



February 8, 2023

Maryland Senate Education, Energy, and the Environment Committee
2 West
Miller Senate Office Building
Annapolis, Maryland 21401

Dear Chair Feldman and Vice Chair Kagan:

Thank you for your work to consider packaging and recycling legislation in Maryland. The Sustainable Food Policy Alliance (SFPA), which is comprised of member companies Danone North America, Mars Incorporated, Nestlé USA and Unilever United States, have each made extensive investments and commitments to make consumer product packaging more sustainable and expedite the transition to a circular economy. In July 2020, we released a set of [Packaging and Recycling Policy Priorities](#) that outline several policy solutions essential to transforming our nation's current waste management and recycling systems and followed up with a set of [Extended Producer Responsibility \(EPR\) Policy Priorities](#) in January 2022.

These priorities aim to shift away from the status quo and move toward a waste and recycling future where companies like ours can set and meet ambitious goals to integrate post-consumer recycled (PCR) content into our packaging, consumers are educated to better navigate their local recycling systems, and we can all be better stewards of the environment. 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 advance forward-looking solutions that help our consumers make a difference and impact the planet. We know it is essential for stakeholders to come together to make end-to-end system changes that will truly transform our waste management system into a circular economy.

SFPA is supportive of Extended Producer Responsibility (EPR) programs. All four companies participate in EPR programs globally and we have worked to set up and support EPR programs and policies in the United States. We were excited to see SB 222 introduced, which includes significant policy elements that we support. We offer our commentary below:

We support the following provisions in the bill:

- We support a Producer Responsibility Organization (PRO) for governance of the EPR program and the PRO has responsibility for setting fees, collecting funds, and determining recycling rates and deadlines after a needs assessment has been completed.
- We support the inclusion of eco-modulation in the bill, which allows fees to account for relative costs of recycling different materials in addition to environmental factors.
- We support the inclusion of an Advisory Committee to advise the PRO on plans, funding and performance goals and include broad stakeholder representation inclusive of local governments, recyclers, collectors, and the PRO participating in the program.

- While this bill does not include a Deposit Return System (DRS), we appreciate that an EPR program would allow for a complementary DRS program at a later date.
- We appreciate the shared responsibility provisions that allow some shared costs between the PRO and state and/or municipalities, which is in line with our [EPR policy priorities](#).

We would like clarity and offer some constructive commentary on the following provisions:

- While we support having a robust PRO structure, we believe the program will be most effective if it begins with one single PRO and allows for the possibility of multiple PROs after a few years, similar to the model in Colorado. The current proposal allows for multiple PROs to start.
- We agree that a needs assessment is essential to determining which infrastructure improvements are needed to improve Maryland's recycling system. Since the PRO will invest in the activities deemed necessary by the needs assessment to achieve legislative goals, we recommend that the PRO have a strong role, along with the state and the advisory council, in how it is conducted.
- We appreciate the needs assessment will include an analysis of infrastructure for composting and reuse but prefer that both be integrated and rewarded under eco-modulation provisions at this stage.
- The bill includes a state recycling trust fund, sourcing PRO fees to fund it. The language states that some of these funds may be transferred to the General Fund, which we do not support. We believe that the funds collected should only be used to support improved recycling infrastructure in Maryland.
- We would like clarity on the provision related to packaging material waste reduction over five years. For example, as written it is unclear if packaging material waste reduction is only reduced material usage, a shift to reusable packaging, or increased recycling and increased recycled content. We recommend an approach that explores reduction by all means, and is completed following the needs assessment or allows for an earlier baseline (e.g. 2013) for producers who have already made source reduction efforts. We also recommend that the mandate apply in aggregate across the entire PRO membership rather than per producer following the needs assessment since some portfolios lend themselves to source reduction more than others.
- The legislation includes a greenhouse gas reduction goal. We recommend removing so as to not dilute from the focus on recovery and recycling.
- The legislation does not include a definition of "recycling." Our position is that any definition of recycling must allow for innovative technologies that help materials or waste to be collected, separated, or processed and returned to the economic mainstream in the form of raw materials



or products. We agree that “recycling” does not include energy recovery or energy generation resulting from combustion or incineration processes.

- In addition, while not specified in the bill, we hope that the PRO will include an on-ramp for post-consumer recycled (PCR) content that aligns with other states and recognizes the critical need to preserve food safety.
- We note that the bill does not provide a clear exemption for medical food and/or infant formula, which require specific packaging for food safety and consumer delivery. We recommend amending the language of “covered material” to harmonize with the currently enacted laws in California, Colorado and Oregon. For example, we have excerpted the California language here:

“covered material” does not include any of the following:

(A) Packaging used for any of the following products:

(i) Medical products and products defined as devices or prescription drugs, as specified in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Secs. 321(g), 321(h), and 353(b)(1)).

(ii) Drugs that are used for animal medicines, including, but not limited to, parasiticide products for animals.

(iii) Products intended for animals that are regulated as animal drugs, biologics, parasiticides, medical devices, or diagnostics used to treat, or administered to, animals under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.), the federal Virus-Serum-Toxin Act (21 U.S.C. Sec. 151 et seq.), or the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.).

(iv) Infant formula, as defined in Section 321(z) of Title 21 of the United States Code.

(v) Medical food, as defined in Section 360ee(b)(3) of Title 21 of the United States Code.

(vi) Fortified oral nutritional supplements used for persons who require supplemental or sole source nutrition to meet nutritional needs due to special dietary needs directly related to cancer, chronic kidney disease, diabetes, malnutrition, or failure to thrive, as those terms are defined as by the International Classification of Diseases, Tenth Revision, or other medical conditions as determined by the department.

We are committed to continuing to work with you and other stakeholders to refine this bill as it goes through the legislative process, and we are confident that we can all work together to revise the bill into something we can enthusiastically support. SFPA is eager to be a resource for you and your colleagues moving forward. Once again, we appreciate your leadership on this topic as well as the opportunity give feedback on this important legislation, and we look forward to working with you to continue to progress toward a more circular economy in Maryland.

Sincerely,

Sustainable Food Policy Alliance