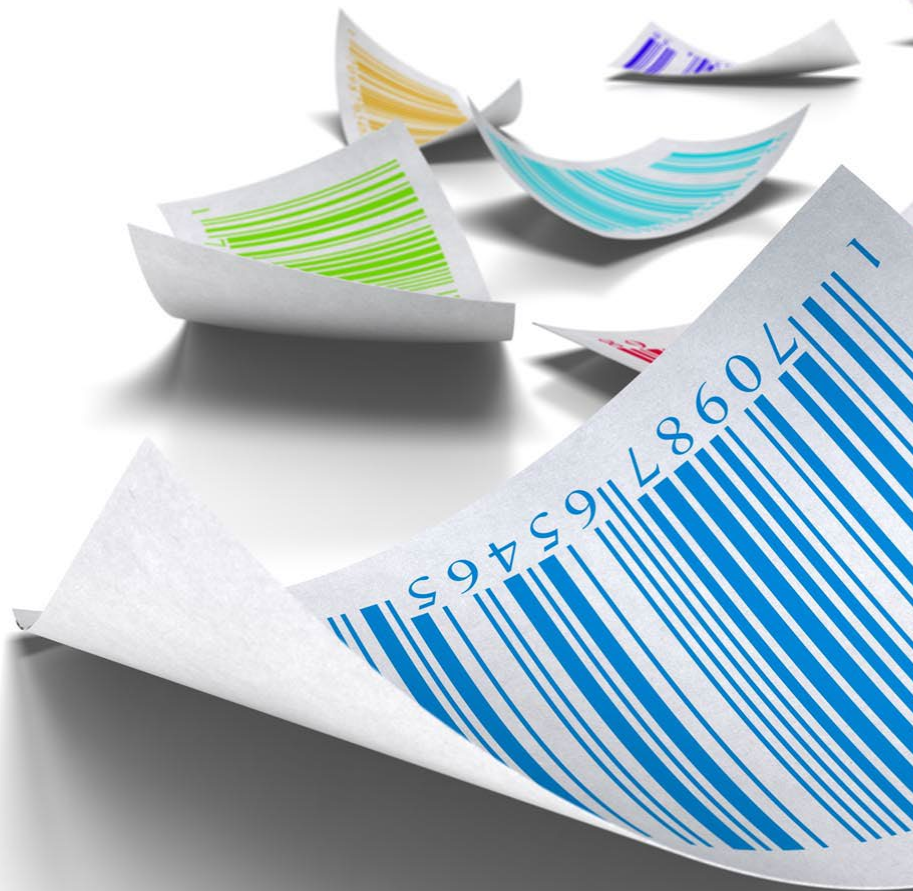


PFAS regulation in textiles and furniture

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Agenda

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Overview of state laws and regulations impacting furniture and textiles

02

Overview of EPA PFAS reporting rule

03

Q&A

State PFAS laws and regulations

State PFAS laws and regulations—Overview

- Most of the action is currently at the state level
 - Juvenile products (sit/sleep/play for children 12 and younger)
 - Cookware
 - Apparel and footwear
 - Textiles
 - Furniture
 - Carpets and rugs, fabric treatments
 - Cosmetics, dental floss, and menstruation products
 - Ski wax
 - Food packaging
- Some states have future bans for PFAS in all products

Types of restrictions:

- Bans on “intentionally added PFAS”
- Manufacturer certificates of compliance
- Reporting or notification requirements
- Warnings

Overview continued

Scope:

- All PFAS substances *OR* specific PFAS classes or individual substances
- New, not previously used products

Effective date:

- Applicable to products *manufactured* after effective date (“manufacture by”)
- Applicable to sale, distribution, or manufacturer after effective date (“sell by”)

Detection

- Due to the number of PFAS substances and relative infancy of testing approaches, despite the “intentionally added” application, some of the laws use detectable (organic) fluorine as a proxy for intentional use
- Result is that contamination/quality control issues can be considered intentional use

Enforcement

- Fines, civil penalties
- For legislation that is not specific about fines or penalties for non-compliance—presume enforcement, if any, will be via Attorneys General and district attorneys for unfair competition
- Private enforcement via class actions for false advertising or unfair competition

Enacted state legislation: Textiles

California (AB 1817): *Effective 1/1/2025*

- Prohibits manufacture, distribution, sale of any new, not previously used, textile articles containing
 - intentionally added PFAS or
 - PFAS as a contaminant above 100 ppm (2025), 50 ppm (2027)
- PFAS defined as “fluorinated organic chemicals containing at least one fully fluorinated carbon atom”
- “Textile goods of a type customarily and ordinarily used in households and businesses”
 - accessories, handbags, backpacks, draperies, shower curtains, furnishings, upholstery, beddings, towels, napkins, and tablecloths.
- Requires manufacturer to provide certification to retailers, liability shield for retailer if in good faith

Enacted state legislation: Textiles (cont'd)

CO (HB 22-1345) and MN (HF 2310) mirror CA requirements, except as follows:

- Narrower scope: Textile goods of a type customarily used in households and businesses, including but not limited to draperies, floor coverings, furnishings, bedding, towels, and tablecloths
- **CO**: Effective 1/1/25 for indoor textiles; 1/1/27 for outdoor textiles
- **MN**: Effective 1/1/25
- No provision for contaminants
- No retailer certification provision/no retailer liability shield

WA (HB 1694)

- *Indoor textiles*: prohibits the manufacture, sale, or distribution of new indoor textiles containing intentionally added PFAS manufactured **after** January 1, 2026
- *Outdoor textiles*: requires notification to Department of Ecology of outdoor textiles sold in the state containing intentionally added PFAS starting January 31, 2025 and then annually thereafter

Enacted state legislation: Furniture

- Prohibits the sale, offer for sale, distribution for sale, or distribution for use of new furniture containing intentionally added PFAS
 - **Colorado** (HB 22-1345): 1/1/25 for indoor upholstered furniture; 1/1/27 for outdoor upholstered furniture
 - **Minnesota** (HF 2310): 1/1/25 for upholstered furniture
- **Washington:**
 - *Indoor furniture*: prohibits the manufacture, sale, or distribution of new indoor furniture containing intentionally added PFAS manufactured **after** January 1, 2026
 - *Outdoor furniture*: requires notification to Department of Ecology of outdoor furniture sold in the state containing intentionally added PFAS starting January 31, 2025 and then annually thereafter

Enacted state legislation: Carpets & rugs

Carpets and rugs (Maine, Colorado, Maryland, Washington)

- Prohibits the manufacture, sale, offer for sale, distribution for sale, or distribution for use of new carpets or rugs containing intentionally added PFAS
 - **Maine (LD1503):** 1/1/23
 - **Colorado (HB 22-1345):** 1/1/24
 - **Maryland (SB 273):** 1/1/24; requires manufacturer to issue certificate of compliance
- **Washington (SB 5135):** applies to products *manufactured* after 1/1/25

Maine PFAS notification requirement

Maine (LD 1503), enacted in 2021, amended in June 2023

- Requires manufacturers of products with intentionally added PFAS to report the intentionally added presence of PFAS in those products to the state
 - January 1, 2023 was the original effective date
 - The state has been delayed in issuing rules and therefore granted extensions to six months after issuance of the rules
 - State legislature passed subsequent amendment moving the compliance date to January 1, 2025
 - Rules are in the rulemaking process (public review and comments, revisions)
- Prohibits intentionally added PFAS in any product as of January 1, 2030 unless the state has granted an exemption due to unavoidable use

Washington State PFAS reporting and restrictions

HB 1694 (2022)

- Authorizes Washington Department of Ecology to issue regulations requiring the reporting of information regarding chemicals in products, with emphasis on PFAS
- State can request information on use of PFAS in products and then issue regulations restricting use
- Current restrictions:
 - Aftermarket stain and water resistance treatments (e.g., waterproofing spray): 1/1/2025
 - Carpets and rugs: 1/1/2025
 - Indoor textiles and furniture: 1/1/2026
 - Outdoor textiles and furniture: reporting only as of 1/1/2024

California Proposition 65

WARNING: This product can expose you to chemicals including [name of one or more chemicals], which is [are] known to the State of California to cause cancer, and [name of one or more chemicals], which is [are] known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

- PFOS and PFOA listed as reproductive (developmental) toxins 11/10/17
- PFOS and its salts and transformation and degradation precursors listed as carcinogen 12/24/21
- PFNA and its salts listed as male reproductive toxicant 12/31/21
- PFOA listed as carcinogen 2/25/22
- PFDA, PFHxS, PFNA and PFUnDA (and their salts) are under consideration for listing as reproductive toxicants
- No safe harbor levels have been set for listed PFAS
- Enforcement has not been widespread—no clear trends yet



US EPA PFAS reporting rule

Overview

- US EPA issued Final Rule on September 28, 2023--*Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl*
- Purpose is to collect data on covered PFAS substances manufactured and used in the US under the Toxic Substances Control Act

Covered substances

- “All chemical substances and mixtures containing a chemical substance (**including articles**) that are a PFAS” as defined

Includes “articles”

- Reporting obligation applies to chemical substances and mixtures in their pure forms, but also to articles, which as defined, encompasses virtually all products and their components

Definition of PFAS

- Any chemical substance or mixture that contains at least one of the following three sub-structures:
 - $R-(CF_2)-CF(R')R''$, where both the CF_2 and CF moieties are saturated carbons;
 - $R-CF_2OCF_2-R'$, where R and R' can either be F , O , or saturated carbons; or
 - $CF_3C(CF_3)R'R''$, where R' and R'' can either be F or saturated carbons
- Not a family-wide classification; requires individual analysis
- US EPA will issue a list of substances it understands meet this definition

Reporting logistics

Who must report?

- Any entity that has “manufactured for commercial purposes a [covered] chemical substance ... at any period from January 1, 2011 through November 13, 2023....”
 - *Manufacture* means “to import ..., produce, or manufacture....”

Reporting timeline

- Report must include look back to January 1, 2011
- Final reporting deadline on or around April 2025
- Small businesses (those with less than \$12M in annual sales) have an additional six months to report
- Reports will be submitted via online reporting portal that US EPA is developing

Recordkeeping

- Must maintain records supporting report for five years from the last day of the submission period

Reporting standard and due diligence

“Known or reasonably ascertainable”

- This includes “all information in a person’s possession or control, plus all information that a reasonable person similarly situated might be expected to possess, control, or know”
- Possession/control extends to subsidiaries, partnerships, parent companies

Due diligence

- Conduct a reasonable inquiry within the full scope of the organization
- Inquire outside organization to fill gaps:
 - Upstream suppliers or downstream customers
 - R&D, import or production, or marketing entities
- Overall, undertake “reasonable efforts”

Report information

- Manufacturers of substances, mixtures, or articles must report the following “to the extent known to or reasonably ascertainable”:
 - Company identification (highest-level US parent) and manufacturing site locations
 - Chemical identification information
 - Categories of use and sector
 - The function of the PFAS in or on the product
 - Consumer and commercial use information (including whether the product is intended for children)
 - PFAS concentration in products
 - Manufactured amounts
 - Identification of manufacturing byproducts
 - Known information on environmental and health effects (human health data, worker exposure data, exposure scenarios, duration of exposure)
 - Disposal information (disposal volume, disposal methods)

Streamlined process for importers

- Streamlined process for importers of articles “if they do not know nor can reasonably ascertain information”
- Reasonable estimates may be submitted to the extent actual data is not known or reasonably ascertainable
- Streamlined information includes everything required of manufacturers to the extent known
- If not known, can provide:
 - Generic name or description of PFAS
 - Import volume of the article (rather than the PFAS volume in the article)

Public reporting database

- Information received will be publicly accessible
- EPA has specified a process for designating information as Confidential Business information
 - Must be substantiated
 - Must be declared at time of reporting
 - Process for claiming CBI will be specified separately

Enforcement

- *Prohibited Acts*, TSCA, Section 15 (15 USC § 2614)
 - Failure to comply with any rule issued under TSCA
 - Failure to maintain required records or permit EPA access to required records
- Civil penalties of up to ~\$47,000 per violation per day
 - Sliding scale including nature, circumstances, extent, and gravity of non-compliance; ability to pay; repeat violations; knowledge/willfulness
- Criminal penalties (\$50,000 per violation per day for individuals; up to \$1M per violation for organizations for knowing/willful violations)
- Injunctive relief

Next steps

What do we do now?

Understand your supply chains, product formulations, raw materials, components

- Do product formulations contain intentionally added PFAS?
- PFAS in raw materials, components?
- Determine whether you want to/need to consider PFAS as a contaminant

Assess quality control—do operations put your products at risk even if no PFAS in formulations?

- Cross contamination in facilities?
- PFAS in water?

What do we do now? (con't)

Establish compliance approach and understand implications of non-compliance

- Types of products?
- Types of suppliers?
 - If you are a supplier, what are your customer requirements and expectations?
 - If you are a brand/retailer/seller, what are minimum legal requirements and what do your customers expect from your brand?
- Are certification of product formulations enough?
 - Certification at facility level? Brand level? Product by product basis?
- Do you need to test for fluorine?
 - Does not need to be all or nothing—consider risk assessment for audit testing

Knowledge!



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