

# Recent Bans and Reporting Requirements for Products Containing Per- and Polyfluoroalkyl Substances (PFAS)

State Developments and Challenges for the Pesticide Industry

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# State Attention on PFAS in Products

- ❖ Many states have adopted policies regulating PFAS
  - Cleanup standards, toxicity levels
  - Drinking water, groundwater, soil, air quality, hazardous waste, remediation
  - Monitoring, notification/reporting, restrictions
- ❖ Firefighting Foam (AFFF)
- ❖ New territory: consumer products



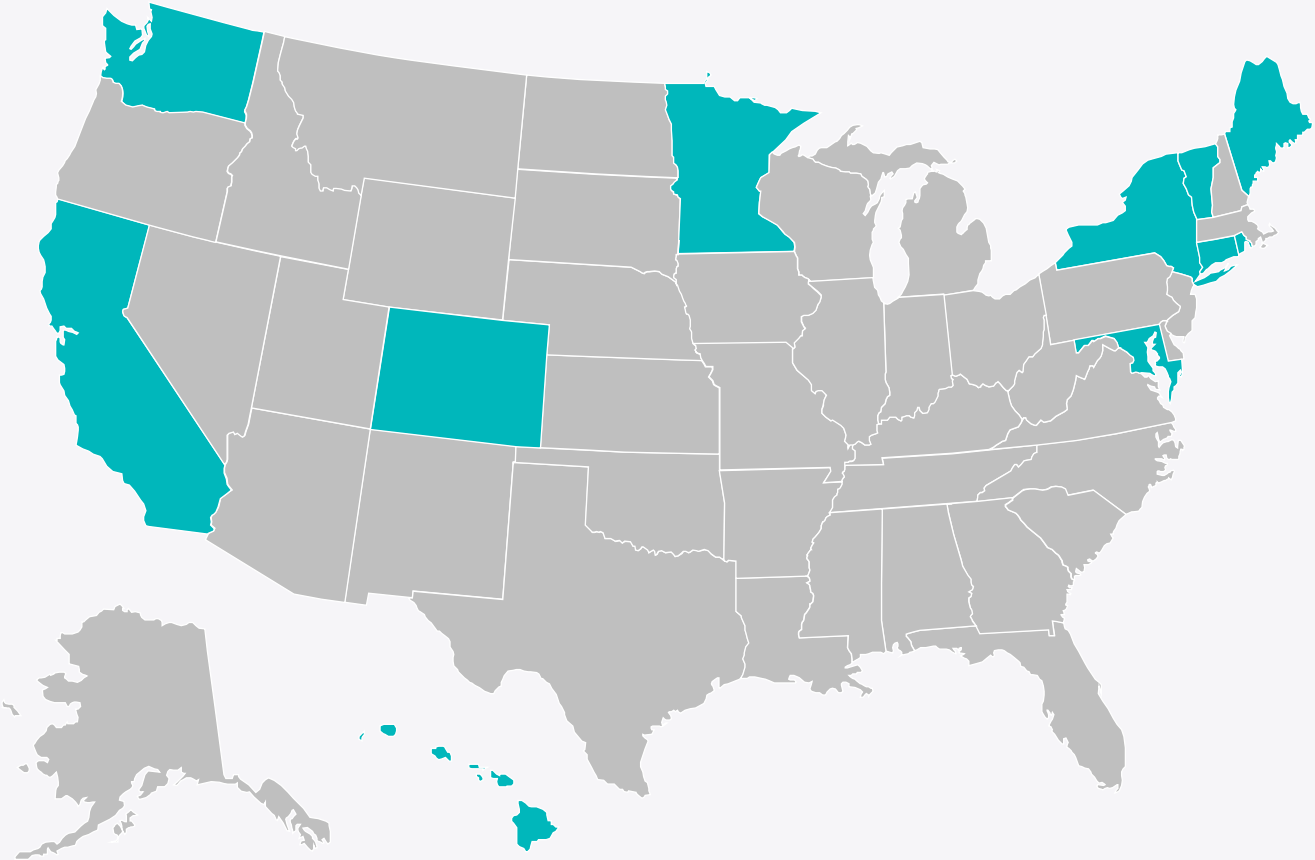
# State Regulation of PFAS



- ❖ Previous targets of regulation
  - *BPA, phthalates, lead, cadmium, flame retardants*
- ❖ In 2022, 280 PFAS-related bills were proposed at the state level; 198 bills introduced in 2023
- ❖ 11 states have enacted laws to ban PFAS in various products
  - *Food packaging, rugs, carpets, textiles, cosmetics, fabric treatments, children's products, furniture, ski wax*
- ❖ Retailers taking voluntary initiatives to ban PFAS in products from their suppliers in response
  - *Response to public pressure and testing from consumer groups*



# State Bans on PFAS in Products



# State Bans on PFAS in Products

State	Products Regulated	Compliance Date
<b>California</b>	Food packaging	January 1, 2023
	Juvenile products	July 1, 2023
	Cosmetics	January 1, 2025
	Textile articles	January 1, 2025
<b>Colorado</b>	Juvenile products	January 1, 2024
	Carpets and rugs	January 1, 2024
	Oil and gas products	January 1, 2024
	Fabric treatments	January 1, 2024
	Food packaging	January 1, 2024
	Indoor upholstered furniture	January 1, 2025
	Cosmetics	January 1, 2025
	Indoor textile furnishings	January 1, 2025
	Outdoor upholstered furniture	January 1, 2027
	Outdoor textile furnishings	January 1, 2027
<b>Connecticut</b>	Food packaging	As soon as feasible but no later than December 31, 2023

# State Bans on PFAS in Products

State	Products Regulated	Compliance Date
Hawaii	Food packaging	July 1, 2023
Maine	Carpets, rugs and fabric treatments	January 1, 2023
	All products	January 1, 2030
	Pesticides	January 1, 2030
Maryland	Food packaging	January 1, 2024
	Rugs and carpets	January 1, 2024
	Cosmetics	January 1, 2025
Minnesota	Food packaging	January 1, 2024
New York	Food packaging	December 31, 2022
	Apparel	December 31, 2023
Rhode Island	Food packaging	January 1, 2024
Vermont	Rugs, carpets	July 1, 2023
	Food packaging	July 1, 2023
	Ski wax	July 1, 2023
	Aftermarket stain and water-resistant treatments	July 1, 2023
Washington	Food packaging	February 2023 and May 2024

# State Reporting/Disclosure Requirements

State	Products Regulated	Scope	Form of reporting or disclosure	Compliance Date
California	Rugs and carpets	PFAS	Priority product notifications	August 30, 2021
	Converted textile and leather treatments (for carpets, upholstery, clothing, shoes)	PFAS	Priority product notifications	May 31, 2022
	Consumer products	PFOA, PFOS (and its salts and transformation and degradation precursors), PFNA (and its salts)	Proposition 65 warnings	PFOA- Nov. 10, 2018 (repro harm) Feb. 25, 2023 (cancer) PFOS- Nov. 10, 2018 (repro harm) Dec. 24, 2022 (cancer) PFNA- Dec. 31, 2022 (repro harm)
	Cookware	PFAS	Website and labeling	January 1, 2023- website January 1, 2024- labeling
Colorado	Cookware	PFAS	Labeling	January 1, 2024

# State Reporting/Disclosure Requirements

State	Products Regulated	Scope	Form of reporting or disclosure	Compliance Date
Maine	All products	PFAS	Report to the state	January 1, 2023
	Children's products (broad definition)	PFOS	Report to the state	Within 180 days of July 28, 2020 (if sale commences after reporting period, within 30 days of sale in state)
New York	Children's products	PFOA and PFOS	Report to the state	Regulation not promulgated yet
Vermont	Children's products	PFOA and PFOS	Report to the state	January 31, 2022
Oregon	Children's products	PFOS	Report to the state	January 1, 2018
Washington	Children's products	PFOA and PFOS	Report to the state	January 31, 2019



## ❖ Reporting Requirement

- Manufacturers of products (including pesticides) with intentionally added PFAS sold, offered for sale or distributed in Maine must submit notification to the state beginning Jan. 1, 2023
- Threshold: PFAS that is intentionally added, present in the product sold, detectable
- Reports are to be emailed; DEP working on online reporting system
- Fee required for notifications
- Report product information, CAS number, purpose of PFAS in product, amount of PFAS in product, and manufacturer information
- Packaging of a product is not required to be reported
- **Proposed reporting regulation out for public comment until May 19, 2023**

## ❖ Bans

- Carpets or rugs; fabric treatments- Jan. 1, 2023
- All products (including pesticides)- Jan. 1, 2030 (unless currently unavoidable use)

## ❖ LD 2019- Ban

- Ban on sale or distribution of a pesticide that has been contaminated by PFAS
- Ban on sale or distribution of a pesticide containing intentionally added PFAS – January 1, 2030

## ❖ LD 264- Disclosure

- Manufacturers and distributors must provide affidavits stating whether the registered pesticide has ever been stored, distributed or packaged in a fluorinated high-density polyethylene (HDPE) container
- Manufacturers must provide affidavits stating whether a PFAS is in the formulation of the registered pesticide
- Must also provide confidential statements of formula
- These are conditions for product registration and reregistration (renewal)
- Board of Pesticide Control to conduct study to determine if fluorinated adjuvants are being used or sold in the state and whether to regulate

## ❖ Massachusetts

- Bill to prohibit pesticide containing PFAS from being used as part of mosquito or greenhead fly control activity; department must test products to ensure no PFAS

## ❖ Minnesota

- Ban on state registration of pesticides that contain a PFAS as an inert ingredient or other intentionally added substance

## ❖ Maryland

- Prohibits state registration of pesticides for use against mosquitoes unless registrant submits test results indicating the product has passed a PFAS test Bill has been significantly scaled back

## ❖ Vermont

- Prohibits the manufacture, sale and distribution of pesticides containing PFAS by 2024
- Ban on all products by containing PFAS by 2030

## ❖ Massachusetts

- Ban on PFAS in food packaging, child passenger restraints, fabric treatments, cookware, personal care products, rugs and carpets, upholstered furniture, children's products January 1, 2026; testing of certain products
- Reporting requirements for all products starting June 1, 2026; labeling
- Ban on all products containing PFAS beginning January 1, 2030

## ❖ Minnesota

- Ban on PFAS in carpets, rugs, cleaning products, cookware, cosmetics, fabric treatments, children's products, menstruation products, textiles, ski wax, and upholstered furniture
- Reporting requirements for all products starting January 1, 2026
- Ban on all products containing PFAS beginning January 1, 2032

## Consistencies across states

- Definition of PFAS: “a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom”
- Bans: “any person” selling or distributing in the state (retailers included)
- Knowledge of presence of PFAS in products not necessarily required



## Inconsistencies across states

- Definition of “intentionally added” PFAS;
- Definitions of products regulated (e.g., food packaging)
- Whether laws cover intentionally added PFAS and/or unintentional presence of PFAS
- Whether product packaging is included in scope of law
- Certificates of compliance
- Thresholds for reporting
- Information required for reporting
- Exemptions from bans or reporting; ability to apply for waivers
- Fees
- Safer alternatives



# Supply Chain Challenges and Strategies for Compliance

## *Challenges*

- ❖ Lack of knowledge about use or presence of PFAS in supplier materials
- ❖ Customers seeking more information about products
- ❖ Testing of products that may contain PFAS
- ❖ Tracking patchwork of state regulations
- ❖ Products sold online— lack of ability to control which states products are sold into
- ❖ Impact on ability to make certain sustainability claims about products that are reported or banned

## *Possible Solutions*

- ✓ Communication with suppliers
- ✓ Assurances/certifications that products comply with state PFAS laws
  - Defining PFAS appropriately so certification covers multiple states
  - Indemnity language in supplier agreements
- ✓ Ensure certificates of compliance meet required criteria
- ✓ Track PFAS legislation and regulations

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*Thank you!*



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