

A Snapshot of US State-Level Regulatory Developments Restricting or Prohibiting PFAS in Consumer Products in 2023

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About The Author



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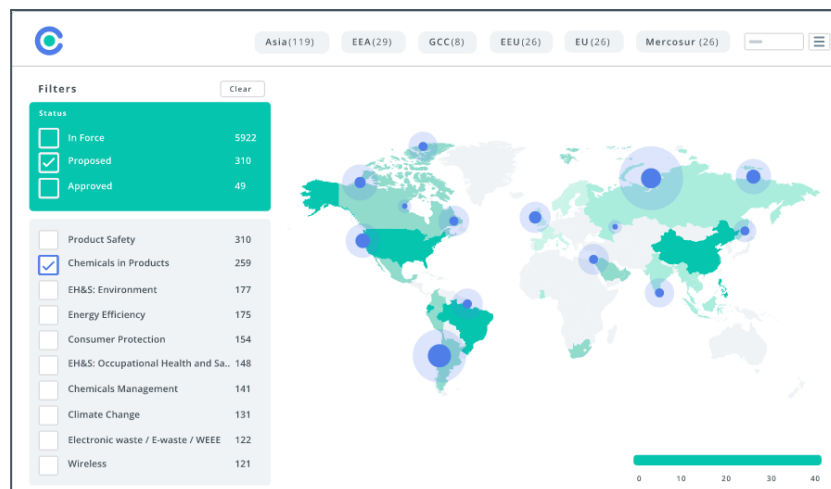
Before joining Compliance & Risks in 2008, Victoria was a senior analyst for major law firms, with experience in complex litigation and legal operations, intellectual property, and regulatory process; and Operations Manager for software companies.

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1. Introduction

In this first half of 2023, several US states have proposed new and amending legislation and regulation regarding the group of chemicals referred to as PFAS (Perfluoroalkyl and Polyfluoroalkyl substances or “Per - and Polyfluoroalkyl”).

PFAS is known to be widely used, in many consumer products including textiles, EEE, semiconductors, carpets and floor coverings, furniture, children’s products, cookware, packaging, and in manufacturing for its nonstick, repellent, and water resistant properties.

This whitepaper provides an overview on developments of product compliance requirements regarding PFAS, and proposed or upcoming compliance deadlines.

It also identifies significant or exemplary legislation and rules that may be enacted later in this year or next, affecting product manufacturing, distribution and sale.

2. Enacted Rules

California: Prohibition of Perfluoroalkyl and Polyfluoroalkyl substances (PFAS) in Textiles, Assembly Bill 1817 Enacted, 2022

On 29 September 2022, California enacted Assembly Bill 1817 restricting PFAS in a range of textile products. It prohibits the manufacture, distribution and sale of new textile articles that contain regulated perfluoroalkyl and polyfluoroalkyl substances (PFAS), as of **1 January 2025**.

The bill also requires legible disclosure of "Made with PFAS chemicals" with any textile article as of that date but has postponed the applicability of the ban on outdoor gear and apparel designed for "severe conditions" to **1 January 2028**.

The prohibition is based on PFAS thresholds measured in total organic fluorine: a) commencing **1 January 2025**, 100 parts per million; and b) commencing **1 January 2027**, 50 parts per million.

California: Prohibition of Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS) in Food Packaging, and Cookware Labeling, Assembly Bill 1200 Enacted, 2021

While this Bill entered into force on 1 January 2022, it contains recent and upcoming compliance deadlines:

As of **1 January 2023**, manufacturers are prohibited from claiming on the internet that cookware is free of a specific chemical if the chemical belongs to a chemical group or class identified on the designated list, unless no individual chemical from that chemical group or class is intentionally added to the cookware.

From **1 January 2024**, all manufacturers of cookware that contain one or more intentionally added chemicals on the designated list - in the handle of the product or in any product surface that comes into contact with food, foodstuffs, or beverages - shall list the presence of those chemicals *on the product* while also meeting the labeling requirements in this law.

Manufacturers shall not claim (on the cookware package) that cookware is free of any specific chemical if the chemical belongs to a chemical group or class identified on the designated list, *unless* no individual chemical from that chemical group or class is *intentionally added* to the cookware.

Maine: Restriction of Products Containing Perfluoroalkyl and Polyfluoroalkyl (PFAS) Substances, House Paper 1113, Legislative Document 1503 Enacted, 2021

In July 2021, Maine Bill HP 1113/ LD 1503 established 38 MRSA §1614 prohibiting the sale, offer or distribution for sale of a product containing intentionally added PFAS. Though enacted 2 years ago, the first prohibition took effect on **1 January 2023** covering carpets, rugs, and fabric treatments containing intentionally added PFAS.

The second prohibition, which requires manufacturers of a product containing intentionally added PFAS to submit a report that includes a brief description of the product, as well as the purpose and use of PFAS in the product, including components, and other information, was to take effect as of 1 January 2023. However, the Governor of Maine signed LD 217, An Act to Support Manufacturers Whose Products Contain Perfluoroalkyl and Polyfluoroalkyl Substances, on 8 June thereby revising the 1 January 2023 reporting requirement for products and product components containing intentionally added per- and polyfluoroalkyl substances (PFAS) to **1 January 2025**.

LD 217 also authorizes reporting the amount of total organic fluorine if the amount of each PFAS compound is not known and also allows the amount of PFAS to be reported based on information provided by a supplier in lieu of testing.

The third prohibition, effective **1 January 2030** is a complete prohibition, on the sale of products in Maine, containing intentionally added PFAS.

Minnesota (USA): Restrictions on PFAS, Lead, and Cadmium in Products, and Food Package Labeling, House File 2310 Enacted, 2023

This omnibus Bill was enacted on 24 May 2023 and entered into force on **1 July 2023**.

Beginning **1 January 2025**, a person may not sell, offer for sale, or distribute for sale in this state the following products if the product contains intentionally added PFAS:

1. Carpets or rugs;
2. Cleaning products;
3. Cookware;

4. Cosmetics;
5. Dental floss;
6. Fabric treatments;
7. Juvenile products;
8. Menstruation products;
9. Textile furnishings;
10. Ski wax; or
11. Upholstered furniture.

As of **1 January 2032**, the sale, offer for sale, or distribution in the state of any product that contains intentionally added PFAS is prohibited, unless the Commissioner has determined that the use of PFAS in the product is a currently unavoidable use.

Manufacturers of products containing intentionally added PFAS will be required to notify the agency of such products and uses beginning **1 January 2026**.

Nevada: Governing Certain Products That Contain Intentionally Added Perfluoroalkyl and Polyfluoroalkyl Substances, Senate Bill 76, 2023

On 23 January 2023, Senate Bill 76 was proposed. The Bill proposes that as of **1 January 2024**, manufacturers would be prohibited from selling or distributing any carpet or rug, fabric treatment, food packaging or children's product that contains intentionally added perfluoroalkyl and polyfluoroalkyl substances. Beginning **1 July 2024**, manufacturers would also be prohibited from selling cosmetics, indoor textile furnishings or indoor upholstered furniture that contain intentionally added perfluoroalkyl and polyfluoroalkyl substances.

Manufacturers of cookware that contain intentionally added perfluoroalkyl and polyfluoroalkyl substances will also be required to include on the cookware a product label, and on any product listing for online sales.

On 16 June 2023, the Nevada governor vetoed the Bill. The Legislature will not be able to override the governor's veto until next session because it adjourned sine die before the governor's action. The Bill will return to the legislature in 2024 for reconsideration.

New York: Prohibition of Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS) in Apparel and Outdoor Apparel for Severe Wet Conditions, Senate Bill S1322 Enacted, 2023

On 24 March 2023, New York Senate Bill S1322 was enacted. The Bill, which enters into force on **31 December 2023**, provides that as of **1 January 2025**, the sale or offer for sale in the state of any new, not previously used, apparel containing perfluoroalkyl and polyfluoroalkyl substances as intentionally added chemicals is prohibited.

In addition, the sale or offer for sale in the state of any new, not previously used, apparel containing perfluoroalkyl and polyfluoroalkyl substances [as intentionally added chemicals] at or above a level that the department shall establish by way of regulation will be prohibited no later than **1 January 2027**.

The Bill also contains a prohibition on the sale or offer for sale of any new, not previously used, outdoor apparel for severe wet conditions containing perfluoroalkyl and polyfluoroalkyl substances at or above a level that the department shall establish in regulation, or as intentionally added chemicals as of **1 January 2028**.

Oregon: Prohibition of PFAS and Polystyrene Foam in Foodware Products, Senate Bill 543 Enacted, 2023

On 8 May 2023, Oregon Senate Bill 543 was enacted. The Bill, which is effective as of **1 January 2025**, prohibits the sale, offer for sale, or distribution in the state, of foodware containers containing intentionally added perfluoroalkyl or polyfluoroalkyl substances. Foodware containers are defined to include bowls, plates, cups, lids, clamshells or other containers or any other items used for serving or containing

prepared food, including takeout food and leftovers from partially consumed meals prepared by food vendors.

Washington: Safer Products Restrictions and Reporting for Designated Priority Products, Rule, May 2023

On 31 May, the Washington State Department of Ecology established a regulatory program to reduce toxic chemicals in consumer products and increase product ingredient transparency which is effective as of **1 July 2023**. The program introduces reporting requirements for certain chemical-product combinations as well as restrictions for certain chemical-product combinations. The rule restricts the ability of a person from selling a previously owned priority consumer product they know violates a restriction. Repair and replacement parts are exempt so people can extend the life of old priority consumer products.

As of **1 January 2024**, regulated entities that must comply with reporting requirements should begin tracking certain intentionally used priority chemicals in certain priority consumer products including PFAS in leather and textile furniture and furnishings intended for outdoor use and organohalogen flame retardants in electric and electronic products with plastic external enclosures, intended for outdoor use.

Additional restrictions take effect from **1 January 2025** including the restriction of:

- Intentionally added PFAS in aftermarket stain and water-resistance treatments, carpets and rugs;
- Intentionally added ortho-phthalates in fragrances in beauty products and personal care products, 1,000 ppm ortho-phthalates in vinyl flooring and intentionally added organohalogen flame retardants in electronic displays and televisions in the “electric and electronic products with plastic external enclosures, intended for indoor use” product category;
- 1,000 ppm alkylphenol ethoxylates in laundry detergent;
- Bisphenols in drink cans.

Regulated entities must comply with reporting requirements to submit their notification to Ecology as of **31 January 2025**.

As of **1 January 2026**, intentionally added PFAS in leather and textile furniture and furnishings intended for indoor use is restricted whilst the restriction of intentionally added organohalogen flame retardants in electric and electronic products with plastic external enclosures, intended for indoor use, for Group 1 entities, takes effect from **1 January 2027**.

Intentionally added organohalogen flame retardants in electric and electronic products with plastic external enclosures, intended for indoor use, for Group 2 entities, takes effect from **1 January 2028**.

3. Proposed Rules

California: Eliminating Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS) from Menstrual Products, Assembly Bill 246, 2023

This Bill, proposed on 17 January 2023, would prohibit manufacturing, distributing or sales of any menstrual products containing regulated PFAS, and require that a manufacturer use the least toxic alternative to PFAS with effect from **1 January 2025**. A manufacturer of a menstrual product would provide a certificate of compliance that the product is free of PFAS. This Bill would amend existing prohibitions on PFAS in cosmetics.

Rhode Island (USA): Towards a Comprehensive Ban of PFAS in Products, Senate Bill 16, 2023

This Bill, proposed on 18 January 2023, reflects the title in that the Legislature, by **31 December 2032**, intends a “complete ban on all uses of PFAS unless the use of PFAS in a product is considered unavoidable”. If enacted, Senate Bill 16 would prohibit the use of PFAS in carpets, upholstered furniture, textile furnishings, apparel, cosmetics,

juvenile products, cookware and firefighting foam. The Act would provide for some limited and/or temporary exemptions to the prohibitions, and would take effect on enactment of the Bill.

The sale and distribution in commerce of new juvenile products containing PFAS chemicals would be prohibited as of **1 July 2024**, and on and after **1 January 2025**, prohibitions would apply to carpets and rugs, textile furnishings, upholstered furniture and fabric treatment that contain PFAS; and sale of any cosmetic or cosmetic product containing PFAS; and distribution or sale of cookware that contains PFAS.

As of **1 January 2026**, the manufacture, distribution, and sale of any outdoor apparel containing PFAS would be prohibited, and any manufacturer of a product that contains intentionally added PFAS would be required to notify the Department of Environment.

Vermont: Regulating Products Containing Certain Chemicals (including PFAS) House Bill 152, January 2023 - Proposed

Vermont House Bill 152, which was proposed on 1 February 2023, proposes to prohibit the manufacture, sale, and distribution in Vermont of apparel, cookware, paper products, and pesticides containing PFAS by **1 January 2024**; and to similarly prohibit cosmetic products containing certain chemicals and chemical classes by **1 July 2026**.

Ultimately this Bill would prohibit the manufacture, sale, and distribution of all products containing PFAS by **1 July 2030**.

4. Conclusion

The aim of this whitepaper was to give an overview of existing and proposed regulatory developments with regards to the use of PFAS in consumer products at US state level.

As can be seen, product regulation regarding PFAS is expanding in the US, as compliance requirements on reporting, restriction, prohibition, and labeling become increasingly complex across multiple states.

This is bolstered by action at federal level where the US Environmental Protection Agency (EPA) announced its framework for addressing new and new uses of PFAS on 30 June 2023 in to ensure that, before these chemicals can enter the market, that it undertake an extensive evaluation to ensure they pose no harm to human health and the environment.

PFAS is therefore one of the key topics impacting business now and is predicted to extend through 2024 and beyond. We are closely monitoring all developments in this growing area on a daily basis and will capture all regulatory updates in our C2P database.