less of a need for that kind of tool. But it is certainly an important tool, in my opinion, in an interim period.

Senator CAPITO. Ms. Simon, do you have an opinion? You mentioned that in your opening statement.

Ms. SIMON. Overall, I think we are cautious about chemical recycling today, as it hasn't quite been proven. However, I don't think we need to define the how. I think we define outcomes in the process. We don't want to close off innovation.

But we say that any technology that is used to process and provide us secondary markets has to meet certain environmental, social, and economic bars. If we set a system up to be about outcomes, about improving the benefits of this system, then we don't have to put barriers up around what those tools can be.

Senator CAPITO. So, one of the frustrations that I think the Chairman and I have, if I can speak for him briefly, I think, is that we can't even get our small recycling bills through Congress. So how in the world are we going to be able to do something on a Fed-

eral level at the scale at which we are talking about here, which would be, I think, beneficial, fundamentally, to everybody in the Country and all the States would be able to comply?

But the two downsides that I mentioned were possible regressiveness in terms of cost of product as you further recycle. What does that do to the cost to the general consumer? And the other thing is the rural America, sort of inability to access recycling now, but in the future. I don't know.

Mr. Felton, do you have any helpful hints here for Congress?

Mr. FELTON. Included in my written testimony are some more examples of this, but yes, I think there are things that are moving forward that Congress can help with. The acts that we have heard of today, the Recycling Infrastructure and Accessibility Act, the Recycling and Composting Accountability Act, understanding they are currently facing challenges as well. But those are steps in the right direction.

I think another thing that could be helpful, and I don't think it is impossible to do, is to get some more harmonization or uniformity, if you will, around the definitions. I would agree with Ms. Simon's discussion about what is the end goal, what is the end game here. But if we are all operating from a different definitional standard, that is something to think about.

One other thing I would highlight that I think is very important that I do see an opportunity, potentially, for Federal Government to support is the re-emergence of State recycling market development. So we want markets for these materials at the end of the day. Producers want that, to get to the recycled content, either self-imposed or mandates States are putting forward.

Recycling market development is another tool, and I think there is a role here for the Federal Government to potentially help in that regard.

Senator CAPITO. You mentioned in your statement that, I think you said four States has already put in——

Mr. FELTON. That have full EPR laws in place right now, yes.

Senator CAPITO. OK. What four States are those?

Mr. FELTON. They are Oregon, Maine, Colorado, and California.

Senator CAPITO. And then, what were the other two you mentioned, you mentioned two other States?

Mr. FELTON. Illinois and Maryland have passed what I am referring to as a groundwork law. It will do a needs assessment.

Senator CAPITO. Are these in conflict with one another, or are they similar?

Mr. FELTON. I would say that generally speaking, none of these six laws in place now are quite like each other. They are definitely——

Senator CAPITO. So Mr. Johnson's products, are they going to be impacted? How are they impacted by the State laws?

Mr. JOHNSON. There is some conflict between the State laws. I will give you an example. The labeling laws, as part of EPR in California, will prevent the chasing arrows symbol in most cases, whereas 30 other States have laws that mandate the chasing arrows. Our products flow pretty freely across State borders, so it would be impossible for us to comply with the law when you have that kind of labeling conflict. That is just one example.

Senator CAPITO. Well, that is a good example. That is a good example of why harmonization would really be where we need to go, here.

Mr. JOHNSON. Yes.

Senator CAPITO. Just on something that sounds pretty simple can complicate things. Thank you very much.

Senator CARPER. Thanks. Thank you very much.

I would just say to our colleagues, two of us that are sitting here on this side of the dais are former Governors and very much involved in the National Governor's Association. There is an entity within the National Governor's Association, which is a mechanism that enables States to share ideas with one another, what is working, what is not working. They actually have a name for the committee that does that. I used to chair that committee.

I would remind us that this is not just a Federal issue; this is not just a private sector issue. States have a real dog in this fight. We welcome that.

Senator Capito, her father was Governor of West Virginia when I was born, and rumor has it that she has a son who might end up being Governor of West Virginia in the future. Those Governors, we want to keep an eye on them and make sure they are part of what needs to be done.

Senator RICKETTS. He and I are recovering Governors.

Senator RICKETTS. Great. Thank you very much, Chairman Carper and Ranking Member Capito. I appreciate the opportunity. Thank you to our witnesses for being here today.

EPR is a relatively new approach to address our plastic waste infrastructure. I have some concerns that relate to something that, frankly, none of the witnesses addressed directly, which is the financial burden this could place on complying with that regulation, and what it is going to do to the price of goods.

A study from the State of New York showed the adoption of EPR could increase grocery bills $36 to $57 per month for a family of four. This is at a time, of course, when inflation is already impacting families across this Nation. Grocery prices are up 21 percent since Joe Biden has taken office.

Of course, who does this harm the most? Well, it is our lowest income families who are the ones that are the least able to handle these price increases. We see this in a lot of areas. In low-income households, they consume almost 20 percent of the prepackaged goods, more than other households.

We have all sorts of examples where regulation comes in place and it drives up costs for consumers, and of course, that impacts our consumers all across the board. For example, when California passed some of their animal cruelty laws, it drove up the price of eggs 33 percent. If you look right now in California, on Proposition 12 as well, eggs consistently cost 85 cents more in California, or 85 cents to a dollar more in California than they do in the Midwest.

If you look at, for example, the EPA's proposed tailpipe regulations that would require two-thirds of all vehicles to be sold in the United States by 2032 to be electric vehicles, electric vehicles generally cost $65,000. That is significantly more than a regular internal combustion engine, and the average low-income household

spends $12,000 dollars on their vehicle. So, again, a huge impact on low-income families when you have regulations come in place.

So, this overregulation can have a big impact on our families that are the least able to do it, especially when you are talking about basic necessities, like food and transportation. They are really the most vulnerable.

In Nebraska, we actually have innovation that can also help with this. It is development of mild plastics. Nebraska is the leader in the development of production of these types of chemistries. The previous Farm Bill expanded the definition of bio-based products to include renewable chemicals.

Renewable chemicals are produced from renewable biomass, allowing sustainable materials to be mixed with conventional materials and existing industrial processes and supply chains. It is widely used internationally, and the USDA has been slow to adopt these improvements.

Mr. Felton, can you talk a little bit about the importance of innovation and provide some examples of important innovations that are happening in the packaging supply chain?

Mr. FELTON. Yes, thank you, Senator, for that question. There is a lot of innovation happening, bioplastics is one example. There are other innovations happening that we are able to incorporate. For instance, more recycled content.

What I would say is, I want to try to answer both parts of your comments. One is the innovation happening. It is important to remember that packaging is designed for a particular reason, a particular purpose, and I would even suggest, in some instances, that would be more true in your State with more rural communities, people may go to the store a distance and maybe once a week, once every 10 days. So there is packaging designed expressly for that purpose, for them to be able to purchase products and have it last longer, quite frankly.

So, innovation, whether it be bioplastics or other types of materials, packaging being produced really is meaningful when we have this more holistic discussion about Extended Producer Responsibility, which then goes to the cost issue.

You referenced a study. There are studies sort of on both sides of the aisle. Does EPR increase cost to consumers, does it not? I think economics would argue there may be some incremental, at least, small cost to consumers at the end of the day.

I would suggest that consumers may have some of that cost impact. Companies may be willing to internalize some of that cost as well, if it gets to what they are trying to do as a company. I am sure Mr. Johnson can speak further to that. It is definitely a consideration.

My members are very concerned about potential cost increase. But I think if they can find paths forward to meet their goals, whether it be environmental or to sell more products, if they can internalize some of that cost, the impact will be less, quite frankly.

Senator RICKETTS. Mr. Johnson, can you talk a little bit about innovation in the packaging industry?

Mr. JOHNSON. Certainly. Just to comment on the cost piece, I share your concern about its impacts, especially on people that can't afford these kinds of cost increases.

But I would make a couple of points. One is, if we let this emerging round of State regulation happen, that is going to drive costs a lot faster than if we had Federal regulation.

The second thing that I would say, and this is one of the things I am promoting, is that the sooner we get Federal regulation and the more time given to meet goals, the more innovation can happen; the more you get economies of scale, and you can mitigate the costs and inconvenience to the people that buy our products. I advocate for time to meet these hurdles.

But there are a lot of innovations happening, particularly on recyclability of products and recycled content. I think those, and reuse-refill kinds of innovations, those are, I think, the three big things that will be promoted in EPR regulation.

Senator RICKETTS. Great. Thank you. Thank you, Mr. Chairman.

Senator CARPER. Thank you, and thank you for always showing up. This guy, I think his attendance is as good as mine. It is a joy to continue to work with you.

Senator Padilla has joined us. Senator Padilla represents a big State, California, and does it extraordinarily well.

As you know, I used to be a Naval flight officer. We were stationed, when we weren't in southeast Asia in the Vietnam War, our squadron was housed at Moffett Field Naval Air Station. I lived very close to there in Palo Alto.

When we weren't overseas, I would recycle. I found the warehouse about a mile from the apartment that some of my buddies and I lived in. We would go there pretty regularly every month. I have never, never stopped. It is a good habit that I learned a long time ago in your State. Thank you.

Senator PADILLA. Thank you, Mr. Chairman. Thank you for convening this hearing.

As we explore the role of Extended Producer Responsibility, I think it is helpful to remind ourselves that it is just one aspect of the circular economy for plastic. These policies should, obviously, work in tandem with other areas like recycling infrastructure investments, which we have talked about, improved data collection, because that can help inform future decisions and policymaking, and any other strategies that would leverage public-private partnerships and investments to achieve our goals.

As the Chairman said, I am proud to represent California, which I believe has paved the way toward a circular economy for the benefit of both consumers and the environment. Thanks to California's leadership on recycling over the years, we have collected over 491 billion bottles and cans, including the ones that you recycled, Mr. Chairman, and a billion pounds of carpet. Maybe a lot of people prefer the cans and bottles, but it is not just that.

Carpet, 2.6 billion pounds of e-waste, because of electronics and its disproportionately impactful environmental damage, if not disposed of properly, 2.2 billion gallons of used oil, and 9.6 million mattresses for recycling. We are going to take recycling and reuse everywhere we can find it.

California is also one of the first States to enact Extended Producer Responsibility legislation with its landmark passage of SB 54 in 2022. This law requires producers to reduce single use plastic packaging by 25 percent and make 100 percent of their packaging

either recyclable or compostable by 2032. Reports estimate that the targets in the law would result in 23 million tons less of single use plastics over the next 10 years.

That sounds like a big figure. Let us try to envision what 23 million tons is. You are familiar with the Golden Gate Bridge? Twenty-three Golden Gate Bridges is what we are talking about, or 150,000 blue whales.

Dr. Johnson, how can Congress best advance Extended Producer Responsibility policies while also protecting States' abilities to act?

Mr. JOHNSON. I do think there is an important role for States. What we would like to see is harmonization of product labeling and product characteristics so that, because our products flow freely across State borders, so that we don't have conflicts of laws, and we can capture good economies of scale.

To me, those are the two most important things that we need from a Federal level. But States obviously should have a lot of capability to design these systems to meet their State's particular needs.

Senator PADILLA. Right. I think, in addition, this is my position, for the record here, I think we in Congress can learn what has worked at the State level and try to broaden that across the Country while not preempting those States that can and want to be even more aggressive. It is an important balance and policy relationship to have.

In my time remaining, I wanted to try at least one other topic. California was one of the first States to pass a beverage container deposit law, which established what Californians know as California's redemption value, the CRV on beverage containers.

This fee, or deposit, as it is referred to, is either returned to consumers when they recycle their bottles and cans or given to a curbside operator or nonprofit recycler. Thanks to California's bottle bill, our beverage container recycling rate is at 70 percent. We have had higher marks at some point, but 70 percent is pretty successful.

Ms. Simon, what other complementary recycling systems should be considered and incorporated into Federal Extended Producer Responsibility policies?

Ms. SIMON. Thank you so much for the question, and thanks for your leadership.

I think it is really important that we learn from what the States have been doing and what really creates sustainable secondary markets for all materials, because we do know that we are way outpacing the world's ability to produce all of the things we depend on, and we need to figure out how to get them back.

There are a lot of elements that we would build into a system like EPR that could extend beyond single use products. You can learn from DRS to create and how the incentives work in that to enact incentives for reuse systems and recovery in the shared community. You can create better harmonization and design standards across a whole host of different product categories.

We are primarily talking about municipal solid waste here and single use materials, but there is apparel, there is electronics. There are a lot of other industries that are going to learn from what is happening in this space, and we should be considering

those as we look at what types of mechanisms could be successful in helping us to recover those unneeded resources in one place and provide them for other industries in another.

Senator PADILLA. Thank you very much.

Mr. Chair, I will just remind us that recycling is the third of the three Rs: reduce, reuse, and then recycle. Back to you, Mr. Chair.

Senator CARPER. The three Rs. Can't get away from that.

You mentioned the Golden Gate Bridge, which a lot of us are familiar with. There is also a Golden Gate Park, and when we were not deployed overseas, my squadron was back in California.

I got to go to the very first Earth Day in Golden Gate Park. The speaker that day was Ralph Nader. He had written a best-selling book, some of you may recall, called Unsafe At Any Speed. It was written about my car, the Chevrolet Corvair. It had an air-cooled engine in back, and it had a way of going around a curve, you go down to a sharp curve, it would change directions, and you find yourself going the opposite direction.

The other thing we found out is that in the winter, when you turned on the heater, carbon monoxide would come out of the heater. When I was at Ohio State, I bought it when I was a senior at Ohio State. When young women at Ohio State found out that my car was a Corvair, it was hard to get dates in the winter.

I lived to make it to Pensacola, Florida and sold it for a dollar and bought myself a Volkswagen Karmann Ghia, which I think I ended up with like, 200,000 miles on it. But it started with the Corvair. Lots of great memories.

I want to say thank you for your leadership in California and thank you very much for your leadership here.

We have a bunch of other, all of us serve on a number of committees. I serve on about three or four others, and so my colleagues do, and a lot of those committees are meeting right now. Members are going to kind of try to pop in to the extent that they can, but until they do, I am going to proceed to just ask questions.

My next question would be of you, Dr. Johnson. Several countries, as we may know, including, I think, including Canada, and I think France is one of them, have established Extended Producer Responsibility laws. Recently, I think we have had some mention here of Colorado, Maine, California, and Oregon have passed their own laws for consumer packaging.

We have heard both pros and cons to these laws. One concern that we have heard from stakeholders is about the challenges we have heard here today, the challenges of patchwork State-by-State approaches to recycling policies, such as differing labeling requirements.

I mentioned the National Governors' Association (NGA) actually has an entity that is in place to actually share good ideas with one another and to find out what works and do more of that. It is called the Center for Best Practices within the NGA. That is a great organization and still very active. We try to work with them in ways that are helpful to the Federal Government, to Congress, and also to State and local governments.

Dr. Johnson, a followup question for you. Would you please share some of your experiences as a global business working with national and international Extended Producer Responsibility laws?

What are some of the challenges that S.C. Johnson has faced in complying with these laws, and how might regulatory entities address those challenges?

Mr. JOHNSON. I think there are some good models of EPR legislation out there. I would hold British Columbia up as an excellent example. You shared that as an example earlier, Senator, where they have been able to achieve high recovery rates and very high access to recycling for the population in British Columbia.

Some of the challenges that we have had revolve more around transparency of fees. The one thing that I would like to see more of in an Extended Producer Responsibility regulation is more of a push on reuse and refill. That is probably one of the best approaches to minimizing environmental impact.

I would just like to share an example, if I could. Twelve years ago, we launched a concentrate which you could put in this Windex bottle and fill it with water so you can reuse this trigger bottle a hundred times, if you wanted. That is the best environmental footprint for this kind of product, but it doesn't sell very well.

Most consumers, plastic is just not top of mind enough for them to want to go through the inconvenience of putting a concentrate in here and refilling this bottle. It just comes back to, it is very hard for an individual company to make progress with these kinds of innovations.

But if we have things in the regulation that could help incentivize these kinds of things and bring scale at retail, if retailers had 30 percent of their space devoted to refill-reuse options, if many companies created those options for their brand, if we had education programs, if we had subsidies, that could help this kind of innovation.

France has put in their regulation a minimum amount of retail space that you have to devote to these options. The United Kingdom is giving subsidies for refill stations in Europe. We have over 700 refill stations for our laundry detergent brand in Europe, and those kinds of things work.

I would love to see that kind of thing added to a regulation that we can have federally here in the United States.

Senator CARPER. OK. Well, thank you for that.

Ms. Simon, and again, probably, Dr. Johnson, but we will start off with you. Ms. Simon, as I mentioned I think in my opening statement, some materials have more viable markets for repurchasing than others, as you know. It is known as end markets. I believe that is what they call end markets.

For example, paper is recycled at almost 70 percent, and recycled paper is often put back into products for resale, but plastic products do not have the same recovery rate or value as recycled paper. Question for you and maybe for Dr. Johnson, as well. How can Extended Producer Responsibility policies establish new end markets for recycled materials? Ms. Simon?

Ms. SIMON. Every single one of the materials that we depend on for single use today, whether it is paper, aluminum, glass, or plastic, comes from a resource and comes with impact. We should be making our best effort to make sure all of those materials are getting recycled. They all end up in the same blue bin.

So when we are talking about an Extended Producer Responsibility scheme at the Federal level, we need to be considering all of those materials at once and how we can create design standards and eco-modulation to enhance and improve the way those materials are designed for recycling and for the infrastructure and technologies needed to most efficiently recycle them so that we have high value materials on the back end for all of that.

So, maybe the improvement from paper is not as high as it would be because we have a much lower starting point for other materials. But that improvement is still needed. Because paper and paperboard are the materials within that blue bin that absorb most of the contaminants. Because they are on the lower end of the amount of times you can recycle them, those contaminants actually have a bigger impact on the strength of those fibers when they are being recycled.

I think there is mutual benefit that can happen across all materials for those secondary markets.

Senator CARPER. Thank you. Dr. Johnson?

Mr. JOHNSON. I would just say that a key tenet of Extended Producer Responsibility regulation and a key responsibility of that producer organization is to help create those end of life markets. If you look at the British Columbia example, today, over 99 percent of what they collect goes into an end market. That has been improved over time.

Again, I think eco-modulation is an important tenet as well. You create a plastic pollution hierarchy, and you create an incentive system to move products from going into landfill or waste energy up to higher value, more circular markets. To me, that is a very helpful and important principle in Extended Producer Responsibility regulation.

Senator CARPER. Let me just followup with that. How important are viable end markets for a company like yours that is trying to use more recycled content in your packaging materials?

Mr. JOHNSON. I am sorry, can you repeat the question?

Senator CARPER. Yes. How important are viable end markets for a company like yours that is trying to use more recycled content in packaging materials?

Mr. JOHNSON. It is extremely important. What regulation does is it creates scale. It creates scale and supply of post-consumer recycled plastic, which is important to us, because we are meeting our own internal goals of using recycled plastic.

It is important for us to see that even today, some of the hard to recycle things get into even down-cycled markets. To me, it is a critical part of regulation.

Senator CARPER. Good, thank you. I think those are my questions.

I want to mention a couple of things, if I can. Senator Capito, Senator Boozman, and I have provided the leadership in introducing two significant pieces of legislation dealing with recycling. We have talked about it many times in this room. Some of you are familiar with them.

We have actually, they passed out of committee, I think, unanimously. They have very broad support within the Senate. In an effort to try to find, to reconcile our legislation with what is going

on in the House, we have stumbled over something that is called, in the Senate, it is called a hold. A member of the Senate, Democrat or Republican, can put a hold, in some cases, on legislation that he or she has concerns about.

One of our colleagues, Senator Lee of Utah, has lifted his hold. He has lifted his hold, we learned this morning, on the two recycling bills that this committee has moved earlier in this Congress that we talked about here, even today. Senator Capito has provided a lot of leadership on that, along with Senator Boozman, and our staffs, great staff work on that. We appreciate very much the decision by Senator Lee to lift his hold.

Senator Capito and I are going to be working and our staffs are going to be working with the floor. I don't know how you work with the floor in the Senate, but the folks who work the floor, for Democratic and Republican leadership, to see if we can't move these two recycling bills as soon as possible so we can work with the House to get them to President Biden's desk. A piece of good news. We don't always have good news, but that is good news, and we are really happy and grateful to Senator Lee for what he has done.

Before we wrap it up, one of the things I like to do, I am always looking for consensus, how do we build consensus. How do we build consensus here across political lines; how do we build consensus between the House and the Senate? How do we build consensus with States and Governors and other levels of government?

I am going to ask you, in closing, if you would, just to maybe close with, each of you, with a thought or two in terms of actually taking us closer to consensus on something, an issue of significance relating to recycling. It could be what we are talking about today. It could be something else that is related to what we are talking about today, and maybe we might have asked a question that triggered a response.

What else do you think you what to kind of leave us? You had a chance to give an opening statement. I want you to give us just a short closing statement, with some real wisdom. You have given us a lot of that already. I am going to ask Mr. Felton if you would just lead us off, and then we will wrap it up with Ms. Simon.

Mr. FELTON. Yes, thank you, Senator. Three quick thoughts. One is, consensus is critical, and we need people at the table. I am not suggesting the people here in the room today are not at the table, but one thing AMERIPEN has discovered over the last 4 years is, we are only going to solve these problems if all stakeholders sit down together, and that is what consensus is. So encourage those who are not currently engaged in this issue to follow hearings like this, understand the complexities of it, and move forward with us.

Two other things I want to say. I do want to mention that, while we have, I believe, 40 countries around the world that have EPR in place, many of those programs were set up 20 and 30 years ago for a different set of packaging and a different set of technology. These programs are continuing to evolve.

So as we point toward other countries and what they are doing right, I think we need to be mindful of that, and we need to be mindful that I think we need a unique, United States solution as well for the way that things are set up here in the United States.

My last comment is data, data, data. We need data.

Senator CARPER. Did you say data?

Mr. FELTON. Data, yes. I did, three times. We need that desperately. I think there is a role for the Federal Government to help with that, so as we are looking to find consensus, looking to drive industry interests and environmental interests and State interests is we lack data that is desperately needed. We need to work more on that.

Senator CARPER. Good. I think one of the pieces of legislation, one of the two pieces that I talked about, speaks to that issue, which is good.

Mr. FELTON. It does, yes.

Senator CARPER. We have been responsive. Thank you for that encouragement.

Mr. FELTON. Thank you.

Senator CARPER. Dr. Johnson?

Mr. JOHNSON. I would just say, obviously, consensus is important. Far be it from me to suggest what might help build that. I would just say that, given the emerging State regulations, that Federal regulation will help prevent overregulation. I think that should be important for everybody.

I would also say that this is an important emerging issue. I know you talked about microplastics last week. That, I think, is becoming a very important human health issue that needs to be solved. I think, if there is anything with urgency around it, it is that.

I appreciate the opportunity today to share my views. Thank you.

Senator CARPER. We are delighted you could join us again. Thank you for sharing your views with us.

Ms. Simon?

Ms. SIMON. Thank you so much for the opportunity, once again. When you talk about consensus, it makes me think about the process that is happening in parallel to this in the United Nations around the treaty, where it is the goal for all of those member States to come together and find a common path forward against a shared threat.

That is really hard to do in quite a divisive world, as it can be to find paths forward in the U.S. But an interesting thing has emerged in these negotiations and in the momentum in the U.S. is that where we have common ground from more players than ever before is on Extended Producer Responsibility.

We may have different reasons for why we want it, but ultimately, we all need better, more harmonized standards. We need better collection. We need better processing, and we need better secondary materials. That is fairly common and, I think, why you see more excitement and activity from the private sector on this. They want that more than anything.

I want to add one thing. I didn't get a chance to comment on the cost thing earlier, and I was hoping I could just add a few thoughts.

Senator CARPER. On the what?

Ms. SIMON. On the cost to the consumer. I think the cost is already on the consumer in the form of plastic waste today and municipalities that are currently dealing with that. So I think we need to make sure we are considering where these costs are falling as we do the full balance sheet for what an EPR system would do.

Mayors in the Midwest, part of the Mississippi River Cities and Towns Initiative talk about cost as one of the challenges they faced and how it is coming down to the local taxpayers. Those mayors will be on the Hill tomorrow to talk about their support of EPR also, and Washington has done some studies that have shown that there are benefits to it, coming back in the form of $600 to $300 a year by not having to pay for trash services.

I think there is an opportunity to find that common ground in where there could be those benefits to businesses, those benefits to the government, and those benefits to the communities who really need it.

Thank you again for the opportunity. I appreciate it.

Senator CARPER. We thank you all. I hope your work provides you as much joy and satisfaction as our work provides for us. People who follow the news and follows what goes on in Washington think that we don't like each other and can't stand working with one another.

That could not be further from the truth, as least with respect to many of the issues before this committee. We have a lot of mutual respect. We have a great, I think, a great track record in things like the Inflation Reduction Act, which we were involved in helping to write and the Bipartisan Infrastructure Bill, which has huge climate provisions in it, some of which we talked a little bit about here, too, today.

I was going to say Winston Churchill, but another great leader was, there is a statue of him a couple of miles from where we are gathered here today, and it is our former President Abraham Lincoln. One of my favorite Lincoln quotes is in response to the question, what is the role of government? What is the role of government?

Lincoln used to say, the role of government is to do for the people what they cannot do for themselves. The role of government is to do for the people what they cannot do for themselves. There is a lot of wisdom in that. One of the ways that the government works best is when we do it in a collaborative way and look for common ground, trying to find ways to harness market forces where that works, and realize that there is a moral imperative for this.

This is the only planet we are going to have. There is no planet B. We have to take care of this planet if we care about our grandchildren and our great-grandchildren. I know, if we are lucky enough to have those, we want to make sure they have a wonderful place to inherit and to raise their own families someday.

We appreciate your thoughtful insights into what can be a complex topic. We look forward to remaining in touch with you if we can find you, in a good way. We want to stay in touch with you and with our committee so that we can really reach some of the best and most thoughtful policies and advance these and other shared goals.

I want to say a special thanks to Senator Capito and to her staff, to our majority staff, and the staff of all of our colleagues who participated in helping to select you to be our witnesses and provided some of the questions that have been asked here today.

I get to do a little bit of housekeeping here to close out our hearing. This is my favorite part of the hearing. I want to ask unani-

mous consent to submit for the record a variety of materials that include letters from stakeholders and other materials that relate to today's hearing.

When I ask unanimous consent and there is no other Senator to object, then I can pretty much run the show. Without objection, so ordered.

[The referenced information follows:]

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March 6, 2024

The Honorable Tom Carper
Chairman
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United States Senate
513 Hart Senate Office Building
Washington, DC 20510

The Honorable Shelley Moore Capito
Ranking Member
Committee on Environment and Public Works
United States Senate
170 Russell Senate Office Building
Washington, DC 20510

Dear Chairman Carper and Ranking Member Capito:

Walmart is pleased to submit this letter for the record regarding Extended Producer Responsibility (EPR) and wishes to thank the Environment and Public Works Committee for convening today's important hearing.

Walmart's goal is to achieve 100% recyclable, reusable, or industrially compostable packaging and increase the use of post-consumer recycled content for our private brands by 2025. While we work to achieve these goals, we are also taking action to eliminate problematic or unnecessary plastic packaging and to move away from single-use models where feasible. A summary of our plastics efforts can be found here.

Walmart is active in its pursuit of model EPR systems in the United States to achieve a circular economy and strong environmental outcomes. We are a member of the Ellen MacArthur Foundation's Plastics Advisory Board and the Consumer Goods Forum's (CGF) Plastic Waste Coalition of Action. We are also a founding member of the EPR Leadership Forum and the Circular Action Alliance, where we serve on both the Colorado and California producer responsibility organization (PRO) boards. As early leaders, we are supportive of federal efforts to create a unified framework that would support well-designed EPR programs.

Well-constructed EPR is an effective way to generate the funds necessary to revitalize America's recycling system. Globally, Walmart has operated in EPR systems for decades and understands that these policies can be instrumental in funding curbside recycling, enhancing recycling infrastructure, and securing robust consumer participation. Walmart has endorsed the Consumer Goods Forum principles on EPR, which outline the critical design features drawn from the highest-performing systems around the world. These are captured in a paper entitled *Building a Circular Economy for Packaging: A View from the Consumer Goods Industry on Optimal Extended Producer Responsibility.*

As outlined in the CGF paper, Walmart supports EPR systems founded on the following key principles:

- Strong environmental outcomes

- Efficient, cost-effective, and accountable systems
- Shared financial responsibility
- Convenience for consumers
- Long-term financial sustainability
- Ability of producers to secure material for closed loop recycling
- Social inclusiveness and fairness

EPR policy is intended to transfer the responsibility and financing of waste management from governments to producers of packaging material, enabling them to play a proactive role in managing and improving recycling systems in collaboration with governments.

EPR is a holistic policy and has benefits that extend beyond funding and improving curbside recycling systems. Well-designed EPR is funded through ecomodulated producer fees for packaging material, which provide powerful financial incentives to (1) decrease plastic usage, (2) design for recyclability, and (3) adopt more eco-friendly packaging designs. Ecomodulated fee structures can result in transformational packaging portfolios.

A well-designed EPR system thrives on simplicity and strong stakeholder participation. Ensuring recycling is accessible and straightforward encourages active and eager involvement from consumers and creates an awareness that used packaging can become a valuable resource. Model EPR systems can achieve almost 100% participation and lead to high levels of collection and recycling of valuable packaging materials.[1]

In our vision for model EPR, the federal government would oversee the system, including the authorization and endorsement of the PRO plan. However, the day-to-day management would be entrusted to an industry-led, non-profit PRO. This organization would be responsible for the effective, cost-efficient development and implementation of the program.

We look forward to the opportunity to work together as the committee continues efforts to enhance collection and sorting infrastructure in the United States. We believe that a well-designed national EPR policy could revitalize America's recycling system.

Thank you for your consideration.

Sincerely,

Bruce C. Harris
Vice President, Federal Government Affairs
Walmart Inc.

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[1] The Recycling Partnership. (2024). State of Recycling: Present and Future of Residential Recycling

April 03, 2024

Chairman Thomas Carper
U.S. Senate Committee on Environment & Public Works
513 Hart Senate Office Building
Washington, D.C. 20510

Ranking Member Shelley Moore Capito
U.S. Senate Committee on Environment & Public Works
170 Russell Senate Office Building
Washington, D.C. 20510

RE: Examining Extended Producer Responsibility Policies for Consumer Packaging

Dear Chairman Carper, Ranking Member Capito, and Members of the Committee,

On behalf of Tyson Foods, Inc., we appreciate the opportunity to provide comments on the Committee's evaluation of Extended Producer Responsibility ("EPR") programs, emerging state laws imposing EPR responsibilities, and mechanisms to improve packaging recyclability, infrastructure, and practices. As a global food company with aspirations to help build an equitable and robust food system that helps sustain our planet and supports current and future generations, Tyson Foods continually looks for ways to source and use more sustainable packaging for our products. As part of our sustainability strategy, *Formula to Feed the Future*, we also aspire to have all Tyson Foods branded products in packaging that are designed to be recyclable, home-compostable, or reusable by 2030.

For the reasons detailed below, Tyson Foods is generally supportive of state laws and programs aimed at improving recycling infrastructure, consumer behavior, and recycling practices. Even so, Tyson Foods believes these programs need to be approached critically and thoughtfully implemented to avoid unnecessary complexity, unintended consequences, and excessive costs. The current approach of state-driven EPR programs is also not ideal because the differences in adopted and proposed state program requirements are increasing program complexity and compliance costs, and are often narrowly focused on recyclability, without consideration for necessary consumer behavioral changes at scale or availability of alternative solutions for select industries. A patchwork state approach to EPR programs with varying requirements may also negatively impact the placement of products and product costs in certain markets. Tyson Foods therefore welcomes the Committee's review of EPR programs and policies and would be amenable to a federal policy or framework governing these programs as a way to ensure greater consistency in how states manage solid waste, recycling, and packaging sustainability issues at a national level.

1. **EPR programs should be harmonized, results-based, have clear requirements, and be implemented fairly and equitably.**

EPR programs are implemented through state laws that aim to hold "producers" accountable for the end-of-life management of their products, with specific consideration for product packaging and waste disposal at state and local levels. As these laws have gained traction, the mechanisms for implementing EPR programs have varied, with states identifying different scopes of covered materials, responsible parties (*i.e.*, "producers"), program requirements, and exemptions. States with fully established EPR programs, such as California, Colorado, Maine, and Oregon, have, for example, set different program goals, producer obligations, and producer benefits. To illustrate, compare Colorado's EPR program goal of having producers fund 100% of the packaging recovery and recycling in the state against Oregon's EPR program

goal of only providing the funding necessary for the state's expansion of existing packaging recovery and recycling systems. Each of the established EPR programs also carve out varying exemptions, exceptions, and waiver processes.

Many food producers ship their products throughout the United States. With different goals, scopes, and requirements, state-driven EPR programs are creating a patchwork of compliance obligations that are challenging for food producers to identify. Food producers also face compliance challenges with state-driven EPR programs, particularly when they are not manufacturing product packaging and products may be further sold or distributed. Food producers are, as a result, being required to invest considerable time and resources into monitoring state and local laws as well as developing new systems and procedures to trace the placement of their products beyond initial customer sales through to consumer consumption to determine compliance obligations under state EPR programs. To meet emerging EPR program requirements in some states and manage EPR program costs, food producers may even need to stand up and support separate and distinct packaging supply chains for their products, thereby complicating logistics, packaging availability, and costs. Compliance obligations may also not be readily apparent if the "producer" definition in the state EPR program does not effectively delineate the packaging manufacturer or distributor from the food producer or considers these entities to have equal control and responsibilities over packaging design, specifications, and characteristics. Indeed, while only a few states have fully adopted EPR programs to date, these state laws have already resulted in increased compliance costs, production costs, and costs to customers and consumers through necessary sourcing of new packaging to state-specific criteria, continual assessment of packaging specifications, and establishment of new or additional traceability processes. To illustrate, one study by York University reported an estimated $803.2 million in direct cost to producers resulting from EPR legislation in New York through modeling, which following an evaluation of packaged goods costs translates to an additional $36 to $57 per month in grocery costs for the average family of four.[1] As additional EPR programs are considered, adopted, and implemented, these obligations will only increase resulting in increasing administrative expenses, compliance costs, and EPR program fees over time and increased food costs. Increasing food costs, in turn, will reduce the affordability and accessibility of food products in some states and localities.

Having a harmonized framework and approach to EPR programs would substantially alleviate compliance burdens in several ways. Initially, and perhaps most importantly, having consistency in covered materials, producer expectations, and obligations would reduce confusion on whether packaging is subject to EPR program requirements and corresponding compliance obligations. Consistency in definitions, as well as clear identification of the chain of responsibility for packaging through the supply chain, would allow food producers to clearly understand when they have responsibility for EPR program participation versus their packaging suppliers and corresponding fees. In making the financing mechanisms for EPR programs obvious to those who are manufacturing packaging and those who purchase packaging for use in supplying products, the entities having the most control over packaging design and specifications will be incentivized by EPR programs to develop more sustainable packaging solutions and work collaboratively across the supply chain to drive improvement in recycling behaviors and best practices. Finally, having harmonized requirements would support compliance efforts, resulting in more efficient compliance processes and procedures, thereby lowering compliance costs and expenditures. Reducing these costs, while still providing for a robust EPR policy and approach, will help establish a circular economy for packaging while also keeping the cost of food to the end consumer from rising.

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[1] *See* Dr. Calvin Lakhan, *Study Examining the Economic Impacts of EPR Legislation for Packaging Waste in New York State,* YORK UNIVERSITY, (2021), https://wastewiki.info.yorku.ca/study-examining-the-economic-impacts-of-epr-legislation-for-packaging-waste-in-new-york-state/.

2. **EPR program requirements for food packaging should be thoughtfully tailored to food-product-specific issues and factors to avoid unintended consequences.**

Packaging for food products poses a complex issue and requires a holistic assessment and consideration within EPR programs. Unlike other industries where product stewardship may be more straightforward, the nature of food production involves complex and continually evolving environmental, health, safety, nutrition, quality assurance, and consumer expectation factors. Packaging must, for example, be designed for purpose, durability, quality assurance, longevity, and safety, as well as to meet both customer and consumer expectations. Consider, for example, a switch from meat products using single-use plastic packaging to paper-based packaging. The switch in packaging may have the immediate impact of removing single-use plastic packaging for the meat product but have the unintended consequences of a reduced shelf-life, durability, or quality assurance, as well as potentially increased waste and food loss. Additionally, since paper-based packaging has poor barrier properties, low heat sealability, and strength, paper packaging generally requires additional packaging components such as a liner, pouch, sealant, and glue to prevent a premature breakdown of the packaging and product in the supply chain, resulting in increased packaging components, not less. Although avoiding plastic packaging, the use of paper packaging with supporting components to maintain durability may also create additional complexity in disposal through each component having different disposal considerations, chemical compositions, and health and safety factors. Further, packaging with multiple components often adds to the complexity of responsibilities for EPR program requirements, such that only solutions focused on increased recyclability (i.e., clear packaging, use of single polymer plastics, and packaging without colorants, inks, adhesives, and coatings) may be pursued in favor of other innovations, such as packaging with reduced material usage and weight, compostability, and high-durability to extend the food products shelf life and avoid food loss and waste.

Another example of unintended consequences of EPR programs is the focus on recyclability as a solution at scale, without consideration for whether other alternative packaging designs or disposal mechanisms may be more sustainable in the short or long term for food products. Take, for example, APET (Amorphous-polyethylene terephthalate) packaging, which is increasingly being used for food products due to the ease with which APET can be recycled in most recycling facilities. While designed for recyclability in a majority of recycling systems and avoiding EPS (Expanded Polystyrene) foam, which is an undesirable packaging constituent under many state laws, APET packaging generally results in three times the amount of plastic being used as compared to the foam alternative. As a consequence, APET packaging can have a higher use of fossil-fuel-based plastics as well as increased weight, leading to increased transportation expenses. EPR programs with rigid requirements and focus on recyclability design, constituent use, or recycling focus may unintentionally incentivize the use of APET packaging when other innovations are available or could be developed more holistically and with consideration for food product longevity, reduced food waste and loss, reduced greenhouse gas emissions, and food safety and quality assurance. For comparison, the use of flexible plastics and multi-layer specialty films, which are specially designed to ensure meat products have a long life, are packaged safely, and with durable material that maintains quality assurance without adding weight. Eliminating these materials as a packaging option would result in a loss of sustainable performance measures for meat products. EPR programs therefore need to have thoughtful assessment of packaging function to ensure effective goals and ensure tailoring to packaging needs, such as specific goals and considerations for food products, which take into account holistic measures needed to build and sustain an equitable food system.

3. **EPR Programs and Policies should take into account other existing regulatory frameworks for packaging to ensure compliance burdens are not in conflict or competition.**

Food packaging in the United States must meet strict requirements, including, for example, minimum safety requirements for food contact substances established and administered by the U.S. Food and Drug Administration ("FDA"). For meat products, packaging must also meet requirements established and administered by the U.S. Department of Agriculture. Together, these regulatory frameworks ensure that packaging for meat products is safe for intended use and meets required durability and quality assurance requirements. As these laws do not govern food packaging's end-of-life, programs and policies aimed at packaging disposal should be complementary to these requirements, not in conflict or competition through strict requirements for packaging design, components, or chemical composition. EPR programs, for example, which set strict requirements for packaging design, components, and chemical composition can negatively impact food producers' ability to source packaging materials by reducing the availability of packaging supplies that are both approved for use with food by the FDA and the EPR program's specifications. This is, perhaps, best evidenced by requirements in EPR programs to use a specific percentage of post-consumer recycled content in packaging and the fact that there have been significant challenges in obtaining FDA approval for these materials due to safety and sanitation concerns. EPR Programs and Policies should therefore be structured to provide deference to the standing legal authorities and frameworks governing food packaging and provide complimentary mechanisms to promote the development of more sustainable packaging and improved disposal practices.

4. **EPR Programs and Policies should incentivize and support the development of new packaging design solutions and drive consumer behavior at scale.**

As packaging is already being designed with the intent of it being able to be recycled or composted from a technical or chemical standpoint, the fact that packaging is not being recycled or composted cannot be fixed through an EPR Program or policy aimed at incentivizing recycling or funding a recycling infrastructure. These policies will not fully solve the issue of packaging waste or create a more circular economy. Rather, EPR Programs and policies need to incentivize and support the use of packaging that is designed for reuse, recyclability, or compostability by supporting technological developments to improve packaging design, the process of production (e.g., new tooling in the manufacturing process to integrate altered packaging design), and packaging waste collection, sorting, and processing (e.g., change in technologies at waste management facilities to allow for both mechanical and chemical recycling or addition of composting facilities). As transitioning to new packaging designs can involve capital expenditures, EPR Programs and Policies should allow for sufficient time for food producers and waste management facilities to develop and integrate technology at scale.

EPR Programs and Policies similarly need to consider consumer behavior and incorporate mechanisms to improve consumer education on waste management and incentives for consumer recycling, composting, and reuse. Put simply, a well-designed package that can be recycled in a local and accessible industrial recycling facility and is labeled with recycling instructions, can still end up in a landfill if consumers do not have incentives to meaningfully engage in recycling behaviors. Consumer behavior is therefore a critical consideration for effective and responsible packaging disposal and will determine the success or failure of EPR Programs and policies. These initiatives therefore need to critically assess whether consumers have the right information, incentives, and resources to engage in recycling, composting, and other practices to drive a circular economy for packaging materials and reduce consumer product packaging waste. The results of this assessment should then be incorporated into EPR Programs and policies, and continually revisited, to ensure adequate consumer participation and shared consumer responsibility in EPR initiatives.

In conclusion, while EPR Programs and policies hold promise for advancing the environmental sustainability of packaging used for consumer products on the whole, it is essential that these laws carefully consider the implications of EPR requirements holistically, with specific consideration on their impact on food products, accessibility, and affordability. By addressing the challenges of compliance for food producers, minimizing cost burdens, promoting consistency in regulation, and assessing requirements more holistically within the food system, policymakers can foster a more sustainable and equitable approach to product stewardship in the food industry.

Thank you for considering these comments as you continue to explore the issue of EPR Programs and policies.

Sincerely

Jeff Czarny
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Can Manufacturers Institute

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March 14, 2024

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The Honorable Shelley Moore Capito
Ranking Member
U.S. Senate Committee on Environment & Public Works
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Washington, DC 20510

**RE: CMI Comments on Extended Producer Responsibility**

Dear Chairman Carper and Ranking Member Capito:

The Can Manufacturers Institute (CMI) thanks you for the opportunity to share our thoughts and principles on extended producer responsibility (EPR) for packaging. CMI appreciates the committee's consideration of policies to provide Americans more access to recycling and funding for the required infrastructure to increase the collection and processing of metal cans so this material can be made into new products rather than littered or landfilled. Just as important, EPR educates Americans on how and what to recycle, which reduces the contamination of materials in the recycling stream.

CMI is the U.S. trade association representing metal can makers and their suppliers. The can industry accounts for the annual domestic production of approximately 131.6 billion food, beverage, aerosol, and general line cans; employs more than 28,000 people with plants in 33 states, Puerto Rico, and American Samoa; and generates about $15.7 billion in direct economic activity.

**Steel and Aluminum Metal Can Recycling Rates**

Aluminum and steel are endlessly recyclable, and the metal can is the most recycled food and beverage container in the United States.

Currently, the recycling rate for steel cans – including food cans, aerosol cans, and paint cans – is 58 percent, based on an American Iron and Steel Institute and Steel Manufacturers Association technical report.[1] According to the Aluminum Association, the national recycling rate for aluminum beverage cans is 45 percent.[2] Our industry and the consumer-packaged goods (CPG) companies want to see both of these rates increase.

[1] The American Iron and Steel Institute
[2] REPORT: Aluminum Beverage Can Retains Edge as Most Sustainable Drinks Package | The Aluminum Association

**Effective Policies to Increase Recycling Rates**

To build on the metal packaging industry's already leading recycling rates, EPR systems should:

- Recognize the high value of metal cans.
- Credit CPG companies who choose packaging with high value, readily recyclabe and whose material can be readily made inro new products.
- Exempt materials with strong end market demand from minimum recycled content mandates.
- Manage beverage containers through a separate recycling refund program.
- Focus on improving recycling access and material reuse, not prohibiting materials already approved for use in manufactruing packaging.
- Not mandate the use of reuseable containers over other types.
- Ensure the metal can sector has an advisory role to the producer responsbility organization.

To accomplish these goals, a national program must include and prioritize these core principles:

**Recognize the high value of metal cans**

Since not every recyclable material is created equal, any recycling legislation should consider the material's value and the sorting and processing capabilities best aligned with today's recycling infrastructure. CMI believes that one eco-modulation factor is the value of the packaging. The ability to capture more metal cans has an economic impact that helps the entire recycling system, and EPR programs out of fairness should recognize the value metal cans play in keeping recycling programs financially solvent and successful for the long term.

According to The Recycling Partnership's 2020 State of Curbside Report, aluminum and steel cans represent only 3 percent of the weight but more than one-third of the economic value of recyclable material generated by single-family homes.[3] This demonstrates the inherent value of recycled metal cans in effectively subsidizing the recycling of less valuable materials.

**Credit CPG companies through reduced fees when they choose packaging that has high intrinsic value, is easy to recycle and can be made into new products multiple times**

We encourage policymakers to include eco-modulation factors that both encourage recycling as well as reduce fees that CPG companies need to pay the producer responsibility organization (PRO). For example, this should include lower fees or credits for CPGs choosing packaging materials that:

- Provide high commodity value and end market demand.
- Can be remade into similar products.
- Maintains quality after being recycled multiple times.

**Steel cans should be exempted from minimum recycled content targets**

EPR legislation often features post-consumer recycled content requirements for packaging and target dates for when the requirements must be met. Such "rates and dates" for steel cans is unnecessary and ineffective as a tactic to achieve decarbonization and circular economy goals.

First, requiring a minimum recycled content for steel cans makes it difficult for the specialized steel used to produce cans to meet strict product safety and formability requirements. If the

[3] Recycling Rate Roadmap.ai (cancentral.com)

recycled content-level threshold is set too high, steel can makers will not be able to meet quality and safety standards.

Second, recycled content requirements for steel could result in greater energy use. Steel used in can making is produced in basic oxygen process (BOP), which typically incorporates 20-30 percent scrap. Only BOP steelmaking has the capability to produce the grades of steel utilized in packaging. Requiring a minimum recycled content of 30 percent may result in adding so much recycled content during production that the process becomes energy inefficient. This inefficiency reduces the desired environmental benefits of reusing used steel to make new products.

Third, there is no need for any minimum recycled content requirement for steel cans given the material's robust end markets in the United States. Demand for used steel scrap already exceeds supply and all collected steel has a market. Adding a minimum recycled content requirement to increase scrap within steel cans would not result in more steel cans being recycled. What is needed are improvements in recycling access so more people can recycle their steel cans, which is what EPR could provide. A recycled content mandate for steel cans would only shift steel from one end market to a mandated market, adding cost and greater environmental impact to the production of cans without increasing the amount of steel cans recycled.

**Recycling refunds for beverage containers programs should be separate from EPR programs, but both policies are necessary to increase recycling rates**

While the aluminum can industry is proud of the relatively high recycling rate of its containers, the industry is committed to reaching a 70 percent national recycling rate for aluminum beverage cans by 2030. To reach this target, the industry needs effective policy solutions that include a recycling refund for beverage containers, also known as a container deposit return system. The policy, considered one of the oldest models of EPR, originated in the 1970s as states began to pass legislation requiring the beverage industry to take responsibility for its packaging because of growing concerns over litter.

CMI and its aluminum can sheet suppliers support recycling refund programs because they provide a vital source of used beverage cans. According to an analysis from the Container Recycling Institute (CRI), states with an established deposit program consume about a quarter of all beverage cans and generate more than a third of all recycled cans. The average recycling rate for containers sold under a deposit is just under 80 percent, while it averages 36 percent for containers sold without a deposit.[4] Additionally, the cans aluminum suppliers receive from deposit states tend to be far cleaner and of higher quality, making recycling easier and more economical.[5]

CMI urges policymakers to design EPR programs where beverage containers are managed through a separate recycling refund program, versus an EPR program that funds the collection and recycling of other packaging. According to the CRI, beverage containers make up the largest portion (over 80%) of all containers sold in the United States.[6] CRI also cites the American Beverage Association, which calculated that one-third of beverage containers sold are consumed away from home.[7] These "on the go" containers are not captured by curbside collection programs, so the financial incentive of the deposit helps encourage consumers to

[4] https://www.container-recycling.org/index.php?option=com_content&view=article&id=730&Itemid=1372
[5] https://resource-recycling.com/recycling/2020/03/03/in-our-opinion-the-right-design-for-container-deposits/
[6] https://www.bottlebill.org/index.php/about-bottle-bills/bottle-bills-faq
[7] ibid.

return them to retailers for their refund. Finally, CRI also reports beverage containers comprise a large portion (40-60%) of litter, which can be reduced with a financial incentive to recycle.[8]

To aid policymakers on how to integrate recycling refund programs and EPR, The Recycling Partership wrote a memo, "Interplay and Integration of Deposit Return Systems and EPR"[9] In 2023. CMI encourages lawmakers to read the memo when drafting framework legislation. Issues including how to address financial impacts on existing recycling infrastructure are addressed.

**EPR legislation should focus on improving recycling access and increasing material reuse, not toxic substance regulation**
CMI does not support regulating materials approved for food contact packaging in recycling legislation. CMI believes regulation of such materials should be addressed through a science-based, public regulatory process. Such materials should be approved by the Food and Drug Administration, not by lawmakers who may not have expertise in making such decisions.

**EPR legislation should not include mandated reuseable container rates or targets**
CMI does not oppose reusable packaging, but EPR legislation should not contain requirements that certain percentages of packaging be reusable. The public sector should not choose winners and losers between reusable versus single-use containers. Consumer demand should determine the growth of reusable container systems. Further, reusable containers are not always more environmentally friendly than single-use containers. The footprint of reusable containers depends on many variables including number of uses and distance to washing.[10]

EPR legislation should also not give reusable packaging an unjustified subsidy via its fee structure. Reusable packaging should have to pay a fee to support the collection program that it is benefitting from and not only the first time it is introduced into the marketplace.

Also, the PRO should not pay for the reuse infrastructure when the PRO is made up of many companies, some of which do not use reusable packaging. This is not equitable and will cause other types of packaging to subsidize the true cost of reusable packaging.

**Ensure the metal can sector has an advisory role to the PRO**
CMI members supply packaging to CPGs that make up the PRO. CMI asks that a representative from the metal can industry have a seat on an advisory council to ensure industry expertise is provided. This will assist the PRO in its decisionmaking around material characterization, recyclability lists and eco-modulation when it comes to fee setting.

**Establish a baseline through an Environmental Protection Agency (EPA) recycling needs assessment**
A critical obstacle hindering the advancement and modernization of America's recycling system stems from the absence of consistent, dependable data regarding the performance of waste and recycling processes. A concentrated national initiative to gather reliable data is imperative to understanding the current state and how to improve upon it. This involves establishing comprehensive baseline and performance data for both commercial and residential recycling programs.

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[8] Bottle Bills FAQ - Bottle Bill Resource Guide
[9] https://recyclingpartnership.org/wp-content/uploads/dlm_uploads/2023/06/Recycling-Partnership-DRS-EPR-6.20.23.pdf
[10] https://research.wur.nl/en/publications/reusable-packaging-in-europe-between-facts-and-fiction-an-informe

To address this data gap, it is recommended that EPA allocate funds and conduct a needs assessment for the country's recycling industry and infrastructure, subsequently reporting its findings to Congress. This assessment should encompass the required investment for modernizing material recovery, ensuring consistent collection and processing of packaging material, determining the necessary investment for universal access to recycling services, and pinpointing communities with limited recycling infrastructure capacity. Clear data collection and reporting requirements are vital for understanding existing limitations within the U.S. recycling infrastructure, informing the development of an effective system.

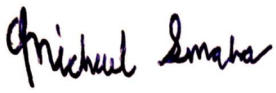
In addition, standardizing and harmonizing recycling systems must be a federal priority. The EPA's *Draft National Recycling Strategy* effort revealed 18 different definitions for the terms "recycling" and "recycled" across states, contributing to a patchwork of recycling systems hindering economies of scale and leading to high contamination rates. Establishing national standards and definitions for recycling systems, along with providing clear guidance to states and municipalities, would enhance clarity for consumers and support increased recycling collection rates. Standardization and harmonization would enable the collection, processing, and sale of a broader range of materials for value-added products or packaging.

CMI applauds Chairman Carper and Ranking Member Capito for introducing two legislative pieces that directly address these barriers. *The Recycling and Composting Accountability Act* aims to establish a comprehensive baseline of data on recycling and composting systems nationwide. Simultaneously, *the Recycling Infrastructure and Accessibility Act* aims to assist communities, especially those in rural and underserved areas, in developing the necessary infrastructure to expand recycling access and foster circular economies. Having approved both bills twice in the past two years, the committee urges the full Senate to pass them promptly.

CMI and the metal can industry support policies that will increase recycling rates and provide as many residents as possible access to recycling. We urge you to consider the metal can industry's principles in EPR discussions. Thank you for the opportunity to share our members' perspective on what it takes to achieve a well-designed EPR program. We look forward to continuing to engage the committee on these important issues.

Please do not hesitate to to contact me if CMI can answer questions and provide additonal input.

Best regards,



Michael Smaha
Vice President, Government Relations
Can Manufacturers Institute

AMERICAN BEVERAGE
DRIVING SOLUTIONS TOGETHER

March 6, 2024

The Honorable Thomas Carper
Chairman
U.S. Senate Committee on the Environment and Public Works
Washington, D.C. 20510

The Honorable Shelly Moore Capito
Ranking Member
U.S. Senate Committee on the Environment and Public Works
Washington, D.C. 20510

Dear Chairman Carper and Ranking Member Capito:

On behalf of American Beverage, representing the unified voice of America's non-alcoholic beverage industry, thank you for holding today's hearing on "*Examining Extended Producer Responsibility Policies for Consumer Packaging*."

American Beverage and its members are taking action at every stage of the life cycle of our valuable bottles and cans to ensure they are collected and remade into new products as intended.

It starts with innovative packaging that is carefully designed to be 100% recyclable, even the caps. We are raising awareness about the recyclability of our bottles through nationwide multimedia communications and advertising to inspire consumer confidence that a bottle recycled is a bottle that can be remade.

Our companies are investing in the modernization of our nation's recycling infrastructure, working alongside environmental leaders The Recycling Partnership and Closed Loop Partners. We are committing $100 million to leverage a fund of nearly a half-a-billion dollars for the improvement of recycling in key communities of the country.

Our members have made the reduction of their plastic footprints a business imperative. We are increasing the amount of recycled plastic used in our bottles to reduce our use of virgin plastic and are measuring our progress.

The beverage industry recognizes the need for improved recycling and is taking a leadership role with prominent environmental groups to create more effective, efficient and convenient collection systems.

In 2020, American Beverage partnered with World Wildlife Fund to develop robust collection policy principles (attached) that serve as a guide to a circular economy for recyclable materials. We have been actively involved in pushing forward these policies. The beverage industry joined

with the conservation community and producers of consumer packaging to pass Colorado's landmark Extended Producer Responsibility (EPR) legislation, HB22-1335. In this system, producers of packaging and printed paper will fund and operate the state's recycling system to meet goals set with state agencies to increase access to recycling for more than 1 million people who do not have it and improve collection of all recyclable packaging and printed paper.

The beverage industry also plays an active role in a similar producer-run and funded collection system for bottles and cans in Oregon, which has the highest redemption rate for containers in the nation at 88.5% (2022). The success of the Oregon system continues to inform our views on designing and operating effective stewardship systems.

Our broad experience in the U.S. and across the globe shows that any successful collection system must be convenient to consumers, privately run with appropriate government oversight, and include protections that keep financial resources in the system to ensure its long-term viability – and not go to other government spending. It is also important to consider environmental justice objectives when designing new systems. This is the better path forward.

As work continues to advance on the full committee level, we look forward to continuing to engage in discussions around effective stewardship systems and collection policy that will help collect more of our valuable bottles and cans so they can be remade and help reduce the use of new materials.

Thank you for hosting this important hearing and we remain committed to working with the U.S. Senate on this issue.

Sincerely,

/s/Franklin L. Davis

Franklin L. Davis
Vice President, Federal Government Relations

American Forest & Paper Association

March 22, 2024

The Honorable Tom Carper
Chairman
Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Shelley Moore Capito
Ranking Member
Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Carper and Ranking Member Capito,

We are writing regarding the Senate Environment and Public Works Committee's hearing on "Examining Extended Producer Responsibility Policies for Consumer Packaging" on March 6. The American Forest & Paper Association (AF&PA) appreciates the opportunity to share our views on extended producer responsibility (EPR) policies on behalf of our members and their employees who are an integral part of the circular economy.

AF&PA serves to advance U.S. paper and wood products manufacturers through fact-based public policy and marketplace advocacy. The forest products industry is circular by nature. AF&PA member companies make essential products from renewable and recycle resources, generate renewable bioenergy and are committed to continuous improvement through the industry's sustainability initiative — *Better Practices, Better Planet 2030: Sustainable Products for a Sustainable Future*. The forest products industry accounts for approximately five percent of the total U.S. manufacturing GDP, manufactures nearly $350 billion in products annually and employs approximately 925,000 people. The industry meets a payroll of approximately $65 billion annually and is among the top 10 manufacturing sector employers in 43 states. Our industry makes essential products, such as packaging for food, beverages, pharmaceuticals, medical equipment, and other consumer products. We also manufacture tissue products for household and commercial use, pulp used in diapers and personal hygiene products, papers for communication and education, and building and construction products.

We respectfully ask the Committee to focus on improving recycling for materials with low recovery rates, instead of creating mandates and fees for paper producers that could direct capital away from investing in recycling infrastructure. The paper industry has a demonstrated, measurable record of success in making paper and paper-based packaging more circular and sustainable through market-based approaches. EPR policies are typically applied as a solution for hazardous, hard-to-handle materials with low recycling rates, such as batteries, paint, mattresses, or electronics. For a highly recycled material like paper, with widely accessible collection programs and robust and resilient end markets, EPR could disrupt efficient and successful paper recycling streams in an attempt to subsidize the least effective streams. Moreover, mandating fees on packaging producers could increase consumer costs, unfairly burdening people with low and fixed incomes.

**The Paper Industry is a Responsible Producer**

Paper recycling rates in the U.S. have consistently increased in recent decades, with nearly 68 percent of paper recovered for recycling in 2022.[1] The paper industry recycles about 50 million tons of recovered paper every year — totaling more than 1 billion tons over the past 20 years. According to the EPA, more paper by weight is recovered for recycling from municipal waste streams than plastic, glass, steel, and aluminum combined.[2]

In addition, our industry has planned or announced nearly $7 billion in manufacturing infrastructure investments (2019-2025), which will use more than 9 million tons of recycled fiber in our products. The forest products industry has also set a goal to increase the use of secondary materials like recycled fiber in new paper products to 50% by 2030.[3]

This success has been driven by the paper industry's commitment to providing renewable, sustainable, and highly recycled products for consumers. Recycling is integrated into our business to an extent that makes us unique among material manufacturing industries – our members own over 100 materials recovery facilities and 80 percent of paper mills use some amount of recycled fiber. Any EPR system must fully and fairly credit the early, voluntary action our industry has taken to advance the recycling rate of our products, and strictly prohibit the use of fees generated by one material to subsidize development of recycling infrastructure for competing materials with lower recycling rates.

In fact, our industry's recycling rates are so successful that some products are approaching the maximum achievable recycling rate. The three-year average recycling rate for the material that would likely be most impacted by EPR policies, corrugated cardboard (OCC), is already over 93 percent.[4] In addition, *The 2021 AF&PA Access to Recycling Study* shows that 94 percent of Americans have access to community paper and paperboard recycling programs.

**EPR Policies Introduce Uncertainty in Fee Structure and Disrupt Flow of Material**

EPR policies must be carefully designed to avoid creating fees or mandates which could disrupt efficient and successful paper recycling streams and direct private sector funds away from investment in recycling manufacturing infrastructure. EPR programs that are beginning implementation in states (e.g., California, Colorado, Maine, and Oregon) require funding to be given to local governments to pay for their collection of readily recyclable materials, but this is a cost-shifting mechanism common in EPR programs that does not create added value or develop end markets for recyclable materials. The paper industry already contributes to economically sustainable recycling programs by purchasing and utilizing material sourced from residential collection programs in using it in manufacturing new products.

Current state EPR programs also require that the producer responsibility organization set product performance goals. There needs to be clear justification for the goals and consideration of individual products and the voluntary action already underway. Recovered fiber markets are complex, efficient, and dynamic and are not served by regulations or prescriptive approaches to specify the use of recycled fibers or dictate what type of recovered fiber is used in products. Moreover, the preference for "post-

[1] https://www.afandpa.org/priorities/recycling
[2] https://www.epa.gov/sites/default/files/2021-01/documents/2018_ff_fact_sheet_dec_2020_fnl_508.pdf
[3] The Recycling Partnership; Northeast Recycling Council. Last updated: December 2021
[4] https://www.afandpa.org/priorities/recycling

consumer content" in packaging could be contrary to sustainability goals. Rather than drive increased paper recycling (because recycling rates for paper and paper-based packaging are already very high), recycled content minimums in paper products could: make markets for recovered fiber less efficient; prevent recovered fiber from going to highest value end use; raise the cost of production for new paper products; and narrow available choices for consumers.

Market forces and voluntary efforts have achieved strong gains in paper recycling and are expected to continue to do so in the future. Putting pressure on producers to arbitrarily change content in certain paper products interrupts the market-based utilization of recovered fiber, prevents recovered fiber from flowing to its highest value end-use, is counterproductive both economically and environmentally, and is inconsistent with the precepts of sustainability.

Recycling programs in the U.S. are operated by local governments, which have more freedom to tailor recycling programs to the needs of local communities. U.S. state EPR programs currently fall into two categories: proposed legislative bills (such as the NY EPR bill), or programs that are in their nascent stages and not fully implemented (as is the case in CA, CO, ME, and OR). Therefore, the only EPR programs that U.S. policymakers can realistically look to as models are programs in Canada and Europe.

The record of highly centralized, command-and-control EPR programs in Canada and Europe offers no real proof of advantages over the market-based approaches and locally-operated programs prevalent in the U.S. In fact, a 2021 research paper performed by York University in Ontario concluded there is no evidence to indicate the steward-operated EPR program in Canada will result in cost containment or increased recycling performance.[5] In addition, another York University study examined the potential impacts that consumers would face from a proposed EPR program in New York state. On average, consumers could expect prices on a typical basket of goods to rise from 4.01% - 6.35%. Put another way, an average family of four in New York state could expect to pay an additional $36 to $57 per month in grocery costs.[6]

**Focus On Solutions for Products with Low Recycling Rates**

Policymakers should take a more solution-oriented approach focused on improving necessary data to increase consumer access to recycling, particularly in rural and underserved communities. AF&PA is pleased that S. 1194, the Recycling and Composting Accountability Act, and S. 1189, Recycling Infrastructure and Accessibility Act of 2023, have passed the Senate, and we urge the Committee on Energy & Commerce to examine their legislative counterparts in the House.

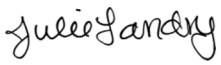
Paper recycling has enjoyed decades of success because of the industry's investments, consumer education, the wide availability of recycling programs, and the efforts of millions of Americans who recycle at home, work, and school every day. The paper products industry is proud to be part of the recycling solution by providing renewable, sustainable, and highly recycled products for consumers.

We encourage the Committee to avoid measures that might penalize paper and paper-based packaging and their existing successful recycling programs. We look forward to continuing our work with the

[5] Review of Recycle BC Program Performance, Dr. Calvin Lakhan, York University
[6] https://wastewiki.info.yorku.ca/study-examining-the-economic-impacts-of-epr-legislation-for-packaging-waste-in-new-york-state/

Committee, and your staff may contact Elizabeth Olds, AF&PA Senior Manager, Government Affairs at Elizabeth_Olds@afandpa.org for further information.

Sincerely,



Julie Landry
Vice President, Government Affairs
American Forest & Paper Association

March 27, 2024

The Honorable Tom Carper
U.S. Senate Committee on
Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Shelley Moore Capito
U.S. Senate Committee on
Environment and Public Works
456 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Carper and Ranking Member Capito:

The Association of Plastic Recyclers (APR) applauds the leadership of the EPW committee in holding the first national hearing on Extended Producer Responsibility (EPR) for Packaging on March 8, 2024. Through our policy and advocacy initiatives, the APR works with U.S. states and stakeholders to adopt and implement producer-funding recycling policies as a critical solution to improve plastics recycling. **EPR for packaging will increase recycling rates and reduce plastic waste; reduce greenhouse gas emissions; strengthen domestic supply chains to support US manufacturing; spur more sustainable packaging design; and achieve all these milestones through an industry-driven solution without government spending.**

The Association of Plastic Recyclers (APR) is a U.S.-based non-profit and the only North American organization focused exclusively on improving the recycling of plastics. The membership of APR includes independent recycling companies of all sizes that process numerous plastic resins, as well as consumer product companies, plastic resin producers, packaging producers, equipment manufacturers, testing laboratories, organizations, and others committed to the success of plastics recycling. In short, we are the boots on the ground dedicated to making recycling work every day across the United States.

Plastics recycling works every day across the U.S., with more than five billion pounds of post-consumer recycled plastics recovered in 2023. There are functioning domestic markets for recycled content in the most widely used types of consumer plastic packaging. Yet less than one-third of plastic packaging is recycled from U.S. households, and there is substantial room to improve recycling, both in the number of households participating in recycling and the amount of recyclables collected from households. National EPR is one of the most effective solutions to improve U.S. recycling, and all states will see improvements in recycling rates under EPR programs

The federal government plays a critical role in facilitating greater action and coordination among states to improve and expand recycling. A national EPR program will drive needed investments in infrastructure and education to improve recycling across the country without passing those

costs along to local governments or consumers. Even maintaining the existing recycling systems in states will require continual investment, and EPR for packaging is the most effective solution to shift the funding toward brand companies and off taxpayers and local governments' budgets.

National EPR is both an economic and an environmental solution. Improved recycling directs supports domestic manufacturing and a more resilient, stronger domestic supply chain. There is more demand to use recycled plastics than available supply of materials, and U.S. recyclers are already importing plastics from overseas to meet demand. This is a lost economic opportunity, and this policy will help collect more plastic bottles and packaging from U.S. households to be used directly in U.S. manufacturing. Our U.S. recyclers have excess operational capacity, meaning our facilities are running at less than 100%, and we have the opportunity to recycle nearly 50% more plastic bottles today if we can collect more plastics from households. There is a large need for more services, new and renovated infrastructure, innovative collection and processing systems, and more to reach these goals. EPR for packaging will unlock the private investment to scale high-performing recycling programs and is the only proven policy to provide sufficient, ongoing, and dedicated funding to increase recycling.

More than 3,000 companies participate in similar EPR programs in Canada. These are the same companies that sell the same products on our shelves in the U.S., companies such as Coca-Cola and Pepsi, Keurig and Kelloggs, Clorox, and Colgate, and many others. More than 20 years of experience has shown producer-funded recycling programs to be one of the most effective solutions to increase the amount of plastics collected for recycling and ensure more recycled materials are used in new plastic packaging.

A national EPR program will also create local economic benefits by unlocking significant investment in domestic recycling infrastructure. The existing recycling providers are in the best position to deliver these new and expanded services because they have the existing infrastructure, partnerships, and experience to best serve the state.

Plastics recycling has numerous environmental benefits and is a critical solution to reducing plastic pollution and waste. The use of recycled PET and HDPE plastics instead of virgin plastics reduces energy use by 75 to 88% and reduces GHG emissions by 70%. Recycling plastics also reduces air and water pollution compared to virgin production. Greater plastics recycling will move the country closer to its climate goals. In addition, more recycling will result in millions of tons of materials kept out of landfills and incinerators, which will reduce the harm these facilities pose to the environment and local communities.

EPR for packaging has been in place in parts of Europe and Canada for over two decades, and there is no data to show that Producer Responsibility programs lead to a noticeable increase in consumer prices based on actual program experience. There is no discernable difference in the price of consumer goods in locations that have EPR for packaging programs compared to those that do not.

Under EPR for packaging regulations in Canada, brand companies pay fractions of a penny per product. These costs are spread throughout the supply chain and the company portfolio, and do not result in perceptible changes in consumer prices. Data from three Canadian provinces show the EPR program is less than 1% of the total price of the average cost of goods in those regions. There are numerous factors that influence product prices far greater than compliance costs such as EPR, including labor, transportation, retailer agreements, raw material supplies, and inflation. A 2023 Columbia University study reinforced the findings that EPR for packaging is not a major driver of consumer costs. The study concluded that packaging is never more than 2% of the total cost of a product and that there is never a case where brand companies pass 100% of an added compliance cost to consumers. This demonstrates that opposition to this bill related to cost recovery is vastly overstating the potential cost increases by using inaccurate assumptions.

Producer responsibility is the right policy to create a more resilient, domestic supply chain using recycled materials to make new products through U.S. manufacturing, helping to reduce plastic pollution and greenhouse gas emissions. Proven EPR programs are working in dozens of countries around the world each and every day, and the time is now to launch EPR across the U.S. APR requests EPW continue to examine the multitude benefits a national extended producer responsibility program could provide the United States. Thank you for your vision, leadership, and commitment. APR staff are available at your convenience to discuss these comments. Please contact Kate Bailey, Chief Policy Officer, at katebailey@plasticsrecycling.org.

Sincerely,

Kate Bailey
Chief Policy Officer
Association of Plastic Recyclers (APR)


March 6, 2024

The Honorable Tom Carper
Chairman
U.S. Senate Committee on Environment
& Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Shelley Moore Capito
Ranking Member
U.S. Senate Committee on Environment
& Public Works
456 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Carper and Ranking Member Capito:

Thank you for holding today's hearing, "Examining Extended Producer Responsibility Policies for Consumer Packaging." On behalf of the member companies of the Consumer Brands Association (Consumer Brands), I welcome the opportunity to share with the committee our industry's significant commitments to packaging sustainability and support for investment in the development and enhancement of recycling systems — including through extended producer responsibility (EPR) — to improve the capabilities that will build a more circular economy.

Consumer Brands champions the industry whose products Americans depend on every day, representing nearly 2,000 iconic brands. From household and personal care to food and beverage products, the consumer packaged goods (CPG) industry is vital in powering the U.S. economy, contributing $2 trillion to the U.S. GDP and supporting more than 20 million American jobs.

The CPG industry plays a crucial role in helping create a more sustainable future through its products and is prioritizing sustainable developments in packaging and recycling innovation. For instance, all the 25 largest CPG companies in the U.S. have made commitments to making packaging more recyclable, increasing recyclable content, source reducing packaging, or investing in reuse or refill models. Consumer Brands champions sustainability policies that protect consumer safety and support the achievement of the ambitious circularity targets set by the CPG industry.

Consumer Brands and its members are proponents of EPR policy programs when the system is designed in such a way that it achieves its intended goals of improving recycling access, collection rates, and overall materials circularity. For an EPR program to accomplish these goals, it must include and prioritize several core components:

1. Standardize recycling programs across a state, region, or nationally.
2. Improve the underlying recycling system to deliver strong environmental outcomes.
3. Be based on accurate data and science, including a needs assessment with clear financial and performance targets over a specified period.
4. Allow for an industry-funded and -run producer responsibility organization (PRO) to assess fees on packaging and determine where/how those funds are spent and manage the system.
5. Dedicate new funds raised for recycling improvements solely to recycling.

**Consumer Brands Association**
1001 19th Street North, 7th Floor
Arlington, VA 22209

**Powering every day.**

6. Develop a system with measured input from a wide array of stakeholders, including state, local and federal government, packaging suppliers, the consumer packaged goods industry, and the waste and recycling industry.
7. Include more than one source of funding, which should be additive and target specific challenges in the recycling value chain. No single funding source should replace or supplant other funding sources.
8. Apply to and account for a range of material types in the waste stream.

Consumer Brands supports EPR programs with these central principles. However, as outlined in Consumer Brands' Blueprint for America's Recycling System, a significant lack of data and standardization exists across the U.S. recycling landscape. Fundamental developments to the existing national recycling system are crucial to enabling the effectiveness of sustainability policies and programs in achieving circularity, including EPR.

One of the most significant barriers to advancing and modernizing America's recycling system is a lack of consistent, reliable data on the performance of the waste and recycling system. A focused national effort to collect reliable data is essential to improving circularity nationwide, including comprehensive baseline and performance data on commercial and residential recycling programs. This data is pertinent to identifying opportunities for investment, improvement, and innovation at the federal level.

To fill this gap, the U.S. Environmental Protection Agency (EPA) should fund and conduct a needs assessment of the U.S. recycling industry and infrastructure and report to Congress on its findings. The assessment should include the amount of infrastructure investment needed to modernize material recovery and achieve consistent collection and processing of packaging material, the amount of investment needed to provide all citizens with access to recycling services, and identification of communities with no or particularly limited recycling infrastructure capacity to pinpoint where targeted funds are most needed to improve access. Clear data collection and reporting requirements to further understand existing limitations within U.S. recycling infrastructure are crucial to inform the creation of a system that works.

Recycling systems standardization and harmonization must also be a federal priority. EPA's America Recycles stakeholder effort found that the words "recycling" and "recycled" were defined 18 different ways by states. The existing patchwork of recycling systems in the U.S. prevents economies of scale and contributes to high contamination rates. Developing national standards and definitions for recycling systems and providing clear guidance to states and municipalities would improve clarity for consumers and support increased recycling collection rates. By standardizing and harmonizing systems, more and different types of materials can be collected, processed, and sold for value-added products or packaging.

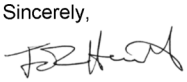
Fortunately, the committee is aware of these needs and Consumer Brands once again applauds Chairman Carper and Ranking Member Capito for introducing two pieces of legislation that directly address these significant barriers. *The Recycling and Composting Accountability Act* will create a badly needed comprehensive baseline of data on recycling and composting systems nationwide. *The Recycling Infrastructure and Accessibility Act* will help communities around the country, particularly those in rural and underserved areas, to build out the infrastructure required to expand recycling access and foster circular economies. The committee has approved both bills – twice over the past two years – and Consumer Brands urges the full Senate to pass them without delay.

In addition to advocating for thoughtful federal solutions, Consumer Brands and its members are pursuing complementary industry actions to improve the U.S. recycling system and the circularity of packaging materials. Consumer Brands and The Recycling Partnership have collaborated to provide consumers with up-to-date, localized recycling instructions directly on product packaging through SmartLabel, Consumer Brands' digital QR code labeling platform. The integration of recycling instructions into SmartLabel will encourage proper end-of-life procedures for packaging — leading to less contamination, less material in waste streams, and increased recycled content.

Consumer Brands and its members support effective EPR programs, but without sufficient national recycling data and harmonization at the federal level, the impact of any EPR program is limited. A well-designed EPR policy also should include support for broad recycling technologies to further a circular economy. We recommend the actions discussed above are prioritized as fundamental steps toward improving the U.S. recycling system.

Thank you for the opportunity to share our members' perspective on what it takes to achieve a truly circular economy. We look forward to continuing our work with the committee on these important issues.

Sincerely,



John Hewitt
Vice President, Packaging Sustainability
Consumer Brands Association

CC: Members of the Senate Committee on Environment & Public Works

March 6, 2024

The Honorable Tom Carper
Chairman
Committee on Environment and Public Works

The Honorable Shelley Moore Capito
Ranking Member
Committee on Environment and Public Works

Dear Chairman Carper and Ranking Member Capito,

On behalf of the EPR Leadership Forum, an organization of multinational corporations supporting well-designed Extended Producer Responsibility (EPR) policy, we wish to thank the Committee for hosting today's important hearing.

EPR can be a critical lever for generating the billions of dollars needed to revive America's recycling system. Our companies have learned through decades of experience that these programs can be an effective way to improve and manage collection and recycling systems when inclusive of critical design features that ensure our shared goal of reducing plastic waste, improving recycling and reuse rates, and enabling a circular economy.

As leading manufacturers and retailers of consumer-packaged goods, we have taken a leadership position to develop principles and key design parameters for optimal EPR programs, which you can review in the Consumer Goods Forum's (CGF) *Building a Circular Economy for Packaging: A View from the Consumer Goods Industry on Optimal Extended Producer Responsibility.*

As outlined in the CGF paper, we support EPR systems founded on the following key principles:

- Strong environmental outcomes
- Efficient, cost-effective and accountable systems
- Shared financial responsibility
- Convenient for consumers
- Long-term financial sustainability
- Allow producers to secure material for closed loop recycling
- Social inclusiveness and fairness

EPR policy is designed to shift the management and funding obligations from governments to producers, enabling companies to assume a stewardship role in the management of recycling systems and work alongside governments toward establishing a circular economy.

The above principles aim to support a future where companies like ours can better set and meet goals to integrate post-consumer recycled content (PCR) into our packaging and ensure consumers are equipped to better navigate and participate in local recycling systems. Further, well-designed EPR policy employs ecomodulated fee structures that establish powerful financial incentives to reduce the use of plastic, design for recyclability, and adopt more sustainable packaging formats.

A successful EPR system greatly benefits from simplicity and robust stakeholder participation. By making recycling convenient and easy to understand, optimal collection systems can foster active and enthusiastic consumer participation while promoting the understanding that packaging after use can be a valuable resource. Well-constructed EPR programs boast near 100% participation and result in high collection and recycling rates for valuable packaging material.

Within our own companies, we are investing in improving recycling systems around the world, innovating our packaging design, and collaborating with suppliers, local communities, and retail customers to continually advance forward-looking solutions that help our consumers make a difference and protect the planet.

We would appreciate the opportunity to elaborate on these themes in the coming weeks as you continue your hard work supporting effective bipartisan collection and sortation infrastructure in the U.S.

While our co-developed set of guidelines has a global focus designed to foster EPR in markets worldwide, we hope that you find them useful as you pursue a bipartisan and productive dialogue on this issue.

Thank you for your time and please consider our organization a resource as relevant legislation takes shape. We look forward to partnering with your offices on improving our nation's waste management infrastructure.

Sincerely,

Amcor
Bel Brands
The Coca-Cola Company
Kraft Heinz
L'Oréal USA
Mars, Incorporated
McCain Foods
Mondelēz International
Nestlé USA
PepsiCo
SC Johnson
Walmart

Please contact Stephanie Potter, Director of Environmental Policy at PepsiCo and Alex Schenck, Director of Global Public Policy at Walmart on behalf of the group with any inquiries [Stephanie.Potter@pepsico.com; Alex.Schenck@walmart.com].

March 6, 2024

The Honorable Tom Carper
U.S. Senate
513 Hart Senate Office Bldg.
Washington, DC 20510

The Honorable Shelley Moore Capito
U.S. Senate
172 Russell Senate Office Bldg.
Washington, DC 20510

*Re: PRC Statement for the Record – Senate Environment & Public Works Committee – Hearing on "Examining Extended Producer Responsibility Policies for Consumer Packaging"*

Dear Chairman Carper and Ranking Member Capito:

On behalf of the Paper Recycling Coalition (PRC) – an organization of eight member companies representing the interests of the 100 percent recycled paperboard and containerboard industries – we appreciate the opportunity to submit the following statement for the record regarding the Committee's hearing, entitled "Examining Extended Producer Responsibility Policies for Consumer Packaging."

The PRC commends the Committee for evaluating the state of the nation's recycling system and considering various policy solutions. The PRC supports the Committee's concern for, and assessment of, these issues. As the Committee considers possible legislative policies affecting the recycling sector, the PRC encourages the Committee to recognize that recycling commodities are not all equal. Recyclable materials such as paper have unique characteristics and face different challenges. Federal policy, therefore, should account for such differences rather than adopting a "one size fits all" approach to recycling infrastructure and system improvements.

## I. About the Paper Recycling Coalition

The PRC's eight member companies represent the interests of the 100 percent recycled paperboard and containerboard industries. Our members operate over 500 facilities in 45 states and support over 63,000 well-paid jobs with competitive benefits throughout the United States. PRC members manufacture 100 percent recycled paper products that are ubiquitous in American commerce, such as cereal and pizza boxes, tubes and cores, Amazon cartons, and other shipping containers and packaging critical to today's growing e-commerce economy. The PRC's mission is to promote recycling education and to prevent market-distorting government programs and subsidies from diverting mill quality recycled fiber from the supply chain.

## II. EPR & Other Fee-Based Frameworks Will Undermine Paper Recycling

The PRC shares congressional interest in reducing packaging pollution and ensuring that the nation's recycling system is robust, resilient, and – above all – a key component of creating a more circular and sustainable future. However, the PRC strongly believes any federal Extended Producer Responsibility (EPR) framework should be strategically tailored to address materials and products that have low recovery rates like plastic packaging. Potential overreach could undermine markets for other recyclable commodities – such as paper and paper-based packaging – which has a robust and well-functioning market and successful recycling track record.

To that end, any federal recycling policy, including an EPR framework, should:

- Address plastic pollution and other underperforming commodities by focusing on improving capacity and demand for materials with low-recovery rates.
- Avoid a one-size-fits all approach, recognizing instead the differences between commodities as measured by quantifiable utilization and recovery rates.
- Not pick winners and losers by disproportionately applying higher fees to highly recovered recycled commodities versus fees for lesser recovered materials.
- Preserve market-based principles to ensure a well-functioning market.
- Protect consumers from increased waste management and product costs.
- Reduce recycling challenges and barriers through education and outreach.

### A. The Recycling System is Not Broken

A stated justification for establishing a federal EPR framework is that the recycling system is broken. The PRC takes issue with this negative portrayal of the nation's recycling system and the implication that all recycled commodity sectors have failed to invest and innovate toward establishing a resilient recycling system. The 100 percent recycled paper sector has invested billions of dollars in modern recycling infrastructure over the last two decades and has worked to establish robust demand for paper and paper-based packaging. This resulted in nearly 68% of paper consumed in the United States being recycled in 2022, marking the thirteenth consecutive year with a rate above 60 percent.[1]

[1] AF&PA, "U.S. Paper Industry Tallies High Recycling Rate in 2022," (August 8, 2022).

### B. EPR Should Target Underperforming Commodities

In contrast to the paper sector's 60-plus percent recovery rate, other recyclable commodities have drastically underperformed. For instance, according to 2018 EPA data, the recycling rate for plastics is around 8.5 percent.[2] Other materials are in the double digits but the recovery rate for fiber dwarfs them all. Indeed, more paper by weight is recovered from MSW streams than plastic, glass, steel, and aluminum combined. In short, recycling commodities are not equal. Federal policy, therefore, should account for such differences rather than adopting a "one size fits all" approach to recycling infrastructure and system improvements.

### C. EPR May Undermine Recycling's Economic Impact

As the recycling sector continues to grow, especially the 100 percent recycled paperboard and containerboard industries, sound and consistent policies are critical to preserving and expanding recycling. The PRC's eight member companies, for instance, employ over 63,000 Americans across 45 states, representing $150 billion in economic impact. Short-sighted EPR policies could lead to outcomes that discourage private sector investment, hinder economic growth and job creation, and hurt consumers. EPR fees will discourage the use of recyclable materials where the fee is higher and encourage the use of materials with lower fees. For instance, the fee structures in some EPR models being discussed to date would have a net increase on the cost of recycled paper packaging as compared to other packaging materials.

### D. Allow Markets to Work

The PRC supports well-functioning markets and urges caution against any federal intervention to artificially create markets or pick winners or losers. Markets work best when traditional forces of supply and demand are permitted to operate free of government intervention. This is true of recycling commodities, as demand for 100 percent recycled paperboard and containerboard products and packaging has triggered billions of dollars in private capital to develop, sustain, and grow these markets.

To be sure, the domestic paper recycling sector has completed or announced nearly $7 billion in manufacturing investments through 2025 (2019-2025). These investments will add 9 million tons of additional U.S. manufacturing capacity in the form of new mills, new paper machines, paper machine conversions, and the re-starting of idle mills. Further, the investments will increase efficiency of recycled paper mills and have a positive impact on the industry's environmental profile. This is a true testament of a circular and well-functioning paper recycling market. Investments in end-user capacity and capabilities encourage supply chain investment and innovation to support that demand.

[2] U.S. EPA, "Advancing Sustainable Materials Management," (December 2020).

### E. Education is the Key to Reducing Recycling Barriers

Policies that support the availability of a separate, clean stream of recyclable materials is vital to sustaining and growing the recycling sector. This can be achieved through improved recycling education and outreach. Federal programs and funding can help educate the public about not only how to recycle properly but also drive consumer engagement by stressing the many benefits – both economic and environmental – of recycling. Using the resources and reach of the federal government to educate the public is a more cost-effective strategy than a government market intervention through EPR. Recycling education can reap immediate recycling-related rewards and have a significant return on investment for taxpayers.

### F. EPR Penalizes Consumers

Proponents of EPR allege that producers will absorb the costs and prevent those costs from being passed onto consumers. Such arguments fail to understand how manufacturers and producers manage input costs. Consumers will pay more for products affected by EPR and these costs will not be outweighed by the purported benefits of an EPR regime. In fact, consumers often end up paying twice, both as taxpayers (as a result of increased waste management costs) and as consumers. The burden of this double payment falls most heavily on low-income consumers. Indeed, at least one study of British Columbia's EPR program demonstrated that "costs increased by approximately 26 percent from program inception in 2015 to 2018 while program performance increased by only one percent."[3]

### G. EPR Does Not Address End Use Markets

End use markets are an essential part of the recycled value chain. EPR proponents suggest that addressing the recycling infrastructure and increasing supply will eventually generate demand for certain commodities, like plastic. Economic theory would suggest that end use markets must be established first. This demand will encourage investment and innovation in the recycling system to support that demand. With the low recovery rates of several materials, the current recycling infrastructure can accommodate the demands of an emerging end use market.

## III. Perspectives on Chemical Recycling

The PRC shares the goal of finding solutions to address the plastics pollution challenge. We support efforts to divert plastic waste from landfills, responsible materials management, and innovative methods to convert waste into usable products with end market demand. Doing so provides important economic value and environmental protection. However, the PRC fundamentally opposes redefining chemical processes that convert plastic waste into energy as recycling. This is energy recovery, not recycling.

[3] Resource Recycling, "The Whole Package?" (October 26, 2020).

The paper recycling sector has worked for many decades to invest in and promote recycling to the public as a circular and sustainable alternative to landfilling. Conflating recycling with energy recovery from gasification, pyrolysis, and similar chemical processes and technologies undermines this public trust. Tens of millions of American households put their recyclables in the "blue bin" expecting these materials to be recycled into new products, not burned for energy. We urge this Committee to uphold the integrity of recycling and protect consumers by rejecting the misleading concept of "advanced recycling."

Moreover, Congress should avoid providing federal support to the plastics sector to aid with the construction of chemical recycling facilities, regardless of whether designed for plastics-to-energy or plastics-to-plastics. Such facilities can be permitted and built today under existing state and federal law. Federal regulatory carveouts, mandates, tax credits, definitional changes, R&D funding, and other federal interventions are not necessary to support these projects. In fact, they would distort recycling markets and undermine state and local control over solid waste management.

The plastics industry's efforts to promote chemical recycling will undermine EPA's waste management hierarchy by defining "advanced recycling" to include converting plastics and other recyclable materials into chemical feedstocks, fuels, and energy recovery. The PRC opposes such efforts. To this end, the PRC recommends that any recycling legislation developed by this Committee should expressly exclude such end products from the bill's definition of recycling. To do otherwise would be to overturn decades of recycling law and policy, skew "real" recycling rates, disadvantage true recyclers, and destabilize the recycling economy.

**IV. Proper Role of the Federal Government in Recycling**

Despite challenges for less recycled commodities, the PRC would caution against federal interventions that distort recycling markets. But there are a handful of areas where the federal government can certainly play a role:

- Recycling Education: The federal government is well-suited to help educate the public about the benefits – both economic and environmental – of recycling. Educating communities and consumers about the importance of recycling, what is recyclable, and how to recycle properly is essential to increasing recycling rates and reducing contamination. Therefore, we were pleased to see the RECYCLE Act included in the enacted bipartisan infrastructure bill and the subsequent awarding of grants from EPA to dozens of communities.

- Data Collection to Inform Recycling Policymaking: As Congress considers other recycling-related policies, it is important to have accurate and complete baseline data. Such data across the recycling supply chain is lacking. That is why the PRC supports – S. 1194, the "Recycling and Composting Accountability Act." The bill provides a first step to gathering more data related to MRF inputs and outputs, landfill and waste-to-energy diversion, and other data that can inform investment decisions, as well as future policymaking.

- Recycling Access: Equally important is providing communities with access to recycling, which is why the PRC supports S. 1189, the "Recycling Infrastructure and Accessibility Act." The PRC supports the bill's objective of expanding access to recycling in communities that have historically had limited access to recycling collection programs. Fortunately, access to paper recycling is readily available. According to the latest data from the American Forest & Paper Association, 94 percent of Americans have access to community paper and paperboard recycling programs. S. 1189 will help close the remaining gap, while helping other recycled commodities increase their own recycling access rates.

- Protecting Recyclable Feedstocks: The federal government can also ensure a level playing field for recycled paper manufacturers by protecting our raw material – recovered fiber. In the past, the tax code has provided subsidies to the waste-to-energy sector that incentivizes the burning and contamination of paper. Financial incentives that would subsidize the destruction of another sector's raw material or otherwise distort recycling markets should be avoided by Congress.

**V. Conclusion**

We thank you for your leadership and we look forward to working with you and your staff as the Committee continues considering policies in furtherance of establishing a more circular, sustainable future. The PRC would be pleased to provide testimony before the Committee should future opportunities arise.

Sincerely,

Brian McPheely
Chairman, Paper Recycling Coalition, Inc.
Global CEO, Pratt Industries

Michael P. Doss
Vice Chairman, Paper Recycling Coalition, Inc.
President/CEO, Graphic Packaging Int'l, LLC

Terese Colling
President, Paper Recycling Coalition, Inc.

ISRI
Voice of the Recycled Materials Industry™

ISRI is the voice of the recycled materials industry, promoting safe, economically sustainable and environmentally responsible recycling through networking, advocacy and education.

March 29, 2024

The Honorable Tom Carper
Chair, Senate Environment and Public Works Committee
513 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Shelley Moore Capito
Ranking Member, Senate Environment and Public Works Committee
172 Russell Senate Office Building
Washington, D.C. 20510

**RE: Statement for the Record by ISRI, Voice of the Recycled Materials Industry™ – Senate Environment and Public Works Committee Hearing on "Examining Extended Producer Responsibility Policies for Consumer Packaging"**

ISRI, the Voice of the Recycled Materials Industry™, appreciates the opportunity to share our insights on Extended Producer Responsibility (EPR) for consumer packaging, and applauds the U.S. Senate Environment and Public Works Committee for its leadership seeking to better understand the impacts and ramifications of this topic.

ISRI advocates, educates, and raises public awareness of the vital role recycled materials play in the U.S. economy, global trade, the environment, and sustainable development. The recycled materials industry is a corner stone of the American economy, transforming obsolete, surplus, or incidentally produced materials into fundamental components of our daily lives – ranging from the roads we travel on and cars we drive in, to the buildings we occupy and the packaging that brings consumer goods and food into our households.

It is vitally important the federal government proceeds with caution as it considers a federal EPR approach. The vast majority of recyclable materials flow smoothly through the industrial and commercial recycling industries without any difficulties and are transformed into high-quality products. Introducing EPR for materials that are already successfully re-integrated into the market could risk disrupting existing, well-functioning systems[1][2] This is true for commodities with well-established markets such as aluminum, corrugated cardboard, and PET bottles.

However, ISRI does recognize that the residential and municipal segments often struggle to meet their potential. While at first glance, shifting the responsibility of processing post-consumer products to the manufacturer may seem like an easy solution, such a shift may place undue strains on the existing recycling supply chain and place a regressive economic hardship on many Americans. Therefore, prior to any such federal mandates, ISRI encourages Congress to urge manufacturers to address challenges

[1] Huang, Ximin (Natalie) and Atasu, Atalay and Toktay, L. Beril, Design Implications of Extended Producer Responsibility for Durable Products (November 1, 2015). Georgia Tech Scheller College of Business Research Paper No. 2015-17, Available at SSRN: https://ssrn.com/abstract=2693152 or http://dx.doi.org/10.2139/ssrn.2693152

[2] Lakhan, Calvin. "The Whole Package?" *Resource Recycling News*, 16 Nov. 2020, resource-recycling.com/recycling/2020/10/26/the-whole-package/?utm_medium=email.

posed by hard-to-recycle items through preemptive measures which improve the overall recycling systems including:

- Designing their consumer products for recycling so that they can be more easily recycled;
- Using more recycled content in their products which will strengthen the demand for recyclable materials and increase the amount of material successfully recycled; and
- Providing education to consumers on what should – and should not – be placed in their 'blue' bin.

While ISRI does not generally endorse EPR, we do recognize that EPR may have potential as one of many "tools" to facilitate the collection and recycling of difficult to recycle items as a temporary last resort to support new, previously unestablished, recycling markets until they mature. However, it is vital that any such EPR a program include the following:

- Evaluation of existing recycling infrastructure to determine capacity and appropriate cost reimbursements for recycling service, ensuring program costs are not punitive in nature, but rather reflect the true costs of recycling the material, including the market value of recovered materials;
- An "off-ramp," to ensure that commodities with robust markets, or those who have built successful markets via the programs, may be exempted from such EPR programs;
- Representation of the recycled materials industry – haulers, recyclers, and MRFs – if such a program incorporates a producer responsibility organization (PRO) structure; and
- Ensure that municipalities and recyclers are compensated for the cost associated with separate collection; transportation and processing systems for difficult to recycle items.

Recycling is essential to a secure and stable manufacturing supply chain, both here in the U.S. and globally. Recycled materials supply 40% of global raw material needs[3] while providing a sustainable alternative to the extraction of natural resources and reducing carbon emissions. ISRI will continue to advocate for policies and regulations that support healthy end markets combined with a quality supply stream, upon which successful recycling is dependent.[4]

We thank you for your continued leadership and look forward to working with you as the Committee continues to examine and support the nation's recycling infrastructure.

Sincerely,

Robin K. Weiner
President
*Via Electronic Delivery*

[3]Bureau of International Recycling, "The Industry," https://www.bir.org/the-industry (last visited March 2024)
[4] Read more: ISRI Guidance on Packaging EPR Elements


20 F Street NW
7th Floor
Washington, D.C. 20001
recyclingpartnership.org

March 6, 2024

Senator Tom Carper
Chairman, Committee on Environment and Public Works
United States Senate
410 Dirksen Senate Office Building
Washington, DC 20510

Senator Shelly Moore Capito
Ranking Member, Committee on Environment and Public Works
United States Senate
456 Dirksen Senate Office Building
Washington, DC 20510

Letter for the Record: Hearing on "Examining Extended Producer Responsibility for Consumer Packaging"

Dear Chairman Carper, Ranking Member Capito and Members of the Committee:

We at The Recycling Partnership work with businesses, communities, and policymakers across the nation to strengthen America's recycling programs. We catalyze investment into communities and the recycling industry which creates jobs, supports manufacturing, protects resources, empowers sustainable action, and unlocks opportunity.

The United States recycling system has the potential to channel packaging materials into supply chains for a circular economy and prevent materials from filling landfills, being sent to incinerators, or being littered. Extended Producer Responsibility (EPR) for packaging and paper products can accelerate the transition to a circular, equitable economy that creates positive economic, environmental, and social impacts. Congress needs to build on state models to develop and pass national EPR that fits the varying geographies of the nation, that meets consumer demand for easy recycling, and that delivers accountable business practices that advance the American recycling economy.

We have captured more than 1 billion pounds of new recyclables since our founding 10 years ago, avoiding 1.1 million metric tons of greenhouse gas emissions. Our community grants program has provided Americans with 1.74 million recycling carts, and our resources have supported more than 3,500 recycling programs nationwide. We are inspired by our impact, and we also know this is not a system that

any one organization can fix on its own. A $17 billion investment is needed to strengthen and innovate the recycling system to move towards a circular economy.[1] Good policy is needed to galvanize that investment, and we support EPR for packaging and paper products to transform our economy.

Why? Because EPR uses packaging fees to channel industry funding toward improving every step of the recycling system. It improves access, engagement, and processing, while setting expectations for packaging recyclability, investing in the supply chains that incorporate recycled feedstock into new products, and incentivizing the use of recycled content in the products and packaging we all use every day.

Our recent State of Residential Recycling Report reveals that once EPR takes effect for the four states that have adopted it thus far (California, Colorado, Maine, and Oregon) they will collectively recycle an additional 2.4 million tons of material annually. That's the equivalent of avoiding 5.2 million metric tons of CO2 emissions which equals the emissions from 1.1 million passenger vehicles.[2]

**Why is Recycling with EPR Important?**

Every year, households across the United States generate over 46 million tons of recyclable materials, 76% of which are sent directly to landfills. Recycling is an important part of the American economy, and integral to national efforts to keep waste and pollution out of natural environments. Recycling programs with EPR reduce the amount of material sent to landfills and incinerators, reducing the direct environmental burden of these practices. Waste disposal sites are often sited in overburdened communities who face detrimental health impacts from pollution and emissions. By reducing the amount of material sent to these facilities, EPR can reduce the impacts of packaging disposal on human health and the environment. It can be disappointing to see that while 73% of American's have access to recycling services, only 47% of households participate in programs and millions of tons of recyclables end up in landfills. EPR will ensure that everyone recycles effectively to maximize the positive impacts of recycling.

EPR provides a framework for positive economic outcomes by providing domestic feedstock for supply chains and creating new jobs in recycling systems. EPR would create an expanded recycling system in need of drivers to collect and transport material, more skilled equipment operators to run facilities, trained data engineers to enhance capacities and domestic equipment manufacturers for Materials Recovery Facilities (MRFs) that sort the materials. This investment will also support research and

[1] The Recycling Partnership, Paying it Forward Report
[2] The Recycling Partnership, 2024 State of Residential Recycling

development in innovative technologies and applications of artificial intelligence that will position the U.S. as a leader in the circular economy.

The growing American recycling economy is a smart investment for American jobs. In 2020, the EPA estimated that the recycling economy generated $37.8 billion in wages. As investment into recycling infrastructure increases through existing EPR laws and the Infrastructure Investment and Jobs Act, the recycling economy is expected to grow.

Basics of EPR

At its heart, EPR holds the companies that make the products and packaging sold on store shelves across the country responsible for the net cost of collecting and recycling those materials. Currently, the burden of managing and operating a recycling system often falls on local governments and taxpayers. By shifting this responsibility to producers, local governments will save money and producers can gain access to the materials they need for producing new products.

Effective producer responsibility also includes effective oversight of programs. Producers form a Producer Responsibility Organization (PRO), an auditable, publicly accountable collection of producers responsible for the costs of running the system and creating a plan for improvement.

Any EPR framework for packaging and paper products needs to include all packaging and printed paper. Recycling streams include many materials – paper, a variety of plastic packaging, aluminum, steel, and glass – which need to be sorted to be made into single-material bales that can be reprocessed. Investment is needed to advance national collection and sortation infrastructure. By excluding one or more formats from EPR programs, those materials would be exempt from any responsibility and thus unaccountable for their performance in the recycling system. Ecomodulation is an effective mechanism in EPR programs to account for the varying costs associated with different material moving through the recycling supply chains and rewards more recyclable designs and use of recycled content in different formats.

Additionally, an EPR framework can set the standards for traceability and certification that recycled materials going back into supply chains are having positive social and environmental impacts and at the scale needed.

As an organization that has been working with industry stakeholders to invest in recycling infrastructure at the many points in the system, we have seen the potential for impact and know that voluntary efforts are not enough to meet the needs and the desired impacts. EPR provides the framework and mechanisms to engage all the stakeholders across the system to bring transformational change, and we

are seeing a call for such action from individual consumers and local governments, to recycling collectors and processors, to packaging manufacturers and consumer brands.

**An Opportunity for Global Leadership**

Through 2025, nations are coming together to develop a Global Treaty on Plastic Pollution, a process ignited at the 5th United Nations Environment Assembly in 2022. As part of the agreement, nations will be expected to develop and implement an EPR model that meets their national context as the primary mechanism for reducing plastic pollution. The EPR provisions have seen support from the global business community to ensure international consistency and global movement of goods.[3] By implementing EPR for packaging and paper products, the United States could show international leadership and innovation in waste reduction. The Partnership believes that a national EPR framework would enhance the global competitiveness of American products.

As other nations across the globe implement EPR and recycled content requirements for packaging, it will be critical for US businesses to increase recyclable designs and recycled content for packaging and paper products to remain competitive in international markets.

**Let's Get to Work**

National Extended Producer Responsibility for Packaging and Paper Products can transform the way we handle waste, advance effective recycling, and speed our transition to a circular economy. Along the way, communities will be less burdened by waste, American companies will be more competitive, and our environment will be less polluted. The Recycling Partnership is dedicated to advancing national EPR, and we appreciate the work of Chairman Carper and Ranking Member Capito and the entire committee to advance this critical work.

Sincerely,

Kate Davenport
Chief Policy Officer
The Recycling Partnership

[3] Business Coalition for a Global Plastics Treaty, Key Elements


**Statement for the Record**

**American Chemistry Council**

**Hearing on:**

**"Examining Extended Producer Responsibility Policies for Consumer Packaging"**

**Senate Committee on Environment & Public Works**

**March 6, 2024**

The American Chemistry Council (ACC) represents more than 190 companies engaged in the business of chemistry—an innovative, economic growth engine that is helping to solve the biggest challenges facing our country and the world. The members of ACC's Plastics Division create materials that countless companies rely on to make essential and often lifesaving products. These include medical-grade plastic for surgeries, personal protective equipment for ourselves and our caregivers, lightweight plastic components in our vehicles, and energy-saving products in our homes.

ACC and our members are committed to creating a more circular economy for plastics and helping to end plastic waste in the environment. Plastics contribute to sustainability goals, which support a cleaner, more sustainable future; plastic waste does not. Waste in the environment, including plastic waste, is never acceptable. We are eager and taking action to solve this problem.

America's Plastic Makers® have established two ambitious circular economy goals:

1. 100% of U.S. plastic packaging is recyclable or recoverable by 2030, and
2. 100% of U.S. plastic packaging is reused, recycled, or recovered by 2040.

Meeting those very ambitious goals will require a coordinated set of actions pertaining not only to how plastics are made but also how they are used, reused, and remade. These are outlined in more detail in our Roadmap to Reuse:

- More effective value chain engagement to optimize new and existing programs;
- More active consumer engagement, so Americans know what and how to recycle;
- Expanded access to recycling so more Americans can recycle in their communities and away from home;
- Improvements to collection and sortation capabilities, solving the challenge of economically collecting and sorting harder-to-recycle plastic packaging formats like films, pouches, foams, and small formats;
- Dramatically scaling domestic capacity in both mechanical and advanced recycling; and
- Solving the challenges of domestic sortation and end markets for plastics, especially those formerly exported to overseas markets.

The recycling system must be improved and modernized to increase the recycling rate for plastics. That will take money: $17 billion, according to The Recycling Partnership.

**America's Plastic Makers support extended producer responsibility (EPR) as an important policy tool to help achieve these ambitious goals.** EPR helps generate the

funding, incentives, infrastructure, public education, and other needed changes to fill the gaps in the current recycling system.

**Effective EPR works.** In other parts of the world, EPR financed and directed by the private sector have helped increase recycling access, collection and sortation. More than 40 countries have EPR programs, and their recycling rates are up to three times higher than U.S. recycling rates. Leading examples include Germany, Japan, Italy, France, Canada, and Korea.

**Not all EPR is effective - the details matter.** An effective EPR system improves the recycling system by increasing access, collection, and sortation infrastructure investment for all materials, including metals, paper, glass, and plastic. Effective EPR should be focused on the following outcomes:

1. Increasing landfill and incineration diversion by bringing more items into more circular pathways.
2. Increasing the end-markets for recycled content – especially for food and medical grade packaging.
3. Decisions should be driven by improving comprehensive environmental outcomes of all packaging and materials – especially climate impact.

**Effective EPR is producer-led through a producer responsibility organization (PRO).** The PRO should be data-driven though a comprehensive needs assessment and empowered to meet the objectives above. Once needs assessment-identified goals are achieved, the PRO plan should terminate.

**EPR costs for the program should be allocated by material and packaging type.** EPR costs should be "eco-modulated" (i.e., based on the weight of the packaging and other factors focused on the material's environmental impact) pursuant to a needs assessment.

**Effective EPR also includes:**

- **Technology neutral:** No single technology is a "silver bullet." EPR should be structured so that all forms of recycling (i.e., mechanical and advanced recycling) are included. EPR should also be open to new recycling technologies and materials may be developed. Not doing so locks-in the current system and stifles innovation and associated improvements that can enhance the recycling of post-use material.
- **Third-party certification**: Inspections, audits, and monitoring are part of the certification process and can provide system transparency and consumer confidence in the recycled content of material. Reliable certification systems incorporate important elements such as mass balance accounting and attribution.

- **Avoid non-EPR provisions**: Provisions banning or restricting certain polymers, products, or chemistries, recycling technologies, setting unrealistic rates and dates, limit EPR effectiveness and can result in unnecessary delays and misdirection. Often these types of provisions have little to do with the recycling system and could lead to worse environmental outcomes. These provisions would undermine the proper functioning of a competitive, market-based EPR system.

**ACC and its members support effective EPR.** By filling in the gaps in our recycling system EPR can play an important role in increasing an important element for development of a circular economy in the United States. Not only would the establishment of an effective EPR system(s) result in improved environmental outcomes such as reductions in landfilling and climate change, but it could also be an important boost to our economy.

# U.S. Extended Producer Responsibility

IKEA Point of View

*IKEA supports federal and state efforts to increase recycling nationwide as key means to developing a circular economy. We are committed to becoming a circular business by 2030 and, to achieve this, support systemic and harmonized change beyond our own operations. We believe a well-constructed federal extended producer responsibility (EPR) program that is fair to producers and consumers will help communities increase recycling rates and, consequently, the supply of recycled/circular materials.*

*A patchwork of varying state programs is inefficient, difficult for industry to comply with, and financially burdensome. However, we recognize that a federal EPR program will take time to develop and in the meantime support state EPR programs that meet this paper's policy recommendations. In this paper, we wish to share our point of view on how EPR programs can support companies like IKEA to accelerate the transition to more sustainable business practices and growth.*

## Well-designed EPR program requirements and benefits

Well-designed EPR programs are essential to establish a coherent approach to more efficient and sustainable material handling – a cornerstone to prolonging material life and limiting negative climate impacts. Based on our experience conducting business in countries with established EPR programs (e.g. France, Netherlands, Spain, and Sweden), the following factors are critical to establishing a successful EPR program.

**EPR programs promote sustainable materials lifecycle management & circularity.** EPR programs that promote reuse and recycling result in the sustainable lifecycle management of materials. These programs contribute to the emerging circular economy by incentivizing and enabling materials to stay in use longer, extending their useful life and keeping them out of landfills.

**Producer fees are administered by an independent third party.** EPR programs should be funded by producers who pay fees to a producer responsibility organization (PRO). By paying fees to an independent PRO—instead of taxes to the government—fee payments directly support increased investments in recycling infrastructure, the creation of viable end markets, and improved manufacturer and consumer education.

**Industry is given the opportunity to provide input.** EPR programs should allow for necessary industry input and oversight through various means like PRO board memberships and the rulemaking process. Such input and collaboration foster a deeper understanding of how implementation of these programs works and aids in identifying opportunities for further development and optimization of solutions.

**EPR programs increase recycled materials supply.** EPR programs can result in increased recycled materials supply, thus enabling companies like IKEA to meet business ambitions to significantly increase the use of recycled materials.[1]

[1] https://www.ikea.com/us/en/this-is-ikea/sustainable-everyday/a-circular-ikea-making-the-things-we-love-last-longer-pub9750dd90

## Structural considerations for EPR program development and implementation

Collaboration with industry to set common definitions, secure workable solutions that promote compliance, and develop progress assessments are imperative to ensure EPR programs deliver on their goals in a cost-effective manner. We offer the following list of considerations for EPR schemes.

**Establish a multi-stakeholder PRO.** All aspects of an EPR program's implementation, including goal setting, fee design, and revenue allocation, should be managed by an industry-led, multi-stakeholder, multi-state stewardship organization that includes producers, retailers, and other industry stakeholders. This offers the best possibility for the development of an EPR program that can be successfully implemented by producers.

**Include a flexible and broad "producer" definition.** Policymakers should adopt a flexible and broad definition of "producer" in any EPR legislation. Recognizing that producers seek to comply with EPR program requirements and achieve positive environmental outcomes, potential producer companies should have the flexibility to determine which entity (e.g., brand owner, importer, retailer, manufacturer, etc.) in the supply chain will serve as the official producer responsible for fee payment in an EPR program.

**Perform a needs assessment for system costs and infrastructure.** A comprehensive needs assessment should be completed to define the total system costs, including the investments and infrastructure necessary to achieve the stated legislative goals. An independent third party, such as the PRO, should complete the needs assessment, preferably before implementation of the EPR program begins.

**Ensure appropriate use and application of collected fees.** Fee structures for materials covered under EPR programs developed by PROs should meet the following considerations:

- Collected fees directly fund programs that enable and increase recycling and do *not* fund state or locality general funds.
- EPR programs should not mandate a fee assessed at the point of sale, rather producers should determine how to absorb fee costs. EPR programs should educate consumers on how producer fees support recycling through outreach and public education.

**Use oversight as a tool for assessment and improvement.** Policymakers should conduct regular reviews and progress assessments of PRO-led EPR programs with the ability to revise enacted policies with the goal of strengthening the program over time.

**Employ ecomodulation[2] to reduce packaging waste and promote ecodesign.** The EPR system should use ecomodulation to incentivize sustainable packaging design. Programs should employ an ecomodulated cost model that reduces packaging waste and promotes sustainable design, utilizes eco-friendly materials and production processes, and implements EPR schemes to ensure responsible disposal and recycling of packaging waste.

## Additional EPR program considerations

**Align program requirements across states to enable economies of scale.** Harmonization is critical to enable economies of scale in both the recycling and collection processes. When neighboring states can agree on a system, it increases the value and impact of that system. We encourage alignment across states on the scope, reporting obligations, and ecomodulation fees.

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[2] Ecomodulation is the concept of penalizing the use of materials that are less environmentally friendly, and rewarding the use of those which are better - for example, through charging a higher rate of tax for products that are harder to recycle, or offering EPR fee reductions for materials which can be easily recycled. Ecomodulation can also encourage more sustainable product packaging design and innovation.

**Use existing covered materials and products definitions.** To simplify the process, it is preferable to include the U.S. International Trade Commission's Harmonized Tariff Schedule and adhere to existing import reporting.

**Rely on definitions based on internationally accepted standards.** Definitions for terms including "recyclable," "recycled content," "pre-consumer material," "post-consumer material," "recycled content," "recovered content," and "recycling" should be based on internationally-accepted definitions in standards such as ISO 14021. These definitions must be easily understood by the consumer so that they, too, can effectively participate in the program.

**Promote equity.** EPR programs should include diverse perspectives from underrepresented groups and strive to increase recycling among all stakeholders and impacted communities.

**Avoid labeling costs.** EPR programs should avoid product and packaging labeling requirements, as conflicting labeling requirements will complicate production and design and lead to cost increases.

**Use consumer education as a tool to prolong material life.** The PRO should prioritize educating consumers about the benefits of recycling and the role consumers play in achieving a circular economy.

**Define an appropriate role for producers and program operators.** PROs should not require producers to participate in EPR programs as operators (e.g. collection sites for covered materials). However, producers can play important recycling infrastructure and system roles, and PROs should consider incentives to encourage producers to participate as operators.

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For further information, please contact:
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IKEA U.S., Ingka Group
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**About IKEA**
IKEA offers well-designed, functional, and affordable, high-quality home furnishing, produced with care for people and the environment. There are several companies with different owners, working under the IKEA Brand, all sharing the same vision: to create a better everyday life for the many people. IKEA was founded in Sweden in 1943.

**About the IKEA franchise system**
The IKEA retail business is operated through a franchise system with franchisees that are authorised to market and sell the IKEA product range within specified geographical territories. Inter IKEA Systems B.V. is the owner of the IKEA Concept and worldwide IKEA franchisor, who also assigns different IKEA companies to develop the range, supply products and deliver communication solutions. Today, 12 different groups of companies own and operate IKEA sales channels under franchise agreements with Inter IKEA Systems B.V.

**About Inter IKEA Group**
Inter IKEA Group includes Inter IKEA Systems B.V., IKEA of Sweden AB, IKEA Supply AG, IKEA Industry AB, and related businesses. Inter IKEA Holding B.V. is the holding company for the Inter IKEA Group.

**About Ingka Group**
With IKEA retail operations on 31 markets, Ingka Group is the largest IKEA retailer and represents about 90% of IKEA retail sales. It is a strategic partner to develop and innovate the IKEA business and help define common IKEA strategies. Ingka Group owns and operates IKEA sales channels under franchise agreements with Inter IKEA Systems B.V. It has three business areas: IKEA Retail, Ingka Investments, and Ingka Centres. Ingka Group operates business under the IKEA vision – to create a better everyday life for the many people by offering a wide range of well-designed, functional home furnishing products at prices so low that as many people as possible can afford it. Read more on Ingka.com.

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**COMMENTS OF MOLSON COORS BEVERAGE COMPANY**
**ON**
**"Examining Extended Producer Responsibility Policies for Consumer Packaging"**
**Before the United States Senate Environment and Public Works Committee**
**Washington, DC**
**MARCH 6, 2024**

Molson Coors Beverage Company is pleased to offer our perspective and experience of Extended Producer Responsibility (EPR) policies for consumer packaging, drawing from our involvement with the Colorado EPR law and observations from other state deliberations. We aim to present our viewpoint, grounded in our commitment to sustainability and efficient recycling practices, while highlighting alternative recycling strategies that may offer more promising results without the complexities and costs associated with EPR systems.

Molson Coors is the fourth largest brewery in the world and the largest headquartered in the United States. Our portfolio includes Coors Light, Miller Lite, Molson Canadian, Blue Moon, Vizzy Hard Seltzer and numerous other beverage brands. Our company employs approximately 10,000 people and operates twelve manufacturing facilities across the country. We have long invested in sustainable packaging solutions and consider packaging a critical focus area for environmental stewardship.

Molson Coors has been at the forefront of recycling innovations including our pioneering introduction of the aluminum can in the late 1950s after many years of development driven by Bill Coors. Our commitment to sustainability is further underscored by our ambitious targets to ensure our packaging is reusable and/or recyclable and to significantly reduce greenhouse gas emissions across our value chain to achieve net zero by at least 2050. Despite these efforts, we recognize the challenges posed by the current recycling landscape, such as declining demand for recycled materials, increased processing costs, and contamination issues that hinder the ability to create clean recycled products.

Considering the recent legislative actions regarding EPR in states such as Illinois, Washington, Minnesota, and others, including the enactment of Colorado's EPR legislation in 2022, we contend that numerous alternative recycling strategies exist. These alternatives encompass a range of approaches, including but not limited to public education initiatives, the creation of financial incentives to encourage recycling, and enhancing the convenience and accessibility of recycling programs to facilitate consumer participation. These programs would benefit from the support of value chain participants active within these regions, alongside advancements in recycling center technologies and collection systems, which could be further supported by retailers, suppliers, and waste haulers.

Our experiences and observations lead us to conclude that EPR policies, while well-intentioned, introduce significant complexity, costs, and potential unintended consequences. These policies often result in shifting the financial and operational burdens of recycling from municipalities to a limited number of producers and, ultimately, to consumers, without adequately addressing the core challenges of improving recycling rates and reducing waste. EPR is a novel government construct where a limited number of consumer-packaged goods companies must coordinate to take control of local waste recycling systems. This coordination is aimed at assuming control over local waste management systems—a realm traditionally managed by local and state governments as a critical public service upon which citizens rely. In fact, the decision-making process of

certain EPR proposals which encompasses operations, fees, and control, can consist of a select few producers and the governance structure can exceed the authority of any elected government body.

One viable alternative, the Deposit Return System (DRS), is garnering increased attention from producers and packaging material manufacturers due to its recycling efficacy. A well-designed DRS, akin to the model currently operational in Oregon, offers superior quality in the redemption of beverage containers, bolsters the waste management capabilities of local governments, and ensures beverage container materials are recycled efficiently back into new beverage containers. While it is acknowledged that DRS programs impose certain costs on beverage companies, the privately managed, yet reasonably government-regulated model exemplified in Oregon has demonstrated notable improvements in the outcomes for beverage container recycling, establishing itself as one of the most effective circular recycling models currently in practice.

While the Environment and Public Works (EPW) Committee and Congress have crucial roles in shaping policy through legislation such as S.1194, the Recycling and Composting Accountability Act (Senator Carper), and S.1189, the Recycling Infrastructure and Accessibility Act (Senator Capito), it appears improbable that state and local governments will relinquish their longstanding authority over solid waste management matters. Thus, we can expect a proliferation of EPR and other state solid waste requirements to continue.

In light of these factors, we respectfully request that the Committee consider initiating a comprehensive national assessment of solid waste and recycling needs. This assessment should aim to identify and endorse viable and more efficacious alternatives to the prevailing recycling methodologies. Implementing such a strategy could pave the way for a more integrated and collaborative framework to surmount the challenges inherent in solid waste management and recycling, to the mutual benefit of all parties involved in the value chain. Molson Coors is committed to contributing to the development of sustainable recycling solutions and stands ready to engage further with the Committee and other stakeholders on this critical issue.

Should you have any questions or wish to discuss our comments in more detail, please do not hesitate to contact Richard.Crawford@molsoncoors.com or Nell.Reilly@molsoncoors.com in our Federal Government Affairs Department.

We appreciate the opportunity to share our perspective and look forward to contributing to meaningful progress in solid waste management and recycling policies.

The Aluminum Association

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Submitted via email to hanna_sweet@epw.senate.gov

March 22, 2024

Senate Environment and Public Works Committee
Subcommittee on Chemical Safety, Waste Management, Environmental Justice, and Regulatory Oversight
410 Dirksen Office Building
Washington, DC 20510

**RE: March 6, 2024 Hearing - Examining Extended Producer Responsibility Policies for Consumer Packaging**

Senate EPW Staff:

The Aluminum Association appreciates the opportunity to provide written testimony as part of the March 6, 2024 Senate EPW Subcommittee Hearing – Examining Extended Producer Responsibility Policies for Consumer Packaging.

The Aluminum Association (the 'Association') represents the full value chain of aluminum industry manufacturers and their employees in the United States, ranging from primary production to value-added products to recycling. Its member companies produce a variety of consumer packaging related products including aluminum sheet that is formed into beverage cans, food cans and food service pans, aluminum cast products formed into aerosol cans, and aluminum foils used directly by consumers for packaging purposes. With these consumer packaging products in mind, the Association submits the following information for the subcommittee's consideration:

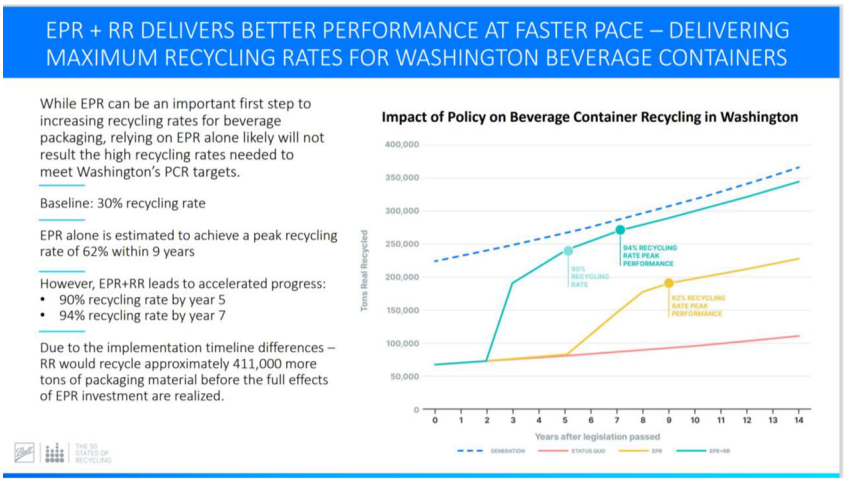
**EPR and Recycling Refunds**

The Association recognizes that EPR has the potential to raise recycling rates for common recyclables but notes that it is as yet unproven in the US with only four states now in the early stages of its implementation. Challenges related to needs assessments, scope of recyclables covered, fee-setting, and other important issues remain unresolved at this point and in the best-case scenario full implementation is a 5-10 year process. This results in needless landfilling and littering of countless tons of material that won't make it back into the recycling system while EPR systems ramp up.

Fortunately, for beverage containers there is a proven recycling solution already in place in 10 US states that results in double the redemption/recycling rate of the other

states. That solution is Recycling Refunds, wherein consumers pay a small upfront deposit at the time of beverage container purchase (typically $0.05-$0.10) and then are refunded that deposit when they return the container for recycling. As noted, these systems result in far higher recycling rates and deliver much cleaner raw material that can be integrated back into the beverage container manufacturing supply chain. In addition, they can be implemented much quicker than EPR programs, resulting in high capture of recyclables while EPR programs are still in the implementation phase. Given these advantages, the Association requests that the subcommittee consider how a national Recycling Refunds system could be implemented for beverage containers in lieu of a national EPR system. This would align well with the subcommittee hearing on September 28, 2023 focused on Recycling Refund programs where testimony was provided from a variety of stakeholders on the practicality and efficiency of these programs.

Another option for the subcommittee to consider is the ability of EPR and Recycling Refund programs to work in parallel with each other by covering beverage containers under a Recycling Refund program and other packaging and printed paper under a traditional EPR program. The value of this approach is illustrated by recent analysis done by Ball Corporation in their *50 States of Recycling* Report[1] reflective of the state of Washington adopting such an approach. As can be seen in the graphic below, Recycling Refunds paired with EPR provides significantly higher recycling rates for beverage containers much sooner than relying on traditional EPR alone to scale up and start delivering results.



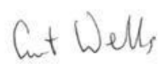

[1] https://www.ball.com/sustainability/real-circularity/50-states-of-recycling (accessed March 23, 2024)

**EPR and the RCAA/RIAA bills**

The Association also believes that the Recycling and Composting Accountability Act (RCAA) and the Recycling Infrastructure Accessibility Act (RIAA) could provide good foundations for the ultimate implementation of a nationwide EPR program. The RCAA will deliver critical data about the nature, scope, and scale of the over 9,000 separate recycling programs in the US that can help inform EPR implementation, and the RIAA will deliver pilot programs for recycling improvements in underserved communities that can similarly by integrated into an EPR program. Based on this value, the Association recognizes the importance of both bills having passed the Senate EPW committee in April 2023 and having passed the full Senate in March 2024. The Association will continue to support action on these bills in the House now that Senate approval has been secured.

On behalf of the Association and its member companies that produce aluminum packaging products and aluminum substrate materials for those products, I appreciate the Senate EPW subcommittee's consideration of this testimony and look forward to the opportunity to further engage with the subcommittee on this and other recycling-related topics. Please let me know via phone at 703-358-2976 or via email at cwells@aluminum.org if you have any questions or would like to discuss any of this input further.

Respectfully submitted,



Curt Wells
Senior Director of Regulatory Affairs and Corporate Stewardship
The Aluminum Association

Senator CARPER. Senators are going to be allowed to submit questions for the record through the close of business on Wednesday, March 20th, and we will compile those questions. We will send them to our witnesses, and we will ask all of you to respond, if you could, by Wednesday, April 3, 2024.

In a place where sometimes we don't have great news every day, the news about our friend Senator Lee lifting his hold on a recycling bill is a wonderful piece of news. I think folks who might be tuned in across the Country are probably encouraged by your testimony and what you have presented to us today, and the questions that our members asked.

While you have been testifying here for the last almost an hour and a half, we have just had a really impressive group of young people coming into the hearing. There are seats for folks who might be watching this on C-SPAN or television. We have a number of people who can sit in the hearing room. We have seats for maybe 50, 60, 70 people, but we have had probably 100 or more young people, they look like they are in maybe, high school, or maybe college, that are coming.

They could have gone to any hearing. We have a lot of committees. They could have gone to any hearing. They could have gone to see the House in order, or in session, or the Senate over in the Capitol. They came here. They came here by the dozens.

They came here because they know this is important. This is important for them in their lives and the families that they will raise someday. We don't want to let them down. We don't want to let them down. I am proud to say that, I think, on this committee, we are not letting them down. With your help, we will continue to do that.

With that, this hearing is a wrap. Thank you all very much. We are adjourned.

[Whereupon, at 11:22 a.m., the hearing was adjourned.]

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