Last month, Washington state enacted a new law, making it the first in the country to ban the use of perfluoroalkyl and polyfluoroalkyl substances, or “PFAS,” in food packaging.

What are PFAS? PFAS are a group of chemicals that impart oil and water repellency, among others properties, to various products. They are in the same family of chemicals that were used in Teflon. Although the Teflon chemical is no longer produced in the United States, other chemically related PFAS are widely used by industry and in consumer goods. These chemicals have been linked to cancer and other health risks. Recently, PFAS have gained the attention of state regulators, as PFAS have been detected in drinking water throughout the country.
So what does this have to do with food packaging? PFAS are widely used in the food industry because they create grease-proof and waterproof coatings in food packaging. They are used in various food packaging items, including pizza boxes, fast-food wrappers, microwave popcorn bags, baking papers and pet food bags, and handling these products can potentially expose consumers.

On March 21, Washington enacted the first law in the country to ban PFAS in food packaging. Under this new law, Washington’s Department of Ecology (WDOE) has until January 1, 2020 to determine whether there are any safer alternatives to the use of PFAS in paper food packaging. “Safer alternatives” must be readily available in sufficient quantity and at a comparable cost and must perform as well as or better than PFAS in specific food packaging applications. Any “chemical” alternative must have previously been approved for food contact by the U.S. Food and Drug Administration.

If Washington can identify alternatives to PFAS, then PFAS will be banned in all paper food packaging in the state, starting January 1, 2022. If a safer alternative cannot be identified, the ban will not go into effect, and WDOE must annually review the availability of alternatives. If WDOE identifies an acceptable alternative at some time in the future, the ban would become effective two years later.

California also is beginning to regulate the use of PFAS in consumer products. On November 10, 2017, two PFAS chemicals — perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS) — were added to California Proposition 65’s list of chemicals known to the state to cause reproductive toxicity. The requirement to include Proposition 65 warnings on products that may expose consumers to PFOA or PFOS takes effect on November 10, 2018.

Finally, California also is considering regulating PFAS in food packaging under its Safer Consumer Products regulation. California’s Department of Toxic Substances Control’s “Draft Three Year Priority Product Work Plan (2018-2020)” includes an evaluation of potential exposures from chemicals, such as PFAS, that may migrate from food packaging into food.
Food and food packaging manufacturers should evaluate whether their products contain any PFAS. Companies whose products enter the California market will need to determine whether Proposition 65 warning requirements apply to their products before the November 10, 2018 deadline. These chemicals present significant potential liability issues, so please contact us to discuss strategies for navigating these developing regulations.