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INSIGHT

Expanding State PFAS Regulations Prove Challenging to Business

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Addressing PFAS-related allegations requires counsel with expertise in products litigation paired with a deep understanding of the relevant legal and scientific issues.

Photographer: Nicolas Tucac/AFP via Getty Images

State laws governing the sale of consumer products containing per- and polyfluoroalkyl substances, or PFAS, are expanding rapidly. The emerging patchwork of state laws poses compliance challenges and litigation risks for multi-state retail chains, internet retailers, and manufacturers.

Manufacturers and retailers can best navigate these challenges by working with counsel to proactively prepare for compliance challenges and to respond properly to alleged failures to comply.

Government Action

Concerns over the alleged health impacts of PFAS—often referred to as “forever chemicals” because of their extremely long-lasting molecular bonds—have fueled calls for increased government regulation.

Federal law doesn’t generally limit PFAS in consumer goods, and the Environmental Protection Agency currently appears unlikely to act on the issue. For instance, in 2025 the agency significantly pared back a rule adopted under the Biden administration that requires product manufacturers and importers to disclose certain PFAS-related information.

State regulation of PFAS in consumer goods, however, continues to grow. Six states began enforcing new laws in 2026. As of late February, at least nine states have already introduced new bills on PFAS in consumer products for consideration in the 2026 legislative session.

At least 16 states have now passed bans on the sale of certain types of consumer goods that contain intentionally added PFAS, with some bans already in effect and others being years away from implementation. Other states mandate special labeling or other disclosures for products containing intentionally added PFAS.

Retailers and manufacturers should consider working with experienced legal counsel to plan for these compliance challenges and respond to any issues. Failing to plan appropriately risks government action or private litigation. Within a week of Maine’s expanded 2026 ban going into effect, for instance, a nonprofit group located websites and stores selling newly prohibited items and referred them for investigation to the state’s Department of Environmental Protection.

Legislative Overview

Different states’ laws banning intentionally added PFAS in consumer products vary dramatically in the types of products covered and the implementation date of the ban.

Examples of State Bans on Intentionally Added PFAS in Consumer Goods																
	CA	CO	CT	HI	IL	ME	MD	MN	NJ	NH	NM	NY	OR	RI	VT	WA
General Ban						2032		2032			2032	*** (Everyday) 2028 (Outdoor)				
Apparel (Type)	2028 (Outdoor)	2028 (Outdoor)	2028 (All)		2032 (Intimate)											
Artificial Turf															***	
Carpets/Rugs		***	2028			***	***	***	2028	2027	2028			2027	***	***
Cleaning Products		2027	2028			***		***			2028				2027	
Cookware		2027	2028			***		***			2027			2027	2028	
Cosmetics	***	***			2032	***	***	***	2028	2027	2028		2027	2027	***	***
Dental Floss		2027	2028		2032	***		***			2027				2027	
Fabric Treatments		***	2028			***		***	2028	2027	2028			2027	***	***
Food Packaging	***	***	***	***		***	***	***	2028	2027	2027	***	2025	***	***	***
Incontinency Products															***	
Juvenile Products	***	***	2028		2032	***		***		2027	2027	***	***	2027	***	
Menstruation Products	***	2027	2028		2032	***		***		2027	2028	Dec. 2026		2027	***	
Ski Wax		2027	2028			***		***			2028			2027	***	
Textiles Generally	***	2028				***				2027	2028			2027	***	
Textile or Upholstered Furnishings (Type)		*** (Indoor) 2027 (Outdoor)	2028			***		***		2027	2028					*** (Indoor)

*** denotes current bans.
Dates shown represent when bans go into effect.

Source: Hollingsworth LLP

Despite broad similarities among states, the unique features of a particular law may create significantly different compliance or other legal obligations. Some notable distinctions among states include:

Total Organic Fluorine Limits. Although Washington prohibits only intentionally added PFAS in juvenile products and food packaging, state regulations create a rebuttable presumption that a product contains intentionally added PFAS when its total organic fluorine registers above certain levels.

California law currently prohibits the sale of food packaging and juvenile products if they have either intentionally added PFAS or if they test positive for greater-than-specified levels of total organic fluorine. States using total organic fluorine as a proxy for intentionally added PFAS raises the prospect of erroneous allegations of non-compliance, especially given that total organic fluorine tests register substances other than PFAS.

Currently Unavoidable Uses. Maine, Minnesota, and New Mexico have recognized an exemption to PFAS prohibitions for currently unavoidable uses, meaning products necessary for health, safety, or the functioning of society for which alternatives aren't reasonably available. Manufacturers and retailers of products that may qualify for a currently unavoidable use exemption will need to apply to state regulators and make their case with the necessary supporting evidence.

Fluoropolymers. Fluoropolymers are a class of PFAS compounds commonly used in non-stick coatings for cookware and implantable medical devices. Fluoropolymer molecules' large size limits their bioavailability, leading New Mexico to exempt fluoropolymers from its PFAS laws. Other states, such as Illinois, are considering similar exemptions.

Federal Preemption. Many state PFAS statutes explicitly recognize areas in which the statute's application is preempted by federal law, such as medical devices regulated by the Food and Drug Administration. When statutes don't recognize a conflict between federal and state law, impacted businesses may need to litigate to get federal preemption judicially recognized.

Preparation and Response

Retailers and manufacturers may wish to consider some or all of the following steps to ensure compliance with state PFAS requirements in this rapidly shifting legal landscape:

- Monitor PFAS legislation and regulations;
- Where appropriate, audit existing products and packaging to determine whether they may be impacted by state PFAS requirements;
- Consider the necessity, availability, and feasibility of supply chain changes to avoid potential compliance problems; and
- Implement internal procedures to prevent sales of products in states where legally prohibited.

Retailers and manufacturers of consumer products should additionally consider strategic engagement, either individually or collectively, on PFAS rules to promote policies that continue to address public health concerns without unnecessary and unreasonable compliance burdens.

If alleged failures to comply with PFAS laws threaten government action or private litigation, retailers and manufacturers should retain appropriate outside defense counsel to develop mitigation and response strategies.

Addressing such claims requires counsel with expertise in products litigation paired with a deep understanding of the relevant legal and scientific issues. Properly positioning a company for potential litigation can reduce the likelihood of that litigation subsequently materializing and can help the company's defense if it does.

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