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PERSPECTIVE

New laws in California and beyond on PFAS and consumer products

By Will Wagner, Andrew Rambo and Judah Prero

The California Legislature has recently enacted a sweeping new set of laws that prohibit food packaging, cookware and children's products from containing intentional per- and polyfluoroalkyl substances, aka "PFAS," and prohibit certain green claims on products that contain PFAS. These laws are in addition to California's already onerous regulation of some PFAS under Proposition 65 and other statutes.

PFAS are a category of as many as thousands of fluorinated organic chemicals that may be used in consumer products or packaging for a variety of uses. Certain PFAS are sometimes referred to as "forever chemicals" because they bioaccumulate and are long lasting in the environment. Regulators at the federal and state levels have been considering regulation of certain PFAS for years due to these properties, and potential toxic effects in humans, but California's recent legislative activity is notable because of its broad nature and affect it will have on products sold to consumers in the country's largest state.

California Laws Passed in 2021

Assembly Bill 1200 limits or prohibits the use of PFAS in food packaging and cookware. Starting January 1, 2023, food

packaging comprised of paper, paperboard or other plant fibers containing "regulated PFAS" is prohibited. "Regulated PFAS" is PFAS that has either (1) been intentionally added and has a functional or technical effect in a product, or (2) is in a product greater or equal to 100 parts per million (ppm) as measured in total organic fluorine. AB 1200 does not include a sell-through exception, so food companies will have to immediately begin assessment of food packaging to ensure they meet the January 1, 2023 deadline.

Beginning on January 1, 2023, for internet disclosures and January 1, 2024, for product labels, cookware products must disclose the presence of intentionally added chemicals that appear on the

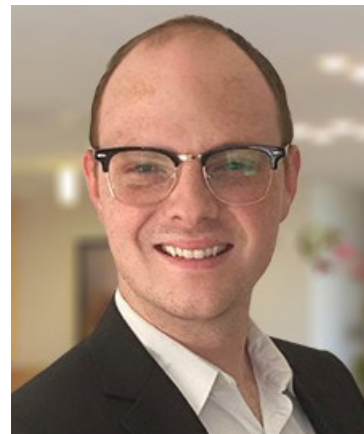
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Department of Toxic Substances Control's Candidate Chemicals List under its green chemistry regulations, which includes approximately 2,700 entries, one of which is PFAS. Thus, the cookware section of AB 1200 regulates much more than just PFAS, and it is not limited to "regulated PFAS," meaning that PFAS is regulated when intentionally added, even if it's present at under 100 ppm.

If a regulated chemical is present in the handle or the surface of the cookware, the law's warning requirements are triggered. Companies will have to act promptly to comply with the internet disclosure rules that become effect on January 1, 2023, which are relatively onerous. While companies are provided

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more leeway to update product labels — until 2024 — the labeling requirements are substantial and will require a long lead time. Cookware companies would be wise to begin compliance planning immediately concerning AB 1200.

AB 652, also passed in the 2021 session, regulates the use of PFAS in products designed for use by infants and children under 12 (coined "juvenile products"), including bassinets, booster seats, changing mats and infant carriers. Effective July 1, 2023, a manufacturer is prohibited from selling or distributing any new juvenile product that contains regulated PFAS, which includes intentionally added PFAS or PFAS at over 100 ppm as measured in total organic fluorine.

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Finally, in largely overlooked statutory amendments, AB 1201 prohibits the use of “compostable” or similar green marketing claims, and SB 343 prohibits the use of the chasing arrows recycling symbol and some other recyclability claims, when PFAS is intentionally added to a product or a product contains PFAS at greater than 100 ppm, as measured in total organic fluorine.

Other Notable Laws and Regulations

Outside of the 2021 legislative session, there are several other PFAS-oriented laws and regulations that products companies should be aware of. First, the Toxic Free Cosmetic Act (AB 2762, 2020 session), prohibits the sale of cosmetic products containing any of 24 intentionally

added chemicals, including 13 PFAS chemicals — most notable perfluorooctanoic acid and perfluorooctane sulfonate (“PFOA” and “PFOS”). A cosmetic product will not be in violation of this law if it contains a “technically unavoidable trace quantity” of any listed chemical if the quantity stems from impurities of ingredients, the manufacturing process, storage, or migration from packaging.

There has also been significant regulatory activity under California’s Proposition 65 related to PFAS. PFOA and PFOS were listed as reproductive toxicants under Proposition 65 in 2017. The Office of Environmental Health Hazard Assessment is now also considering the addition of PFOA and PFOS as carcinogens, and is considering the listing of

some other PFAS as reproductive toxicants as well. It is anticipated that the agency will focus on the regulation of PFAS under Proposition 65 in coming years.

Regulation by Other States

A number of states aside from California have enacted PFAS-focused laws over the past year. Maine’s prohibitions are the most sweeping: All products containing intentionally added PFAS will be banned as of January 1, 2030, unless the Maine Department of Environmental Protection determines that the use of PFAS is a “currently unavoidable use.” The law also requires manufacturer notifications regarding products that contain intentionally added PFAS, it prohibits the sale of carpets and rugs and fabric

treatments containing intentionally added PFAS, and authorizes Maine DEP to prohibit others categories or uses of products containing intentionally added PFAS in advance of the 2030 ban.

A Connecticut law bars manufacturers and distributors from offering for sale or for promotion purposes food packages to which PFAS has been intentionally introduced as of December 2023. Maryland has banned the manufacture, sale, delivery, holding, or offering for sale of cosmetic products containing 13 PFAS beginning on January 1, 2025. Vermont has banned PFAS-containing rugs, carpets, stain and waterproofing treatments and ski wax as of July 1, 2023. New York has banned food packaging with intentionally added PFAS as of December 31, 2022.