Monday, March 23, 2020

As concern about per- and polyfluoroalkyl substances (PFASs) continues to grow due, in part, to their prevalence in the environment, actions to limit or ban their use often extends to food packaging. For example, the use of PFASs in food packaging for military meals ready-to-eat (MREs) is prohibited after October 1, 2021. Additionally, several bills have been introduced in Congress that include bans on use of PFASs in food packaging and containers. The most recent, S.3227, “Prevent Future American Sickness Act,” was introduced by Senator Bernie Sanders (I-Vt.) last month.

S.3227 would amend the Federal Food, Drug, and Cosmetic Act to deem any PFAS used as a food contact substance unsafe, in addition to requiring the Environmental Protection Agency to designate PFASs as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. The PFAS ban would become effective January 1, 2022.

With respect to the ban on PFASs in MREs, the National Defense Authorization Act for Fiscal Year 2020 (S.1790), which became a public law on December 20, 2019 (P.L. No. 116-92), prohibits the use of PFASs in food packaging for military meals ready-to-eat (MREs) after October 1, 2021. The full text of S.1790 can be found here.

U.S. states are also concerned about PFASs in food packaging. Washington state amended its Toxics in Packaging Law in 2018 to include a ban on PFASs in food packaging made from paper and paperboard, effective in January 2022, but only if the state’s Department of Ecology identifies safer alternatives by conducting an
alternatives assessment prior to that date. Maine’s Toxic chemicals in packaging law, signed by the governor on June 13, 2019, authorizes the Maine Department of Environmental Protection to issue a rule prohibiting the sale of food packaging containing intentionally added PFASs, provided the Department first determines that a safer alternative is available. And California is considering prioritizing PFASs in food packaging under its Green Chemistry/Safer Consumer Products legislation.

More state bans could be forthcoming. A number of states have recently introduced legislation that include bans on PFASs in food packaging. Descriptions of bills introduced or ones that have progressed since the beginning of the year are included below.

**Arizona:** [SB 1468](#), “Food Packaging: Prohibitions,” was introduced February 3. The legislation would ban the sale of food packages to which PFASs have been intentionally added, effective January 1, 2023. The bill also includes a certificate of compliance requirement.

**Connecticut:** [H.B. 5291](#), “An Act Limiting the Use of Perfluoroalkyl and Polyfluoroalkyl Substances and Expanded Polystyrene in Food Packaging,” was introduced February 24. It would prohibit the manufacture and sale of food packaging containing PFASs or expanded polystyrene, effective January 2022, if a “reasonable alternative” is available. The Connecticut Department of Public Health (DPH) would be required to issue a report by January 2021 that includes a list of any food packaging products that contain an intentionally added PFASs or expanded polystyrene. The Public Health Committee held a public hearing on the bill on March 9, 2020.

**Illinois:** [SB 3154](#), “PFAS Reduction Act,” was introduced February 6. It includes a ban on the manufacture and sale of food packaging that contains intentionally added PFASs, effective January 1, 2021.

**New Hampshire:** [HB 1425](#), introduced on January 8, would establish a committee to study how to remove food containers containing PFASs and polystyrene from schools. The committee would also provide recommendations for proposed legislation. The bill originally would have prohibited the use of food packaging containing PFASs in public schools and hospitals if suitable alternatives were found. The amended legislation was passed by the house on March 11.

**Massachusetts:** [HD 3839](#), “An Act to Ban the Use of PFAS in Food Packaging,” was originally introduced in May 2019 and was referred to the Joint Committee on Health Care Financing on February 26, 2020. The legislation would ban the manufacture and sale of food packaging to which PFASs had been intentionally added in any amount.

**Minnesota:** [SF 3225](#), The “Perfluoroalkyl substances (PFAS) use in food packaging regulation,” was introduced February 17. It would prohibit the manufacture and sale of food packaging that contains intentionally added PFAS, effective January 1, 2021.

**New Jersey:** [A3350](#), “An Act concerning the use of perfluoroalkyl and polyfluoroalkyl substances in food packaging,” was introduced February 25. The bill directs the New Jersey Department of Environmental Protection (DEP) to conduct a study of PFASs in food packaging and determine if a safer alternative is available for each
Food packaging containing a PFAS chemical would be banned 18 months after DEP determines that a safer alternative is available and publishes its findings in the New Jersey Register. For applications where a safer alternative is not currently available, DEP is directed to re-evaluate that application in three years.

New York, S2000B, “An Act to amend the environmental conservation law, in relation to the use of perfluoroalkyl and polyfluoroalkyl substances in food packaging,” was introduced in January 2019 but was advanced to the third reading in the senate on March 10, 2020. The legislation would ban the sale of food packaging with intentionally added PFASs, effective December 31, 2021.

Rhode Island: H 7307, “An Act Relating to Health and Safety – PFAS in Food Packaging,” was introduced January 24. The act would prohibit PFASs from being used in food packaging, effective January 1, 2021. The bill was referred to the House Environment and Natural Resources Committee, which recommended that the measure be held for further study.

Vermont: H 777, “An Act Relating to Chemicals of Concern in Food Packaging,” was introduced in the state assembly on January 17. The bill includes a ban on the manufacture and sale of food packages to which PFASs have been intentionally added. There is also a certificate of compliance requirement. A related bill, S.295, “An Act relating to restriction on perfluoroalkyl and polyfluoroalkyl substances and other chemicals of concern in consumer products,” was introduced in the senate on January 15. It includes a ban on the manufacture and sale of food packages to which PFASs have been intentionally added, in addition to restrictions on firefighting foam containing PFASs.

Virginia: HB 1712, “Food Packaging; PFAS chemicals, penalty,” was introduced January 17. It prohibits the sale or use of any food packaging containing PFAS chemicals.

Wisconsin, AB 952, “An Act relating to regulating certain chemicals in food packaging,” was introduced February 24. The bill requires the Wisconsin Department of Natural Resources (DNR) to determine whether a safer alternative exists for PFASs in food packaging applications by January 2021. If a safer alternative exists, then the manufacture and sales of food packaging containing PFASs will be banned, effective January 1, 2023. DNR provided a fiscal estimate of the bill to the legislature on March 13, 2020.

For a list of chemicals legislation by state—including potential bans of PFASs in food packaging introduced prior to 2020—see the online database and map developed by the non-governmental organization Safer States.

© 2020 Keller and Heckman LLP

Source URL: https://www.natlawreview.com/article/attack-pfass-extends-to-food-packaging