



# PFAS - A Year in Review: U.S. Key Regulatory Developments in 2023

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*20 February, 2024*

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# About The Author



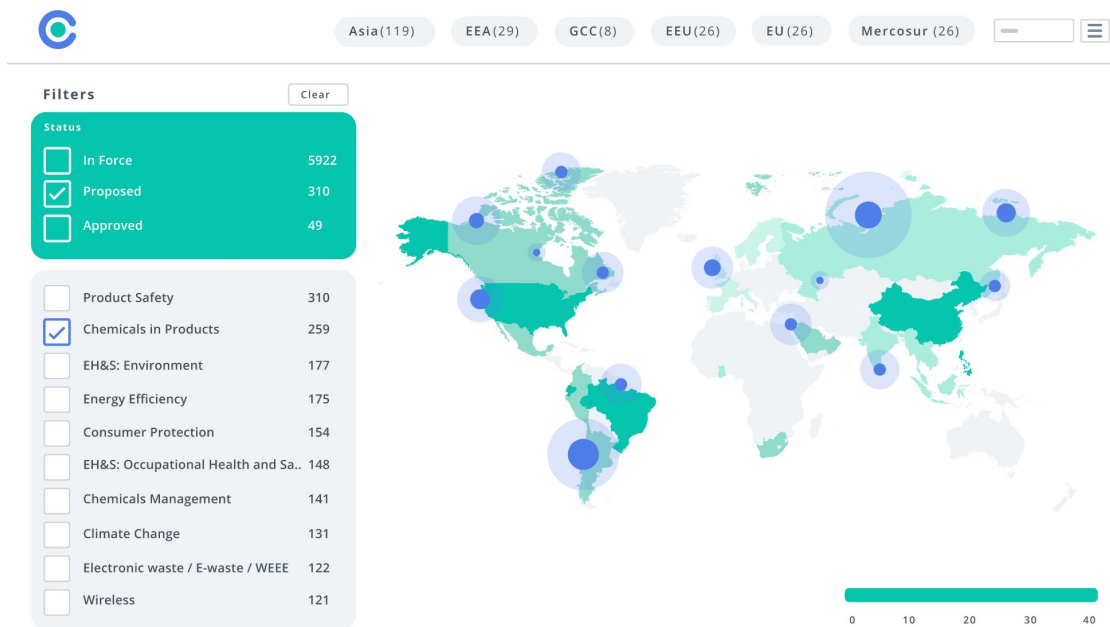
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Victoria is a Senior Regulatory Compliance Specialist with the Global Regulatory Compliance team specializing in the topics of Chemicals in Products and Energy Efficiency for the USA.

Before joining Compliance & Risks in 2008, Victoria was a senior legal analyst at major California law firms in complex/significant litigation on intellectual property, labor class action, and environmental law; and was the operations manager for a software company.

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## 03. Introduction

In 2023, many US states proposed new and amending legislation and regulation of the chemicals belonging to the group named PFAS (Perfluoroalkyl and Polyfluoroalkyl substances or “Per - and Polyfluoroalkyl”).

PFAS is known to industry to be widely used, and is found 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.

We report on legislation that took effect in 2023, including:

- Bills proposed during the year;
- The status of implementing rules; and
- Bills that have failed.

This paper is an overview of developments in 2023 on regulation of PFAS by the US States.

It is an update on legislation and rules affecting product manufacturing, sale, distribution, and new registration and reporting requirements.



## 04. Enacted Bills

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

On September 29, 2022 California enacted Assembly Bill 1817 restricting PFAS in a range of textile products.

The bill entered into force in **January 2023** and prohibits the manufacture, distribution and sale of new textile articles that contain regulated perfluoroalkyl and polyfluoroalkyl substances (PFAS), as of **January 1, 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 **January 1, 2028**.

The prohibition is based on PFAS thresholds measured in total organic fluorine:

- A. Commencing **January 1, 2025**, 100 parts per million; and
- B. Commencing **January 1, 2027**, 50 parts per million.

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

This bill entered into force on January 1, 2022 but contains some compliance dates that took effect in 2023.

As of **January 1, 2023**, manufacturers were 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.

As of **January 1, 2024**, all manufacturers of cookware containing 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 labelling 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 two years ago, the first prohibition took effect on **January 1, 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 January 1, 2023. However, the Governor of Maine signed LD 217, *An Act to Support Manufacturers Whose Products Contain Perfluoroalkyl and Polyfluoroalkyl Substances*, on June 8 thereby pushing back the January 1, 2023 reporting requirement for products and product components containing intentionally added per- and polyfluoroalkyl substances (PFAS) to **January 1, 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 **January 1, 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 Labelling, House File 2310 Enacted, 2023

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

Beginning **January 1, 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 **January 1, 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 **January 1, 2026**.

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

On March 24, 2023, New York Senate Bill S1322 was enacted. The bill entered into force on **December 31, 2023**. As of **January 1, 2025**, sale or offer in the State of new apparel containing intentionally added PFAS is prohibited.

In addition, the sale or offer for sale in the state of new apparel containing perfluoroalkyl and polyfluoroalkyl substances [as intentionally added chemicals] - at or above a level that the department shall establish by way of regulation - is prohibited as of **January 1, 2027**. Under the same prohibition, sale or offer of new outdoor apparel for severe wet conditions, containing the intentionally added substances, is prohibited as of **January 1, 2028**.

## New York (USA): Carpet Collection Program, Assembly Bill 9279 Enacted, December 2022 - Amendment - (on certain definitions and extension of deadlines) Senate Bill 834 Enacted, 2023

Senate Bill 834 was enacted on May 3, 2023. The bill amended portions of the Carpet Collection Program, modifying the prohibition on the sale of carpets containing or treated with PFAS substances for any purpose to a revised compliance deadline of **December 31, 2026**.



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

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

As of **January 1, 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 **January 1, 2025** including the restriction of:

- Intentionally added PFAS in aftermarket stain and water-resistance treatments, carpets and rugs;
- Intentionally added, among others: 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 **January 31, 2025**.

As of **January 1, 2026**, intentionally added PFAS in leather and textile furniture and furnishings intended for indoor use is restricted while 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, is in effect from **January 1, 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 **January 1, 2028**.

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

On May 8, 2023, Oregon Senate Bill 543 was enacted. The bill, which is effective as of **January 1, 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.



## 05. Proposed Bills & Regulations

### **California (USA): PFAS Testing and Enforcement for Food Packaging and Cookware, Assembly Bill 347, 2023**

Introduced on **January 31, 2023**, this bill requires the Department of Toxic Substances Control (DTSC) to take action on implementation of existing law on perfluoroalkyl and polyfluoroalkyl substances (PFAS) in food packaging and cookware, and requires DTSC to select and test at least 100 random samples of food packaging and cookware for compliance with those PFAS prohibitions. (The bill is currently inactive).

As of **January 1, 2025**, cookware containing PFAS would be required to carry very specific labelling; and childrens' products, carpets, textiles, food packaging, apparel and oil & gas products containing intentionally added PFAS would be prohibited from sale, offer, or distribution.

On **January 1, 2026**, and again on **January 1, 2027** additional covered products would then be subject to prohibition. Companion editions of this bill were introduced in 2024.

### **Illinois (USA): Perfluoroalkyl and Polyfluoroalkyl (PFAS) Chemicals Consumer Protection, Senate Bill 0088, 2023**

Senate Bill 0088 was introduced on **January 20, 2023**. The proposed bill would prohibit certain products containing PFAS and would require manufacturers to notify the Agency of sale or distribution of PFAS containing products within 30 days of the transaction and pay a fee, after which the Agency would post on its website the trade name and manufacturer name.

### **Iowa (USA): Prohibiting the Use, Manufacture, Distribution and Sale of Consumer Products Containing Certain Chemicals, House File 62, 2023**

This bill, introduced on **January 18, 2023**, would prohibit the manufacture, sale, offer, or distribution in this State on food packaging, class B fire fighting foam, or fire fighting personal protective equipment to which a perfluoroalkyl substance or polyfluoroalkyl substance has been intentionally added in any amount, taking effect on **January 1, 2024**, the proposed date of entry into force. However, House Bill 62 will not advance after December 31, 2023.

## Hawaii (USA): Prohibition of Food Packaging, Cosmetics and Personal Care Products Containing Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS), Senate Bill 504, House Bill 748, 2023

Introduced on **January 23, 2023**, this bill would prohibit the manufacture, sale, offer or distribution, or use, of food packaging, food service ware, cosmetic, or personal care products that contain perfluoroalkyl and polyfluoroalkyl substances, with certain exceptions, beginning **December 31, 2026**.

## Maine (USA): Reporting Requirements and Prohibitions on Products Containing Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS), Draft Rule, Chapter 90 06-96, February 2023

This rule, issued **February 14, 2023**, implements Maine's Legislative Document 1503 on restriction of PFAS in certain textiles. The rule details notification requirements and sales prohibitions for new products and product components containing intentionally added Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS), covering carpets, rugs, and fabric treatments, with phased-in restrictions. Effective **January 1, 2030**, a person may not sell, offer for sale, or distribute for sale in the State of Maine *any product* that contains intentionally added PFAS.

## Massachusetts (USA): Toxic Chemicals of Concern in Children's Products, Senate Bill 2564, 2023 (Substituted S.175 and H.318)

Proposed on **January 19, 2023**, this bill and its substitutes would prohibit a manufacturer, wholesaler or retailer from sale, offer or distribution of a children's product or product component containing regulated PFAS.

The bill would establish a chemicals of concern list, and implementing rules would be promulgated one year after the effective date of the Act. The bill would take effect **90 days** from the date signed by the Governor.

## Massachusetts (USA): Chemicals in Food Packaging, Senate Bill 1431, 2023

Introduced on **January 20, 2023**, SB1431 prohibits manufacture, sale, offer, and distribution of food packaging to which perfluoroalkyl and polyfluoroalkyl substances have been intentionally added in any amount. A certificate of compliance is also required. If approved, the bill would take effect on **January 1, 2025**, though it has not advanced since June 2023.

## Massachusetts (USA): Prohibition of PFAS in Food Packaging and Certain Consumer Products, House Bill 2197, 2023

Filed on **January 20, 2023**, HB 2197 proposes to prohibit the sale, offer and distribution of any of the following products or product categories to which PFAS is intentionally added:

- I. Child passenger restraints;
- II. Cookware;
- III. Fabric treatments;
- IV. Personal care products;
- V. Rugs and carpets;
- VI. Upholstered furniture; and
- VII. Children's products.

The compliance deadline for these products would be **January 1, 2026**. Registration of PFAS or the product or product component containing intentionally added PFAS is required by **June 1, 2026**.

## Minnesota (USA): Currently Unavoidable Use of PFAS in Products, Draft Rule, December 2023

Proposed **December 18, 2023**, this rule would establish criteria and processes through which the Minnesota Pollution Control Agency will make decisions on which uses of intentionally added PFAS will qualify as currently unavoidable uses in products sold, offered for sale, or distributed, which could affect any manufacturer.

## Minnesota (USA): Truth in Labelling for Recyclable Products, House File 2571, 2023

This bill, introduced **March 6, 2023**, prohibits misleading claims regarding product or packaging recyclability. The bill holds that a product is not considered recyclable if it contains PFAS measured in total organic fluorine above the limit of < 100 ppm, or if it contains PFAS in any amount. This restriction would take effect **the day after enactment**.

## Minnesota (USA): Prohibiting PFAS in Juvenile Products, House Bill 552, 2023

This bill, introduced on **January 20, 2023**, would establish a prohibition on manufacture, sale, offer or distribution of any new children's product (for use by infants and children under 12 years of age) that contains perfluoroalkyl and polyfluoroalkyl substances.

**January 1, 2025** is the proposed date of entry into force if the bill is approved.

## Minnesota (USA): Reporting of Products containing Per- and Polyfluoroalkyl Substances, Notice, September 2023

Proposed on **September 25, 2023**, this rule would require that on or before **January 1, 2026**, a manufacturer of a product that contains intentionally added PFAS sold, offered for sale, or distributed within the State must submit to the commissioner information about the product, the PFAS, and the submitter. The final rule is estimated to issue by **January 1, 2026**.

## New Hampshire (USA): Restriction of Perfluoroalkyl and PolyfluoroAlkyl Substances in Certain Consumer Products, House Bill 465, 2023

House Bill 465, introduced **February 3, 2023**, proposes to prohibit a manufacturer, supplier, or distributor from manufacturing and marketing a rug or carpet to which PFAS has been intentionally added in any amount; and may require a certificate of compliance. The proposed compliance deadline is **July 1, 2025**.

## New York (USA): Phase Out Sale of Products Containing Intentionally Added PFAS, Assembly Bill 3571, 2023

Proposed on **February 3, 2023**, this bill would prohibit as of **January 1, 2027**, the distribution, sale or offer in this State any carpet or rug, or cookware product that contains perfluoroalkyl and polyfluoroalkyl substances (PFAS) as intentionally added chemicals, unless the department determines the use of PFAS in such products is unavoidable use. By **January 1, 2032**, all products would be subject to this restriction. The bill would take effect on enactment.



## **Pennsylvania (USA): Prohibition of Perfluoroalkyl and Polyfluoroalkyl Chemicals (PFAS) in Food Packaging, House Bill 1122, 2023**

Proposed **May 5, 2023**, this bill would prohibit sale, offer and distribution of food packaging containing perfluoroalkyl or polyfluoroalkyl substances. PFAS is defined as “all members of the class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.”

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

Vermont House Bill 152, introduced on **February 1, 2023**, would prohibit the manufacture, sale, and distribution in Vermont of apparel, cookware, paper products, and pesticides containing PFAS as of **January 1, 2024**; and to similarly prohibit cosmetic products containing certain chemicals and chemical classes by **July 1, 2026**. Ultimately this bill would prohibit the manufacture, sale, and distribution of all products containing PFAS by **July 1, 2030**.

## **NEWMOA: Reduction of the Use of PFAS Substances, Model Legislation, May 2023**

This model bill on PFAS, published on **May 2, 2023**, consists of 18 elements of PFAS legislation, including key definitions for terms such as “Intentionally Added PFAS” and “PFAS Added Products”; and provisions on “Currently unavoidable uses of PFAS”; as well as protocol for Notification, standards for *Restrictions on the Sale of Certain PFAS-added Products*; and producer responsibility. NEWMOA, (Northeast Waste Management Officials' Association) proposes implementation of a multi-jurisdiction clearinghouse to support unified regulation.

# 06. Failed and Blocked Legislation

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

This bill was introduced on February 16, 2023 and vetoed on **October 8, 2023**.

If approved, it would have created a prohibition on manufacturing, distribution or sales of any menstrual products containing regulated PFAS; and would have required certification of the absence of PFAS in products.

If enacted, Senate Bill 16 would have prohibited as of **January 1, 2025**, the use of PFAS in carpets, furniture, apparel, cosmetics, childrens' products, cookware and firefighting foam.

**January 1, 2026**, was the date of prohibition on manufacture and marketing of any outdoor apparel containing PFAS.

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

Proposed on January 23, 2023, this bill would have, as of **January 1, 2024**, prohibited manufacturers 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 **July 1, 2024**, a prohibition on cosmetics, indoor textile furnishings or indoor upholstered furniture that contain intentionally added perfluoroalkyl and polyfluoroalkyl substances, would have applied.

Had the bill been approved, manufacturers of cookware containing intentionally added PFAS would be required to include a specified product label on the cookware, as would any product listed for *online sales*. On June 16, 2023, the governor of Nevada vetoed the bill. The bill would likely be resubmitted in the **2025 Session**.

## California (USA): Prohibiting Plastic Packaging Containing Certain Substances, Assembly Bill 1290, February 2023 (Died - Inactive)

This bill, proposed January 17, 2023, died as 'inactive' on February 1, 2024.

Had the bill been approved, it would have prohibited, as of **January 1, 2026**, the manufacture, sale or offer of plastic packaging containing PFAS.

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

This bill, introduced on January 18, 2023 and abandoned on **June 16 2023**, reflects the title well, as the Legislature, by **December 31, 2032**, intended a "complete ban on all uses of PFAS unless the use of PFAS in a product is considered unavoidable".



## 07. Conclusion

Product regulation regarding PFAS is expanding in the United States, as compliance requirements of reporting, restriction, prohibition, and labelling become increasingly complex across multiple States.

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

PFAS has become one of the key topics impacting business now and is predicted to extend through 2024 and beyond.

The aim of this paper was to give an overview of existing and proposed regulatory developments in 2023 with regard to the use of PFAS in consumer products at the US state level.

We closely monitor developments in this widening area on a daily basis, and will capture regulatory updates in C2P.

## OUR NUMBERS

**300+**

CUSTOMERS WORLDWIDE

**195**

COUNTRIES COVERED

**90,000**

REGULATIONS