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TESTIMONY

Presented to

Fiscal Committees of the New York State Legislature

Hearing on the FY 2022-2023 Environmental Conservation Budget

February 1, 2022

Albany, New York

On behalf of the Consumer Technology Association™ (CTA)¹, thank you for the opportunity to testify regarding the 2022-2023 Executive Budget relating to the Environmental Conservation budget.

CTA supports the intent behind three provisions in the FY 2022-2023 Executive Budget, but respectfully opposes each for the reasons outlined below.

TED - Part RR: Extended Producer Responsibility Act

TED - Part SS: Toxics in Packaging Act

TED - Part EEE: Advanced Building Codes, Appliances and Equipment Efficiency Standards, and Building Benchmarking Act of 2022

Each of these provisions in the Executive Budget are significant and sweeping proposals, put forth without consulting impacted stakeholders. All three of these initiatives are substantive policy proposals and should be given proper vetting and discussion in the Legislature with the opportunity for significant stakeholder input. Much additional dialogue and amendments are needed before moving forward, and we suggest these be removed from consideration as part of the new State Budget.

1. Extended Producer Responsibility Act (Part RR)

We recognize the importance of recycling and for a decade, our members have financially supported collection and recycling of consumer electronics in New York under the New York Electronic Waste Recycling Program². New York isn't alone – our members have implemented and complied with state-level producer responsibility laws for electronics in 24 other jurisdictions. Our industry has almost two decades of experience in state level producer responsibility programs. We understand what it means for producers to be involved in the end-of-life management of products and have brought that lens and experience to the dialogue on packaging EPR.

EPR is a complex policy and there is no “one size fits all” solution. CTA and our member companies are open to a discussion on the role of producers in supporting the recycling system for packaging in New York and have been actively following packaging EPR legislation such as Senate Bill 1185-C over the past year. However, the EPR proposal for packaging in Part RR is not the right path forward for New York.

At CTA, we have worked with our members to develop a set of packaging policy principles to guide our participation in packaging EPR discussions. The first principle is that industry must be at the table and an active stakeholder in discussions surrounding producer responsibility and packaging mandates. While that is occurring on other packaging EPR bills in New York (albeit dialogue and negotiations are expected to continue), there was no stakeholder engagement on the packaging EPR proposal in Title 33 of the Governor’s Environmental Conservation Budget. In fact, this proposal takes a step back from the stakeholder engagement and progress that has taken place over the past year in New York.

¹ As North America's largest technology trade association, CTA® is the tech sector. Our members are the world's leading innovators – from startups to global brands – helping support more than 18 million American jobs. CTA's members have long been recognized for their commitment and leadership in innovation and sustainability, often taking measures to exceed regulatory requirements on environmental design, energy efficiency, and product and packaging stewardship.

² New York Electronic Waste Recycling Program website at <https://www.dec.ny.gov/chemical/65583.html>.

Additionally, CTA has several specific areas of concern regarding the proposed Title 33:

- **Lack of shared responsibility:** All entities - including consumers, governments, MRFs, recyclers and producers – have a role and responsibility in improving upon and addressing the challenges of the current recycling system. CTA strongly supports a shared responsibility structure under a producer responsibility system. Producer funding should be geared toward system improvements such as infrastructure investment, contamination reduction efforts, etc. based on a needs assessment conducted specific to New York.
- **Unclear cost constraints of program:** As noted above, CTA supports the concept of shared responsibility for collection and recycling among all stakeholders. CTA is concerned with the potential costs ballooning for industry under the proposed producer responsibility system as it strives to achieve the “widespread, free, convenient, and equitable consumer access to collection opportunities”. Producers must reimburse municipalities’ or private collectors’ “reasonable costs” but that term remains undefined given that DEC can determine “any other cost factors” that should be covered by the PRO. It remains unclear how producer funding is directed toward recycling improvements to help improve the system or how a cost-sharing mechanism could be achieved.
- **Focus should be on consumer / residential not all businesses, government agencies, and institutions [§27-3301(2)]:** CTA objects to the inclusion of all businesses, government agencies, and institutions in the definition of “consumer”. The history of producer responsibility programs in the U.S. is to focus on consumers. Businesses and other institutions have obligations to manage their waste and recycling, and this should not be the responsibility of producers.
- **Tertiary Packaging Should Be Excluded [§27-3301(5)]:** CTA does not support the inclusion of tertiary packaging that does not reach and is not managed through the residential recycling system in New York. Tertiary packaging refers to material such as shrink wrap and pallets that are used for the distribution of products throughout the chain of commerce. This type of material is appropriately managed within the distribution chain or at the retail level; it never reaches the consumer or the consumer solid waste stream. As such, it should not be captured under a producer responsibility program which is focused on residential recycling programs.
- **Concerning definition of “readily-recyclable” [§27-3301(10)]:** CTA cannot support the definition of “readily-recyclable” due to the subjective and potentially fluctuating requirements given the inclusion of the language stating there must be a recycler “...willing to pay for fully sorted material at the door of their facilities in quantities equal to or in excess of material supply”.
- **Incorrect use of needs assessment [§27-3303]:** CTA strongly supports the incorporation of a needs assessment to ensure that producer funding is utilized to address the identified challenges in the collection and recycling system in New York. However, unlike the needs assessment proposal here, the producer responsibility organization (PRO) should have the authority to conduct the needs assessment and then direct funding to address those needs as outlined in the PRO plan approved by the Department of Environmental Conservation (DEC). This proposal has the DEC overseeing the needs assessment with the Advisory Committee using that information gathered in the needs assessment to inform its recommendations around PRO plan approval and setting rates. This is not the correct way in which to utilize a needs assessment.

- **Removal of labeling requirements [§27-3307(3)(g)(ii)]:** CTA opposes the labeling requirements for producers. A New York specific packaging label is not feasible given the consumer technology industry distributes products and thus the associated packaging throughout a US market, not state specific. The role of the PRO should not be to establish and require labeling standards for packaging which is an issue that needs addressed at a national level.
- **Removal of recycled-content mandates [§27-3305(7)]:** Recycled content in packaging should be incentivized through the fee structure charged to producers by the PRO. Recycled content should not be mandated nor should recycled content rates be arbitrarily recommended by the Advisory Council to DEC with no parameters or established process and criteria to determine viability of recycled content by both material type and application/use.
- **Recycling and recovery rates should be established by the PRO, not the Advisory Committee [§27-3305(7)] and should not be set via regulation [§27-3305(8)]:** Goals for producers – the entities ultimately held responsible under an EPR structure – should also be connected to the needs assessment. Goals should be focused on actions that move the needle toward those higher rates – increasing consumer access, reducing contamination, and addressing infrastructure needs / inadequacies. If a recycling and reuse rate must be established, it should not be a percent established by the Advisory Committee and ultimately via regulation by DEC but rather a requirement for a recycling and reuse rate to be established by the PRO as informed by the needs assessment and in consultation with the Advisory Council and ultimately approved by DEC.

2. Toxics in Packaging Act (Part SS)

Packaging plays a critical role in protecting and safely delivering consumer electronic devices to households throughout the U.S. Heavy metals, PFAS and phthalates are not intentionally added to the packaging used by the consumer electronics industry. However, incidental presence of these chemicals is possible from the packaging manufacturing process and/or the use of recycled-content material. In its present form, CTA cannot support the Toxics in Packaging Act (Part SS) due to the following concerns:

- **Concern with broad category distinction:** CTA's members are concerned that the proposed legislation defines PFAS and phthalates too broadly. Chemical compounds within these classes are distinct and broad class-based assumptions about risks and hazards given the various uses within different types of packaging are not an approach based on sound science. Additionally, class-based restrictions are difficult to implement especially when there is no evidence that the substance is used in packaging. CTA encourages New York to focus on specific PFAS and phthalates that are of concern in specific packaging applications/uses.
- **Lack of Chemical Abstracts Service registry numbers (CASRNs) is problematic:** Effective regulation and implementation requires identification of the substances that are in scope of the restriction. Broad class-based restrictions are extremely difficult to implement, especially when there is no evidence that a substance is intentionally used in packaging. The proposed legislation should focus in on specific PFAS and phthalates that are of concern in packaging and list those chemicals by CASRNs to ensure any restrictions are implementable by industry.

A major challenge to reporting on the presence of these chemicals – especially for PFAS – is the lack of a harmonized definition and naming system. CASRNs – a uniform and consistent means of communicating information on chemical substances and one that our industry relies on for

chemical management within global supply chains -- exist for many thousand PFAS, but not all within “the PFAS universe.” Generic chemical names will be a challenge as they cannot be consolidated and aligned with the intended substance and may not be easily recognizable across global supply chains. To be implementable by industry, industry will need a list of PFAS and phthalates by CASRNs.

- **Unrealistic implementation timeline given number of chemicals:** CTA understands there is a two-year grace period for implementation. However, if PFAS and phthalates are restricted as broad classes (collectively over 9,000 different chemicals) and no CASRNs are provided, it will take industry several years to identify potential presence and at what levels. Additionally, there should be an exemption for any packaging material put into the marketplace prior to the effective date of the rule which is standard for material restriction laws.
- **Lack of recycled content exemption:** Exemptions for the use of recycled material in packaging must be included. Many product manufacturers, including manufacturers of consumer technology products, have commitments to increase the use of recycled material in packaging. Packaging supplier bases are global in nature. To keep continuity of supply, avoid burdensome testing and promote the use of recycled content material, an exemption for recycled content packaging material must be included.
- **Open ended future regulation is concerning [§37-0211]:** This section is a departure from the standard of how chemicals are regulated in the U.S. There does not appear to be any assessment of the hazard of a specific chemical or evaluation of exposure to the chemical from a specific use. Both are ultimately needed to determine chemical risk. Additionally, this section does not provide any details on how the addition of new substances will be communicated to stakeholders and what opportunities stakeholders will have to comment on any proposed additions. The approach to this section does not appear based on sound science or the type of chemical review and evaluation processes established by other regulatory agencies (e.g., U.S. Environmental Protection Agency).

3. Advanced Building Codes, Appliances and Equipment Efficiency Standards, and Building Benchmarking Act of 2022 (Part EEE)

CTA is concerned with the approach outlined in the proposed Appliance and Equipment (Energy) Efficiency Standards section related to regulating the energy efficiency of consumer technology products including:

- Consumer audio and video products,
- Televisions,
- Computers and computer monitors,
- Imaging equipment,
- Small network equipment, and
- Telephones.

While CTA appreciates the intent of Part EEE, the establishment of New York specific energy efficiency standards is concerning given that a number of other policies and initiatives – California Energy Commission (CEC) standards, EnergyStar and voluntary agreements – currently exist for consumer technology. These structures result in real savings for consumers, while at the same time protecting

industry innovation and keeping pace with the rapid development timeframes of consumer technology products. This proposal creates the very real potential for the establishment of state specific standards for New York that may conflict with standards in another state. Consumer technology products are sold in a U.S. or North American market, not state-by-state. Conflicting standards among states will result in the potential for consumer technology products – products that are used every day by residents in New York – to be removed from shelves.

Most concerning is that Part EEE opens up the potential for New York to mandate voluntary industry standards such as EnergyStar or the existing home industry equipment voluntary standard that has already increased the energy efficiency of more than 99% of the small network equipment purchased and sold in the U.S.³ Voluntary programs are designed to be just that – voluntary in an attempt to drive energy efficiency in the marketplace in a way that can quickly accommodate changes in technology and innovation. Mandating these programs would be a step backward and a blow to the purpose behind voluntary leadership by industry.

Conclusion

CTA appreciates the opportunity to raise concerns on Parts RR, SS and EEE in the Governor's Environmental Conservation Budget and we respectfully oppose these parts for the reasons outlined above.

Should you have any questions regarding the above concerns, please do not hesitate to contact me.

Sincerely,



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³ For additional information, visit <https://www.energy-efficiency.us>.