



**Joint Legislative Hearing Testimony Submission – Environmental
Conservation**

S.8008/A.9008 - Part RR - Extended Producer Responsibility Act – Title 33

February 1, 2022

The Food Industry Alliance of New York State, Inc., the premier trade association representing the full spectrum of the retail food industry in New York, appreciates the opportunity to comment on the above referenced proposal within the Governor’s proposed Executive Budget. This proposal, which we oppose as structured, seeks to establish an extended producer responsibility (EPR) mandate for packaging and printed material.

The retail food industry is not averse to implementing new, sustainable and cost-effective solutions in promoting and improving New York’s recycling infrastructure. In fact, the industry has been and continues to be committed to consumer education and minimizing packaging and reusing materials when applicable and available. It is our belief that with clarity, consistency and cost containment measures, a path to implementing an EPR program in New York exists. Unfortunately, this proposal lacks all three.

First, the entire retail food supply chain stretches from coast to coast, as highlighted numerous times during the COVID-19 pandemic. The unfortunate shortages and delays of various products that has ebbed and flowed during this tumultuous time has driven public awareness on the dependency of our industry on the policies and procedures in neighboring states. This legislation fails to even acknowledge the layers of complexity within the supply chain.

Materials used for the packaging of numerous products must meet numerous federal and state standards, some of which may not meet the new standards which could be imposed by this proposal. Enacting an EPR mandate during an unprecedented and unpredictable time, even with the timelines outlined within Part RR would further reduce the efficiency of the supply chain while imposing delays of the availability of consumer goods. The laudable goal of increasing recycling rates and promoting more recyclable material should be examined at a national or regional level.

Second, there lacks clarity within the definition of a “producer” in general and specifically to the role of a retailer. Many retail food stores employ food service operations to their customers. The definition states that a producer is “*the person who manufactures the packaging or paper product under such person’s own name or brand and who sells or offers for sale the packaging or paper product in the state..*”. This legislation does not clearly address the following questions:

- If a retailer packages a product for off-premise use or consumption, such as deli items, prepared foods, etc. and sells that within packaged product, are they considered a producer?
- How and where does the utilization of trays and wrappings used within a retail food store as display items fall under this definition?
- Many retailers have invested heavily in private label products. This is a healthy aspect of our economy which promotes fair competition, consumer choice and in many instances, affordability. Where these retailers fit within the definition of a producer, as highlighted above, is also not entirely clear and could have a dramatic impact on cost for both the retailer and consumer while also stifle future investment in these products.

Simply, the role of retail within this EPR proposal needs to be addressed with clarity. Further, leaving this ambiguity to the regulatory process is also problematic. The legislation as proposed should effectively and clearly represent the role and responsibilities of a retailer with any EPR mandate while also considering that a “one size fits all” approach to retail is also inaccurate and imposes further challenges on the industry.

Additionally, the proposal lacks cost containment provisions and codifies numerous critical aspects of the program within regulatory code. To this end we highlight the following flaws:

- Recycling rates should be proposed in the producer responsibility plans, not set within regulatory code by the Department of Environmental Conservation. Recycling rates are fluid and rarely, if at all, uniform. There must be flexibility to adjust for constant changes within the marketplace.
- While the needs assessment is integral, there is no mechanism in place which would delay or modify the implementation of EPR if the costs associated with the program are significant. Last year, Canadian-based York University conducted a [study](#) on the impact of EPR and concluded that it would result in over \$800 million annually in direct costs to the packaging industry and would disproportionately impact through increased costs to low-income households considering their proportionally higher purchases of prepackaged goods. Clearly that is significant and should be considered.
- The definition of “readily recyclable” is problematic in that it, again, is specified in statute and is not determined through consideration and collaboration between stakeholders and the producer responsibility organization.
- The entire funding mechanism structure within this proposal needs to be dramatically revised. As constructed, the full spectrum of the retail food industry, from retailer to wholesaler, supplier and manufacturer would provide for the full-cost reimbursement to municipalities for collection, recovery, recycling and processing of packaging materials. This blatantly ignores the joint responsibility of the recycling infrastructure in this state and puts the full cost on a fully stressed and fiscally volatile supply chain. Implementing any EPR mandate should have joint fiscal responsibility between producers and municipalities while also considering the market value of all covered materials.

We lastly wish to address the timelines as presented within this proposal. A total and dramatic reform to the entire recycling infrastructure in New York cannot be reasonably and adequately implemented in less than five years as this proposal sets forth. It should also not be conducting a needs assessment while simultaneously promulgating and codifying regulations. Any new EPR mandate should provide for a responsible amount of time to effectively conduct a thorough needs

assessment to identify fiscal barriers, relevant and consistent definitions, market changes and economic factors. And only after that, if deemed feasible, should any implementation begin.

The global health crisis has not only highlighted the critical importance of the retail food industry across the state and but also the regional and global impact of the supply chain. In this inflationary environment with increased costs across the board for consumers, any hastily or rushed implementation of a new recycling infrastructure in the state will have a significant cost impact across the entire industry and ultimately to consumers. This issue should not be debated and expedited through a state budget process, rather, it should be considered via collaboration of stakeholders with the Governor and the Legislature.

There are countless examples of the retail food industry as business leader in promoting healthy living, a cleaner environment and community investor. This industry is essential in every community across the state. Yet the fact remains that they are in a financially volatile situation with the annual increases in every aspect of running their stores. Imposing new costs or mandates will further threaten their ability to invest, expand and serve their communities.

The Food Industry Alliance of NYS appreciates the opportunity to discuss these critical proposals and will work with lawmakers and the administration to find meaning, sustainable solutions which benefit the environment and our industry.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Michael P. Durant".

Michael P. Durant
President/CEO
Food Industry Alliance of NYS, Inc.