

The Use of PFAS Substances in Many Common Household and Industrial Products Opens Industry to Potential Increased Regulation and Lawsuits

In recent years, there has been growing concern, and regulation, of different chemicals commonly used with many consumer and industrial products sold in the U.S. marketplace. One such group of chemicals gaining increasing scrutiny among federal and state regulators are per- and Polyfluoroalkyl substances (PFAS). PFAS chemicals includes more than 4,000 different chemical compounds and are widely used in everyday products, including stain and water resistant fabrics and carpeting, cleaning products, cookware, paints and fire extinguishing foams. PFAS substances do not easily break down in the environment and have been linked to a number of health problems including cancer, thyroid disease and reproductive issues. The growing scrutiny of PFAS chemicals includes plans for increased regulation, as well as lawsuits against manufacturers, processors, distributors and users of the chemicals.

PFAS have historically been, in large part, unregulated at the federal and state level, but this may change in coming years as federal and state regulators scrutinize the potentially adverse environmental and human impact PFAS substances can cause. Some state agencies have already implemented formal plans to try to regulate the use of these chemicals either through agency regulatory actions or through the courts under existing nuisance or tort law.

Regulators have focused on two PFAS chemicals in particular: Perfluorooctanoic acid (PFOA) and Perfluorooctane sulfonate (PFOS). California state regulators in 2017 added both PFOA and PFOS chemicals to its Proposition 65 list, a law that requires consumer products sold in that state to include a warning if consumers may be exposed to certain listed chemicals. In 2009, the Environmental Protection Agency (EPA) also issued nonbinding advisories for recommended PFOA and PFOS concentration levels in drinking water at which adverse health risks were not anticipated to occur. These advisories remain non-binding.

The EPA announced a PFAS Action Plan in 2019 to address these chemicals and to determine whether binding regulation and enforcement steps are necessary. In January 2021, the EPA issued an advance notice of proposed rulemaking for PFOA and PFOS chemicals that could potentially affect a wide-array of industries and

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products including, but not limited to, carpet manufacturers, car washes, coatings, paints, and varnish manufacturers, landfills, paper mills, printing facilities where inks are used in photolithography and textile mills. The new Biden-Harris administration has indicated its commitment to addressing the use of PFAS substances and is expected to continue the regulatory steps taken by the EPA during previous administrations.

Scrutiny of PFAS chemicals has caught the attention of the Gov. Evers administration in Wisconsin as well. Evers announced in February 2021 that his administration was seeking an outside law firm to help the state prosecute claims against companies responsible for PFAS contamination in Wisconsin, especially contamination of groundwater sources, rivers and lakes where Wisconsin's Department of Natural Resources (DNR) have found high levels of PFAS contamination from PFAS spills, or significant concentrations of fire extinguishing foam used at large fire fighter training sites. The DNR is also leading a statewide action plan to study the environmental and health impacts of PFAS chemicals and develop rules to regulate the use and disposal of PFAS substances, including PFOA and PFOS chemicals.

Reinhart is continuing to monitor further developments in the potential regulation of PFAS chemicals by federal and state regulatory agencies and will provide additional updates on this topic as new regulatory activity unfolds. For further questions or guidance about PFAS substances, please contact [James Law](#), [Steve Bogart](#) or your Reinhart attorney.

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