

Lawyer Insights

California Issues Enforcement Warning for PFAS in Cookware and Food Packaging Laws

By Malcolm Weiss, Javaneh Tarter, Jaclyn Lee
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On October 17, 2023, California Attorney General (AG) Rob Bonta released an enforcement advisory letter¹ to manufacturers, distributors, and sellers of food packaging and cookware detailing how he intends to enforce AB 1200.² The law bans the sale of regulated per- and polyfluoroalkyl substances (PFAS) in food packaging in California, and also requires disclosure and labeling of chemicals on a "designated list," including PFAS, that are present in the food contact surface or the handle of cookware products sold in California.

Since the individual laws do not provide specific enforcement mechanisms, this announcement is the first time the AG's office has articulated the authorities it plans to use to enforce these laws. The enforcement advisory letter provides a clear warning to the regulated community, from manufacturers to importers to distributors and retailers, that California will be enforcing its PFAS laws. Similar advisories could be issued in the future for California's other laws restricting the sale of juvenile products, textiles, and cosmetics containing PFAS.

AB 1200: Chemicals in Food Packaging and Cookware

Since January 1, 2023, no person can legally distribute, sell, or offer for sale in California any food packaging that contains regulated PFAS. Regulated PFAS includes either PFAS that are intentionally added or PFAS in a product or product component at or above 100 parts per million (ppm), as measured by total organic fluorine. Manufacturers must also use the least toxic alternative when replacing regulated PFAS in food packaging. Food packaging is defined broadly as nondurable packaging, packaging components, and foodservice ware that is "comprised, in substantial part, of paper, paperboard, or other materials originally derived from plant fibers."

Additionally, manufacturers of cookware must comply with website disclosure requirements (which went into effect January 1, 2023) and labeling requirements (which go into effect January 1, 2024) for cookware products sold in California where the handle or food contact surface of the cookware contains one or more chemicals on the Department of Toxic Substances Control's (DTSC's) designated list³ is intentionally added in. The designated list³ of chemicals includes PFAS as a class, along with 3,297 other chemical substances that DTSC has identified as candidate chemicals that exhibit a hazard trait or an environmental or toxicological endpoint.

AB 1200 also prohibits manufacturers from making claims that cookware is free of any specific chemical if the chemical belongs to a chemical group or class identified on the designated list—unless *no* individual

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chemical from that chemical group or class is intentionally added to the cookware. For example, a product cannot claim to be PFAS-free if it contains any type of PFAS in the product.

California Attorney General's Enforcement Advisory Letter

The AG's enforcement advisory letter informs manufacturers, distributors, and sellers (including retailers) of food packaging and cookware of new requirements established under AB 1200. Prior to issuing this letter, it was unclear to the regulated community how the state of California would enforce its PFAS laws, without specific enforcement authority provided in the statutes themselves. The AG's letter now clarifies that failure to comply with these laws may constitute a violation of California's Unfair Competition Law, Business and Professions Code section 17200 (UCL), Business and Professions Code section 17500, and other applicable laws. The AG warns that his office may bring an enforcement action seeking civil penalties, restitution, injunctive relief, or even criminal liability for failure to comply with AB 1200. Civil penalties for Business and Professions Code violations can be up to \$2,500 per violation (arguably, per product sold in California).

Under limited circumstances, in addition to the AG enforcement, private parties can also bring claims for non-compliance with PFAS laws based on the UCL.

Tracking State PFAS Restrictions

States like California have been active in the past few years passing laws to regulate PFAS in products. So far, 12 states have enacted laws that ban or impose reporting or disclosure requirements for PFAS in products ranging from food packaging to textiles to cosmetics, cookware to juvenile products to carpets, rugs, and upholstered furniture.

While each state's requirements differ to some extent, states have uniformly adopted the same sweeping definition of PFAS: a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom. Additionally, no state has established any *de minimis* level or threshold for intentionally added PFAS.

As states continue to move forward with emerging PFAS product restrictions, those who manufacture, distribute, and sell such products must prepare for the changing legal landscape. Six states have PFAS requirement deadlines in 2024, and eight have deadlines in 2025. Minnesota and Washington have deadlines in 2026; Colorado and Oregon have deadlines in 2027; Maine has deadlines in 2030; and Minnesota has deadlines in 2032.

The sheer scope of these state laws has subjected potentially millions of products currently sold or distributed in states to various labeling, disclosure, and reporting requirements or bans. This trend creates challenges for product manufacturers and retailers alike. Companies need to ascertain which of their products are impacted, where those products are impacted, and how to gather the information they need to determine if even trace amounts of PFAS are in their products or in the materials used to manufacture their products.

A state law tracking tool for PFAS in products⁴ is publicly accessible to help companies track state statutes and regulations that ban or impose reporting or disclosure requirements for products containing PFAS. As state requirements for products containing PFAS continue to emerge, companies will need to regularly track these developments and prepare to assess the presence of PFAS in their supply chains.

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Businesses should also review each state's laws and consult knowledgeable counsel to understand the nuances of each law. As these laws are fast-changing and developing, it is incumbent on businesses to stay current as more laws change and new ones are adopted.

Notes

1. Bonta, R. "Re: Assembly Bill 1200—Hazardous Chemicals in Food Packaging and Cookware." State of California Office of the Attorney General. October 17, 2023. <https://oag.ca.gov/system/files/attachments/press-docs/AB1200%20Enforcement%20Advisory%20%281%29.pdf>.
2. California Assembly Bill 1200. "AB-1200: Chapter 503: Plant-based food packaging: cookware: hazardous chemicals." October 6, 2021. https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1200.
3. CalSafer. "Candidate Chemical." 2024. <https://calsafer.dtsc.ca.gov/cms/search/?type=Chemical>.
4. Hunton Andrews Kurt. "PFAS in Products State Law Tracker." 2024. <https://www.huntonak.com/en/pfas-state-tracker.html>.

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