

WHAT IS ON THE HORIZON FOR HOME FURNISHINGS MANUFACTURERS AND SUPPLIERS?

PFAS – WHAT THE FUTURE HOLDS
AMERICAN HOME FURNISHINGS ALLIANCE
2024 REGULATORY SUMMIT

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AGENDA

- Federal Laws
- State Laws
- Litigation Front
- Potential Game Changers?
- PFAS Compliance and Strategic Guide

FEDERAL LAW

The Whole of Government Approach

TSCA (10/11/23) *(PFAS Reporting and Recordkeeping Rule)*

- One-time report by manufacturers or importers of any “known or reasonably ascertainable” PFAS substances
- Reporting begins 11/12/24, generally closes 5/8/25

SDWA (4/10/24)

- Maximum Contaminant Levels (MCLs) / goals for 6 PFAS
- MCL for PFOA / PFOS of 4 ppt
- Lowest concentration that most labs can reliably detect
- Lowest level that can be feasibly removed

CERCLA (7/8/24)

- Designation of PFOA and PFOS as hazardous substances
- Joint and several liability
- Contribution from other potentially responsible parties
- RECS in Phase I ESAs conducted under ASTM E1527-21 standards

RCRA (proposed 2/8/24)

- Would add nine PFAS to the list of “hazardous constituents”
- First step toward listing as “hazardous waste,” which would automatically add all nine specific PFAS to CERCLA hazardous substances list
- Trigger RCRA's cradle-to-grave requirements
- RCRA Citizen Suits



FEDERAL LAW

EPA Enforcement Policy

EPA PFAS Enforcement Discretion and Settlement Policy Under CERCLA (issued 4/19/24)

- **Focus on** entities who significantly contributed to the release of PFAS into the environment
 - parties that manufactured PFAS or used PFAS in the manufacturing process
 - federal facilities
 - other industrial parties
- **Not pursue** entities where equitable factors do not support seeking response actions or costs under CERCLA*
 - community water systems
 - publicly owned treatment works
 - municipal separate storm sewer systems
 - publicly owned/operated treatment works
 - municipal solid waste landfills
 - publicly owned airports
 - local fire departments
 - farms where biosolids are applied to the land

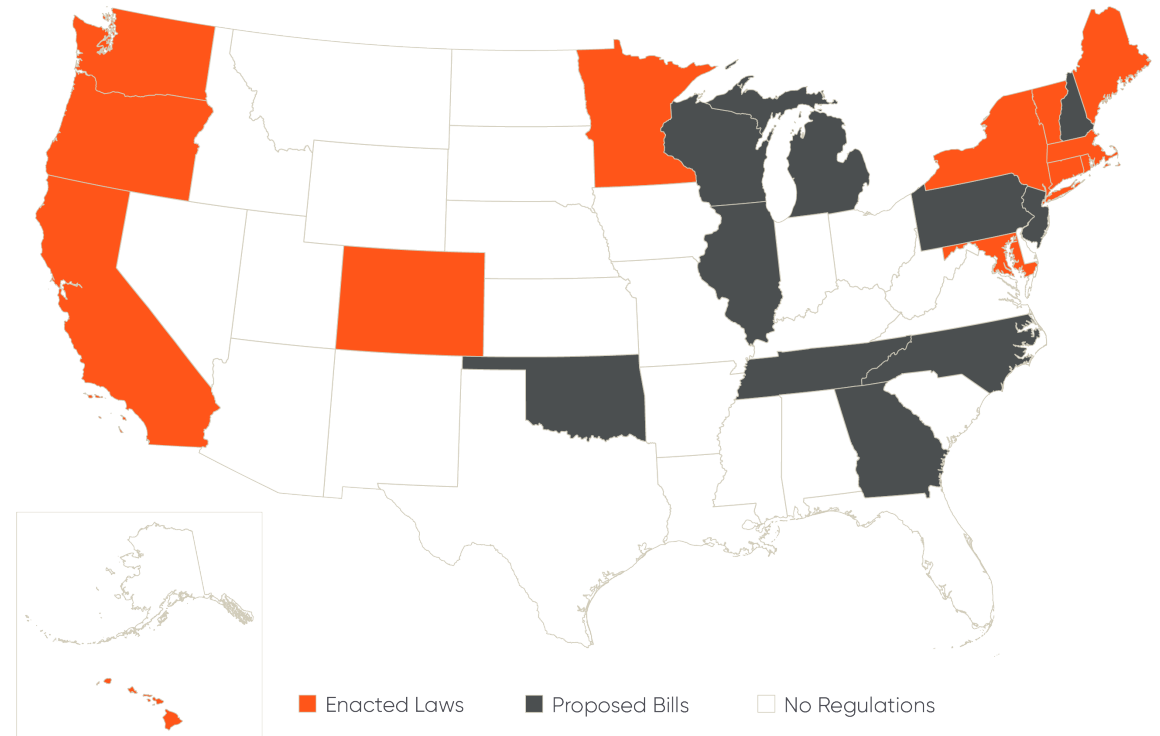
** still subject to the CERCLA and EPCRA release reporting requirements for PFOA and PFOS, but they are less likely to be required to clean up or contribute to the cleanup of legacy PFOA or PFOS contamination as PRPs*
- **Enforcement discretion does not extend to potential third-party claims for contribution for response costs**

STATE LAW

The Patchwork Approach

- **Patchwork approach**
- Most state laws **principally focus** on the following product sectors
 - Food Packaging
 - Cosmetics or Personal Care Products
 - Children’s Products
 - Textiles, Fabrics, and Apparel
 - Carpets or Rugs, and Upholstery
 - Cookware

Enacted and Proposed PFAS Consumer Product Laws



As of June 25, 2024

STATE LAW

CONTINUED

California

- 1/1/23 – prohibit any person from distributing, selling, or offering to sell any food packaging that contains PFAS (either intentionally added or at or above 100 ppm)
- 7/1/23 – prohibit any person from distributing, selling, or offering to sell any juvenile products that contain PFAS (either intentionally added or at or above 100 ppm)
- 7/1/23 – requires cookware manufacturers to comply with internet notice requirements for intentionally added PFAS
- 7/1/24 – additional labeling requirements for PFAS in cookware
- 1/1/25 – PFAS restrictions in cosmetic products and textile articles

Colorado

- phase out sale or distribution of certain products and product categories in the state that contain intentionally added PFAS between 2024 and 2027
 - 1/1/24 – ban on PFAS in food packaging, carpets, rugs, fabric treatments, and juvenile products
 - 1/1/25 – ban will be extended to cosmetics, indoor textile furnishing, and indoor upholstered furniture
 - 1/1/27 – ban will extent to outdoor textile furnishings and outdoor upholstered furniture
- 1/1/24 – internet website notice and product labeling requirements for cookware containing intentionally added PFAS

STATE LAW

CONTINUED

Maine

- 1/1/23 – prohibit offering for sale or distribution carpets, rugs, and fabric treatments containing intentionally added PFAS
- 1/1/25 – requires product manufacturers to report to MDEP presence of intentionally added PFAS in any of their products
- 1/1/30 – prohibit sale, offer for sale, or distribution of any product containing intentionally added PFAS

Maryland

- 1/1/24 – prohibits manufacture or distribution of food packaging, rugs, or carpets with intentionally added PFAS

Vermont

- 7/1/26 – prohibits use of intentionally added ‘regulated’ PFAS in apparel, footwear, accessories, home textiles, and upholstery
- 1/1/28 – extends to outdoor apparel for severe wet conditions

New York

- bans distribution and sale of food packaging containing intentionally added PFAS
 - 1/1/25 – bans distribution and sale of apparel containing intentionally added PFAS
 - 1/1/28 – ban extends to outdoor apparel for several wet weather conditions
- 1/1/27 – NYDEC must establish an overall limit on presence of PFAS in regulated apparel

With others to follow . . .

North Carolina (proposed)

- Use and Manufacturing – PFAS Free NC – HB660
- General Packaging – Break Free from Plastics & Forever Chemicals (HB 279)
- Food Packaging Ban (H972)

LITIGATION FRONT

The Wave Begins . . .

South Carolina Multi-District Litigation

- **3M** agreed to pay at least \$10.3 billion to settle lawsuits related to contamination of water systems with PFAS
- **DuPont** adding an additional \$1.2 billion in a separate settlement
- Over 13 years, settlement will provide funds to cities, towns, and other public water systems for testing and treating PFAS contamination
- Most lawsuits stemmed from firefighter training exercises at airports, military bases and other sites around the U.S.
- Does not include future potential claims from wastewater treatment facilities, fire training areas, and local airports

State Litigation

- **Thirty state** attorneys general have sued PFAS manufacturers alleging widespread contamination
- **Connecticut** (January 2024)
 - State filed two lawsuits accusing chemical makers of covering up for decades the dangers of PFAS
- **City of Calhoun, Georgia** (March 2024)
 - Lawsuit filed by Coosa River Basin Initiative against City of Calhoun
 - Alleges City of Calhoun did not disclose the discharge of any PFAS from its Water Pollution Control Plant sludge disposal operations in its NPDES Permit Application submitted to EPD prior to EPD's issuance of neither its 2016, nor its 2023 NPDES Permit



POTENTIAL GAME
CHANGERS?

**GAME
CHANGER**

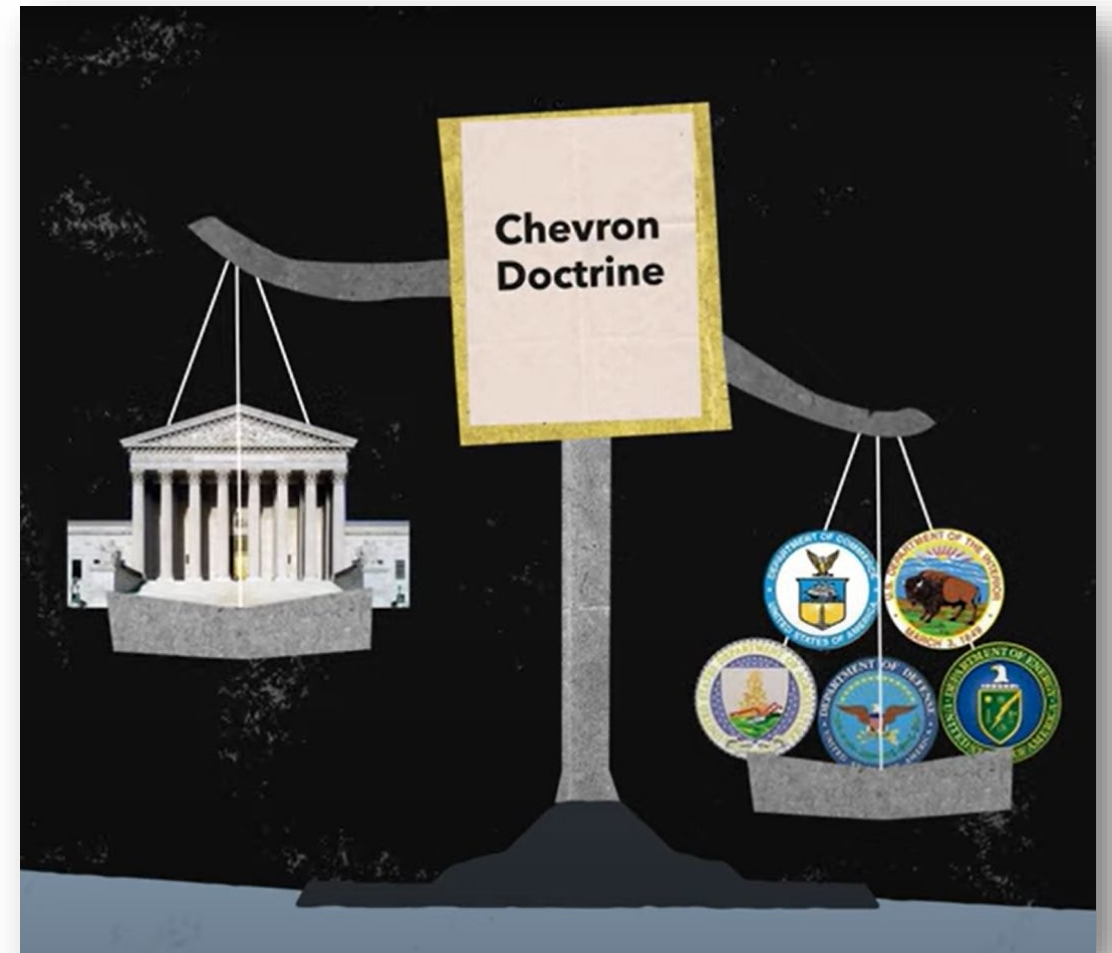


THE CHEVRON EFFECT

Loper Bright Enterprises v. Raimondo

together with its companion case, *Relentless, Inc. v. Department of Commerce* (U.S. Supreme Court) (2024)

- **Landmark decision** in the field of administrative law
- **Overruled** the principle of Chevron deference established in *Chevron U.S.A. v. NRDC, Inc.* (1984)
 - Directed courts to defer to agency's "permissible" interpretation of an ambiguity in a law that the agency enforces
- SCOTUS majority opinion – "[A]mbiguity is simply not a delegation of law-interpreting power"
- Court must "**exercise their independent judgment**" when interpreting federal statutes



THE CHEVRON EFFECT

CONTINUED

Chamber of Commerce v. EPA (D.C. Cir., No. 24-01193, petition 6/10/24)

- Challenge to EPA's designation of PFOA and PFOS as “hazardous substances” under CERCLA
- Section 102(a) permits EPA to designate, as hazardous, substances that “when released into the environment may present **substantial danger** to the public health or welfare or the environment”
- First time EPA has relied upon Section 102(a)
- Comments on the proposed rule cited
 - Lack of a statutory definition of “substantial danger”
 - Lack of explanation of the standard
 - Prior applications of agency deference under *Chevron v. NRDC*
 - Failed to consider costs under this unused provision
- EPA “totality of the circumstances” argument



THE CHEVRON EFFECT

CONTINUED

Texas Court to Revisit ESG 401(k) Investment Rule Post-Chevron

- One of first tests of post-Chevron legal landscape
- Conservative red state attorneys general appealed district court finding that DOL had acted within its authority when it promulgated the **2022 ESG Rule**
- Challenge to a major Biden climate change initiative aimed at encouraging sustainable investing in 401(k) plans
- Focused on “tiebreaker standard”
 - Allowed retirement plan sponsors and other fiduciaries to pick an investment over others based on “**collateral benefits**” when the options are economically equivalent





THE POLITICAL EFFECT

PFAS COMPLIANCE AND STRATEGIC GUIDE



- **Conduct a PFAS Risk Audit**
 - Select and Engage Appropriate Professionals
 - Gather Data Related to Any PFAS Use
 - Chemical Usage
 - Supply Chain Analysis
 - Manufacturing Analysis
 - Permit Assessment
 - Product Usage and Disposition Analysis
 - Waste Management and Disposal
- **Review and Assess Collected Data to Determine Risk**
- **Research and Implement Potential Alternative Ingredients Where Needed**
- **Assemble and Monitor a PFAS Action Plan**



PFAS COMPLIANCE AND STRATEGIC GUIDE

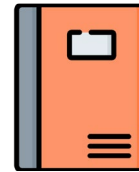
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STRATEGY



Require Certificates of
Conformity from
Suppliers



Document TSCA
Reporting and
Recordkeeping Rule



Perform AAI Prior to
Real Estate Purchases



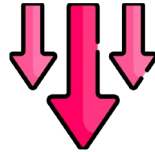
Review Insurance
Policies

PFAS COMPLIANCE AND STRATEGIC GUIDE

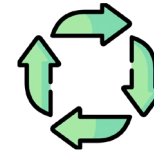
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3 R's of Waste Reduction

- Reduce
- Reuse
- Recycle



Reduce



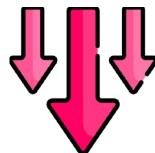
Reuse



Recycle

3 R's of PFAS Reduction

- Reduce
- Replace
- Review



Reduce



Replace



Review

It always seems impossible until it's done.
- Mandela



Q&A DISCUSSION

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