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## AB 1200: New PFAS law and its imminent impact on the food industry

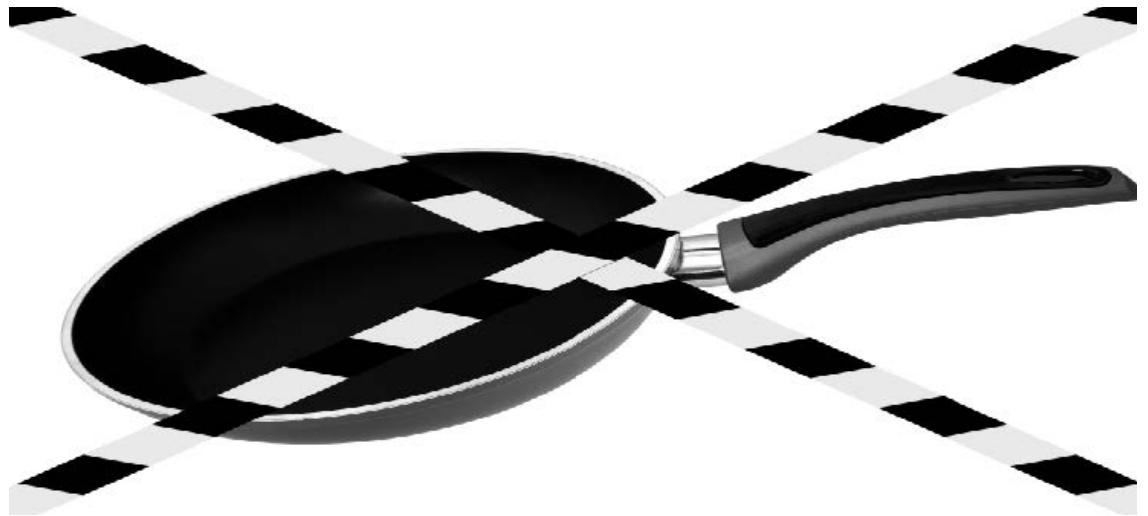
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California has a new PFAS law that affects all businesses involved in the sale of food packaging and cookware, including restaurants. All California restaurants must come into compliance with the food packaging by January 1, 2023 and the cookware requirements by January 1, 2024.

PFAS are a class of human-made fluorinated organic chemicals that share one common trait — highly stable carbon-fluorine bonds that make them or their final degradation products extremely persistent in the environment. PFAS have been used extensively for decades in surface coating and protectant formulations for their unique ability to reduce the surface tension of liquids, including in consumer products designed to be water-proof or water resistant, grease and stain-resistant, or non-stick. Teflon is one of the older but most well-known of these non-stick chemicals, the main chemical of which is currently polytetrafluoroethylene, a polymer form of PFAS.

A route of exposure to PFAS is through ingestion of contaminated food or liquid (accounting for up to half of total exposure), as well as through inhalation and ingestion of contaminated indoor air and dust. Thus, the focus of lawmakers on food packaging and cookware.

The new law, Assembly Bill 1200, “prohibit[s] ... any person from distributing, selling, or offering for sale in the state any food packaging that contains regulated perfluoroalkyl and polyfluoroalkyl substances or PFAS.” Similarly, the law bans the sale and distribution of cookware that contains cer-



tain PFAS chemicals in the handle of the product or in any product surface that comes into contact with food, foodstuffs, or beverages unless new labeling and disclosure requirements are met.

The primary responsibility for compliance with this new law falls on manufacturers. However, restaurants and retailers are prohibited from sale and distribution of food packaging and cookware that do not meet this new law's requirements and thus also have responsibilities to comply.

### Manufacturers

“Manufacturers” under the law include any person or entity that manufactures the food packaging or cookware, or the brand owner whose name appears on the label of same goods manufactured by others. While everyone is covered by the general prohibition of sale and distribution of any food packaging that contains regulated perfluoroalkyl and polyfluoroalkyl substances or PFAS after January 1, 2023, manufacturers have special additional duties.

Manufacturers will be required to replace any PFAS in their food packaging products with “the least toxic alternative.” The method by which manufacturers are to select the “least toxic alternative” are not specified. There are several alternative analysis models which are variable and weigh factors, such as acute and chronic toxicity differently and could lead to widely disparate results in the selection of “least toxic alternative.” While the requirement is self-enforcing, the ultimate arbiter of whether the “least toxic alternative” is a sound one may be in a battle of the experts in private citizen suit litigation. The range of food packaging products for which this “least toxic alternative” determination must be made is broad and “a nondurable package, packaging component, of food service ware, that is comprised in substantial part, of paper, paperboard, or other materials originally derived from plant fibers.”

Manufacturers of cookware will be prohibited from sale or distribution of cookware containing PFAS in California unless specific disclo-

sure and labeling requirements are met. “Cookware” is defined as “durable houseware items that are used in homes and restaurants to prepare, dispense, or store food, foodstuffs, or beverages.”

Beginning January 1, 2023, manufacturers of cookware sold in California must post on a website a list of the “intentionally added chemicals” present in the handle or any surface of the cookware that comes into contact with food, foodstuffs, or beverages. Each manufacturer’s informational website posting must also link to the “designated list” compiled by the Department of Toxic Substances Control pursuant to Article 14 of Chapter 6.5 of Division 20 of the California Code.

Beginning January 1, 2024, cookware manufacturers must list on the product label, in English and Spanish, the presence of such “intentionally added chemicals” and provide, on the label, a link or QR code to the informational website. If the cookware does not have the surface area to fit a product label of at least two square inches,

and does not have an exterior container or wrapper, or a tag or other attachment providing product information, then the manufacture may be exempt from the language requirements and need only provide a QR code for the informational website.

The law also prohibits manufacturers from making a claim on the product or on the website that cookware is free from such chemicals, unless that is indeed the case. However, due to risks of private citizen litigation, making any “free of” claim is fraught with peril and ill-advised.

### **Restaurants and Retailers**

While the majority of product formulation, disclosure and product labeling requirements fall on manufacturers, the new law prohibits

any person from “distributing, selling, or offering for sale” any food packaging containing PFAS and cookware containing PFAS without the requisite disclosures.

Restaurants and retailers can start examining their vendor agreements with food packaging and cookware suppliers now to ensure the responsibility for compliance and liability for any non-compliance remains with the manufacturer and indemnifies downstream customers. They may also seek to institute a supplier verification and audit program. The types of food packaging a restaurant may use and for which a review of vendor agreements may be made include “food or beverage containers, take-out food containers, unit product boxes, liners, wrappers, serving vessels, eating utensils, straws,

food boxes, and disposable plates, bowls, or trays” and any product surface that comes into contact with food, foodstuffs or beverages.

The types of cookware a restaurant or retailer may use and for which a similar review may be made include “pots, pans, skillets, grills, baking sheets, baking molds, trays, bowls, and cooking utensils” and any durable houseware items that are used in homes and restaurants to prepare, dispense, or store food, foodstuffs, or beverages.

Restaurant owners will want to plan for the supply of non-PFAS food packaging and ensure that all cookware used meets the new website requirements by January 1, 2023. As restaurant owners purchase new cookware, they will want to ensure that all cookware used in their restaurants carries

the new labels and QR codes to ensure that no food served to their customers was exposed to any cookware containing PFAS.

Leading up to the effective date of these new requirements, restaurant owners may want to anticipate and prepare for possible supply chain disruptions for both food packaging and cookware with manufacturers scrambling to change production processes to meet these new ingredient formulation and labeling requirements.

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