



American Forest & Paper Association

Submitted via email to Bradley Baker at Bradley.baker1@maryland.gov.

August 12, 2025

RE: Comments related to SB 901 Packaging and Paper Products – Producer Responsibility Plans Act Advisory Council Feedback

On behalf of the American Forest & Paper Association (AF&PA), thank you for the opportunity to provide informal feedback concerning the passed SB 901 Packaging and Paper Products – Producer Responsibility Plans Act. As members of the Advisory Council, it is key that we provide input to ensure that EPR is implementable and successful in Maryland.

AF&PA serves to advance public policies that foster economic growth, job creation and global competitiveness for a vital sector that makes the essential paper and packaging products Americans use every day. The U.S. forest products industry employs more than 925,000 people, largely in rural America, and is among the top 10 manufacturing sector employers in 44 states. Our industry accounts for approximately 4.7% of the total U.S. manufacturing GDP, manufacturing more than \$435 billion in products annually. AF&PA member companies are committed to making sustainable products for a sustainable future through the industry's decades-long initiative — [Better Practices, Better Planet 2030](#). In Maryland, the forest products industry employs more than 6,000 individuals in 29 facilities with an annual payroll over \$351 million, contributes \$38 million in state and local taxes, and manufactures more than \$2.4 billion in products

Paper Recycling Works

Paper recycling is essential to our industry's efforts to achieve important sustainability goals and build a more circular value chain. Paper is one of the most widely recycled materials in America, turning used paper into new, essential products Americans rely on. In fact, more than 2/3 of all paper recycled in the U.S. is turned into new products at mills nationwide.

Our industry has prioritized recycling for over 30 years, and we are committed to continued progress. AF&PA members own and operate more than 100 materials recovery facilities across the country. Additionally, our members have made significant, voluntary investments to built new mills, upgrade old ones and modernize equipment. These are nationwide investments in using more recycled paper, creating jobs and innovating manufacturing.

We're not just participants in the paper recycling system – we're helping build and improve it.

We would like to reinforce our industry's position on the following topics to help create a program, in partnership with the Maryland Department of the Environment, that meets the state's recycling and climate goals. Please find below our feedback on SB 901, with comments focused on the areas of

greatest impact to the paper and fiber-based packaging industry and intended to facilitate the implementation of SB 901.

COMMENTS

Definitions

Recyclable Materials

The current legislative text is missing a clear definition of “Recyclable Material”. Further clarity is needed on if this means covered material in the bill or if this applies to any material that is or could be recyclable.

Paper Products

This definition should have "sold or supplied to the consumer for personal, noncommercial use" and the addition of "printed" after "means".

Recycling

More clarity is needed to define “economic mainstream” and to determine how that economic mainstream might impact marketplace innovation. We also suggest explicitly defining “energy generation” and “fuel production” in the exclusions.

Commercial Inclusion

As currently written, paper products are the only commodity with commercial use in scope. The definition of packaging in MD “means a material, a substance, or an object that is used to protect, contain, transport, serve, or facilitate the delivery of a product that is sold or supplied with the product to the consumer for **personal, noncommercial use** and that is sold, offered for sale, imported, or distributed in the state”. Whereas the definition of paper products “means products made primarily from wood pulp or other cellulosic fibers”. It is missing the designation of personal, noncommercial use provided for packaging.

Secondly, in the exemptions section there is language excluding “material that a producer distributes to another producer that is: (i) subsequently used to contain a product, and the product is distributed to a commercial business or entity”. The inclusion of “subsequently used to contain a product” and the use of the word material plus the explicit exclusion of “and paper products” further doubles down on paper being the only material subject to reporting for commercial use. The requirements for SB 901 should be material neutral, rather than signaling out just one commodity type for reporting and risking a bifurcated and inefficient EPR system. This is particularly concerning considering the findings of the needs assessment indicating the products of concern here, commercial paper products, were the only stream identified with a net \$0 cost for collection.

Separate Account

We support the development of regulations clarifying that the separate account on Page 8 is not subject to the \$2M revert to the General Fund. EPR programs are large, and this threshold may be too low and risk carry-over EPR fees from being rolled into the General Fund.

Need for Regulations & Rulemaking

There are many instances throughout the statute where rulemaking is needed to clarify how requirements must be met. The following are the instances we have identified:

- On page 6, more clarity is needed on the difference between a “waste producer” and a “resident.”
- On page 28, a date needs to be established in regulation for when a producer may not sell, offer for sale, distribute, or import for sale or distribution packaging covered materials for use in the state unless the producer, individually or as part of a producer responsibility organization, has an approved producer responsibility plan on file with the Department.
- On page 30, what the “optimal level of service” for covered material is needs clarification.
- On page 33, more information is needed to define and communicate what “other information is required” by the Department in the development of the Plan.
- On page 35, more information is needed on what the “other requirements” established by the Department may be. Producers and all other stakeholders need adequate time to gather information or implement initiatives.
- On page 36, “other factors” and “general quality” need to be defined.
- On page 37, more clarity is needed on which market indices must be referenced.
- On page 37, more clarity is needed on which waste characterization must be used. Is this at a statewide or local level?
- On page 38, “other factors” needs to be defined.
- On page 40, “sufficient engagement” needs to be defined.
- On page 45, “any other criteria” needs to be defined.
- The statute references “waste reduction” several times but does not define what this means. A definition should be made in rulemaking.
- Throughout SB 901, the undefined term “packaging material” is used. We recommend that “packaging material” be changed to “covered material” where appropriate for consistency and clarity.
- More clarity is needed on how many producers are needed to qualify as a “group” of producers who can form a PRO.

Needs Assessment

The Needs Assessment performed does not align with the scope of the passed statute. As the Department is statutorily obligated to reference the needs assessment when setting performance goals, great care should be given to ensuring that the information aligns with the scope of SB 901.

Administrative Penalty

As written, the statute requires an administrative penalty on a producer or producer responsibility organization if the performance goals have not been achieved. More clarification is needed on whether MDE plans to penalize individual producers versus the PRO. As the law only allows one PRO initially, it does not make sense to institute collective punishment for instances where a single member producer or group of covered material producers are out of compliance.

Dates

As mentioned by the advisory council before – the January 1, 2029 service provider reimbursement date occurs after the establishment of the first reimbursement rate in 2028. Regulations will either need to push back these dates to a schedule that makes sense, or aggressively move up the schedule to remedy the error.

End Markets

We encourage MDE to align and harmonize, where possible, the Responsible End Market (REM) requirements with the other EPR states in the US. MDE should look to Circular Action Alliance (CAA) for guidance as CAA is working to develop a framework to comply with the various REM requirements.

We support reference to existing industry standards for recyclability and repulpability. In the Approved Program Plan for the State of Oregon, Circular Action Alliance granted domestic paper mills an exemption for paper yield verification. They came to this conclusion based on input from us, the Technical Association of the Pulp and Paper Industry, and Moore & Associates that overall yield performance in the U.S. is never below 60%. Additionally, paper mill operators expressed strong concern that sharing yield information negatively impacts their strategic advantage. We suggest that MDE adopt a similar yield exemption for domestic paper mills.

We also support the ability to leverage other certification and verification schemes to meet the REM requirements and minimize any duplication of process. We urge MDE to keep in mind that this requirement is not to actively enforce other jurisdictions regulations and laws, it is to review for evidence of violations with the respective competent authorities.

Recyclability Determinations

We encourage MDE to harmonize, where possible, Covered Material Categories list and the recyclability and compostability designations with the other EPR states. Contradicting recyclability determinations will create an incredibly confusing and burdensome process for producers and end markets. This could also lead to barriers to innovative and new material applications.

Governance Concerns

As a general matter, our industry has significant concerns about the potential for anti-competitive behavior under the auspices of authority MDE grants to the PRO. It is incumbent upon MDE to exercise diligent oversight, require the highest standards of transparency, and provide for an adequate process and opportunity for stakeholder input on key PRO decisions. Extended producer responsibility is a unique policy concept that allows economically powerful competitors to collaborate and exercise consequential, quasi-governmental powers such as fee-setting, creating barriers to entry and other restraints on market access, and making environmental marketing claims.

Thank you for your consideration of our comments. We appreciate the ongoing collaboration between AF&PA and MDE to advance a sustainable recycling system. We remain available to discuss the feedback herein in greater detail and look forward to your response. Please contact Shoshana Micon, Manager, Recycling and Packaging Sustainability, at shoshana_micon@afandpa.org or Frazier Willman, Manager, Government Affairs, at Frazier_Willman@afandpa.org if you have any further questions.