



March 2, 2020

Hazardous Waste and Toxics Reduction Program
Washington State Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7696

Submitted via Safer Products for Washington Comment Portal

**Re: Comments on Safer Products for Washington Draft Report on
Priority Consumer Products**

Dear Sir or Madam:

The Can Manufacturers Institute (CMI)¹ is pleased to submit these comments to the Washington Department of Ecology (DOE) in response to its request for input from stakeholders regarding its January 2020 report, “Priority Consumer Products Draft Report to the Legislature - Safer Products for Washington Implementation Phase 2.” The report identifies draft priority products that are believed to be significant sources of the five priority chemical classes identified by the Washington State Legislature. Of interest to CMI is the report’s identification of food cans as a significant exposure source for the priority chemical class of phenolic compounds - bisphenols.

As detailed further below and in the appended list of publications, since 2018, can manufacturers have largely halted use and production of food cans using bisphenol A (BPA) linings and prioritized the development and use of alternative can linings that are based on polymers that include acrylic, polyester and/or non-BPA epoxy. Much of the data sources referenced in the draft report related to potential exposure of bisphenols from canned food were prior to this industry shift. The values from those older studies are not representative of today’s commercial market. CMI requests an opportunity to meet with DOE and Washington State Department of Health staff to provide more information on this important trend in our industry and how it impacts the draft report’s conclusion regarding food packaging as a significant source of bisphenols in the future.

¹ The Can Manufacturers Institute (CMI) is the national trade association of the metal and composite can manufacturing industry and its suppliers in the United States. The can industry accounts for the annual domestic production of approximately 119 billion food, beverage and general line cans; which employs more than 28,000 people with plants in 33 states, Puerto Rico and American Samoa; and generates about \$17.8 billion in direct economic activity. CMI members are committed to providing safe, nutritious and refreshing canned food and beverages to consumers.

While we realize this report is only Phase 2 of a multi-step process, we also urge DOE and the Department of Health to remain cognizant that potential regulatory actions impacting canned foods could conceivably result in consumer confusion and burdening populations that rely on canned food exclusively as their source of a nutritionally-balanced diet. To that end, CMI's comments also discuss 1) the significant role of canned goods in the U.S. and state economies; 2) the benefit of canned food and beverages to Washington's commitment to environmental sustainability; and 3) how the U.S. Food and Drug Administration's (FDA) comprehensive regulatory scheme protects the safety of Washingtonians, as it does all U.S. consumers, with respect to potential migration of substances from food packaging.

Manufacturing, Market Presence and Supply Chain

BPA was once widely used in the manufacture of epoxy resins that made protective can linings for metal food and beverage containers. BPA-based epoxy resins are effective at both extending the shelf-life of the food and protecting against fatal bacterial contamination. The high-heat canning process prevents the growth of microorganisms that cause foodborne illnesses, and is one of the safest processes for preserving food. While 128,000 Americans are hospitalized annually with foodborne illnesses, there has not been a single reported incidence of foodborne illness from the failure of metal packaging in more than 40 years, even as we have consumed trillions of cans of food.

The industry does not take lightly the critical role of can linings for food safety. Although FDA's clear position is that BPA is safe for its approved uses in food packaging,² as a result of consumer demand, can manufacturers have focused on replacing BPA linings in food cans with alternative can linings. Manufacturers have been fully engaged with FDA in creating the next generation linings to replace BPA-based epoxy resins that perform just as well or better at preserving the quality, flavor and freshness of food.

In its draft report and during the February 19, 2020, webinar, DOE implied that other bisphenols, specifically bisphenol S (BPS), can be substituted for BPA. To be clear, the metal can industry does not use BPS as a "drop-in" replacement for BPA in next generation linings. The new can linings are completely different from their BPA-based epoxy predecessors.

Next generation can linings may consist of polyester, acrylic or non-BPA based epoxy resins. New linings are formulated with carefully chosen components intended to maximize technical performance as a strong barrier between the packaging and food. The industry's work to develop

² In 2013, FDA amended its regulations to no longer provide for the use of BPA-based epoxy resins as coatings in packaging for canned infant formula because FDA had data available indicating that industry had abandoned this use of BPA. An amendment of the food additive regulations based on abandonment is not a safety determination, but an acknowledgment from FDA that the regulatory approval is no longer necessary because the use has been permanently and completely abandoned. <https://www.fda.gov/food/food-additives-petitions/bisphenol-bpa-use-food-contact-application#regulations>.



other safe and effective non-BPA alternative can linings was comprehensive and lengthy, with each phase of safety and efficacy testing, commercial scalability, and attainment of federal regulatory compliance spanning many years. We look forward to an opportunity to share the status of our members' efforts with you.

Role of Canned Goods in the Economy and the Environment

The food and beverage metal can supply chain bridges multiple industry tiers from resin and additive producers, to can lining formulators, to the metal can makers. CMI's 2017-2018 *Annual Report*³ provides information on total metal cans shipped⁴ and the various market sectors and product groups represented by the reported figures. The report establishes that food and beverage packaging is the dominant sector for the metal can industry, with major categories being alcoholic and non-alcoholic beverages and, in the food space, coffee, fruit, vegetables, soups, and pet food. Participants involved in the 2017-2018 *Annual Report* manufacture more than 98 percent of metal cans transported in the United States.

Can manufacturers operate throughout the United States, including Washington, and play a critical role in Washington's food economy. In fact, while the manufacturing, processing, filling and distribution of canned foods and beverages occurs on a national level, the can industry generates over \$1 billion in economic activity in Washington alone and employs over 350 Washingtonians.

Can manufacturers also lead the charge as the most commonly recycled food and beverage containers in the U.S. and play an integral role in Washington State's efforts to reduce plastic waste. CMI members produce cans with abundant and recycled materials, minimizing the depletion of natural resources, and the metal can is infinitely recyclable.TM Every minute, a staggering 105,784 aluminum cans and 20,000 steel cans are recycled.⁵ We note that the report's reference to alternative packaging. "(o)ther food packaging options include glass, lined cardboard, and PET plastic containers," do not offer the same type of sustainability and recyclability that metal cans do.

Providing the longest shelf-life of any package, food cans help to significantly offset food waste, which is the largest component of the landfill stream. Plus, the trimmings from canned food, such as cores and peels, are used to feed livestock and create compost for healthier soil. Moreover, the canning process for foods locks in high quality nutrients, and at a time when fewer and fewer people are meeting their dietary nutrient requirements, increasing intake of canned foods is a convenient, nutritious way to achieve a balanced diet. Can linings are critical to achieving the nutrient lock-in benefit that cans provide.

³ <http://www.cancentral.com/sites/cancentral.com/files/public-documents/2017-2018%20CMI%20Annual%20Report.pdf>.

⁴ This includes U.S. and Canadian shipments.

⁵ <http://www.cancentral.com/recycling-sustainability/recycling>.

DOE's Actions may Eliminate Access to Nutritious and Affordable Food for Vulnerable and Less Affluent Populations

Any regulatory action by DOE that may significantly increase the cost of or restrict access to canned food undermines the goals of the United States Congress' Food Additive Amendments and federal food contact regulations to ensure that FDA is responsible and accountable for the safety of and accessibility to our nation's food supply. Indeed, FDA is responsible for not just consumer safety, but the well-being of consumers. While FDA works diligently to ensure our food is safe, especially with respect to canned food linings, DOE, by pursuing this regulatory path, would be unconstrained by any legal consequences, and could not be held responsible by citizens outside of Washington, for the negative effects its actions would have on the supply of affordable, safe, nutritious canned food.

Canned food provides key benefits to consumers across America. For example, canned vegetables can cost up to 50 percent less than frozen and 20 percent less than fresh with virtually no sacrifice to the nutrition profile. Therefore, an adult can prepare a week's worth of healthy meals largely consisting of canned foods for \$8.29 a day, on average, which falls within the USDA's Moderate Food Cost Plan. For the 42.2 million Americans that live in food insecure households, including 29.1 million adults and 13.1 million children, this kind of access to affordable nutrition is vital. Especially for those 19 million Americans that live in food deserts, being able to store canned food is incredibly important. Note that in an average week, Americans who receive food assistance through the Supplemental Nutrition Assistance Program (SNAP), and Women, Infant and Children Programs (WIC) rely on access to 7.1 cans of fruits and vegetables in an average week.

DOE should act judiciously against initiating a course of action that prioritizes unproven claims regarding product-chemical combinations (i.e., certain can linings) already deemed safe by the federal government over documented benefits to millions of food insecure Americans.

The Safer Products for Washington Program Could be Duplicative of FDA's Federal Paradigm with Respect to Ensuring Food Packaging Safety

FDA is the gold standard for evaluating the safety of packaging. For this reason, businesses and regulatory authorities from all over the globe look to the FDA to guide the innovation pipeline of new substances that can be used for linings. Duplicative regulatory burdens that coincide and frustrate implementation of federal standards would be costly to can manufacturers, as well as downstream customers and consumers, and could affect the availability of canned goods, which could in turn impact the diet of those depending on canned goods as a source of cost-effective, healthy nutrients.

State regulation of food contact materials may conflict with the Federal Food, Drug, and Cosmetic Act (FD&C Act) not only by undermining the goals set by Congress when it enacted



the Food Additives Amendment of 1958,⁶ but also by imposing, on a substance-by-substance basis, regulatory responses like use restrictions or bans that could be directly contrary to FDA requirements.

Prior to their use in commerce, food contact materials, including can linings, are subject to a systemic, science-based review process, which assesses potential exposures to individual substances used and ensures that the levels are sufficiently protective of human health and the environment. FDA's evaluations consider relevant toxicity endpoints for low level exposures to food packaging substances, including the potential for migrants to have endocrine-active effects, neurotoxicity, and/or reproductive or developmental toxicity. FDA has designated an entire division within the Office of Food Additive Safety to the Food Contact Notification Program, which is the primary means for obtaining FDA premarket authorization for new food packaging materials.

The regulation of food contact materials was established by Congress as part of the 1958 Food Additives Amendment. This amendment requires FDA to regulate food contact materials in the same manner as substances intentionally added to food as ingredients (to the extent that there is significant migration or exposure to the components of the packaging). More specifically, Section 201(f) of the FD&C Act defines food to mean "articles used for food or drink for man or other animals," including "articles used for components of any such article" (i.e., food additives). The FD&C Act further defines a "food additive" as a substance that is reasonably expected to become a component of food under the conditions of its intended use. Thus, to the extent that there is significant migration,⁷ FDA regulates a food contact material in the same manner as any substance that is directly and intentionally added to food.

FDA's review process ensures that food packaging in all 50 states is safe. The Agency's safety determinations are based on the best available, peer-reviewed, and good laboratory practice compliant scientific studies. FDA's evaluation for food packaging specifically concerns low level dietary exposures in the human body. FDA conducts specific risk assessments of packaging materials for sensitive populations, like infants.⁸

Food contact materials are already carefully designed to be inert and to preserve the technical quality and purity of the packaged food. They are selected for their technical properties, which protect the food from chemical, microbiological and physical contamination. FDA's comprehensive risk-based approach to the regulation of food contact materials assures any human health effects and the environmental impact of new and existing food contact materials are negligible, while maintaining the continuity of the packaging supply chain and allowing for

⁶ 21 U.S.C. 348, *et seq.*

⁷ The FD&C Act provides an exemption from regulation as a food additive for substances that are properly considered to Generally Recognized as Safe (GRAS) for their intended use.

⁸ <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/guidance-industry-preparation-food-contact-notifications-food-contact-substances-contact-infant>.



innovative technologies to come to market as soon as they have been adequately studied. Any action by Washington to regulate food contact materials would frustrate FDA's comprehensive regulatory scheme, and leave can manufacturers unaware of how to comply with FDA requirements as well as avoid bans or restrictions by Washington law.

We appreciate your consideration of these comments in the deliberation of your final report. We respectfully request an opportunity to meet in person in March or April to discuss further the ongoing trend of new can linings and the potential impact on the Washington State program. Please contact me at RBudway@cancentral.com with potential meeting dates and times.

Sincerely,

A handwritten signature in black ink that reads "Robert Budway". The signature is written in a cursive style with a long, sweeping flourish at the end.

Robert Budway
President
Can Manufacturers Institute



References:

[Food Dive](#) “The Evolution of Food Cans: An Innovation Journey”

[Packaging Digest](#) “Most Food Cans No Longer Use BPA in Their Linings”

[Packaging Strategies](#) “Seeing Is Believing: A Farm Can Tour”