

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 >](#)

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.

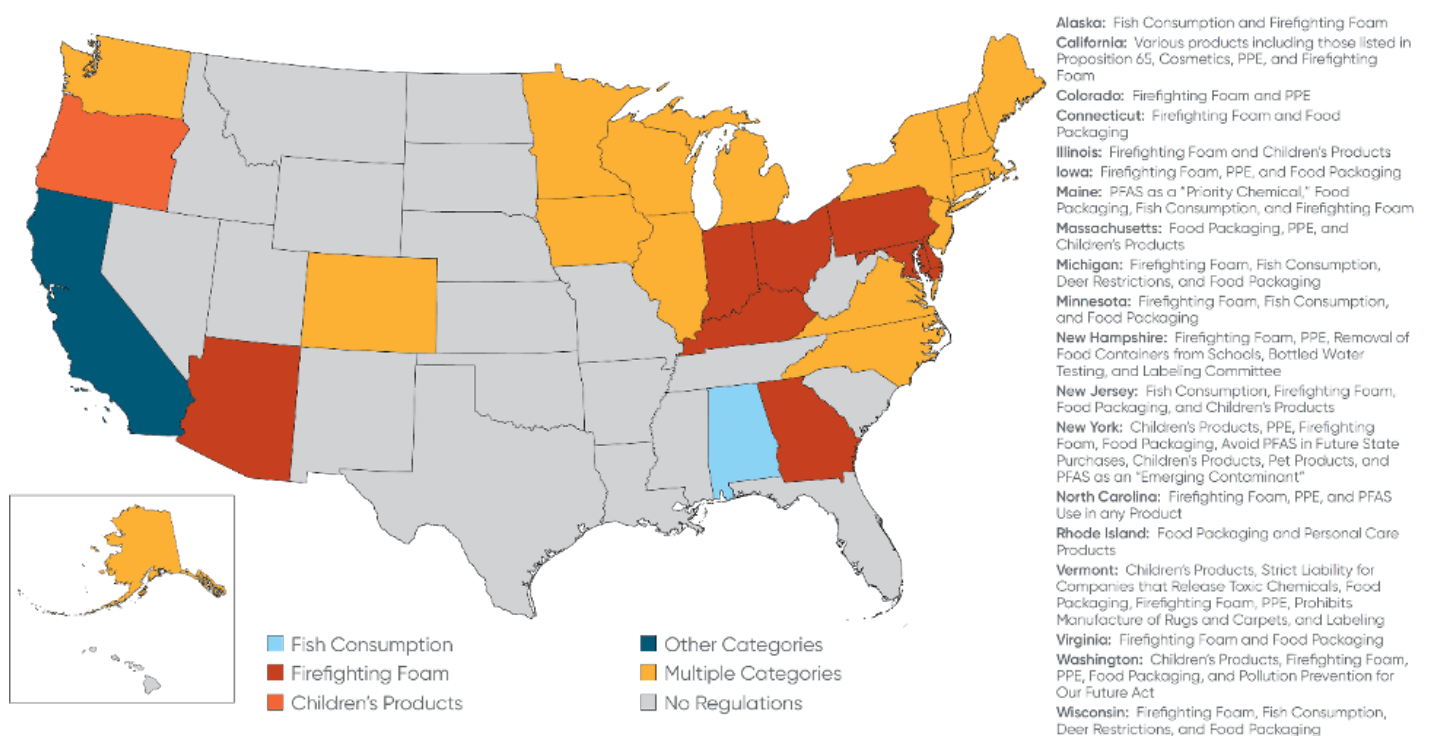
State regulations of PFAS in consumer products have focused on the following product sectors:

- 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 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 in certain regions | Enacted | |

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| | <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> |

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| | Proposed: Food Packaging | Proposed | HF 3657, HF 4554 and HF 20 |
| 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 | <p>Adopted: Children's Products, PPE, and Firefighting Foam</p> <p>Proposed: Food Packaging, Avoid PFAS in Future State Purchases, Children's Products, Pet Products, Firefighting</p> | <p>Enacted</p> <p>Proposed</p> | <p>Children's Products: Laws of New York, Sec. 37-0101 et seq.</p> <p>PPE: S439A (Sec. 4)</p> <p>Firefighting Foam: 6 NYCRR 597</p> <p>Proposed: Food Packaging S2000B and S8817</p> <p>Future Purchases: S1108</p> <p>Children's Products (add to existing law): A9765</p> |

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| | Foam (incineration), certain PFAS identified as “Emerging Contaminants” ^[2] | | 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 Personal Care Products | Proposed | Food 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 |

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| | Proposed: Firefighting Foam (notification and penalty provisions) | Proposed | Food Packaging: RCW 70A.222.070 Pollution Prevention for Our Future Act: SB 5135 Proposed: Firefighting Foam HB 1143 |
| Wisconsin | Adopted: Firefighting Foam, Fish Consumption, and Deer Restrictions Proposed: Firefighting Foam (storage), Food Packaging | Enacted Proposed | 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 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.

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