

PFAS Consumer Products Regulations

October 19, 2020

Summary

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

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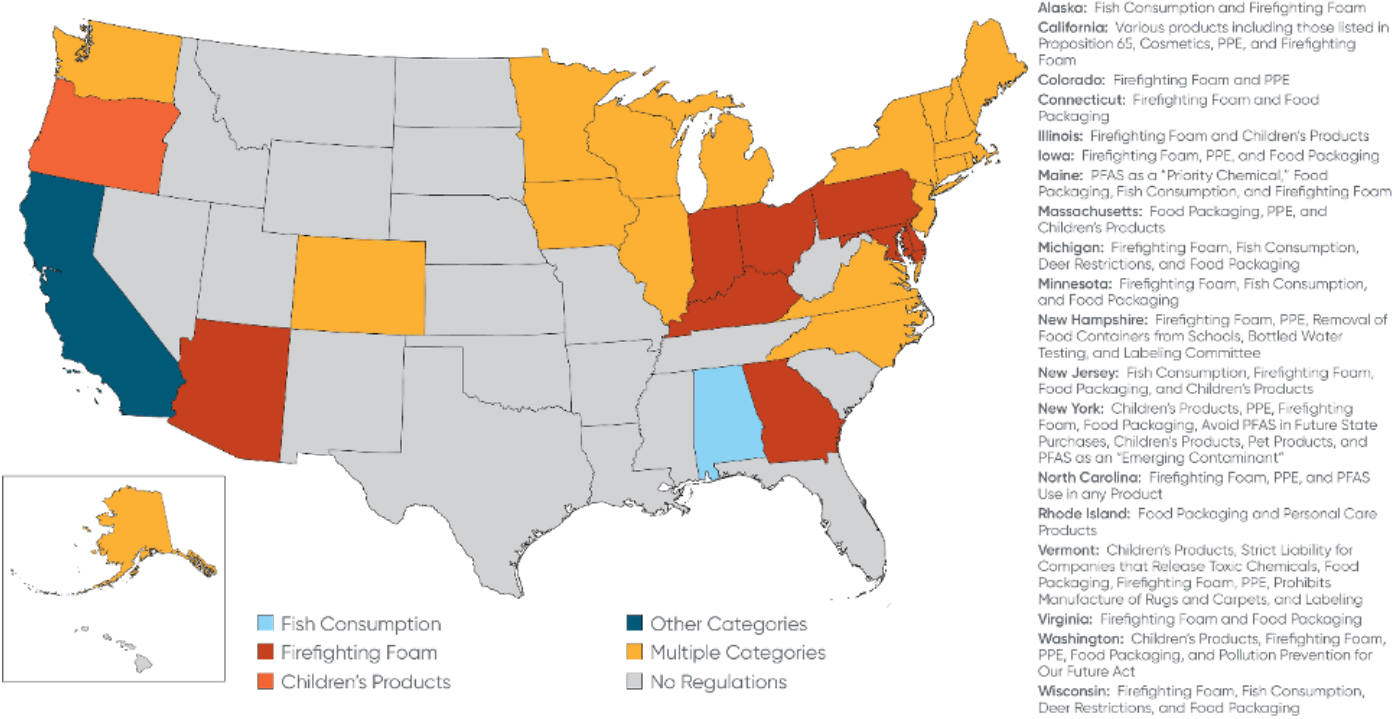
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- Food packaging
- Firefighting foam
- Personal protective equipment for firefighters (“PPE”)
- The consumption of fish tissue and deer meat
- A range of other products including pet products, manufacturing products such as textiles and rugs, and cosmetics.

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 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	<u>The Alabama Dept. of Health</u> restricts the number of fish people should consume from one reservoir and creek
Alaska	Fish Consumption <u>Firefighting Foam discharge notification in certain regions</u> Proposed: Firefighting Foam	Enacted Enacted Proposed	<u>The Alaska Dept. of Health and Social Services</u> prohibits all fish consumption from one lake Proposed: Firefighting Foam <u>SB 176</u>
Arizona	Firefighting Foam	Enacted	<u>Ariz. Rev. Stat. 36-1696</u>
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: <u>27 CCR 27001</u> Cosmetics: <u>AB 2762</u> Firefighting Foam and PPE: <u>SB 1044</u>
Colorado	Firefighting Foam and PPE	Enacted	Firefighting Foam Restriction: <u>CRS 24-33.5-1234</u> Firefighting Foam and PPE: <u>CRS 25-5-1301 et seq.</u>
Connecticut	Firefighting Foam and Food Packaging	Proposed	Firefighting Foam: <u>SB 297</u> and <u>HB 5288</u> Food Packaging: <u>HB 5291</u>

Delaware	Firefighting Foam	Proposed	<u>SB 217</u>
Georgia	Firefighting Foam	Enacted	<u>O.C.G.A. 25-2-41</u>
Illinois	Firefighting Foam and Children's Products	Proposed	Firefighting Foam: <u>SB 3154, HB 5529, and HB 5003</u> Children's Products: <u>SB 3378</u>
Indiana	Firefighting Foam	Enacted	<u>Ind. Code 36-8-10.7-1 et seq.</u>
Iowa	Firefighting Foam, PPE, and Food Packaging	Proposed	Food Packaging: <u>S. 386 and H.F. 775</u> PPE and Firefighting Foam: <u>H.F. 775 and H.F. 2241</u>
Kentucky	Firefighting Foam	Enacted	<u>Ky. Rev. Stat. 227.395</u>
Maine	PFAS as a "Priority Chemical," especially as a Children's Chemical of Concern Adopted: Food Packaging, and Fish Consumption Proposed: Firefighting Foam	Enacted Enacted Proposed	PFAS as a "Priority Chemical": <u>38 M.S.R.A. 1693-A(1), 06-096, Chapter 890</u> (PFOS designation) Food Packaging: <u>32 M.S.R.A., 26A, 1731-1738</u> Fish: <u>Remedial Action Guidelines for certain types of fish</u> Proposed: Firefighting Foam <u>LD 2147</u>
Maryland	Firefighting Foam	Enacted	<u>Md. Code, Envir. 6-1601 et seq.</u>

Massachusetts	Food Packaging, PPE, and Children's Products	Proposed	<p>Food Packaging: <u>SD 678</u> and <u>HD 3750</u></p> <p>PPE: <u>SD 1784</u> and <u>HD 3661</u></p> <p>Children's Products: <u>SD 1518</u></p>
Michigan	<p>Firefighting Foam, Fish Consumption, and Deer Restrictions</p> <p>Proposed: Food Packaging</p>	<p>Enacted</p> <p>Proposed</p>	<p>Firefighting Foam: Mich. Comp. Laws <u>408-1014r</u>, <u>324-14701 et seq.</u>, and <u>29-369c</u></p> <p>Fish: <u>The Michigan Dept. of the Env.</u> advises that people should not eat certain types of fish or limit the fish consumption depending on the location</p> <p>Deer: <u>One "do not eat" restriction from a certain five-mile area</u></p> <p>Proposed: Food Packaging <u>SB 1072</u></p>
Minnesota	<p>Adopted: Firefighting Foam and Fish Consumption</p> <p>Proposed: Food Packaging</p>	<p>Enacted</p> <p>Proposed</p>	<p>Firefighting Foam: <u>Minn. Stat. 325F.072</u></p> <p>Fish: <u>The Minnesota Dept. of Health</u> recommends not eating fish from one lake and consuming limited numbers of certain kinds of fish depending upon the location</p> <p>Proposed: Food Packaging (5 separate bills) <u>SF 2088</u>, <u>SF 3225</u>, <u>HF 3657</u>, <u>HF 4554</u> and <u>HF 20</u></p>

New Hampshire	<p>Adopted: Firefighting Foam and PPE</p> <p>Proposed: Removal of Food Containers from Schools, Firefighting Foam (registry), Bottled Water Testing, and Labeling Committee</p>	<p>Enacted</p> <p>Proposed</p>	<p>Firefighting Foam: N.H. Rev. Statute 154:8-b</p> <p>PPE: N.H. Rev. Statute 154:8-c</p> <p>Proposed: Food Containers: HB 1425</p> <p>Firefighting Foam (registry): HB 1569</p> <p>Bottled Water: HB 1274</p> <p>Labeling Committee: HB 1446</p>
New Jersey	<p>Adopted: Fish Consumption</p> <p>Proposed: Firefighting Foam, Food Packaging, and Children's Products</p>	<p>Enacted</p> <p>Proposed</p>	<p>Fish: The New Jersey Dept. of Environmental Protection has issued limits on fish consumption for high risk and general populations</p> <p>Proposed: Firefighting Foam A747</p> <p>Food Packaging: A3350</p> <p>Children's Products: A2104</p>

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: <u>Laws of New York, Sec. 37-0101 et seq.</u> PPE: <u>S439A</u> (Sec. 4) Firefighting Foam: <u>6 NYCRR 597</u> Proposed: Food Packaging <u>S2000B</u> and <u>S8817</u> Future Purchases: <u>S1108</u> Children's Products (add to existing law): <u>A9765</u> Pet Products: <u>A7876</u> Firefighting Foam (incineration): <u>A9952</u> Emerging Contaminant: <u>A7839</u>
North Carolina	Firefighting Foam, PPE, and PFAS Use in any Product	Proposed	Firefighting Foam and PPE: <u>HB560</u> PFAS Use in any Product: <u>HB1109</u>
Ohio	Firefighting Foam	Proposed	Firefighting Foam: <u>SB328</u>
Oregon	Children's Products	Enacted	<u>Toxic Free Kids Act: 431A.250 et. al.</u>
Pennsylvania	Firefighting Foam	Proposed	Firefighting Foam: <u>SB919</u>
Rhode Island	Food Packaging and Personal Care Products	Proposed	Food Packaging: <u>HB7307</u> and <u>SB2068</u> Personal Care Products: <u>HB7834</u>

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

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