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Colorado Passes Law to Restrict PFAS in Consumer Products and Regulate PFAS-Containing Firefighting Foam

On June 3, 2022, Colorado Governor Jared Polis signed into law HB22-1345, a bipartisan measure that will limit the sale and/or use of a variety of products containing per- and poly-fluoroalkyl substances (PFAS). PFAS are a class of chemicals linked to serious health impacts, such as reproductive and immunological harm and certain cancers. While a substantial number of states (including Colorado) have already passed laws regulating PFAS in drinking water and other media, with the enactment of this law, Colorado joins a smaller but growing group of states that now restrict the sale of PFAS-containing consumer products and/or regulate the use of PFAS-containing firefighting foam.

The new law will phase out the sale and distribution of PFAS-containing consumer products in the State, including carpets, furniture, cosmetics, children's products, fabric treatments, food packaging, fluids used in oil and gas production, textile furnishings, and upholstered furniture. It will require cookware that contains intentionally added PFAS to be labeled with the PFAS chemicals in the cookware and to direct consumers to a website with information about why PFAS chemicals were intentionally added to the cookware.

The law has special requirements for users of PFAS-containing firefighting foam, also known as aqueous film-forming foam (AFFF), a fire suppressant favored because of the speed with which it extinguishes fuel fires. Users of AFFF must prohibit releases to the environment, fully contain AFFF when it is used, safely store AFFF, and report any spills within twenty-four hours to the State's water quality spill hotline.

Three types of entities are exempt from the AFFF requirements of the new Colorado law: (1) entities who use PFAS-containing AFFF because such use is mandated or authorized by federal law (including Part 139 certificated airports); (2) entities who use PFAS-containing AFFF in accordance with Federal Aviation Administration (FAA) guidance; and (3) entities whose use of PFAS-containing AFFF is "otherwise required for a military purpose." However, the law contains a provision triggering the end of the exemption for particular users when federal laws or guidance change so that use of PFAS-containing AFFF is no longer required and/or recommended. This provision anticipates a likely transition away from federally mandated and/or recommended use of AFFF at airports and for military purposes, as the FAA and the Department of Defense are presently considering modifying regulatory standards to allow for the use of new fluorine-free foams. When federal laws or guidance that currently require and/or recommend the use of PFAS-containing AFFF no longer do so, the Colorado Department of Public Health and the Environment must take action to end the exemption with respect to any affected users. Then, those entities will have at least two years before they must comply with the Colorado law.

The restrictions in the new law are effective January 1, 2024.

Please contact Polly Jessen, Tom Bloomfield, Sara Mogharabi, or Nick Clabbers with questions regarding Colorado's new PFAS law.