

State-level Regulation of PFAS

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Issue

Provide examples of state laws regulating per- and polyfluoroalkyl substances (PFAS) in drinking water and products. Summarize similar proposed legislation in Connecticut.

Summary

In the absence of a federal law or regulation setting maximum PFAS concentration levels for drinking water and products, several states have begun enacting their own laws on PFAS.

Vermont enacted a law requiring water systems to monitor PFAS levels in drinking water and take action if the level exceeds 20 parts per trillion (ppt). Other states, including New Jersey and New Hampshire, are establishing more stringent drinking water standards by regulation.

In 2018, Washington State enacted a law limiting the use, manufacture, and sale of firefighting foam with PFAS. Since then, at least six other states have passed laws to restrict using firefighting foam with PFAS: Arizona, Colorado, Georgia, Kentucky, Minnesota, and Virginia. Two states, Maine and Washington, enacted laws on PFAS in food packaging, but they have not yet taken effect.

In the 2019 regular legislative session, Connecticut legislators introduced two bills to restrict the use of PFAS: [SB 78](#) and [HB 5910](#). Neither became law.

On July 8, 2019, Governor Lamont [announced](#) the creation of an interagency working group that will examine issues related to PFAS in Connecticut and report to him by October 1, 2019.

General Information on PFAS

PFAS are a diverse group of man-made chemicals that are resistant to heat, water, and oil. They have been used in the United States since the 1940s in hundreds of industrial applications and consumer products. The PFAS group includes chemicals such as perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS), which, according to the Environmental Protection Agency (EPA), are the most commonly used and studied PFAS. (This report focuses primarily on these two types of PFAS chemicals.)

PFAS are persistent in the environment and the human body; they do not break down and they bioaccumulate (i.e., concentrations increase over time). According to [EPA](#), "There is evidence that exposure to PFAS can lead to adverse health outcomes in humans" (e.g., low birth weight, delayed puberty, elevated cholesterol, and reduced immunologic response to vaccinations).

People may be exposed to PFAS through contaminated food or water or by using everyday products containing PFAS, such as Teflon or other non-stick coatings. EPA has not set a maximum acceptable level for PFAS. However, water that tests at or above 70 ppt triggers a non-binding EPA [health advisory](#). For more information about PFAS, see EPA's [website](#).

State Drinking Water Standards

This year, Vermont enacted a law requiring public water systems, beginning by December 1, 2019, to monitor their water supplies to ensure they do not exceed 20 ppt for five PFAS chemicals, in combination, including PFOA and PFOS. (The Vermont Department of Health had previously adopted a 20 ppt health advisory level for PFAS.) Under the new law, if the monitoring reveals that the PFAS in water exceed 20 ppt, the water system must (1) implement treatment measures to reduce the contaminants to below the threshold and (2) issue a "do not drink" notice to all water system users until the PFAS are below that level ([2019 SB 49](#)).

Other states are in the process of setting PFAS drinking water standards in regulation. For example, in April 2019, New Jersey [proposed](#) maximum contaminant levels for two PFAS chemicals: 14 ppt for PFOA and 13 ppt for PFOS. Under the proposal, water systems testing above those levels will be required to remediate the contaminated wells or take them out of service. The state recently imposed interim groundwater cleanup standards of 10 ppt for PFOA and PFOS. Similarly this year, New Hampshire [proposed](#) a 12 ppt threshold for PFOA, a 15 ppt for PFOS. New Hampshire currently has an enforceable 70 ppt groundwater quality standard.

Firefighting Foam Restrictions

In 2018, Washington State enacted a law limiting the use, manufacture, and sale of firefighting foam containing PFAS, as described below.

Washington

Washington law requires a manufacturer or other person that sells firefighting personal protective equipment to any person, local government, or state agency to provide written notice to the purchaser at the time of sale if the equipment contains PFAS chemicals ([Wash. Rev. Code Ann. § 70.75A.030](#)).

The law also prohibits a person, local government, or state agency from discharging or otherwise using for training purposes class B firefighting foam with intentionally added PFAS chemicals ([Wash. Rev. Code Ann. § 70.75A.010](#)). Class B firefighting foam is designed for flammable liquid fires.

Beginning July 1, 2020, with limited exceptions, a class B firefighting foam manufacturer cannot manufacture, knowingly sell, offer for sale, or distribute for sale or use in Washington class B firefighting foam with intentionally added PFAS chemicals ([Wash. Rev. Code Ann. § 70.75A.020](#)).

A person or manufacturer that violates the law is subject to a penalty of up to \$5,000. Repeat violators are subject to a penalty of up to \$10,000 ([Wash. Rev. Code Ann. § 70.75A.060](#)).

Other States

In 2019, several other states, including Arizona, Colorado, Georgia, Kentucky, Minnesota, and Virginia, enacted laws restricting the use of class B firefighting foam with PFAS. None have yet been implemented. Like Washington, Colorado's law also restricts selling class B firefighting foam with PFAS.

Table 1 identifies each state's law and provides the associated effective date and implementation date.

Table 1: Other States' Laws on Firefighting Foam with PFAS

State (Citation)	Effective Date	Implementation Date
Arizona Ariz. Rev. Stat. § 36-1696, as amended by 2019 SB 1526	May 13, 2019	January 1, 2020
Colorado Colo. Rev. Stat. §§ 24-33.5-1234 and 25-5-1301 to 1308, as amended by 2019 HB 1279	June 3, 2019	August 2, 2019, except for the sale restriction, which begins August 2, 2021
Georgia Ga. Code Ann. § 25-2-41	July 1, 2019	January 1, 2020
Kentucky Ky. Rev. Stat. § 227.395	June 27, 2019	July 15, 2020
Minnesota Minn. Stat. § 325F.072, as amended by 2019 HB 359	May 22, 2019	July 1, 2020
Virginia Va. Code Ann. § 9.1-207.1	July 1, 2019	July 1, 2021

Food Packaging Restrictions

Two states, Maine and Washington, have laws on using PFAS in food packaging.

Maine

A 2019 law authorizes the Department of Environmental Protection to, by rule, prohibit a manufacturer, supplier, or distributor from offering for sale or promotional purposes in Maine food packaging with intentionally added PFAS in an amount greater than an incidental amount. However, it may only do so if it identifies an available safer alternative to using PFAS in food packaging, meaning that it (1) is readily available in sufficient quantity and at a comparable cost and (2) performs as well as or better than PFAS.

If the department identifies a safer alternative, the new law requires it to issue a rule banning the sale of food packages with intentionally added PFAS in an amount greater than an incidental amount. But the ban may not take effect until January 1, 2022, or two years after the date the department finds a safer alternative, whichever is later (Me. Rev. Stat. Ann. tit. 32, § 1733, as amended by [2019 H 1043](#)).

Washington

Beginning January 1, 2022, no person may manufacture, knowingly sell, offer for sale, or distribute for sale or use in Washington any food packaging with intentionally added PFAS ([Wash. Rev. Code Ann. § 70.95G.070](#)).

The ban, however, is contingent on the state's Department of Ecology conducting certain research and publishing its findings. Specifically, the department must identify that safer alternatives to PFAS are available, which must be supported by external peer review feedback. Under the law, a safer alternative to PFAS in food packaging must (1) be readily available in sufficient quantity and at a comparable cost and (2) perform at least as well as PFAS. The law (1) details the alternatives assessment that the department must undertake and (2) requires the department to publish its findings by January 1, 2020.

If the department identifies safer alternatives by January 1, 2020, the ban on using PFAS in food packaging takes effect January 1, 2022. However, if it determines that safer alternatives do not exist, the ban will not take effect. Instead, the department will annually review and report on possible alternatives, and once it identifies a safer alternative, the ban will take effect two years after the department reports on the alternative.

Connecticut Proposed Legislation

During the 2019 regular legislative session, legislators introduced two bills to restrict the use of PFAS: [SB 78](#) and [HB 5910](#). Neither became law.

As proposed, SB 78 would prohibit the use of PFAS in food packaging and firefighter foam. The bill did not receive a public hearing. However, the Public Health Committee held a public hearing on HB 5910, which also sought to prohibit the use of PFAS in food packaging and firefighting foam. The committee voted out a substitute bill that, beginning July 1, 2020, prohibited using class B firefighting foam with intentionally added PFAS for training or testing purposes. The House then referred the bill to the Appropriations Committee, which took no action on it.

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