

## Insights

# PFAS CONSUMER PRODUCTS REGULATIONS

Oct 19, 2020

This insight was originally published in October 2020. [Visit our up-to-date blog on PFAS in consumer products: state-by-state regulations >](#)

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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.

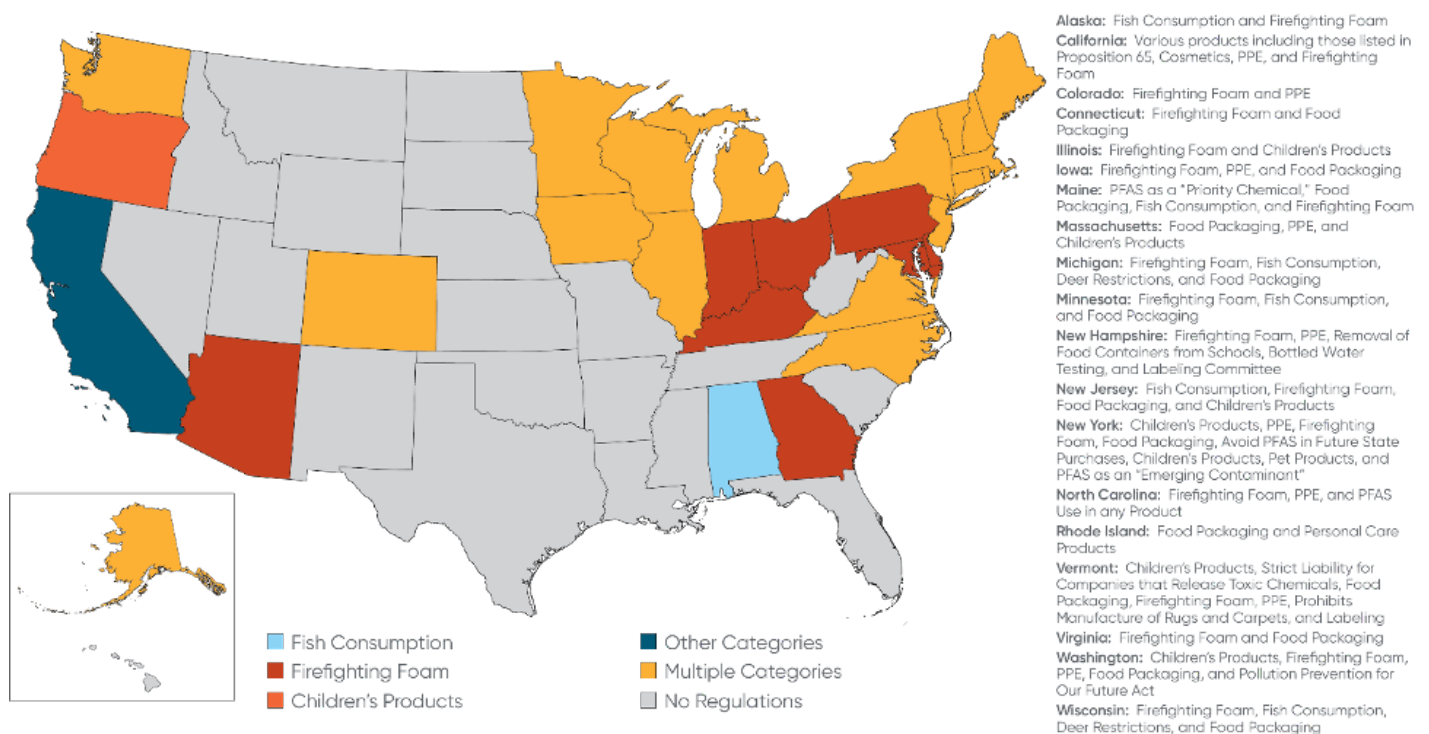
State regulations of PFAS in consumer products have focused on the following product sectors:

- 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	<a href="#">The Alabama Dept. of Health restricts the number of fish people should consume from one reservoir and creek</a>
Alaska	Fish Consumption Firefighting Foam discharge notification in certain regions	Enacted Enacted	<a href="#">The Alaska Dept. of Health and Social Services prohibits all fish consumption from one lake</a>

	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," <sup>[1]</sup> especially as a Children's Chemical of Concern	Enacted  Enacted	PFAS as a "Priority Chemical": 38 M.S.R.A. 1693-A(1), 06-096, Chapter 890 (PFOS designation)  Food Packaging: 32 M.S.R.A, 26A, 1731-1738

	<p>Adopted: Food Packaging, and Fish Consumption</p> <p>Proposed: Firefighting Foam</p>	Proposed	<p>Fish: Remedial Action Guidelines for certain types of fish</p> <p>Proposed: Firefighting Foam LD 2147</p>
Maryland	Firefighting Foam	Enacted	Md. Code, Envir. 6-1601 et seq.
Massachusetts	Food Packaging, PPE, and Children's Products	Proposed	<p>Food Packaging: SD 678 and HD 3750</p> <p>PPE: SD 1784 and HD 3661</p> <p>Children's Products: SD 1518</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 408-1014r, 324-14701 et seq., and 29-369c</p> <p>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</p> <p>Deer: One "do not eat" restriction from a certain five-mile area</p> <p>Proposed: Food Packaging SB 1072</p>
Minnesota	Adopted: Firefighting Foam and Fish Consumption	Enacted	<p>Firefighting Foam: Minn. Stat. 325F.072</p> <p>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</p> <p>Proposed: Food Packaging (5 separate bills) SF 2088, SF 3225,</p>

	Proposed: Food Packaging	Proposed	HF 3657, HF 4554 and HF 20
New Hampshire	Adopted: Firefighting Foam and PPE  Proposed: Removal of Food Containers from Schools, Firefighting Foam (registry), Bottled Water Testing, and Labeling Committee	Enacted  Proposed	Firefighting Foam: N.H. Rev. Statute 154:8-b  PPE: N.H. Rev. Statute 154:8-c  Proposed: Food Containers: HB 1425  Firefighting Foam (registry): HB 1569  Bottled Water: HB 1274  Labeling Committee: HB 1446
New Jersey	Adopted: Fish Consumption  Proposed: Firefighting Foam, Food Packaging, and Children's Products	Enacted  Proposed	Fish: The New Jersey Dept. of Environmental Protection has issued limits on fish consumption for high risk and general populations  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	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

	Foam (incineration), certain PFAS identified as "Emerging Contaminants" <sup>[2]</sup>		Pet Products: <a href="#">A7876</a> Firefighting Foam (incineration): <a href="#">A9952</a> Emerging Contaminant: <a href="#">A7839</a>
North Carolina	Firefighting Foam, PPE, and PFAS Use in any Product	Proposed	Firefighting Foam and PPE: <a href="#">HB560</a> PFAS Use in any Product: <a href="#">HB1109</a>
Ohio	Firefighting Foam	Proposed	Firefighting Foam: <a href="#">SB328</a>
Oregon	Children's Products	Enacted	<a href="#">Toxic Free Kids Act: 431A.250 et. al.</a>
Pennsylvania	Firefighting Foam	Proposed	Firefighting Foam: <a href="#">SB919</a>
Rhode Island	Food Packaging and Personal Care Products	Proposed	Food Packaging: <a href="#">HB7307</a> and <a href="#">SB2068</a> Personal Care Products: <a href="#">HB7834</a>
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: <a href="#">18 V.S.A. 1773</a> Proposed: Strict Liability <a href="#">S37</a> Food Packaging: <a href="#">S101</a> and <a href="#">H777</a> Firefighting Foam and PPE: <a href="#">S295</a> and <a href="#">H721</a> Rugs and Carpets: <a href="#">H771</a> Labeling: <a href="#">H928</a>
Virginia	Adopted: Firefighting Foam  Proposed: Food Packaging	Enacted  Proposed	Firefighting Foam: <a href="#">VA Code Ann. 9.1-207.1</a> Proposed: Food Packaging <a href="#">HB1712</a>
Washington	Adopted: Children's Products, Firefighting Foam, PPE, Food Packaging, and Pollution Prevention for Our Future Act	Enacted	<a href="#">Children's Safe Products Act: WAC 173-334-010 et seq.</a>  Firefighting Foam: <a href="#">RCW 70A.400.010 et seq.</a>  PPE: <a href="#">RCW 70A.400.030</a>

	Proposed: Firefighting Foam (notification and penalty provisions)	Proposed	Food Packaging: <a href="#">RCW 70A.222.070</a> Pollution Prevention for Our Future Act: <a href="#">SB 5135</a> Proposed: Firefighting Foam <a href="#">HB 1143</a>
Wisconsin	Adopted: Firefighting Foam, Fish Consumption, and Deer Restrictions  Proposed: Firefighting Foam (storage), Food Packaging	Enacted  Proposed	Firefighting Foam: <a href="#">Wis. Statute 299.48</a> Fish: <a href="#">The Wisconsin Dept. of Natural Resources</a> advises that people do not consume certain types of fish from one creek and lake Deer: <a href="#">One "do not eat" deer liver restriction from a certain five-mile area</a> Proposed: Firefighting Foam <a href="#">AB792</a> Food Packaging: <a href="#">AB952</a>

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
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- Environment
- Retail & Consumer Products
- Regulation, Compliance & Advisory
- Employment & Labor



## MEET THE TEAM



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