



June 16, 2021

The Honorable Richard Pan, Chair
Senate Health Committee
State Capitol
Sacramento, CA 95814

RE: AB 1200 (Ting) as amended June 14, 2021: OPPOSE UNLESS AMENDED

Dear Senator Pan:

The undersigned organizations, representing many of California’s leading employers, manufacturers, retailers, restaurants and others have taken an **OPPOSE UNLESS AMENDED** position on AB 1200 (Ting), as amended on June 14, 2021.

We certainly appreciate and thank the author and sponsors for the most recent amendment that deletes from the bill a proposed “Prop 65-like” warning label requirement. Despite this significant improvement, we outline below some additional concerns and issues that we feel should be addressed as you and your committee consider this bill.

Scope of Potentially Impacted Products

The bill defines “cookware” to mean “durable, houseware items that are used in homes and restaurants to prepare, dispense, or store food, foodstuff, or beverages. Cookware includes, but is not limited to, pots, pans, skillets, grills, baking sheets, baking molds, trays, bowls, and utensils.” Given the open-ended definition, products ranging from the smallest measuring spoon to large industrial ovens could be in scope. Internal electrical components of refrigerators or ovens such as motors or circuit boards may include certain chemicals on the candidate chemicals list but as used do not result in the potential for direct consumer exposures. These types of components of covered products should be exempted from these requirements.

Furthermore, the inclusion of the phrase “cookware includes, but is not limited to” creates regulatory uncertainty for manufacturers in assessing whether their products are subject to these requirements. These questions would normally be clarified via a regulatory process administered by an appropriate state agency. We believe some clarity is necessary so that manufacturers have a clear understanding of the products subject to these disclosure requirements.

Definition of Intentionally Added

Article 1 contains an unclear and inconsistent definition of “intentionally added” while Article 2 of the bill requires cookware manufacturers to specify “intentionally added chemicals” on the product label but does not define “intentionally added.” To address these issues, we believe language from a similar ingredient disclosure bill, SB 258 (Chapter 830, Stats. 2018) should be used in order to provide for a

consistent state policy. We therefore suggest the definition of “intentionally added” throughout the bill be amended to read:

“Intentionally added” means a chemical that a manufacturer has intentionally added to a product and that has a functional or technical effect in the product.

Current DTSC Evaluation of PFAS in Food Packaging

DTSC has already spent time and resources in its proposed listing of one or more plant fiber-based food packaging PFAS substances as Priority Products under the Safer Consumer Products (SCP) regulations.¹ Once DTSC identifies a priority product, responsible entities are required to conduct an alternatives analysis (AA) on potential replacement chemistries or if the product can be manufactured without the chemical of concern. Upon completion of an AA the law affords DTSC broad authority to impose a regulatory response, including banning the product. According to a timeline of upcoming activities released by DTSC in March 2021 final regulations for this particular priority product is expected this year.²

To address criticisms that the SCP program is not moving fast enough to assess and regulate chemical/product combinations, SB 502 (Allen) would make several changes to the SCP program including granting DTSC clear authority, backed by the ability to issue fines, to obtain product ingredient data from manufacturers and, if needed, their chemical suppliers.

The bill also creates a fast-track for when existing high-quality studies overwhelmingly support DTSC moving quickly to a regulatory response to protect public health. The committee analysis of SB 502 states that according to the author *“The adjustments made by SB 502 will ensure DTSC has the tools they need to efficiently identify and address unsafe chemical ingredients in everyday products.”*

Additionally, the Washington State Department of Ecology recently completed an AA on PFAS in food packaging.³ While the report found “safer alternatives” to PFAS in four types of food packaging applications - wraps and liners, plates, food boats and pizza boxes - Ecology did not find appropriate replacements for other food packaging applications including trays, bags and sleeves, French fry cartons, clamshells, interlocking food containers and bowls. Ecology will be evaluating these categories in the coming months. We encourage you to consider the on-going regulatory activity currently underway at DTSC, as well as the on-going evaluations being conducted in Washington State.

Compliance Date Alignment

Furthermore, manufacturers have entered into a voluntary agreement with the US Food and Drug Administration to phase out the use of PFAS substances in food packaging applications by 2024. Extending the compliance date by one year to 2024 in Article 1 will help avoid potential supply chain disruption and allow for consideration of the findings from the various regulatory assessments currently underway. In addition, the Connecticut Legislature recently passed legislation on this issue and includes a phase out date that more closely aligns with the 2024 compliance date.

¹ <https://dtsc.ca.gov/scp/food-packaging-containing-pfass/>

² [SCP Timeline 2021-Q1 - Smartsheet.com](https://www.smartsheet.com/scp-timeline-2021-q1)

³ https://www.ezview.wa.gov/site/alias_1962/37610/pfas_in_food_packaging_alternatives_assessment.aspx

Other Implementation Issues/Questions

Finally, there are a few implementation issues/questions that we believe warrant additional discussion.

- Given the expansive definition of cookware and of manufacturer, would this bill apply to products that are handmade and sold in small quantities at community fairs or via on-line marketplaces?
- In addition to a product label, the bill requires manufacturers to establish a dedicated toll-free telephone number that companies would presumably need to hire a new staff position for to field consumer inquiries. However, given the movement toward online accessibility of product information and the impacts to small businesses to manage a new toll-free number, we question the necessity and fiscal costs to both manufacturers and ultimately consumers.
- Very small items that fall under the definition of cookware may not have the physical space to include a product label. In these instances, we believe there should be a mechanism to comply via an online posting only.

Thank you for the opportunity to share these views. We look forward to working with you and your committee, as well as the author and sponsors to addresses these issues. Should you or your staff have any questions, please do not hesitate to contact Tim Shestek with the American Chemistry Council at 916-448-2581 or tim_shestek@americanchemistry.com

Sincerely,



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