



Plastics Food Service
Packaging Group

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California Environmental Protection Agency
P.O. Box 4025
Sacramento, CA 95812

RE: Proposed Regulations, Approval Process for Foodservice Packaging Used at State Facilities

Mr. Parrish,

The Plastics Foodservice Packaging Group (PFPG) of the American Chemistry Council (ACC) appreciates the opportunity to provide comments on the informal draft regulatory text implementing SB 1335 – the Sustainable Packaging for the State of California Act of 2018. PFPG represents the leading suppliers of plastic foodservice and packaging products and collectively we are committed to supporting policy and programs to increase the amount of foodservice packaging diverted from disposal through enhanced recycling, composting and recovery efforts. We offer the following comments on the informal draft regulatory text and look forward to working with Cal Recycle to ensure the implementing regulations reflect the intent of the enacting statute.

Section II. Definitions

Subsection (f): Cal Recycle should not unnecessarily limit new, innovative technologies that could be considered “chemical recycling” as a means to recover foodservice packaging material. A recent report by the Closed Loop Fund¹ highlights the opportunity to utilize new technologies to create new market opportunities for material that otherwise would be destined for disposal.

¹ http://www.closedlooppartners.com/wp-content/uploads/2019/04/CLP_Circular_Supply_Chains_for_Plastics.pdf

California Public Resources Code § 42370.2(d)(5) states the Department must consider, among other things “[w]hether the food service packaging material regularly becomes feedstock that is used in the production of new products” when determining if a type of foodservice packaging is recyclable. The statute does not restrict the type of products to resin. To be consistent with the statute, Cal Recycle should define “chemical recycling” as “the act of de-polymerization for the purposes of manufacturing feedstock that is used in the production of new products.”

Subsection (p): Cal Recycle should clarify the list will be updated on a five-year basis, to coincide with the five-year cycle in Section VIII, subsection (c).

Section IV. Recyclable Foodservice Packaging Criteria

Subsection (a)(1) states that in order for a foodservice item to be considered recyclable, it must be collected a minimum of once per week. This language is overly restrictive as many communities provide recycling services on a twice-a-month basis. For example, the City of Sacramento would not meet the requirement outlined in the regulations as drafted.² Instead, this Subsection should specify a minimum of twice per month and provide additional flexibility for rural areas that may not have access to regular collection/recycling programs.

Cal Recycle should revise Subsection (a)(3) to read “The foodservice packaging item is processed into an end product or feedstock and is offered for sale to a commodities market or provided to a manufacturer pursuant to a contract or formal agreement,” consistent with the statute.

Section VI. Foodservice Packaging Evaluation Process

Section VI should be deleted because it is well beyond the scope of the enacting statute. As drafted, this section lacks strong scientific foundation as it arbitrarily identifies specific

² <https://www.cityofsacramento.org/Public-Works/RSW/Collection-Services/Recycling>

chemistries that may be used as a basis for restricting certain packaging types, inappropriately seeks to utilize the Proposition 65 list as a basis for regulation, and does not take into account the US Food and Drug Administration's (FDA) regulation of food contact substances.

Before a chemical used in food packaging (termed a "food contact substance") can be sold or distributed in commerce, it must be reviewed by FDA to determine whether there is sufficient scientific data to demonstrate that the substance is safe for its intended use in packaging (based on a standard of "reasonable certainty of no harm").³ In order to demonstrate that a food contact substance is safe for its intended use, FDA requires submission of extensive upfront test data regarding chemical composition, migration levels, and toxicity.⁴ FDA can withdraw its approval for a food contact substance at any time if available data no longer demonstrate that the food contact substance is safe for its intended use.⁵

However, if Section VI is not deleted, it should be revised as follows. Subsection (b), which specifies the foodservice packaging must not be banned for sale in an undetermined number of local jurisdictions, should be deleted. Local ordinances prohibiting certain types of foodservice packaging, such as polystyrene foam products, often are enacted without any requirements that likely replacement products are actually recycled or composted. These ordinances also have little to no impact on reducing overall litter or trash and, as stated by the State Water Resources Control Board, product bans would not assist in compliance with the Board's Statewide Trash Policy.⁶ In its final report, the Board stated:

Other types of product bans enacted by an ordinance, such as take-out items, may involve a substitution of the banned item. Mere substitution would not

³ See 21 U.S.C. § 348(h)(1).

⁴ See 21 C.F.R. §170.101; FDA Form 3480 (available at: <http://www.fda.gov/downloads/AboutFDA/ReportsManualsForms/Forms/ucm076880.pdf>)

⁵ See 21 C.F.R. §170.105(a)

⁶ https://www.waterboards.ca.gov/water_issues/programs/trash_control/docs/01_final_sed.pdf



Plastics Food Service Packaging Group

result in reduced trash generation if such product substitution would be discarded in the same manner as the banned item. Any such product ban enacted by an ordinance that would not reduce trash would not assist in achieving compliance.

The intent of SB 1335 is to establish a foundation for determining the recyclability and compostability of foodservice packaging based on real world data and clear criteria. Including an arbitrary number of local packaging bans is inconsistent with this intent.

In subsection (b)(1) of the “Recyclable” criteria of the Phase 2 Evaluation, the criteria used for determining whether materials are recyclable incorrectly relies upon the percentage of Cal Recycle’s Recycling and Disposal Reporting System (RDRS). However, Public Resources Code § 42370.2(d)(1) states the Department must consider “(1) [w]hether the type of foodservice packaging is eligible to be labeled as ‘recyclable’ in accordance with the uniform standards contained in Article 7 (commencing with Section 17580) of Chapter 1 of Part 3 of Division 7 of the Business and Professions Code” when determining if a type of food service packaging is recyclable. The statute’s definition of recyclable or compostable uses percentage of the population consistent with the Federal Trade Commission’s Green Guides.⁷ Therefore, subsection (b)(1) of Cal Recycle’s Phase 2 Evaluation criteria should utilize percentage of the population based metrics for recyclability and compostability.

In addition, the level at which reporting entities should report an item as recyclable to the Department and the Disposal Reporting System should not be mandated by the Department. Rather, the buyer of the bale should determine whether the bale is recyclable, allowing the market to determine what is recyclable or reclaimable, and allowing for advancements in recycling technologies and infrastructure. Subsection (b)(1)(B), the verified component of a

⁷ <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-green-guides/greenguides.pdf>



Plastics Food Service
Packaging Group

mixed material bale requirement, should be deleted because it is irrelevant as long as the material is included in a bale for recycling and is not considered a contaminant.

In addition to sorting by MRFs, the regulation should allow secondary MRF sortation to meet the criteria. Cal Recycle should revise Section VI, Phase 2, Recyclable, Subsection (b)(1) to add “the foodservice packaging item is sorted by hand, by an optical sorter, transferred to a secondary MRF or other method and baled for transfer to a recycling facility as reported via Cal Recycle Recycling and Disposal Reporting System (RDRS), by at least XX percent of reporting entities.”

In Subsection (c)(1) of the “Compostable” criteria, a minimum percentage of public/private aerobic compost facilities processing post-consumer food waste and food-soiled paper must be 60% of the population consistent with the statutory requirement that the Department consider “[w]hether the type of food service packaging is eligible to be labeled as ‘compostable’ in accordance with the uniform standards contained in Article 7 (commencing with Section 17580) of Chapter 1 of Part 3 of Division 7 of the Business and Professions Code,” which is the Federal Trade Commission’s requirement of 60 percent of the population. Compostable foodservice ware must be held to the same standard to avoid requiring the use of compostable foodservice where no composting collection exists.

Section VII. Foodservice Facilities

In Subsection (a)(3)(A), the maximum amount of time a contract may extend beyond the publication or modification date of the list should be 60 months. This timeframe coincides with the Department’s updates to the List of Approved Types of Foodservice Packaging under Section VIII.

Section VIII. List of Approved Types of Foodservice Packaging

Subsection (e) provides a process for manufacturers and distributors to seek inclusion on the List of Approved Types of Foodservice Packaging; however, the draft regulatory text does



Plastics Food Service
Packaging Group

not include a deadline by which the Department is required to respond to the inclusion request. The Department should add a requirement that it inform the manufacturer or distributor of its decision within 90 days, giving the Department time to thoroughly review the manufacturer's or distributor's application while ensuring a timely response to the manufacturer or distributor of their packaging materials inclusion on the list of acceptable foodservice ware.

Section IX. Record Keeping Requirements

Subsection (a) would stipulate how long a foodservice facility has to respond to a data inquiry from the Department. An appropriate timeframe would be 90 days. For vendors with contracts at multiple state agencies, 90 days provides the vendor with enough time to collate data from several state sites to respond to a multi-site audit by the Department. Subsection (b) should also provide a 90-day deadline to respond to the Department's information request, allowing for information to be collated from multiple sites, contracts, and an extended timeframe.

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PFPG appreciates the opportunity to submit these comments and looks forward to working with Cal Recycle and other stakeholders in developing the SB 1335 implementing regulations. Should you have any questions, please do not hesitate to contact me at (202) 642-9174 or Omar_Terrie@americanchemistry.com.

Respectfully Submitted,

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