

BCLPemerging.com

PFAS UPDATE: DECEMBER 2022 STATE-BY-STATE CONSUMER PRODUCTS REGULATIONS

Dec 21, 2022

This blog was originally published in December 2022. [Visit our most up-to-date blog on state-by-state regulations for PFAS in consumer products >](#)

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.

While this article focuses on state laws and regulations, we note that the House of Representatives passed the PFAS Action Act of 2021 on July 21, 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 has been directed to PFAS consumer products issues, and that federal action in this area is reasonably likely.

PFAS BACKGROUND

PFAS is a family of chemicals comprised of somewhere between 5,000-12,000 compounds depending on the regulatory definition. According to the [Agency for Toxic Substances and Disease Registry](#) (“ATSDR”), PFAS have been reported in certain 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 sources, such as the [United States Environmental Protection Agency](#) (“EPA”), also state that certain PFAS chemicals accumulate both in the human body and animals since PFAS can be ingested through water and food. Accordingly, some states have enacted health advisories limiting the consumption of deer meat and fish tissue.

SPECIFIC CONSUMER PRODUCT REGULATIONS

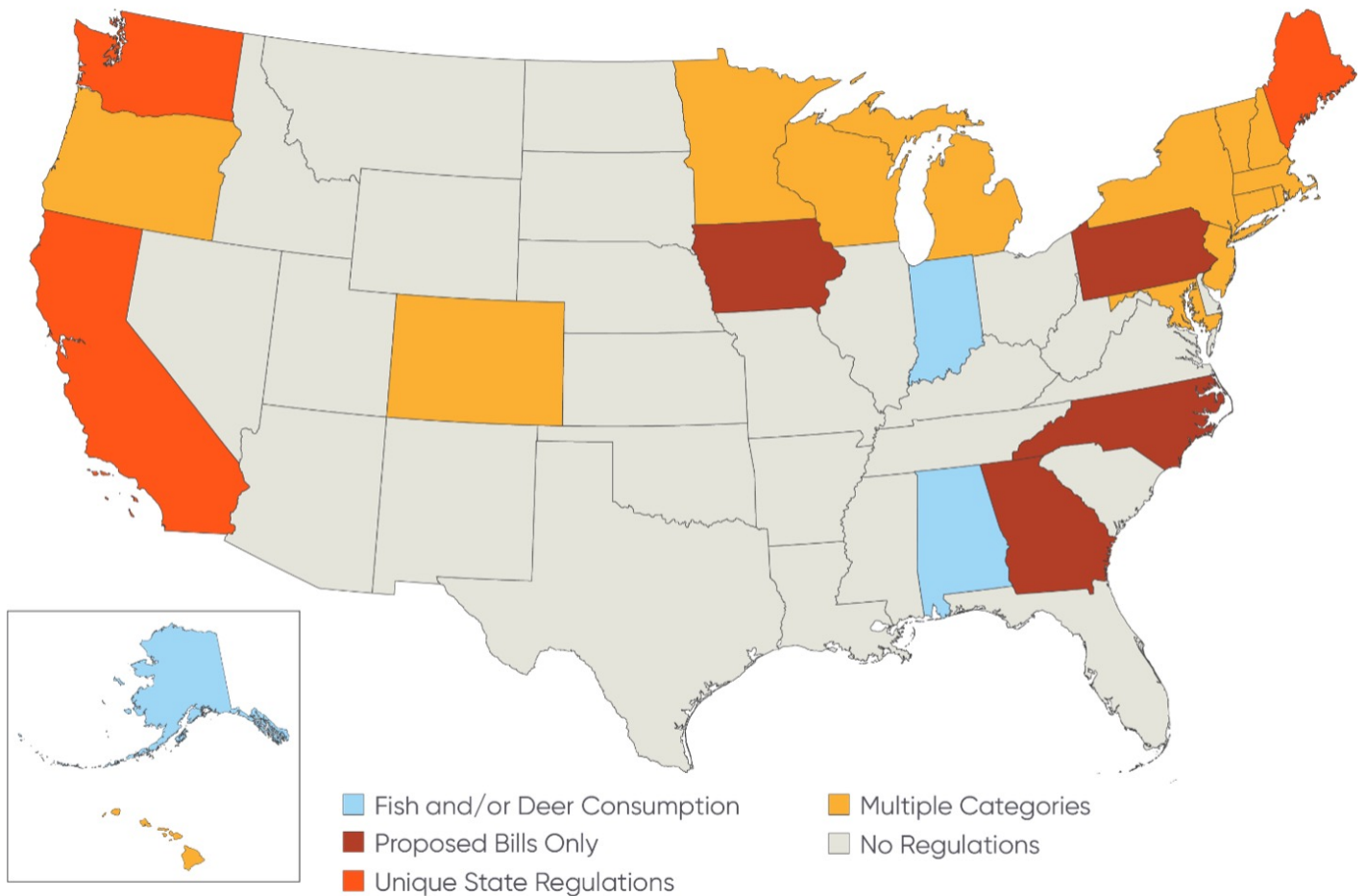
States have taken many different approaches to regulating consumer products containing PFAS.

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

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

Below is an overview of enacted and proposed state laws and regulations as of **December 20, 2022**, to assist you in investigating whether your products may be impacted.

ENACTED AND PROPOSED PFAS CONSUMER PRODUCT REGULATIONS



As of December 20, 2022

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 Department of Health has issued limitations for fish consumption from one reservoir and two creeks
Alaska	Fish Consumption	Advisory	The Alaska Department of Health and Social Services has issued limitations for fish consumption in one lake
California	Proposition 65: All consumer products	Enacted	27 CCR 27001

	sold to California consumers may require warnings if these products contain PFOA, PFOS, PFOS salts and transformation and degradation precursors, and PFNA and its salts above safe harbor levels		
	Cosmetics	Enacted	AB 2762
	Rugs and Carpets	Enacted	Regulation and DTSC Related Information
	1) Cookware; and 2) Food Packaging	Enacted	AB 1200
	Children's Products	Enacted	AB 652
	Recycling	Enacted	SB 343
	Composting	Enacted	AB 1201
	Textiles and Apparel	Enacted	AB 1817
	Cosmetics (Additional)	Enacted	AB 2771
	Treatments – Converted Textiles or Leather	Enacted	Regulation and DTSC Related Information
Colorado	1) Carpets and Rugs; 2) Fabric Treatments; 3) Food Packaging;	Enacted	HB22-1345

	4) Children's Products; 5) Oil and Gas Products; 6) Cookware – certain labelling requirements; 7) Cosmetics; 8) Indoor and Outdoor Textile Furnishings; and 9) Indoor and Outdoor Upholstered Furniture		
Connecticut	Food Packaging	Enacted	Public Act No. 21-191
	Fish Consumption	Advisory	The Connecticut Department of Energy and Environmental Protection has issued an Advisory for fish consumption in numerous locations
Georgia	1) Food Packaging; and 2) Children's Products	Proposed	HB 1629
Hawaii	Food Packaging	Enacted	HB 1644
	Recycling	Proposed	HB 1646
Indiana	Fish Consumption	Advisory	Three state agencies have issued limitations for fish consumption from rivers, streams, and lakes for various contaminants, including PFOS substances
Iowa	Food Packaging	Proposed	HF 2063

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.1731-1738
	Pesticides	Enacted	LD 264 and LD 2019
	Carpets, Rugs, and Fabric Treatments	Enacted	38 M.S.R.A. 16 §1614
	Prohibiting PFAS in All Products by 2030 Note: Some requirements begin on January 1, 2023	Enacted	38 M.S.R.A. 16 §1614
	Fish Consumption	Advisory	Remedial Action Guidelines for Certain Types of Fish (pg. 66) and the Department of Inland Fisheries and Wildlife Fish Consumption Advisory
	Deer Restrictions	Advisory	One “do not eat” restriction has been issued for a certain five-mile area
	Fertilizer and Compost	Enacted	LD 1911
Maryland	Cosmetics	Enacted	HB 643
	1) Food Packaging; and 2) Rugs and Carpets	Enacted	SB 273
	Fish Consumption	Advisory	The Maryland Department of the Environment has issued limitations for fish consumption in one creek for PFOS substances

	Pesticides	Proposed	HB 570
	Recycling	Proposed	HB 700
Massachusetts	Fish Consumption	Advisory	The Massachusetts Department of the Environment has issued limitations for fish consumption in five ponds and one lake
	Food Packaging	Proposed	S 2893
	Mosquito Management	Proposed	S 556
	1) Child Passenger Restraints; 2) Cookware; 3) Fabric Treatments; 4) Personal Care Products; 5) Rugs and Carpets; 6) Upholstered Furniture; and 7) Children's Products	Proposed	H 4818
Michigan	Fish Consumption	Advisory	The Michigan Department of Health and Human Services has issued limitations for fish consumption depending on the specific location
	Deer Restrictions	Advisory	One "do not eat" restriction has been issued for a certain three-mile area
	Labeling of Consumer Products Containing PFAS Substances	Proposed	SB 0217

	Food Packaging	Proposed	HB 5250
Minnesota	Food Packaging	Enacted	Minn. Stat. § 325F.075
	Fish Consumption	Advisory	The Minnesota Department of Health has issued limitations for fish consumption from certain bodies of water
	Food Packaging (Additional)	Proposed	HF 79
	Composting	Proposed	HF 630
	Prohibit PFAS Substances in Cannabis Packaging	Enacted	HF 600
	Cookware	Proposed	HF 2907
	Cosmetics	Proposed	HF 2906
	Ski Wax	Proposed	HF 2952
	Disclosure of Consumer Products Containing PFAS Substances	Proposed	HF 3075
	Clothing and Apparel	Proposed	HF 3076
	Children's Products	Proposed	HF 3571
	Rugs, Carpets, and Textiles	Proposed	HF 3180
	PFAS Funding, PFAS Disclosures or Notifications, and	Proposed	HF 4492

	<p>PFAS in the following products:</p> <ol style="list-style-type: none"> 1) Carpets and Rugs; 2) Fabric Treatments; 3) Upholstered Furniture; 4) Textile Furnishings; 5) Cookware; 6) Cosmetics; and 7) Ski Wax 		
New Hampshire	Fish Consumption	Advisory	The New Hampshire Department of Environmental Services has issued limitations for fish consumption from five lakes
	<ol style="list-style-type: none"> 1) Disclosure of Consumer Products containing PFAS Substances; 2) Carpets, Rugs, and Fabric Treatments; and 3) Prohibiting PFAS in All Products by 2030 	Proposed	HB 1589
	Labels on Specific Products Containing PFAS	Proposed	HB 1422
New Jersey	Fish Consumption	Advisory	The New Jersey Department of Environmental Protection has issued

			limits for fish consumption the high risk and general populations (See pg. 9)
	Labelling for Products Containing PFAS, and Prohibiting PFAS in Various Products: 1) Cosmetics; 2) Carpets or Fabric Treatments; 3) Food Packaging; and 4) Cookware	Proposed	S 3177
	Recycling	Proposed	A 1554
New York	Children's Products	Enacted	S 501B
	Food Packaging	Enacted	N.Y. Environmental Conservation Law § 37-0209
	Fish Consumption	Advisory	The New York State Department of Health has issued limitations for fish consumption from multiple waterways in one region
	Carpets	Proposed	S 5027
	Apparel	Proposed	S 6291
	General Packaging	Proposed	A 10185
	Anti-Fogging Sprays and Wipes	Proposed	S 8188

Cosmetics/Personal Care Products	Proposed	S 8364
Prevent Incineration of PFAS Substances	Proposed	A 10081
Feminine Hygiene Products	Proposed	S 9379
1) Cleaning Products; 2) Air Care Products; 3) Automotive Products; 4) Cookware; 5) Fabric Treatments; 6) Rugs; 7) Ski Wax; 8) Textiles and Textile Articles; 9) Outdoor Apparel; 10) Architectural Paints; 11) Personal Protective Equipment; 12) Polishes or Floor Products;	Proposed	A 10620

	Prohibiting PFAS in All Products by 2030, and Prohibiting PFAS in the Following Products: 1) Carpets and Rugs; 2) Cookware; 3) Cosmetics; 4) Fabric Treatments; and 5) Personal Care Products	Proposed	A 8491
North Carolina	Use and Manufacturing	Proposed	SB 638
	General Packaging	Proposed	HB 1113
Oregon	Children's Products	Enacted	Toxic Free Kids Act: 431A.250 et al.
	Fish Consumption	Advisory	The Oregon Health Authority has issued guidelines recommending limitations for fish consumption depending on the specific location because of various contaminants, including PFOS substances
Pennsylvania	Food Packaging	Proposed	HB 1965
Rhode Island	Food Packaging	Enacted	S 2044
	Food Packaging and Warning Labels for Clothing or Carpeting	Proposed	S 2049

	1) Rugs and Carpets; 2) Fabric Treatments; 3) Upholstered Furniture; 4) Textiles; 5) Apparel; 6) Cosmetics; 7) Children's Products; and 8) Cookware	Proposed	H 7436
Vermont	Children's Products	Enacted	18 V.S.A. 1773
	Food Packaging	Enacted	18 V.S.A. 1672
	Rugs, Carpets, and Aftermarket Stain and Water Resistant Treatments	Enacted	18 V.S.A. 1682
	Ski Wax	Enacted	18 V.S.A. 1692
	Labeling for Certain Consumer Products	Proposed	H 27
	1) Prohibiting PFAS in All Products by 2030; and 2) Cookware and Utensils	Proposed	H 650
	Cosmetics	Proposed	H 677

	1) Cosmetics; and	Proposed	S 267
	2) Athletic Turf Fields		
	Prohibit Use of PFAS Products Sold in Vermont	Proposed	H 694
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 that use PFAS Substances	Enacted	SB 5135 Related Information
	Regulate PFAS Consumer Products Identified in the Chemical Action Plan	Enacted	HB 1694 and the 2021 Washington Chemical Action Plan
	Cosmetics	Proposed	HB 1853
Wisconsin	Fish Consumption	Advisory	The Wisconsin Department of Natural Resources has issued limitations for fish consumption from numerous creeks and lakes
	Deer Consumption	Advisory	Two agencies issued a "do not eat" deer liver restriction for a certain five-mile area
	Food Packaging	Proposed	SB 361

No PFAS consumer product regulations (as of the date of publication): Arizona, Arkansas, Delaware, Florida, Idaho, Illinois, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, 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. 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.

For more information on PFAS chemicals, and the regulatory and litigation risks that they pose, please visit our [PFAS webpage](#). If you believe that you may be impacted by an enacted or proposed regulations, or if you would like help with evaluating whether PFAS may be present in your products, please contact Tom Lee, John Kindschuh, Emma Cormier, or any other member of our PFAS team at Bryan Cave Leighton Paisner LLP.

RELATED CAPABILITIES

- PFAS
- Environment

MEET THE TEAM



Thomas S. Lee

San Francisco

tom.lee@bclplaw.com

+1 415 675 3447



Emma R. Cormier

St. Louis

emma.cormier@bclplaw.com

+1 314 259 2160



John R. Kindschuh

St. Louis

john.kindschuh@bclplaw.com

+1 314 259 2313

This material is not comprehensive, is for informational purposes only, and is not legal advice. Your use or receipt of this material does not create an attorney-client relationship between us. If you require legal advice, you should consult an attorney regarding your particular circumstances. The choice of a lawyer is an important decision and should not be based solely upon advertisements. This material may be “Attorney Advertising” under the ethics and professional rules of certain jurisdictions. For advertising purposes, St. Louis, Missouri, is designated BCLP’s principal office and Kathrine Dixon (kathrine.dixon@bclplaw.com) as the responsible attorney.