

PFAS UPDATE: CURRENT STATE-BY-STATE CONSUMER PRODUCTS 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 polyfluoroalkyl substances (“PFAS”) in their products. This area is rapidly developing as states create new laws, and the penalties and litigation risk for non-compliance can be significant. Below is an overview of enacted and proposed state laws and regulations as of August 10, 2021, to assist you in investigating whether your products may be impacted. While this article focuses on state laws and regulations, we note that the House of Representatives recently passed the PFAS Action Act of 2021, which among other things, includes provisions regarding labeling requirements for certain consumer products (see section 10 of the Act for additional information.) While the Senate still needs to approve this bill, it demonstrates that federal attention is now being directed to PFAS consumer products issues, and that federal action in this area is reasonably likely. PFAS is a family of chemicals comprised of over 5,000 compounds. According to the Agency for Toxic Substances and Disease Registry (“ATSDR”), PFAS have been reported in a variety of consumer products, including the following:

- Some grease-resistant paper, fast food containers, microwave popcorn bags, pizza boxes, and candy wrappers;
- Nonstick cookware (e.g., Teflon);
- Stain resistant coatings used on upholstery, or other fabrics;
- Water resistant clothing such as “durable water repellent clothing;”
- Cleaning products;
- Personal care products (e.g., shampoo, dental floss) and cosmetics (e.g., nail polish, eye makeup); and

- Paints, varnishes or sealants.

Some studies have also shown that certain PFAS chemicals accumulate in humans and animals, including deer meat and fish tissue.

SPECIFIC CONSUMER PRODUCT REGULATIONS

States have taken many different approaches to regulating consumer products containing PFAS.

State regulations of PFAS in consumer products have principally focused on the following product sectors, but these categories are not exclusive:

- Food Packaging;
- Personal Care Products;
- Children's Products;
- Use and Manufacturing;
- Textiles, Fabrics, Carpets or Rugs, and Upholstery; and
- The Consumption of Fish Tissue and Deer Meat.

The following chart identifies what specific product categories each state regulates, but does not include the specific regulatory levels or requirements to avoid confusion because the structure and limits vary widely from state to state.

State	Product Categories	Regulatory Status	Reference and Details
Alabama	Fish Consumption	Advisory	The Alabama Dept. of Health restricts the number of fish people should consume from one reservoir and two creeks
Alaska	Fish Consumption	Advisory	The Alaska Dept. of Health and Social Services prohibits all fish consumption from Kimberly Lake
Arizona	Food Packaging	Proposed	HB 2095
California	All consumer products sold to California consumers may require warnings if these products contain PFOA or PFOS above safe	Enacted	27 CCR 27001

	harbor levels (California Proposition 65)		
	Cosmetics	Enacted	AB 2762 and AB 495
	Rugs and Carpets	Enacted	Z-2020-0218-04
	Cookware	Proposed	AB 1200
	Children's Products	Proposed	AB 652
	Food Packaging	Proposed	AB 1200
Connecticut	Food Packaging	Enacted	SB 837
	Consumer Packaging	Proposed	SB 926
	Consumer Products (general)	Proposed	SB 404
	Food Packaging	Proposed	SB 111
	Water Safety and Bottled Water Restrictions	Proposed	HB 6615
Iowa	Food Packaging	Proposed	SF 19 and HF 293 (more inclusive bill)
Maine	PFOS as a "Priority Chemical" in Children's Products	Enacted	38 M.S.R.A. 1693-A(1), 06-096 Chapter 890
	Food Packaging	Enacted	32 M.S.R.A. 26A. 17-31-1731 et seq.
	Aerial Application of Pesticides	Enacted	LD 264
	Carpets, Rugs, and Fabric Treatments	Enacted	LD 1503
	Prohibiting PFAS in all products by 2030 and reporting requirements	Enacted	LD 1503
	Fish Consumption	Advisory	Remedial Action Guidelines for Certain Types of Fish (pg. 66)
Maryland	Cosmetics	Enacted	HB 643
	Rugs or Carpets	Proposed	HB 22
	Food Packaging	Proposed	HB 22
Massachusetts	Food Packaging	Proposed	S 1494

	Mosquito Management	Proposed	S 556
	Miscellaneous Products: (1) child passenger restraints; (2) cookware; (3) fabric treatments; (4) personal care products; (5) rugs and carpets; and (6) upholstered furniture	Proposed	H 2350
Michigan	Fish Consumption	Advisory	The Michigan Dept. of the Env. advises that people should not eat certain types of fish and limit the fish consumption depending on the specific location
	Deer Restrictions	Advisory	One "do not eat" restriction within a certain five-mile area
	Labeling of Consumer Products	Proposed	SB 0217
	Food Packaging	Proposed	HB 5250 and SB591
Minnesota	Food Packaging	Enacted	SF 20
	Fish Consumption	Advisory	The Minnesota Dept. of Health recommends not eating fish from one lake and consuming limited numbers of certain kinds of fish depending upon the specific location
	Food Packaging	Proposed	SF 70 and SF 373
	Composting	Proposed	SF 148
	Discretion to Prohibit PFAS in Cannabis Packaging	Proposed	HF 600
New Jersey	Fish Consumption	Advisory	The New Jersey Dept. of Env. Protection has issued limits regarding fish consumption for the high risk and general populations (pg. 20)
New York	Children's Products	Enacted	S 501B

	Food Packaging	Enacted	S 8817
	Carpets	Proposed	S 5027A
	Apparel	Proposed	S 6291
North Carolina	Use and Manufacturing	Proposed	S 638
Oregon	Children's Products	Enacted	431A.250 et seq.
	Food Packaging – Plastic Utensils	Proposed	HB 2365
	Carpets	Proposed	HB 3271
Rhode Island	Food Packaging	Proposed	SB 110
Vermont	Children's Products	Enacted	18 V.S.A. 1773
	Food Packaging	Enacted	S 20
	Rugs, Carpets, and Certain Stain-Resistant Treatments	Enacted	S 20
	Ski Wax	Enacted	S 20
	Labeling for Various Consumer Products	Proposed	H 27
Virginia	Food Packaging	Proposed	HB 1712
Washington	Food Packaging	Enacted	RCW 70A.222.070
	Children's Products	Enacted	WAC 173-334-010 et seq.
	Pollution Prevention for Our Future Act, identifying various "priority" consumer products using PFAS substances	Enacted	SB 5135
	Cosmetics	Proposed	SB 5480
Wisconsin	Fish Consumption	Advisory	The Wisconsin Dept. of Natural Resources advises that people should not consume certain types of fish in numerous creeks and lakes
	Deer Consumption	Advisory	Issued a "do not eat" deer liver restriction from a certain five-mile area

No Regulations: Arkansas, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virginia, and Wyoming

CONCLUSION

While several states do not currently have any adopted laws or regulations with respect to PFAS in consumer products, many are considering ways to address these chemicals, and as noted above, Congress is also considering regulation at a national level. Whether or not your business is currently subject to consumer product regulations related to PFAS, a prudent first step to evaluate your potential risk is to determine whether any of your products or production methods contain or use these chemicals. If you believe that you may be impacted by an enacted or proposed regulation, or if you would like help with evaluating whether PFAS may be present in your products, please contact Tom Lee or John Kindschuh at Bryan Cave Leighton Paisner LLP.

RELATED PRACTICE AREAS

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