PFASs in focus

The last few years have seen a growing number of governments pass legislation to regulate per- and polyfluoroalkyl substances or PFASs. And regulatory authorities have set in motion processes that will ban or further restrict their use in the years ahead.

Considering that PFASs are used in a huge variety of products and industrial applications - from firefighting foam to food contact materials and cosmetics to name just a few – increasing regulation has far-reaching implications for compliance efforts.

Keeping track of PFAS regulation is now essential for everyone working towards the safe management of chemicals and the use of safer alternatives.

As the leading global provider of independent intelligence and insight for chemicals management and control, Chemical Watch is focused on helping product safety professionals managing chemicals keep up with PFASs regulation and its impact on products.

Our award-winning News & Insight team continually monitor the latest developments, scientific issues and business updates related to PFASs.

In this report, you will get a taste of the award-winning reporting and analysis that Chemical Watch provides. It includes stories on regulatory updates, as well as some of the research and wider issues around the use of PFASs.

All articles in this report are published and available in full to members of Chemical Watch News & Insight. If you’d like to find out how you can access our complete News & Insight coverage, get in touch now.

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Maine has deferred an expected prohibition on per- and polyfluoroalkyl substances (PFASs) in food packaging, seeking first to further study the availability and cost of alternatives to ensure smooth compliance.

The announcement from the state’s Department of Environmental Protection (DEP) throws into question the execution schedule for its 2019 statute to block this application of the persistent substance class by as early as the first day of this year.

Although Maine was the second US state to adopt a law to remove PFASs from food contact materials (FCMs), the lag could put it behind fellow states poised to do so in less than two years (see box). In response to the holdup, environmental and public health advocates are looking at several strategies to push the department to promptly examine and pinpoint PFAS-free options and to issue regulations establishing the ban.

According to the DEP, Maine’s policy mandates rulemaking only after the agency determines safer alternatives exist for particular FCM varieties. The department told Chemical Watch it must deem potential replacements at least as functional as PFAS-containing technologies, as well as “readily available in sufficient quantity, at a comparable cost”.

Those reported for four packaging categories last February by Washington state – which passed a similar, alternatives-based prohibition in 2018 – meet these criteria, the agency said, but it needs “information specific to products sold in Maine”, due to regional differences. It has published a request for proposals (RFP) to generate a market analysis of the listed substitutes’ state-specific availability and cost, with plans to launch the effort this quarter.

**Slow movement**

The American Chemistry Council (ACC) told Chemical Watch “lawmakers in Maine and in states across the country should take time to review the available information before rushing through legislation that harms consumers and businesses.”

But Patrick MacRoy, Defend Our Health’s deputy director, called the department’s alleged failure to fulfill the legislature’s directive “negligent”, tying the limited progress to concerns of industry pushback.

Given supply chain globalisation, “it defies logic that alternatives available in Washington would not also be available to Maine businesses, especially since some of the alternatives are actually made in Maine,” he told Chemical Watch. Plus, the agency should have begun supplemental data gathering when Washington released its conclusions, almost a year ago, Mr MacRoy said.

Because requirements take two years to kick in after the DEP decides safer choices exist, he added, the policy provides “plenty of time for businesses
to identify and source alternatives, stretching the already thin rationale for delay”.

NGOs are asking legislators to urge the agency to move forward, including via formal supervision or an amendment to create concrete deadlines like other states, according to Mr MacRoy. Additionally, groups will apply Maine’s citizen-led rulemaking process to try to compel the alternatives finding. “Lawsuits aren’t off the table,” he said.

**State landscape**

Other US state statutes to eliminate all PFASs in FCMs are set to take effect between now and 2024, in New York, Vermont, Connecticut, Minnesota and California.

New York’s measure will be the first to enter into force on 31 December and the others will largely follow throughout 2023, prior to Minnesota’s in January 2024.

The exception is Washington – the only other state to require evaluations of substitutes – which will forbid the compounds’ use starting next January only in the packaging types it found had viable replacements. Meanwhile, it continues searching for more PFAS-free choices to support additional restrictions.

California previously intended to address PFAS-containing FCMs under its alternatives-based Safer Consumer Products programme, but the Department of Toxic Substances Control (DTSC) said it abandoned that approach once the governor enacted the comprehensive ban.

According to Mr MacRoy, “it’s downright shameful” that people in Maine facing increasing PFAS pollution will not see phase-outs before people in states that more recently approved restrictions.

“Maine’s most important legacy on this topic though may end up being helping to inspire other states,” he said. Those actions will hopefully “be enough to drive market change that at least mostly wipes out PFASs from the food packaging”.

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New York legislators have introduced a bill to bar the sale of most products containing per- and polyfluoroalkyl substances (PFASs) by 2030, emulating Maine’s strategy for tackling contamination from the persistent substance class.

If adopted into law, the measure may significantly impact the market beyond just New York. It could also be among several state-level PFAS restrictions to advance in coming months, while the US EPA executes its less stringent federal roadmap to address the compounds.

Introduced last month, New York’s proposal (A 8491), would first mandate disclosure of PFAS use across articles and then phase out all avoidable applications within this decade, just as Maine’s statute – passed in July – will do.

Reporting would begin in 2024, with a ban on the sale and distribution of carpets, rugs, cookware, cosmetics, fabric treatments and personal care items containing PFAS ingredients kicking in one year later, except applications the state’s environmental conservation department finds unavoidable. The policy would enable the agency to choose more goods to prohibit if it determines they “are likely to cause contamination of land or water resources and are a threat to human health”.

By 1 January 2030, the prohibition would extend to every new article containing non-essential PFASs.

It is too early to gauge the proposal’s chances of clearing the Assembly and Senate and getting signed into law, according to Bobbi Wilding, executive director of NGO Clean and Healthy New York (CHNY). The proposal is currently under review by the Assembly’s environmental conservation committee.

But Ms Wilding told Chemical Watch that New York is “highly likely to continue taking action to ban PFASs in broad parts of the economy, especially given increasing evidence that PFAS chemicals can cause harm at levels below common detection”. And when the state – the third largest US economy – limits what companies sell, “it shifts the marketplace nationally”, she said.

Sarah Doll, national director of Safer States, said that New York’s measure, if enacted, “would send an even bigger signal [than Maine’s] to industry to move quickly to identify safer materials and solutions”.

Due to “the huge amount of resources that are having to be spent on cleanup, there is increasing pressure to turn off the tap” on the substances in US states, she added. “I absolutely anticipate other states will introduce similar policies in 2022.”

Patrick MacRoy, deputy director of NGO Defend Our Health, which sponsored Maine’s statute, told Chemical Watch it has been discussing that measure’s development with lawmakers elsewhere, such as in Massachusetts.

However, industry stakeholders oppose the legislation.

According to Rudy Underwood, vice president of state affairs at the American Chemistry Council (ACC), it “would threaten access to critical goods and products for New York families and businesses.”

PFASs greatly support national supply chain resiliency and “should not all be regulated the same way” since they represent different chemistries, he told Chemical Watch.
Ski waxes main culprit of PFAS non-compliance in Nordic inspections

Banned PFOA and PFOS found in 10% of chemical products and articles

20 January 2022

A joint Nordic enforcement project inspecting chemical products and articles for restricted per- and polyfluoroalkyl substances (PFASs) has found ski waxes to be responsible for most cases of non-compliance.

Levels of perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS) found in 15 of 158 products examined exceeded the limits established under the EU’s persistent organic pollutants (POPs) Regulation, the Nordic Enforcement Group reported after a two-year project. Of the non-compliant products, 14 were ski waxes – more than a third of all ski waxes tested.

A subgroup of the Nordic Council of Ministers, the enforcement group aims to exchange experience on control and enforcement of the European chemicals legislation and carry out joint inspections across the region. The PFAS project was led by the Finnish Safety and Chemicals Agency (Tukes).

In addition to PFOA and PFOS the project looked for the presence of other PFASs that are not yet restricted in any chemical legislation, and analysed for extractable organic fluorine (EOF) to improve knowledge on the use of PFASs in various products and articles.

PFASs were detected in 40% of chemical products and 65% of articles tested, the group said in a report. Many products and articles – mainly sports jackets – contained PFOA and PFOS, but at levels below the limit values, or contained other PFASs.

It concluded that for many PFASs there is still a lack of available information on occurrence and use, substance identification numbers and external reference standards for quantitative analyses.

“There is a great need to develop analytical methods for targeted analyses of PFAS to make a more effective enforcement possible,” the report said.

The EOF analysis showed high levels of organic fluorine in some products such as ski waxes, textiles, and firefighting foams. The Nordic Enforcement Group advised companies to start working to phase out PFASs from production as more restrictions are in the pipeline.

Five European countries are working on a broad EU-wide PFAS restriction proposal, which will cover more than 4,700 chemicals.

The Nordic Council of Ministers is an intergovernmental forum that promotes cooperation between Scandinavian countries.
A ‘chemical cocktail’ including PFASs and microplastics is polluting rivers across England, putting human health and the environment at risk, a UK parliamentary audit committee has concluded in a report today.

“Not a single river in England has received a clean bill of health for chemical contamination,” the report from the Environmental Audit Committee (EAC) said, calling for a “step change in regulatory action” and financial penalties to water companies for pollution incidents and misreporting.

The use of plastic in single-use sanitary products should be banned, with exemptions only provided for medical requirements. And tyre, car and fashion manufacturers must take greater responsibility for the contribution their products make to microplastic pollution in waterways, it says.

Many pollutants, including a range of legacy and ‘emerging’ chemical pollutants, such as per- and polyfluoroalkyl substances or PFASs, are not being routinely measured, the report concludes. Perfluorooctane sulfonic acid (PFOS), one of the PFAS family of chemicals, continues to be found above threshold levels in rivers despite restriction globally under the Stockholm Convention, it says.

Other persistent chemicals present in river waters include bisphenols and flame retardants, the report says.

Microplastics are “everywhere we can look in the freshwater system” an expert is quoted as saying, including “very high levels” in the urban and suburban riverbeds. In some river sections, 500,000 fragments of plastic were found for every square metre of riverbed.

The report recommends that the secretary of state for environment, food and rural affairs (Defra) commission a UK-wide survey of emerging pollutants and microplastic pollution of river environments.

NGO CHEM Trust said it had given written evidence to the EAC inquiry. Its recommendations included banning the most hazardous chemicals such as PFASs in all non-essential uses and the closing of regulatory gaps in UK chemicals regulations. The Health and Safety Executive (HSE) is conducting a regulatory management option analysis (RMOA) into PFASs.

“We urge the UK government to take the regulatory action needed to address pollution at source, in its forthcoming chemicals strategy,” campaigner Ellie Hawke said in a blog.

In May, the NGO, together with 29 others, set key asks for the UK government’s upcoming chemicals strategy.
US NGO sues CoverGirl, Coty over sustainability claims of alleged PFAS-containing product

Legal challenge follows class action against Shiseido bringing similar allegations

10 January 2022

A US food and environmental justice group has brought a lawsuit against CoverGirl Cosmetics and parent firm Coty Inc for what it calls environmental and safety misrepresentations of one of their make-up products.

In a 20 December filing, Toxin Free USA said the businesses brand themselves as promoters of clean, sustainable beauty even though a CoverGirl pressed powder may contain per- and polyfluoroalkyl substances (PFASs).

Filed in the District of Columbia’s (DC’s) Superior Court, the complaint intends to stop Coty and CoverGirl from advertising its TruBlend Pressed Powder as safe and sustainable.

The group’s action comes after an independent laboratory found organic fluorine in the powder. Organic fluorine is considered a PFAS indicator, although it does not explicitly measure PFAS concentrations. It can pick up unrelated organofluorine content and is not subject to legal limits in the US.

Read the full story

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California to conduct compliance check for PFASs in carpets, rugs next year

DTSC will pursue enforcement measures under Safer Consumer Products programme

15 December 2021

California’s Department of Toxic Substances Control (DTSC) has said it intends to start an enforcement effort in 2022 to ensure that companies are no longer selling carpets and rugs containing per- and polyfluoroalkyl substances (PFASs) in the state.

The agency’s Safer Consumer Products (SCP) programme confirmed the plan in early December. PFASs in carpets and rugs became a priority product under the scheme last summer, requiring businesses to either stop using the compounds or inform the agency that they will do an alternatives assessment to identify safer replacements.

Read the full story 📌

Canada further delays restrictions on flame retardants, long-chain PFASs

Winter 2022 release targeted for proposed update to Prohibition of Certain Toxic Substances Regulations

07 December 2021

The Canadian government has delayed by several more months its planned release of a proposal to tighten restrictions on a handful of flame retardants and long-chain per- and polyfluoroalkyl substances (PFASs).

Environment and Climate Change Canada (ECCC) told Chemical Watch it is now targeting a winter 2022 release of a proposal to update its Prohibition of Certain Toxic Substances Regulations.

As signalled in early 2019, the rework would involve new or additional limits on substances including: perfluorooctane sulfonate (PFOS), perfluorooctanoic acid (PFOA) and perfluorocarboxylic acids (LC-PFCA); and flame retardants dechlorane plus (DP) and decabromodiphenyl ethane (DBDPE).

Read the full story 📌
Researchers in Sweden have found that water repellents used in jackets are preferable when they do not use per- and polyfluoroalkyl substances (PFASs), despite their potential to cause adverse environmental impacts through so-called ‘problem shifting’.

The result, which comes out of a lifecycle assessment (LCA) conducted by scientists in Gothenburg, is likely to add to the pressure on outdoor garment manufacturers to use PFAS-free durable water repellents (DWRs).

Previous assessments have indicated that jackets with non-fluorinated DWRs might have more adverse environmental impacts because of their lower durability. This can mean users wash jackets and reapply DWRs more often. However, the Swedish study showed that this potential trend did not outweigh the PFAS-related potential toxicity impacts.
VF Corporation looks to take PFASs out of apparel

NGOs urge total corporate prohibition on substance class

03 November 2021

US-based garment maker VF Corporation has announced it will remove most per- and polyfluoroalkyl substances (PFASs) from its offerings in the next four years, broadening its ambitions around the persistent substance class as other major industry players have recently done.

The decision demonstrates the clothing sector’s increasing movement away from the compounds, with PFAS-free innovations shared in July by textile producer Polartec and in October by its competitor W.L. Gore & Associates. But VF’s goal does not cover PTFE, a PFAS commonly used for water and stain resistance.

“While we explore technologies to further eliminate PTFE,” the manufacturer said in a document on decreasing its chemical footprint, “we are undertaking extensive training [and] education and are investing to use responsibly manufactured fluoropolymers.” Less than 1% of its materials contain PTFE, the multinational said.

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Global Food Contact Materials Regulations

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BOOK HERE
What to expect from US PFAS regulation in 2022

Per- and polyfluoroalkyl substances or PFASs have made headlines around the world over the past few years. They have also caught the attention of 19 US attorneys general who have called on the federal government to act on the substances.

While there are some bills pending in both the US House and Senate and a White House executive order to prioritise purchase of PFAS-free products, industry push back means there is a political stalemate, with little progress expected at federal level in the year ahead.

At state-level, however, state legislatures and agencies have been busy, passing pieces of legislation or conducting rapid rulemaking processes and regulatory changes around PFAS are set to continue in the year ahead.

Key developments to look out for in 2022

- Measures to restrict PFASs in firefighting products in Arkansas, California, Illinois, Louisiana have been in effect as of 1 January 2022
- 2022 will be a year of planning in the food contact materials (FCMs) sector as several compliance deadlines are scheduled for 1 January 2023
- California's Department of Toxic Substances Control (DTSC) is expected to finalise product designation for textile treatment products containing PFASs under the state's Safer Consumer Products (SCP) programme in 2022
- In Maine manufacturers must report all PFAS-containing goods sold in the state to the Department of Environmental Protection (DEP) by 1 January 2023

This information is taken from one of 10 special reports published in Chemical Watch's Global Outlook 2022 series. Each report is an horizon-scanning view of a key regulatory topic or region. The full series is available to all Chemical Watch News & Insight members, providing high-value information that will help you through 2022.
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