



Guidance on Compliance with PFAS Provisions of Toxics in Packaging Laws¹

Purpose of this Guidance

To provide a common strategy that Toxics in Packaging Clearinghouse members may use to administer provisions of our state laws pertaining to the intentional addition of PFAS to food packaging, while also providing guidance to the regulated community on demonstrating compliance.

The Challenge

In 2021, the Toxics in Packaging Clearinghouse (TPCH) updated its [Model Legislation](#) to include per- and poly-fluoroalkyl substances (PFAS) and ortho-phthalates. Recently, several TPCH member states have either adopted parts of the new Model or enacted other laws that regulate PFAS in food packaging.

Most of the state laws adopted to date do not set concentration limits for PFAS compounds.² Instead, they prohibit the “**intentional introduction**” of PFAS to food packaging. Here is an example of language commonly used:³

“Intentional introduction of PFAS” means deliberately utilizing PFAS in the formulation of a package or packaging component where its continued presence is desired in the final package or packaging component to provide a specific characteristic, appearance, or quality.

This provision does not rely on any definitive laboratory test. Therefore, TPCH has developed the following guidance for demonstrating compliance.

¹ This document and the strategies described herein are intended solely as non-binding guidance. Nothing in this document creates or imposes any legal obligation, commitment, or requirement on any state or agency. The methodologies discussed are presented only as potential approaches that states may adopt, modify, or decline to use, in whole or in part, consistent with applicable statutes, regulations, and internal policies.

² California AB 1200 regulates PFAS that is either intentionally added, or in a concentration over 100 ppm. Regulations for implementation of AB 1200 have not been promulgated as of the publish date of this guidance.

³ Some states may have different definitions and/or additional uses being covered.

Screening Strategy

Optional Screening Process

This section outlines a screening process that states can use to screen for compliance with PFAS in food packaging laws. The process is outlined below in both a step-by-step and a flow chart version.

Step-by-Step:

Step 1: Use knowledge of food packages that historically may have contained PFAS.

- Packages that have tested positive for PFAS in the past
- Packages that historically have used PFAS for non-stick, grease-proof, or waterproof properties

Step 2: Look for third-party certification that has been vetted by the Clearinghouse.

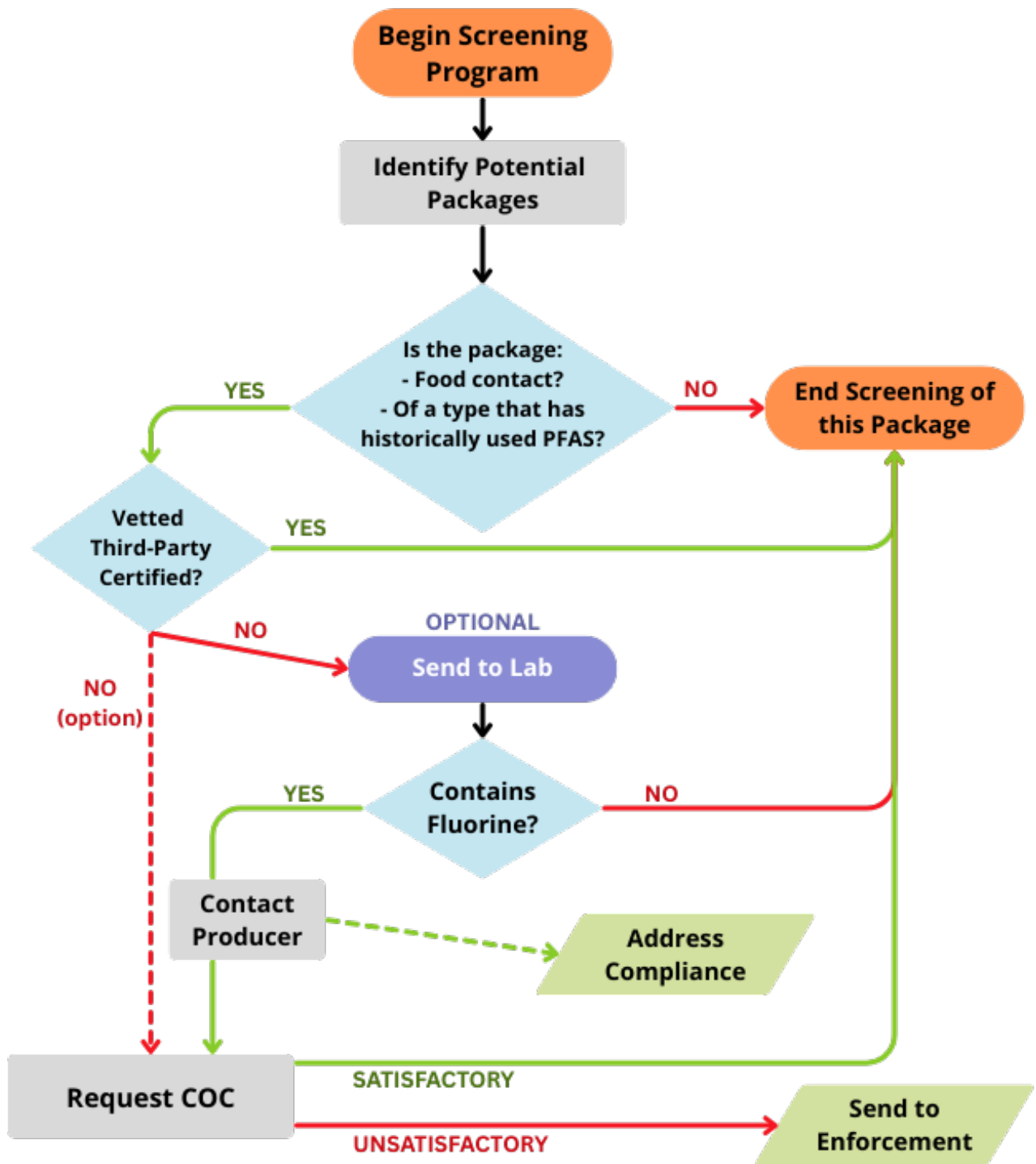
Step 3: Testing (optional). Send sample to a certified lab for: analyte-specific (PFASs available for testing), total fluorine (TF), or total organic fluorine (TOF) analysis.

- If the result is positive, inquire with the producer about intentionality. If they admit it is intentional, begin process of addressing compliance. If they claim non-intentional, then ask for a COC.

Step 4: Request a Certificate of Compliance from manufacturer or supplier.

- Where allowable, request supporting evidence for COC, e.g., a test with zero TOF, a Bill of Substance, or an acceptable third-party certification.

Flow Chart:



Demonstrating Compliance

The Certificate of Compliance

The toxics in packaging laws provide for a Certificate of Compliance (COC) process as a means for the regulated community to demonstrate compliance. Manufacturers must provide a Certificate of Compliance upon the request of any purchaser or state within the Clearinghouse. Fillable [sample COCs](#) are available on the TPCH website.

On the COC, producers can certify that they are compliant by means of:

1. Analytical testing of total fluorine content conducted on behalf of the company
2. Direct knowledge of materials used
3. COC's from suppliers
4. Analytical testing data received from suppliers

Most state laws also authorize the state agencies to ask for documentation that supports the claim on the COC.

Using total fluorine testing

Under option #1 above, if a manufacturer or supplier provides a test result from an accredited laboratory showing either total fluorine (TF) or total organic fluorine (TOF) to be below the detection limits of the lab, then it is assumed that no PFAS were intentionally introduced to the package.

Using a Bill of Substance

Under option #2 above, manufacturers or suppliers may provide a Bill of Substance (BOS) for every component of the packaging to demonstrate that no PFAS were intentionally added into the formulation of the packaging.

Using Third-Party Certification

If a manufacturer or supplier receives a third-party certification which includes a thorough and vetted review of PFAS use in the product that meets the requirements of the state law, some states may consider that as supporting documentation of the certificate of compliance.

General Information on TPCH

The Toxics in Packaging Clearinghouse assists its member states with implementation of each state's toxics in packaging laws and regulations, and provides a Model Legislation for legislatures to use if they so choose. The Model does not exist as law. It is up to each state to decide to adopt the Model in whole or in part, or to adopt new laws to address emerging toxics in packaging.

Please contact TPCH or visit the TPCH website for more information.

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