

## **FDA Ban On PFAS In Food Packaging Brought To Forefront**

Article By:

John Gardella

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On June 3, 2021, a group of NGOs sent a [petition](#) to the [Food and Drug Administration \(FDA\)](#) asking the agency to ban “all long- and short-chain per- and polyfluoroalkyl substances (PFAS) as food contact substances” and to, unless evidence exists otherwise, reassess previous positions issued by the FDA on PFAS in food packaging. The call for an FDA ban on PFAS in food packaging is significant and will have direct impacts on numerous companies, including paper mills and food packaging manufacturers. The petition follows in the footsteps of several legislative steps at the state level, which has resulted in a few states banning PFAS from food packaging. This development lends support to the opinion we have put forth previously that food packaging companies are one of the top three targets of PFAS products liability related issues.

### **What Are PFAS and Why Are They a Concern?**

Per- and poly-fluoroalkyl substances (“PFAS”) are a class of over 7,000 manmade compounds. Chemists at 3M and Dupont developed the initial PFAS chemicals by accident in the 1930s when researching carbon-based chemical reactions. During one such experiment, an unusual coating remained in the testing chamber, which upon further testing was completely resistant to any methods designed to break apart the atoms within the chemical. The material also had the incredible ability to repel oil and water. Dupont later called this substance PFOA (perfluorooctanoic acid), the first PFAS ever invented. After World War II, Dupont commercialized PFOA into the revolutionary product that the company branded “Teflon.”

Only a short while later, 3M invented its own PFAS chemical – perfluorooctane sulfonate (PFOS), which they also commercialized and branded “Scotchgard.” Within a short period of time, various PFAS chemicals were used in hundreds of products – today, it numbers in the thousands.

The same physical characteristics that make PFAS useful in a plethora of commercial applications, though, also make them highly persistent and mobile in the environment and the human body – hence the nickname, “forever chemicals.” While the science is still developing regarding the extent of possible effects on human health, initial research has shown that PFOA and PFOS are capable of causing certain types of cancer, liver and kidney issues, immunological problems, and reproductive and developmental harm.

### **PFAS Concerns With Food Packaging**

The basic concern with PFAS in food packaging is that consumers and some researchers fear that PFAS in food packaging can leach into food, which then provides an easy ingestion source for citizens. While there are relatively few scientific studies published or underway regarding the exposure risk posed to consumers from food packaging, many states have already taken proactive steps to ban PFAS from food packaging, including Maine, New York, Vermont, and Washington. Other states, such as California, Maryland, and Minnesota are considering regulations related to PFAS in food packaging.

In addition, several major fast food chains and grocery stores have introduced policies in recent months stating that PFAS will be phased out from food packaging that the companies use. The company's PFAS ban policy that perhaps caused the most buzz in January 2021 was Amazon, when it, too, announced that it would begin phasing out PFAS from food packaging.

The legislative steps at the state level, the corporate decisions to ban PFAS from food packaging, and the latest pressure on the FDA to enact a sweeping ban all increase pressure on companies in the food packaging world, including not only manufacturers but paper mills. All of these companies find themselves needing to adapt – quickly – to the growing trend to ban PFAS from food packaging. Under potentially constrained timelines, companies must look for substitutes, undertake testing and R&D, and conduct due diligence in order to ensure that substitutes marketed as “PFAS free” are, in fact, from from the 7,000+ compounds that make up the PFAS class of chemicals.

Companies that find themselves impacted by these changes can take several steps to ensure that the least amount of business interruption occurs: (1) internal due diligence – know everything that you put into your finished product; (2) external due diligence – ask for supply chain information about raw materials, components, etc. and verify the accuracy of the information provided, (3) know your risk timetable by following legislative trends and the published scientific literature, and (4) investigate possible non-PFAS substitutes as early as possible so as to not disrupt your business when utilizing PFAS is no longer an option.

### **FDA Ban On PFAS Request**

Eight nonprofits asked the FDA to ban “all long- and short-chain per- and polyfluoroalkyl substances (PFAS) as food contact substances.” The FDA had already taken steps for a phase out of so called long-chain PFAS in food packaging in 2012, but the newer PFAS compounds (the so-called “short-chain” PFAS) were allowed to be utilized. The petition takes the additional step, though, and asks the FDA to revoke all prior permission that its given companies to use PFAS in food packaging.

The formal petition to the FDA must, by law, be responded to in 180 days.

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