



August 24, 2020

Toxics in Packaging Clearinghouse
c/o NERC
139 Main Street, Suite 401
Brattleboro, VT 05301

RE: Toxics in Packaging Clearinghouse (TPCH) Proposed Updates to Model Legislation

Dear Sir or Madam:

Consumer Brands Association (Consumer Brands)¹ champions the industry whose products Americans depend on every day. From household and personal care products to food and beverage products, the consumer packaged goods (CPG) industry plays a vital role in powering the U.S. economy, contributing \$2 trillion to U.S. GDP and supporting more than 20 million American jobs.

Consumer Brands advocates for smart regulatory frameworks that maintain affordability, promote choice and build consumer trust in the products they use every day. Smart regulations result in uniform structures grounded in risk-based science, that empower consumers to make informed decisions. When a patchwork of regulatory policies exists, it contributes to consumer confusion and adds unnecessary stress to the supply chain resulting in higher prices.

Consumer Brands appreciates the opportunity to provide comments on the TPCH's proposed update to the model toxics in packaging legislation. The comments below focus on the model's sections impacting phthalates and per- and poly-fluoroalkyl substances (PFAS) and Section 6 which would establish new authority to create state administered lists referred to as "packaging chemicals of high concern".

Consumer Brands generally supports the creation of national standards and the regulatory primacy held by long-standing federal authorities. Conversely, state and local government mandates that are inconsistent with national standards create confusion for consumers and jeopardize their ability to access clear and reliable product information. U.S. federal regulators, such as the Environmental Protection Agency (EPA), Food and Drug Administration (FDA) and Consumer Products Safety Commission (CPSC) utilize their authority to protect consumers under the Toxic Substances Control Act (TSCA)², Federal Food, Drug &

¹ <https://consumerbrandsassociation.org/>

² <https://uscode.house.gov/browse/prelim@title15/chapter53&edition=prelim>

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Powering every day.

Cosmetics Act (FFDCA)³, and the Federal Hazardous Substances Act (FHSA)⁴ to regulate consumer product packaging in a manner that is protective of public health. It is these laws that provide the means for establishing and updating national regulations through risk based scientific evaluation of the safety and quality of packaging. The aforementioned U.S. federal government entities make safety determinations based on evaluations for specific uses considering materials and other fit-for-purpose methodologies.

For decades, member companies of the Consumer Brands Association have administered and improved systems to ensure packaging materials meet all applicable local, state, federal and international safety standards and other regulatory requirements. Safety standards for substances approved for use in food packaging materials have been applied to packaging materials used more broadly in personal care products and pharmaceuticals. As such, Consumer Brands is concerned that additional and inconsistent state mandates to regulate packaging materials would interfere with existing federal regulatory schemes.

Consumer Brands believes the updated model legislation establishes unworkable requirements for two families of chemicals – phthalates and PFAS; a number of the chemicals in these two families are currently already under the purview of and review by federal regulators. In addition, Consumer Brands believes that Section 6 of the model legislation circumvents federal regulatory primacy in approving the components that comprise food packaging materials.

Phthalates

- Regarding phthalates⁵, in December 2019, EPA finalized the designation of 20 chemical substances as high priority for risk evaluation under TSCA. In April 2020, EPA published the scope documents for these chemical substances, including seven phthalates⁶. The agency's documents detail the conditions of use, hazards and exposure that EPA will examine during the TSCA risk assessment. If the EPA determines that these chemicals present an unreasonable risk to health or the environment under their conditions of use, the agency must take action to address those risks.

Consumer Brands believes that broad, state level, limitations established prior to the completion of the TSCA risk assessments would be premature and disruptive to supply chains. Consumer Brands recommends that TPCB acknowledge EPA's important primary regulatory jurisdiction in determining the safety of these chemical compounds and remove the phthalates provision as EPA is currently reviewing this class of substances.

PFAS

- Federal regulators are also engaged in managing PFAS exposure. On July 30, 2020, FDA announced the voluntary phase out of certain short-chain PFAS used in food packaging. Manufacturers have agreed to a three year phase out of the sales of these PFAS compounds for use as food contact substances in the U.S. marketplace,

³ <https://uscode.house.gov/browse/prelim@title21&edition=prelim>

⁴ <https://uscode.house.gov/browse/prelim@title15/chapter30&edition=prelim>

⁵ Phthalates are approved by the FDA for use in polymeric food contact materials https://www.ecfr.gov/cgi-bin/text-idx?SID=9b1717e07923fd068719f2e4d5ec7a28&mc=true&node=se21.3.178_13740&rgn=div8

⁶ <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/chemicals-undergoing-risk-evaluation-under-tsca>

beginning in 2021. In the announcement, FDA stated that it can take up to 18 months to sell through products that may contain these types of PFAS. In addition, EPA has made progress under its multifaceted PFAS Action Plan to address concerns about these chemicals.

Consumer Brands is concerned about the proposed changes in Section 4 (C), lines 131-132, *“There shall be no detectable PFAS in any package or packaging component.”* In general, Consumer Brands believes that it is necessary to include a safe harbor level for unintentional traces of substances that may be detected, with advanced detection methods, at very low levels for these types of situations. Further, setting a limit of “not detectable” on a potential list of 4700 chemical substances, the majority of which are not intended for use in packaging materials and for which no standardized, multi-residue detection methods exist, is simply unworkable. Without a reasonable, risk based, scientifically justifiable limit for the presence of unintentional traces of specific PFAS compounds in packaging materials, manufacturers will be subject to incalculable legal costs.

State Administered Lists of Packaging Chemicals of High Concern

- Consumer Brands recommends striking Section 6 of the model legislation. Section 6 would establish new authority to create a patchwork of state administered lists referred to as “packaging chemicals of high concern”. Section 6 undermines the regulatory primacy held by federal regulators authorized with making safety determinations on substances used in packaging. Unlike the TPCH’s past efforts on toxic metals and organometallics, for which federal law already prohibited their use in packaging, Section 6, as proposed, would serve as a catalyst for regulatory conflict between states and federal authorities.

The hazard-based requirements under Section 6 would establish packaging requirements without consideration of the commensurate risk or strong existing federal regulations. Federal risk assessments have been crafted and refined using decades of guidance developed by experts within preeminent scientific and regulatory institutions⁷. Separate state hazard-based lists would guarantee that those packaging stakeholders that produce and use packaging materials will be required to navigate multiple state prohibitions on packaging materials previously approved by federal regulatory agencies.

In addition, the TPCH must not ignore the fact that FDA has administered premarket approval of food packaging components for over 60 years and assessed the safety of thousands of substances used in food packaging. FDA and academic laboratories around the world have conducted research to develop a very thorough understanding of packaging related chemicals. As a result, FDA has established expertise in assessing and delineating likely exposure of consumers to substances used in food packaging production and the likely toxicity of those substances. Using that expertise over time and considering advancements in this scientific field, FDA has evolved guidelines and regulations for conducting the required risk assessments for packaging materials.⁸

⁷ <https://www.epa.gov/sites/production/files/2014-12/documents/hhra-framework-final-2014.pdf>

⁸ For example <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/guidance-industry-preparation-premarket-submissions-food-contact-substances-chemistry> and <https://www.fda.gov/regulatory->

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In closing, Consumer Brands strongly recommends TPCH remove the phthalate and PFAS provisions, and Section 6 from the model legislation. The scientific evaluations conducted by FDA, EPA and other federal regulators are recognized globally and have served as the basis for other national and regional standards for the assessment of the safety of food contact chemicals. The potential patchwork of laws at the state level, when federal regulatory frameworks already exist, will promote confusion among consumers.

Clear, simple, and consistent national regulation and regulatory frameworks informed by risk-based science will enhance consumer trust in these products and reduce frictions in the supply chain.

Thank you for your consideration of the Consumer Brands Association's comments on the updated toxics in packaging model legislation. Do not hesitate to reach out to us if you would like to discuss further.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael Gruber", with a long horizontal flourish extending to the right.

Michael Gruber
Vice President, Regulatory & Government Affairs