

PFAS CONSUMER PRODUCTS REGULATIONS

Oct 19, 2020

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Manufacturers, distributors, and retailers of consumer products across a broad spectrum of industries are being impacted by regulations regarding the presence of per- and polyfluorinated chemicals (“PFAS”) in their products. This area of law is rapidly developing as states create new laws, and the penalties for non-compliance can be significant. Below is an overview of enacted and proposed state laws and regulations to assist companies in beginning an investigation into whether their products are, or will be impacted.

PFAS BACKGROUND

PFAS is a family of chemicals comprised of over 5,000 compounds. PFAS have been reported in a variety of consumer products and industrial applications including the following: children’s products, textile and apparel items, carpet cleaners, non-stick products (e.g., Teflon), stain resistant coatings, polishes, paints, cleaning products, food packaging (including pizza boxes, microwave popcorn bags, and take-out food containers), firefighting foam, certain cosmetics, and ski wax. Some studies have also shown that certain PFAS chemicals accumulate in humans and animals, including deer meat and fish tissue.

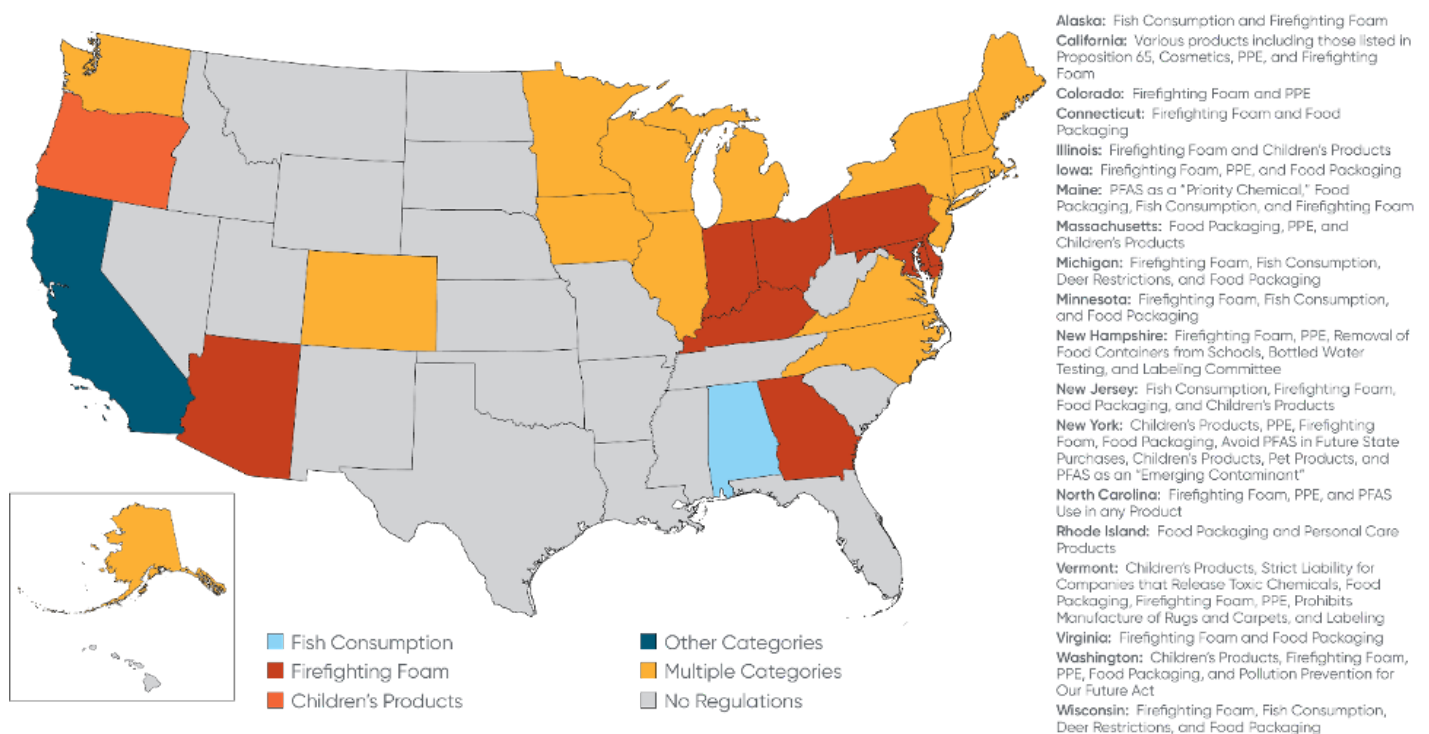
State regulations of PFAS in consumer products have focused on the following product sectors:

- Children’s products
- Food packaging
- Firefighting foam
- Personal protective equipment for firefighters (“PPE”)
- The consumption of fish tissue and deer meat

- A range of other products including pet products, manufacturing products such as textiles and rugs, and cosmetics.

Many of the states take different approaches to regulating consumer products containing PFAS. For example, Washington forbids any PFAS chemicals from being added to fiber-based food packaging, whereas other states allow the use of PFAS chemicals unless there is a viable alternative (e.g., Connecticut or New Jersey, both proposed). For the purposes of this Alert, we simply note whether or not a state has laws or regulations regarding a specific product category, but we do not compare the differences between the various regulations. However, BCLP would be happy to discuss the details of the different state regulations if you have specific questions.

ENACTED AND PROPOSED PFAS CONSUMER PRODUCT REGULATIONS



As of October 12, 2020

State	Product Categories	Regulatory Status	Reference
Alabama	Fish Consumption	Enacted	The Alabama Dept. of Health restricts the number of fish people should consume from one reservoir and creek
Alaska	Fish Consumption	Enacted	The Alaska Dept. of Health and Social Services prohibits all fish consumption from one lake
	Firefighting Foam discharge notification	Enacted	

	in certain regions Proposed: Firefighting Foam	Proposed	Proposed: Firefighting Foam SB 176
Arizona	Firefighting Foam	Enacted	Ariz. Rev. Stat. 36-1696
California	All consumer products may require warnings if they contain PFOA or PFOS (California Proposition 65) Adopted: Cosmetics, PPE, and Firefighting Foam	Enacted	Proposition 65: 27 CCR 27001 Cosmetics: AB 2762 Firefighting Foam and PPE: SB 1044
Colorado	Firefighting Foam and PPE	Enacted	Firefighting Foam Restriction: CRS 24-33.5-1234 Firefighting Foam and PPE: CRS 25-5-1301 et seq.
Connecticut	Firefighting Foam and Food Packaging	Proposed	Firefighting Foam: SB 297 and HB 5288 Food Packaging: HB 5291
Delaware	Firefighting Foam	Proposed	SB 217
Georgia	Firefighting Foam	Enacted	O.C.G.A. 25-2-41
Illinois	Firefighting Foam and Children's Products	Proposed	Firefighting Foam: SB 3154, HB 5529, and HB 5003 Children's Products: SB 3378
Indiana	Firefighting Foam	Enacted	Ind. Code 36-8-10.7-1 et seq.
Iowa	Firefighting Foam, PPE, and Food Packaging	Proposed	Food Packaging: S. 386 and H.F. 775

			PPE and Firefighting Foam: H.F. 775 and H.F. 2241
Kentucky	Firefighting Foam	Enacted	Ky. Rev. Stat. 227.395
Maine	PFAS as a “Priority Chemical,” especially as a Children’s Chemical of Concern	Enacted	PFAS as a “Priority Chemical”: 38 M.S.R.A. 1693-A(1) , 06-096 , Chapter 890 (PFOS designation)
	Adopted: Food Packaging, and Fish Consumption Proposed: Firefighting Foam	Enacted Proposed	Food Packaging: 32 M.S.R.A. 26A, 1731-1738 Fish: Remedial Action Guidelines for certain types of fish Proposed: Firefighting Foam LD 2147
Maryland	Firefighting Foam	Enacted	Md. Code, Envir. 6-1601 et seq.
Massachusetts	Food Packaging, PPE, and Children’s Products	Proposed	Food Packaging: SD 678 and HD 3750 PPE: SD 1784 and HD 3661 Children’s Products: SD 1518
Michigan	Firefighting Foam, Fish Consumption, and Deer Restrictions	Enacted	Firefighting Foam: Mich. Comp. Laws 408-1014r , 324-14701 et seq. , and 29-369c Fish: The Michigan Dept. of the Env. advises that people should not eat certain types of fish or limit the fish consumption depending on the location Deer: One “do not eat” restriction from a certain five-mile area

	Proposed: Food Packaging	Proposed	Proposed: Food Packaging SB 1072
Minnesota	Adopted: Firefighting Foam and Fish Consumption	Enacted	Firefighting Foam: Minn. Stat. 325F.072 Fish: The Minnesota Dept. of Health recommends not eating fish from one lake and consuming limited numbers of certain kinds of fish depending upon the location
	Proposed: Food Packaging	Proposed	Proposed: Food Packaging (5 separate bills) SF 2088 , SF 3225 , HF 3657 , HF 4554 and HF 20
New Hampshire	Adopted: Firefighting Foam and PPE	Enacted	Firefighting Foam: N.H. Rev. Statute 154:8-b PPE: N.H. Rev. Statute 154:8-c
	Proposed: Removal of Food Containers from Schools, Firefighting Foam (registry), Bottled Water Testing, and Labeling Committee	Proposed	Proposed: Food Containers: HB 1425 Firefighting Foam (registry): HB 1569 Bottled Water: HB 1274 Labeling Committee: HB 1446
New Jersey	Adopted: Fish Consumption	Enacted	Fish: The New Jersey Dept. of Environmental Protection has issued limits on fish consumption for high risk and general populations

	Proposed: Firefighting Foam, Food Packaging, and Children's Products	Proposed	Proposed: Firefighting Foam A747 Food Packaging: A3350 Children's Products: A2104
New York	Adopted: Children's Products, PPE, and Firefighting Foam Proposed: Food Packaging, Avoid PFAS in Future State Purchases, Children's Products, Pet Products, Firefighting Foam (incineration), certain PFAS identified as "Emerging Contaminants"	Enacted Proposed	Children's Products: Laws of New York, Sec. 37-0101 et seq. PPE: S439A (Sec. 4) Firefighting Foam: 6 NYCRR 597 Proposed: Food Packaging S2000B and S8817 Future Purchases: S1108 Children's Products (add to existing law): A9765 Pet Products: A7876 Firefighting Foam (incineration): A9952 Emerging Contaminant: A7839
North Carolina	Firefighting Foam, PPE, and PFAS Use in any Product	Proposed	Firefighting Foam and PPE: HB560 PFAS Use in any Product: HB1109
Ohio	Firefighting Foam	Proposed	Firefighting Foam: SB328
Oregon	Children's Products	Enacted	Toxic Free Kids Act: 431A.250 et. al.
Pennsylvania	Firefighting Foam	Proposed	Firefighting Foam: SB919
Rhode Island	Food Packaging and	Proposed	Food

	Personal Care Products		Packaging: HB7307 and SB2068 Personal Care Products: HB7834
Vermont	Adopted: Children's Products Proposed: Strict Liability for Companies that Release Toxic Chemicals, Food Packaging, Firefighting Foam and PPE, Prohibits Manufacture of Rugs and Carpets, and Labeling	Enacted Proposed	Children's Products: 18 V.S.A. 1773 Proposed: Strict Liability S37 Food Packaging: S101 and H777 Firefighting Foam and PPE: S295 and H721 Rugs and Carpets: H771 Labeling: H928
Virginia	Adopted: Firefighting Foam Proposed: Food Packaging	Enacted Proposed	Firefighting Foam: VA Code Ann. 9.1-207.1 Proposed: Food Packaging HB1712
Washington	Adopted: Children's Products, Firefighting Foam, PPE, Food Packaging, and Pollution Prevention for Our Future Act	Enacted	Children's Safe Products Act: WAC 173-334-010 et seq. Firefighting Foam: RCW 70A.400.010 et seq. PPE: RCW 70A.400.030 Food Packaging: RCW 70A.222.070 Pollution Prevention for Our Future Act: SB 5135

	Proposed: Firefighting Foam (notification and penalty provisions)	Proposed	Proposed: Firefighting Foam HB 1143
Wisconsin	Adopted: Firefighting Foam, Fish Consumption, and Deer Restrictions	Enacted	Firefighting Foam: Wis. Statute 299.48 Fish: The Wisconsin Dept. of Natural Resources advises that people do not consume certain types of fish from one creek and lake Deer: One “do not eat” deer liver restriction from a certain five-mile area
	Proposed: Firefighting Foam (storage), Food Packaging	Proposed	Proposed: Firefighting Foam AB792 Food Packaging: AB952

No Regulations: Arkansas, Florida, Hawaii, Idaho, Kansas, Louisiana, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virginia, and Wyoming.

CONCLUSION

Several of the states that do not currently have any adopted or proposed laws or regulations are considering consumer product regulations. These measures are not in effect yet, but may be soon. Accordingly, this client alert reflects the status of state regulation of PFAS in consumer products only as of **October 12, 2020**.

If you believe that you may be impacted by an enacted or proposed regulation, or if you have a question about a PFAS consumer product regulation in a specific jurisdiction, please contact Tom Lee or John Kindschuh at Bryan Cave Leighton Paisner LLP.

1. Certain legislators designated PFOS as a “Priority Chemical,” which is identified through biomonitoring, sampling, or analysis as a chemical of concern found in human blood, household dust, indoor air, drinking water, or a consumer product in the home environment. A “Priority Chemical” designation applies to various manufacturers of products that add PFOS (especially to children’s products), such as water-resistant clothing. Manufacturers selling priority chemicals in an amount greater than in de minimis quantities must provide notification to the Maine Dept. of the Environment.

2. PFOS, PFOA, PFNA, PFHxS, PFHpA, and PFBS are proposed to join a list of 77 chemicals identified by the NY Department of Environmental Protection (Laws of New York, Sec. 37-0905) that pose a concern in drinking water, pharmaceutical and personal care products, and other household items.

RELATED PRACTICE AREAS

- PFAS Team

MEET THE TEAM



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