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Federal Ministry of Food, Agriculture and Consumer Protection  
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**RE: 22nd Regulation Amending the Commodities Regulation, draft of May 16, 2013**

Dear Dr. Galle Hoffmann and Ms. Adler,

Graphic Packaging International, Inc., headquartered in Atlanta, Georgia, U.S.A. and with operations in Bremen, Germany, is a leading, global provider of paper-based, packaging solutions for a wide variety of food, beverage and other consumer products companies. It is a \$4.2 billion company and is one of the largest manufacturers of folding cartons, unbleached paperboard, coated recycle board, flexible packaging, microwave packaging, heat-transfer labels and machinery. We respectively submit the following comments regarding the recent Mineral Oil draft regulation.

On May 16, 2013, the German Federal Ministry of Food, Agriculture and Consumer Protection (BMELV) released a second draft regulation that would prohibit migration of mineral oil aromatic hydrocarbons (MOAH) with a carbon chain length in the range of C10-C25 to food from recycled paper-based food contact packaging. The draft regulation states that these restrictions are appropriate because the substances come from mineral oils that may be present in recycled paper.

We are concerned about BMELV taking action in this area on a precautionary basis, without adequate toxicology and risk data. BMELV's action could negatively affect the ability of global producers to supply paper-based food packaging to German packaged-food producers and the wider European market. The regulation could become a de facto commercial marketplace standard given the globalized nature of today's food marketplace.

We have the following specific comments on the draft regulation proposed by BMELV:

**No comprehensive risk assessment:** There is no comprehensive assessment in existence on the effects of human exposure to traces of mineral oil hydrocarbons (MOH). The European Food Safety Authority (EFSA) issued a scientific opinion in June 2012 in response to questions about the risk related to the occurrence and risk of consumer exposure to MOH. Due to data limitations, EFSA was unable to draw firm conclusions on the risk associated with MOH and concluded that it was inappropriate to establish guidance for MOH exposure at this time.

**Overly-broad definition of scope of paper-based food contact packaging:** The proposed regulation intends to apply to recycled paper-based packaging expected to come directly into contact with food or to transfer its constituencies to food under normal or foreseeable conditions of use. We understand this means that the regulation could include within its scope not only packaging in immediate contact with food such as folded boxes, but also corrugated boxes used for transport packaging. For example, a transport corrugated box for a primary food packaging containing a functional barrier is not considered a food contact material, and therefore, not covered by the regulation but a transport corrugated box for a primary box containing food that does not have a functional barrier is a food contact material and is covered by the regulation. This creates great uncertainty in the packaging and transport supply chain since a producer of transport corrugated boxes is unlikely to know, and cannot control, the corrugated box end use by the food packer.

The overly broad scope definition also undermines the integrity of the current recycling chain by bringing into question all recycled paper-based food contact packaging materials, even packaging materials with minimum or no amounts of recycled fiber or recycled fiber free of mineral oil. Also, this regulation may have a chilling effect in the marketplace that could impact the paper-based packaging industry as a whole. In particular, it may negatively impact the use of recycled fiber in paper-based packaging. Recovering and reusing fiber from paper-based packaging is an environmental success story in Germany and in many other countries. This proposed regulation could reverse decades of progress.

**Not possible to determine the source of MOAH migration:** There are many sources of MOAH migration other than the potential migration from recycled paper-based food contact packaging. The 2012 EFSA report identifies some of these, including lubricants used on the food harvesting or processing machinery, release agents in bakery applications, dust control agents used to reduce the risk of explosions during transport and storage of grains and rice, and environmental sources such as particulate deposits from exhausts or smoke. The manufacturer of the paper-based packaging material does not have control over these sources of potential MOAH migration to food.

The difficulty of identifying and addressing the source of mineral oil migration to food is illustrated by last year's report by the German organization Stiftung Warentest that mineral oil residues were found in the chocolates of advent calendars and identified recycled paper packaging as the main source. However, subsequent analysis by Darmstadt University of the original calendars found that almost all the calendars tested were made of virgin fiber. The University noted that additional testing was needed to identify other potential sources of mineral oil hydrocarbons migration to food.

No clear and unambiguous definition of MOAH: The proposal fails to provide a clear and unambiguous scientific definition for MOAH. The term appears to have been coined in the scientific literature but has never been precisely defined in a scientific manner suitable for regulatory purposes.

**Lack of specific measurement method:** No testing or calculation method is referenced in the draft regulation, so implementation of the regulation would lack the certainty needed. A regulation should include both the standard and the method for demonstration of compliance with the standard. Without a specific, validated analytical protocol it is impossible to determine how one would assure “no migration” nor is there a clear means to develop the information necessary to inform the food producer how to assure they would be in compliance. The EFSA report clearly indicated that food could become contaminated from sources other than recycled paper based food packaging. There is no way to distinguish the source(s) of the hydrocarbons by measuring them in food thus making enforcement of a packaging regulation virtually impossible. A repeatable and reproducible test method should be established well before any rule is enacted that relies on the method.

The “no migration” standard, especially in the absence of a defined test method and detection limit, will create a long-term moving target for establishing compliance. If products are tested in 2013 and no MOAH is detected, will those products have to be re-tested if an advanced, more sensitive test method is developed in future years? It is possible that new analytical methods will be developed, and that technological advancements will lead to lower detection limits for existing test methods in the future. Unless a “safe harbor” level is established or a maximum allowable LDL is specified, this will make both compliance with and enforcement of the ban more confusing and difficult going forward.

**Unworkable notification obligation:** Our understanding is that the proposed regulation would obligate the producer of the corrugated box transport packaging to warn the customer/food producer that the user must ensure that MOAH in the range of C10-C25 does not migrate to food. This obligation is waived if the corrugated transport box is not considered to be a food contact material under the regulation (i.e., if the food packaging includes a functional barrier that prevents the migration of MOAH.) This requirement is not workable in principle because the producer of the recycled corrugated transport packaging cannot control whether or how the corrugated transport packaging material will come into direct or indirect contact with food at all marketing and delivery stages or the type of functional barrier that the food producer will use. Moreover, the producer of the corrugated box transport packaging should not have a legal obligation to determine what type of packaging the food producer should be purchasing or how that transport packaging should be used.

**No delineation of suitable functional barriers:** The proposal indicates that a functional barrier (inner bag or coating) is usually required to rule out the transmission of MOAH from the packaging to food. While the use of a functional barrier can be an efficient way to prevent the migration of MOAH to food, it does not guarantee compliance with the intent of the regulation since the efficacy of a functional barrier depends on the material type, food type and storage conditions. Moreover, it will not address

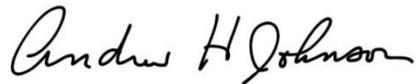
the presence of pre-existing MOAH originating from non-packaging sources or cross-contamination. The presence of functional barriers also can make it difficult to recycle food packaging cartons.

The health and safety of consumers is the number one priority for the paper and packaging industry and that is why it is taking this issue very seriously. However, the draft regulation has vague provisions that raise concerns about the paper-based packaging industry without scientific evidence of the effects of mineral oils on human health and whether taking measures to restrict the migration of mineral oils from paper-based packaging will have a meaningful effect on the presence of mineral oils in food.

Recycling in the paper industry is a well recognized way of ensuring the sustainability of natural resources and as a way of reducing the increasing levels of municipal solid waste. Food packaging, including food packaging manufactured from recycled fiber, has positive environmental and economic benefit.

We hope that BMELV will take into consideration the scientific and technological limitations of the draft regulation and not take steps that will undermine the paper-based packaging sector's high and unique contribution to the recycling society.

Sincerely,

A handwritten signature in cursive script that reads "Andrew H. Johnson".

Andrew H Johnson