

FPA Position on PFAS Statements

Many suppliers to the flexible packaging industry and converters of flexible packaging have received requests for blanket PFAS “free” representations or certifications. FPA continues to caution the industry on providing such assurances because they can unknowingly leave a company open to unnecessary/unwarranted risk and liability.

FPA is aware of the increasing concerns related to per- and polyfluoroalkyl substances (PFAS) as environmental contaminants. This is a complex subject largely because there is no globally consistent convention listing all substances of concern that are part of the PFAS group, and those that are listed do not share all the same risk concerns. Compounding the problem is the effort to arouse public opposition based on similarly incomplete information. This evolving situation has created confusion among many stakeholders along the supply chain, which in turn has driven unfounded, and not necessarily accurate, generalization of these concerns.

The group of PFAS that has been the main focus of public and regulatory concern include perfluoro-octanoic acid (PFOA), perfluoro-octane sulfonate (PFOS), perfluoro-alkyl phosphate esters (PAPs), perfluoroalkyl carboxylic acids (PFCAs) or perfluoroalkyl sulfonates (PFSAs). It is believed that these environmentally more prevalent and persistent perfluoroalkyl substances are not intentionally added to flexible packaging products.

The PFAS in use in flexible packaging are typically referred to as fluoroelastomers. These compounds have been used for years as polymer processing aids to improve the runnability for the production of films. The fluoroelastomer polymers used as processing aids are made from the monomers vinylidene fluoride, hexafluoropropylene, and/or tetrafluoroethylene. These substances are authorized for food contact use in various jurisdictions as follows:

- Authorized in the EU by Regulation 10/2011 for use in all types of food contact plastic and all food applications, subject to specific migration limits;
- Authorized in the U.S. for direct food contact by regulations 21 CFR 177.1380 or 177.1550 and various FCNs; and
- Permitted in China: listed in GB 9685-2016 and GB 4806.6-2016.

The current test used for PFAS is a broad total fluorine test, often with a low de minimis level of 100ppm. The use of this test equating all fluorine to PFAS is not scientifically valid as fluorine is ubiquitous in the environment and the test does not accurately distinguish between types of fluorine.

However, as these fluoroelastomer polymers continue to be grouped into the broadest PFAS definition, the flexible packaging industry continues to work towards alternate materials for PPA, to support the “broadest” definition of PFAS as identified in current or future state laws.

Thus, while FPA does not render product-specific legal opinions and urges members to work with counsel on responding to customer requests in this regard, FPA has developed the following sample explanatory language. FPA feels it is important for the industry to be responsive and transparent on this very nuanced issue.

- FPA recommends certifying/representing compliance to each individual state law as explicitly as possible and to the specific language that the state uses in their definition of intentionally added as opposed to any blanket statement certification of being “PFAS-free” or generically stating compliance with any and all PFAS laws.
- FPA recommends being explicit as to whether a “no intentionally added PFAS” declaration does or does not include PFAS which is used as a processing aid or in inks. In all cases, we recommend certifying that your product “does not contain any intentionally added PFAS either as a raw material or a processing aid” rather than to the broader “PFAS-free” claim.
- If you are supplying film with PCR content, particularly with mechanical recycling, make sure to disclaim PFAS contamination from sourced recycled materials.
- FPA recommends that you always make it clear that a PFAS compliance chain in any finished package is limited to your supply chain partner certification rather than to an arbitrary total fluorine test and the limit that has been used to evaluate PFAS presence.

Example 1. (New York): Fiber Based Packaging law; with processing aid explicit exclusion

We (*company name*) certify that no PFAS have been intentionally added in the manufacture of this package per the letter and intent of NY Section 37-0209. This does not include PFAS utilized as processing aids in the manufacture of the film, and any post-consumer recycled content as specifically excluded under the NY Section 37-0209. OR

We (*company name*) attest that our supplier has certified that no PFAS have been intentionally added under the letter and intent of NY Section 37-0209 of New York’s Environmental Conservation Law under which intentionally added is defined as a “chemical in a product that serves an intended function in the product component.” AND

This declaration does not include PFAS used in processing aids, inks, or any other excluded application under NY Section 37-0209 (if applicable). AND

We (*company name*) have not conducted any tests to determine the presence of PFAS in the finished package and do not warrant the absence of any PFAS that may be found in any resulting finished package.

Example 2. (Vermont): Food Based Packaging Law; with broad intentionally added language

We (*company name*) certify that no PFAS have been intentionally added in the manufacture of this package per the letter and intent of VT 18 V.S.A. § 1671-1695. This does not include PFAS utilized as processing aids in the manufacture of the film. OR

We (*company name*) attest that our supplier has certified that no PFAS have been intentionally added under the letter and intent of VT 18 V.S.A. § 1671-1695, under which intentionally added is defined as a “The addition of a chemical in a product that serves an intended function in the product component.” AND

This declaration does not include PFAS used in processing aids, inks, or any other excluded application under VT 18 V.S.A. § 1671-1695 (if applicable). AND

We (*company name*) have not conducted any tests to determine the presence of PFAS in the finished package and do not warrant the absence of any PFAS that may be found in any resulting finished package.

Example 3. (Rhode Island): Food Based Packaging Law; with processing aids explicitly included

We (*company name*) certify that no PFAS have been intentionally added in the manufacture of this package, per the letter and intent RI Section 23-18.13-4 of the Toxic Packaging Reduction Act. This includes PFAS utilized as processing aids in the manufacture of the film. OR

We (*company name*) attest that our supplier has certified that no PFAS have been intentionally added to the manufacture of this package, per the letter and intent RI Section 23-18.13-4 of the Toxic Packaging Reduction Act, under which intentionally added is defined as 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. The use of a regulated chemical as a processing agent, mold release agent, or intermediate is considered an intentional introduction for the purposes of this chapter where the regulated chemical is detected in the final package or packaging component. AND

This declaration does not include any post-consumer recycled content as excluded under RI Section 23-18.13-4 (if applicable). AND

We (*company name*) have not conducted any tests to determine the presence of PFAS in the finished package and do not warrant the absence of any PFAS that may be found in any resulting finished package.

Please do not hesitate to contact FPA with any questions or if you need more information.