



FOODSERVICE PACKAGING
INSTITUTE®

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House Environment and Transportation Committee
Room 251
House Office Building
Annapolis, Maryland 21401

Written Testimony: HB 1239 - Environment - Plastic and Glass Products - Postconsumer Recycled Content Program

Dear House Environment and Transportation Committee Members,

Thank you for the opportunity to share our feedback concerning HB 1239 - *Environment - Plastic and Glass Products - Postconsumer Recycled Content Program* (HB 1239), which we oppose unless amended. Please note our comments focus only on the targets related to rigid plastic containers for food and beverage, and in particular foodservice packaging.

Founded in 1933, the Foodservice Packaging Institute (FPI) is the leading authority on foodservice packaging in North America. FPI supports the responsible use of all foodservice packaging, while advocating for an open and fair marketplace for all materials. Our members include: raw material and machinery suppliers, manufacturers, distributors and purchasers of foodservice packaging. FPI represents approximately 90 percent of the industry.

The foodservice packaging industry is committed to reducing the impact of its products on the environment and is dedicated to increasing their recovery. FPI has several special interest groups that bring together the supply chain to develop and promote economically viable and sustainable recovery solutions for foodservice packaging. These special interest groups include the Paper Recovery Alliance, Plastic Recovery Group, Paper Cup Alliance and Foam Recycling Coalition. More information on these groups and their efforts can be found [here](#).

In principle, FPI fully supports policies and programs that result in more recycling and/or composting of foodservice packaging. However, while the intent of HB 1239 may be to increase the recycling and recovery of plastics (and glass) via post-consumer recycled content (PCR) requirements, we are concerned that the proposed approach does not reflect requirements and market realities for foodservice packaging, and sets unachievable targets.

There are a number of considerations that need to be taken into account when considering the addition of PCR resins to rigid plastic foodservice packaging, including U.S. Food & Drug Administration (FDA) requirements, supply of PCR resins, and product specifications and constraints.

According to the FDA, PCR resins for food-contact packaging must meet the same specifications as virgin plastic resin. In this regard, all food-contact packaging manufacturers have to follow strict FDA guidelines for all manufacturing processes and materials used in the making of food-contact packaging as per the [Guidance for Industry: Use of Recycled Plastics in Food Packaging \(Chemistry Considerations\)](#).

Of note, food-contact materials used in the manufacture of foodservice packaging are required to obtain a letter of no objection (LNO) from the FDA, which extends to PCR resins. The amount of PCR resin types available for food-contact applications that meet FDA requirements has historically been at lower supplies and varies between resin types. Further, an LNO for a certain resin and product does not indicate that all foodservice packaging of that resin type is approved for PCR content; the LNO is specific to a manufacturer and the defined application.

On the supply side, as various food and beverage companies make commitments to use PCR at higher rates, for an increasing number of products, the availability of material dwindles. There is currently not enough PCR resin in the marketplace to meet the voluntary demand driven by retailers. In fact, a recent study by [AMERIPEN](#) which analyzed U.S. company recycled content goals against available supply, states that *“domestic supply and reprocessing capacity for plastic resin concludes that based upon demand stated through public commitments for plastic PCR, the U.S. currently lacks the available supply and, in some cases, domestic reclamation capacity to meet those goals”*.

It is also important to note that, although PCR resins and virgin resins must adhere to the same FDA requirements, the use of PCR impacts rigid plastic foodservice packaging containers to differing extents. As PCR resins are increased, factors like rigidity can be affected. Certain packaging container shapes may be more easily manufactured using PCR resins at higher percentages, while others cannot as easily utilize the same percentage, making it difficult to uniformly assign minimum content requirements across all products and resins.

It is FPI’s view that HB 1239 should be amended to exempt rigid plastic containers for food and beverage. However, should these materials continue to be included, we recommend they be considered a separate category (food-contact vs. nonfood-contact), with a five-year exemption, where PCR targets may need to be resin and product specific.

Additionally, we recommend amendments to the waiver language to allow for exceptions where compliance with the regulations set forth by the United States Food and Drug Administration prevents its inclusion, where there is lack of supply and where it is not technically feasible.

As drafted HB 1239, does not reflect the realities of the foodservice packaging industry. FPI encourages the expansion of recycling and composting infrastructure to improve the recovery of all foodservice packaging and supports the increased use of PCR, as allowed by FDA approvals, market availability and technological feasibility.

For the reasons outlined above, we are opposed to HB 1239, unless amended. FPI would be pleased to discuss these comments with you further, and we thank you for your consideration of this feedback.

Sincerely,



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