

New York Ban On PFAS In Food Packaging Is Now Law

Article By:

John Gardella

In August 2020, we flagged that New York took a significant step in becoming the third state in the country to ban the use of per- and polyfluoroalkyl substances ([PFAS](#)) in food packaging. At the time, the legislation ([S.8817](#) and [A.4739-C](#)) was passed by the New York State Legislature, but had not been signed into law by Governor Cuomo. On December 3, 2020, Governor Cuomo took the final step and signed the PFAS food packaging ban into law, joining Maine and Washington in banning the use of PFAS in food packaging. The bill broadly bans the use of all PFAS, a class of over 7,000 chemicals that include PFOA, PFOS, and GenX. This is significant, as the vast majority of PFAS remain unstudied for their potential impact to human health. In addition, the bill prohibits anyone from “distributing, selling, or offering for sale” any food in packaging that contains PFAS. This ban goes into effect in 2023.

Both Washington and Maine have already passed legislation banning the use of PFAS in food packaging. In 2018, Washington amended its own law concerning toxics in packaging, which included a ban on PFAS in food packaging to take effect by January 2022, as long as the Washington Department of Ecology is able to identify a safer alternative in the meantime. Similarly, in June 2019, the Maine Governor signed into law a rule that prohibits the sale of PFAS-containing food packaging that will take effect once the Maine Department of Environmental Protection is able to identify a safer alternative. Unlike the New York just signed by Governor Cuomo, both Maine and Washington have prerequisites of finding safe alternatives to PFAS that must be met before PFAS-containing food packaging is banned.

Several other states have proposed legislation intended to phase-out the use of PFAS in food packaging. We are seeing more proposed legislation as it becomes clearer that the federal government will be slow in regulating PFAS-containing food packaging. Not only are states taking the initiative to phase-out PFAS-containing food packaging, but also major brands such as Sweetgreen, Trader Joe’s, and Whole Foods have taken steps to reduce or eliminate PFAS in light of public concern that food consumption is a prominent source of human exposure.

With the growing concern of PFAS exposure through food packaging, combined with a liberal incoming administration under President-Elect Biden, we anticipate that more states and the federal government will regulate PFAS in food packaging. As is clear from the first three states to regulate PFAS in food packaging, the regulations differ from state to state, so it is necessary to track current and pending legislation to keep in compliance with the laws of every state you do business in.

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National Law Review, Volume X, Number 342

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