



# PFAS REGULATION & LITIGATION: NAVIGATING THE LEGAL LANDSCAPE

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Sept. 10, 2025

Chicago – Association of Corporate Counsel



# Your Speakers



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# PFAS BACKGROUND

# What is (are) PFAS?

**PFAS is an acronym for a large family of man-made chemical substances:**

- 5,000-15,000 fluorinated chemicals
- Perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS) – most well-known and regulated compounds

## **Manufacturing:**

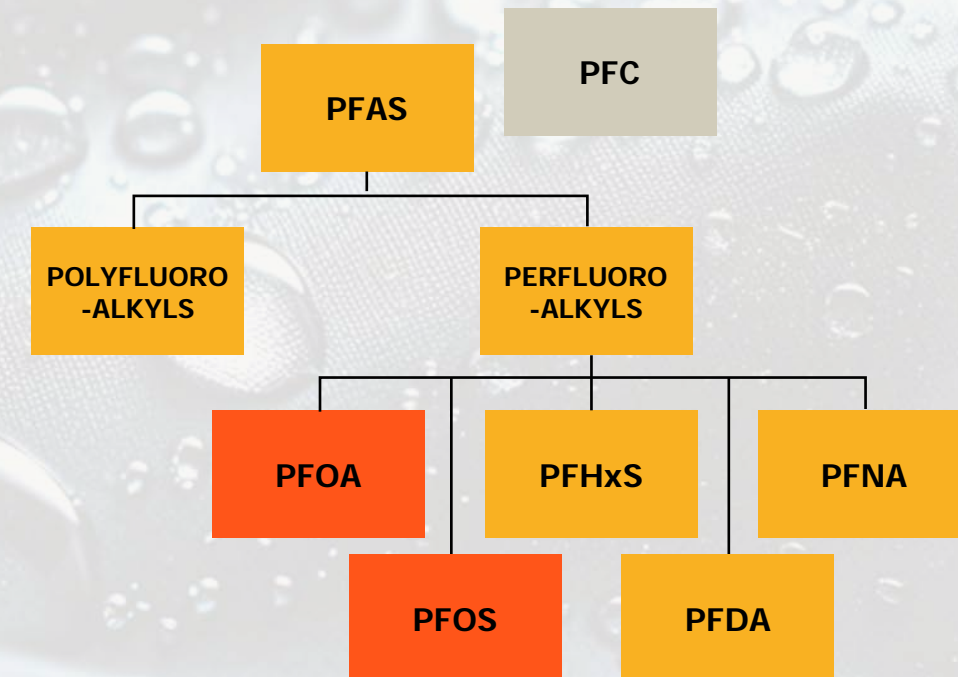
- First manufactured in 1940s
- PFOA and PFOS not currently produced in the US, but still manufactured abroad and imported to the US
- Replacement chemistry still widely used

## **Common uses:**

- Commercial products including stain- and water-repellant fabrics, polishes, waxes, paints, cleaning products
- Plastic extrusion; chrome plating; fire-fighting foams



Family tree of perfluoroalkyl and polyfluoroalkyl substances



# FEDERAL REGULATORY UPDATE

# Recent Administration Announcements



**Water Quality, Fluoride, and PFAS:** The CDC, informed by data and scientific review from NIH and EPA, will update recommendations regarding fluoride and PFAS in water. FDA will evaluate high dose liquid drop and tablet (consumable) dosages indicated for children and remove unsafe products. FDA will also take action against unapproved products, often marketed as supplements.

The Trump Administration Unified Agenda released this month identifies the following PFAS-related regulatory actions:

- Propose a rule by January 2026 setting PFAS effluent limits to address discharges from the organic chemicals, plastics and synthetic fibers (OCPSF) sector.
- Propose revisions by July 2026 to metal finishing effluent limitation guidelines to address discharges from chromium electroplating wastewater.
- By May 2027, finalize a rule to include monitoring and reporting of PFAS under the National Pollutant Discharge Elimination System (NPDES) permitting system.
- Finalize analytical methods for assessing PFAS under the Clean Water Act by March 2026.
- Designate nine PFAS as RCRA hazardous constituents subject to RCRA corrective action in April 2026.
- Add certain PFAS to the Toxics Release Inventory program.

# Rollback or Keep Rolling?

## Biden-Era EPA Actions Up For Reconsideration

### CERCLA Listing for PFOA and PFOS as Hazardous Substances



### Drinking Water Maximum Contaminant Levels



### TSCA PFAS Reporting Rule



- Reporting portal opens on ~~July 11, 2025~~ **April 13, 2026**, and closes on ~~January 11, 2026~~ **October 13, 2026**.
- Requires reporting for PFAS manufactured in the US, imported into the US, **and** contained in articles imported into the US between January 1, 2011, and December 31, 2022
- **Update – possible exemption for articles importers:**
  - Unified agenda has indicated a proposed rule with potential additional exemptions for small manufacturers, article importers.
  - Proposed rule to be published in December 2025; finalized in June 2026.



# PFAS NATIONAL PRIMARY DRINKING WATER REGULATION

ORIGINAL RULE (Adopted April 2024)
<b>Max. Contaminant Levels:</b> PFOA.....4.0 ppt PFOS.....4.0 ppt  <b>Compliance Deadline: 2029</b>
<b>Max. Contaminant Levels:</b> PFHxS, PFNA, HFPO-DA (GenX).....10 ppt
<b>Hazard Index of 1.0:</b> Mixtures containing two or more of PFHxS, PFNA, HFPO-DA, and PFBS

LATEST PROPOSED CHANGES (Announced May 2025)
<b>MCLs unchanged</b>
<b>Compliance Deadline: 2031</b>
<b>MCLs rescinded</b>
<b>Hazard Index rescinded</b>

Extension of deadline – proposed rule anticipated next month (October 2025) and final rule to be finalized by April 2026.

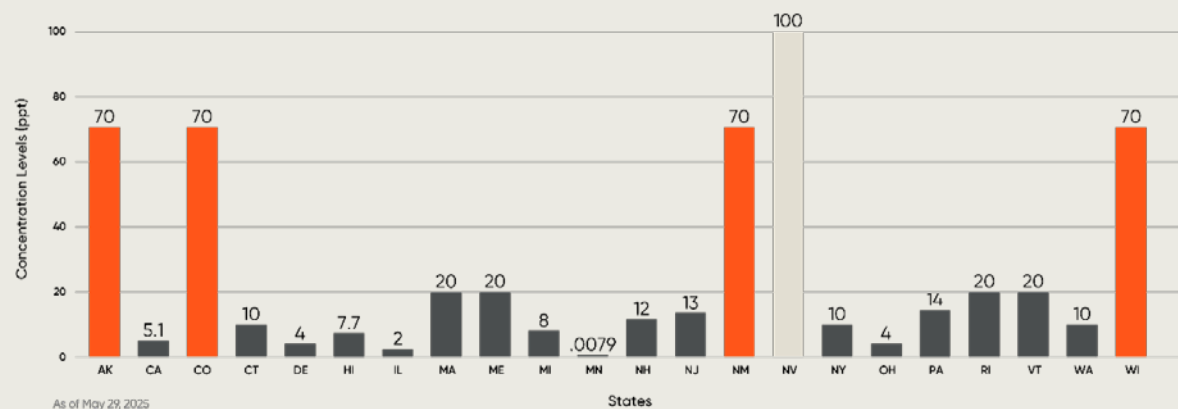
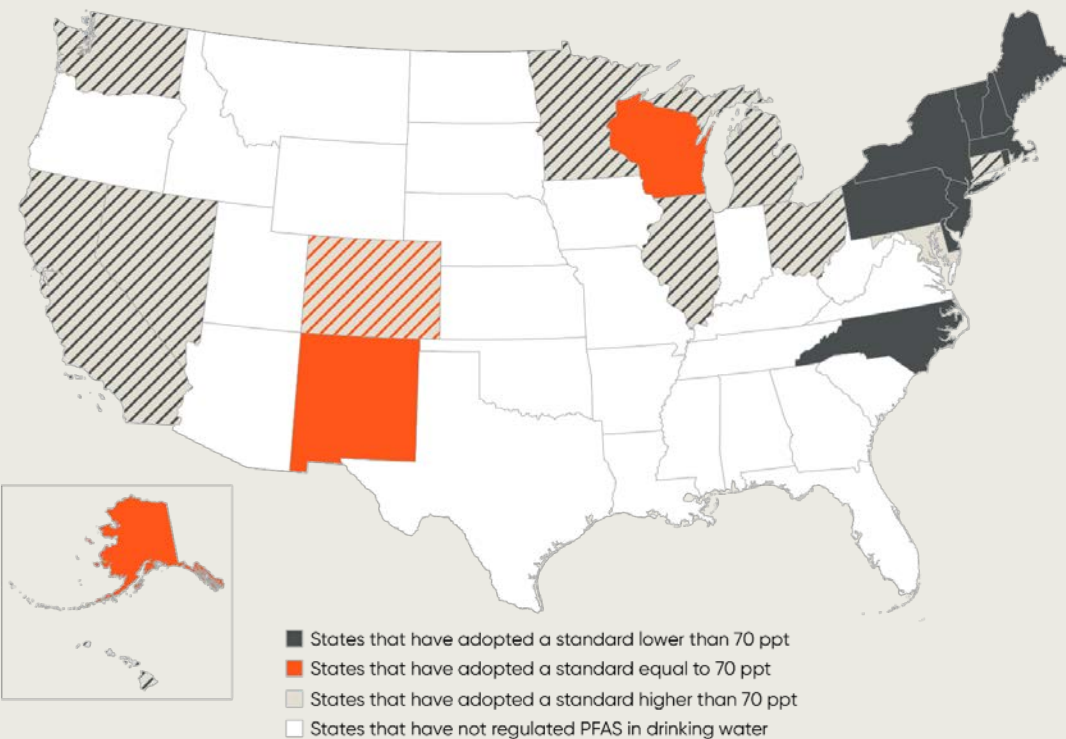
Rescinding MCLs/HIs – withdrawal to be initiated in February 2026.





# PFAS Drinking Water Standards

Extensive state action and regulation,  
with a wide range of standards



# REAL ESTATE & TRANSACTIONAL CONSIDERATIONS

# PFAS – Real estate due diligence changes



1 PFOA and PFOS (and their salts and structural isomers) are now **“Hazardous Substances”** under CERCLA (since July 2024).

2 How does this CERCLA designation potentially affect prospective purchasers and owners/operators?

**PFOA and PFOS must be included in Phase I environmental site assessments –**

e.g., could become Recognized Environmental Conditions (RECs)

- Importance: Phase I ESAs are required in real estate transactions for prospective purchasers to satisfy the All Appropriate Inquiries standard for certain defenses to CERCLA liability.
- Evaluate when/whether to conduct sampling.

**EPA will have the authority to include listed PFAS in site investigation and remediation projects.**

- Can lead to cost recovery/contribution claims for cost of PFAS remediation
- Can identify additional potentially responsible parties at existing sites to address PFAS issues
- EPA enforcement discretion to exclude passive receivers of PFAS from liability may increase costs to legacy industrial users.
- Potential for regulatory closure re-openers

# PFAS ENVIRONMENTAL STANDARDS & CLEANUP LAWS



- 1 Some states have listed certain PFAS as hazardous substances. State hazardous substances may need to be included in a Phase I to satisfy AAI under state laws.



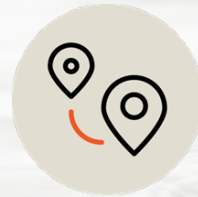
- 2 Soil, groundwater, and other clean-up standards can require investigation, remediation, or removal.



- 3 Drinking water standards at federal and state levels



- 4 Increasingly regulated by environmental permits – stormwater, wastewater, potentially air (e.g., effluent and emissions limits, monitoring/reporting)

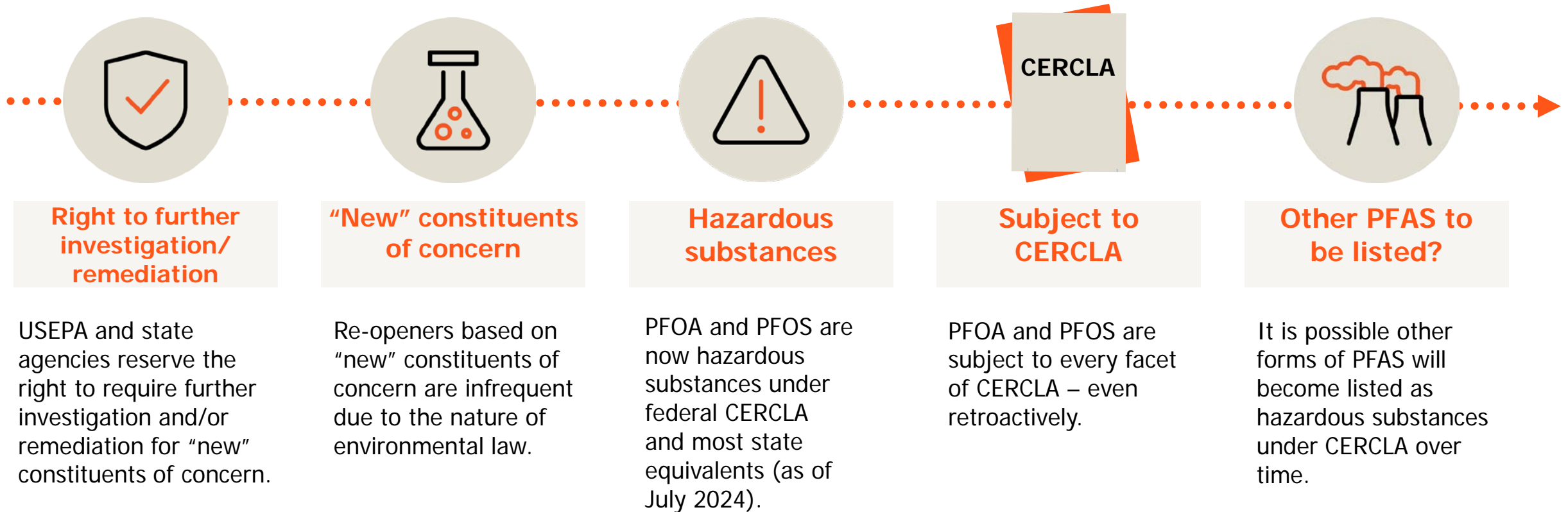


- 5 Significant regulatory variance among states

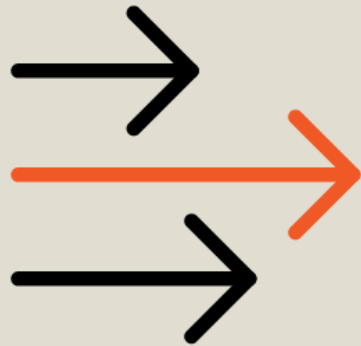


- 6 Other countries are regulating PFAS as well – e.g., EU, Canada

# PFAS is now a potential regulatory “re-opener”



# PFAS considerations in the transactional context:



1

- PFOA & PFOS are “hazardous substances” pursuant to CERCLA
- Phase I & II assessments of real estate must include evaluation of these two PFAS to preserve access to certain statutory defenses to CERCLA

2

## Incorporate PFAS into due diligence

- PFAS-related litigation (consumer product or enviro.)
- PFAS in the target’s supply chain
- Target’s compliance with US and global regulatory requirements related to PFAS
- Understanding of current and former operating locations, activities, releases, products manufactured

3

- Incorporate protections in transaction documents, including reps & warranties related to regulatory compliance, environmental liability, etc., with respect to PFAS

4

- Assess activity by state/local regulators in key operating locations (e.g., suits by local public water utilities for PFAS contamination) to evaluate potential risks

# FEDERAL & STATE REPORTING REQUIREMENTS



# TSCA PFAS Reporting Rule (Federal)



- Requires reporting on the manufacture or import of PFAS chemicals that occurred between **Jan 1, 2011 - Dec 31, 2022** (long look-back time)

#### Reporting period:

April 13, 2026 -  
October 13, 2026

#### Includes:

Mixtures and articles  
(i.e., finished goods)  
containing PFAS

- Must report information **“known or reasonably ascertainable”** and conduct diligence appropriate to demonstrate compliance
- Confidential business information can be protected, but claim must be substantiated at the time of submittal
- Reporting will create significant amounts of publicly available information regarding PFAS in supply chains.



Companies should review manufacturing and import records to determine applicability and conduct upstream supplier outreach.

# Minnesota's HF 2310



Beginning on **July 1, 2026**, manufacturers of any products that contain intentionally added PFAS must provide notice to the Minnesota Pollution Control Agency providing information on the product and PFAS content.



Beginning on **January 1, 2032**, a person may not sell or distribute any product that contains intentionally added PFAS, unless the MPCA has determined the use of PFAS in the product is a currently unavoidable use.

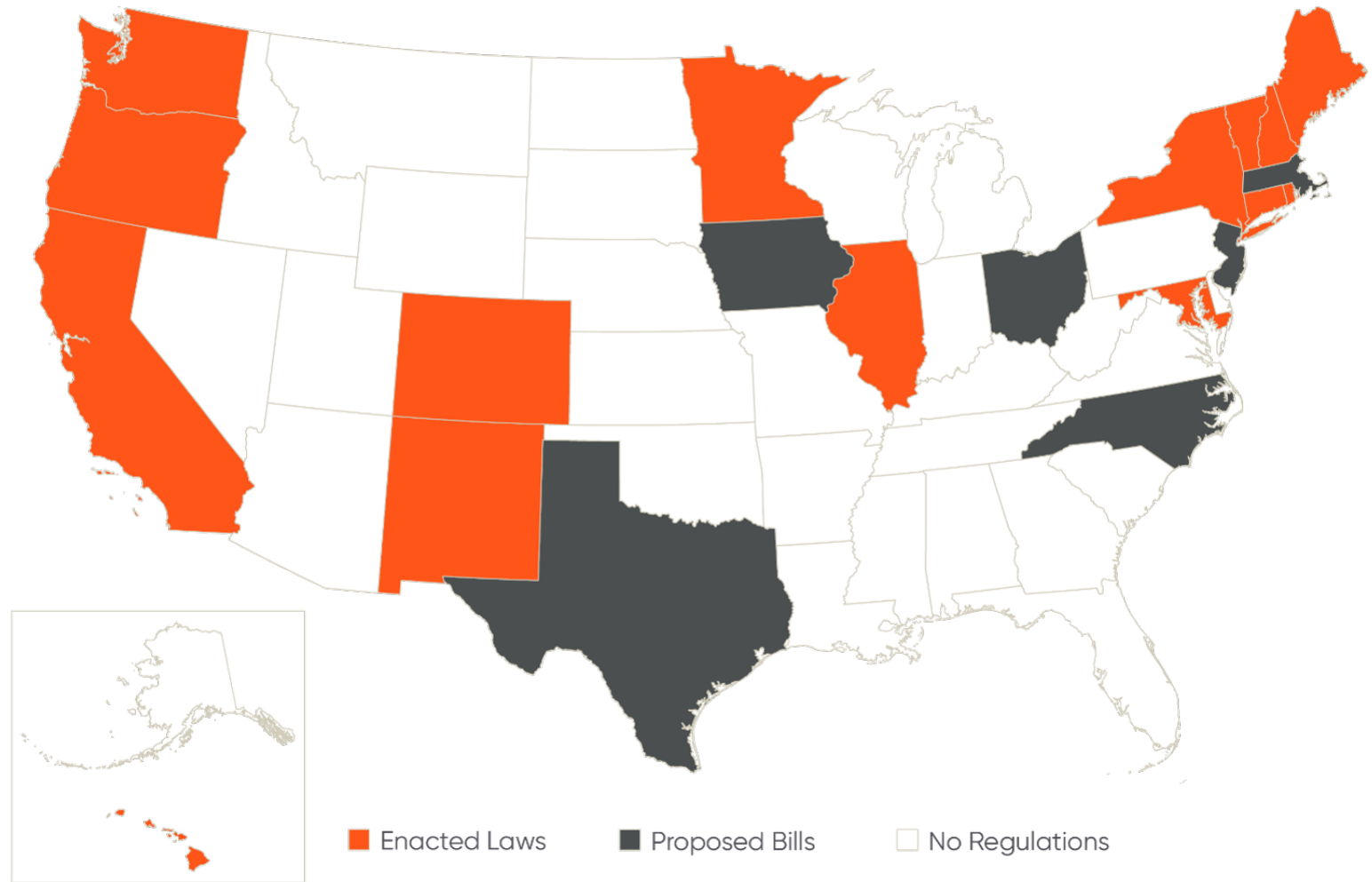
# STATE REGULATION OF PFAS IN CONSUMER PRODUCTS

# PFAS Consumer Product Laws

Extensive state legislation with some consistent themes:

- “Intentionally added PFAS”
- Primary Regulatory Categories:
  - Juvenile Products
  - Food Packaging
  - Textiles and Apparel
  - Cleaning Products
  - Ski Wax
  - Fabric Treatments
  - Rugs and Carpets
  - Cosmetics
  - Menstruation Products
  - Cookware
  - Textile Furnishings
  - Upholstered Furniture

# Enacted and Proposed PFAS Consumer Product Laws



# Types of PFAS Products Laws

Vary by state and type of product



## Bans

- No intentionally added PFAS in specific product categories
- General prohibitions on the manufacture, distribution, sale, etc., of products containing intentionally added PFAS by a set date



## Notification requirements

- Consumer-facing labeling or disclosure requirements for specific product categories



## Reporting

- Reporting obligations for specific product categories or for all products, but no immediate on-label disclosures or reformulation requirements

# Food Packaging Laws



- **General Structure**
  - “PFAS” is a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom
  - Prohibits the use of “**intentionally added**” or “**intentionally introduced**” PFAS
- **Plant Fiber Bans: Jan. 1, 2023 – California and New York**
  - CA also prohibits the presence of any PFAS in a product or product component at or above 100 ppm measured in total organic fluorine, in addition to intentionally added PFAS.
- **Non-Fiber Bans: July 1, 2023 – Vermont**
- **Processing Aid: July 1, 2024 – Rhode Island**
- **Shipping/Distribution Packaging – Jan. 1, 2024 - Minnesota**

# Juvenile Products Laws



- **General Structure**
  - **“Juvenile products”** are generally defined as products that are intended for use by children 12 years old or younger.
  - The prohibitions apply to **“intentionally added”** PFAS, which generally are PFAS added to a product to create a specific effect in the finished product.
    - **California’s law** also prohibits the presence of PFAS in a product at or above **100 ppm**, as measured in **total organic fluorine**.
  - Some, but not all, of the laws exempt internal components of the product that are not accessible during foreseeable **“use and abuse”** of the product.
  - **First in effect - July 1, 2023 - California** - Use prohibition
- **Impacted states include:**
  - **Bans: CA, CO, IL, ME, MN, NM, OR, RI, VT**
  - **Notice Requirements: CT, ME, NH, NY, VT, WA**



# Textile and Apparel Laws



- **California AB 1817 – January 1, 2025**
- **The definition of “regulated” PFAS is either:**
  - PFAS that are “intentionally added to a product and that have a functional or technical effect in the product,” including PFAS that are intentional breakdown products of added chemicals, **or**
  - The presence of PFAS in a product or product component at or above the following thresholds, as measured in total organic fluorine:
    - **January 1, 2025** – 100 parts per million (“ppm”)
    - **January 1, 2027** – 50 ppm
- Textile articles are defined to include “textile goods of a type customarily and ordinarily used in households and businesses, and include, but are not limited to, apparel, accessories, handbags, backpacks...”
  - “Apparel” is also broadly defined, and includes essentially all forms of clothing, including outdoor apparel (i.e., “clothing intended primarily for outdoor activities, including, but not limited to, hiking, camping, skiing, climbing, bicycling, and fishing”).

# Cosmetics Laws



After **January 1, 2025**, cosmetic products sold, distributed, or manufactured in **California**, **Colorado**, & **Minnesota** cannot contain “intentionally added PFAS.”

**“Cosmetic product”** means an article for retail sale or professional use intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance.

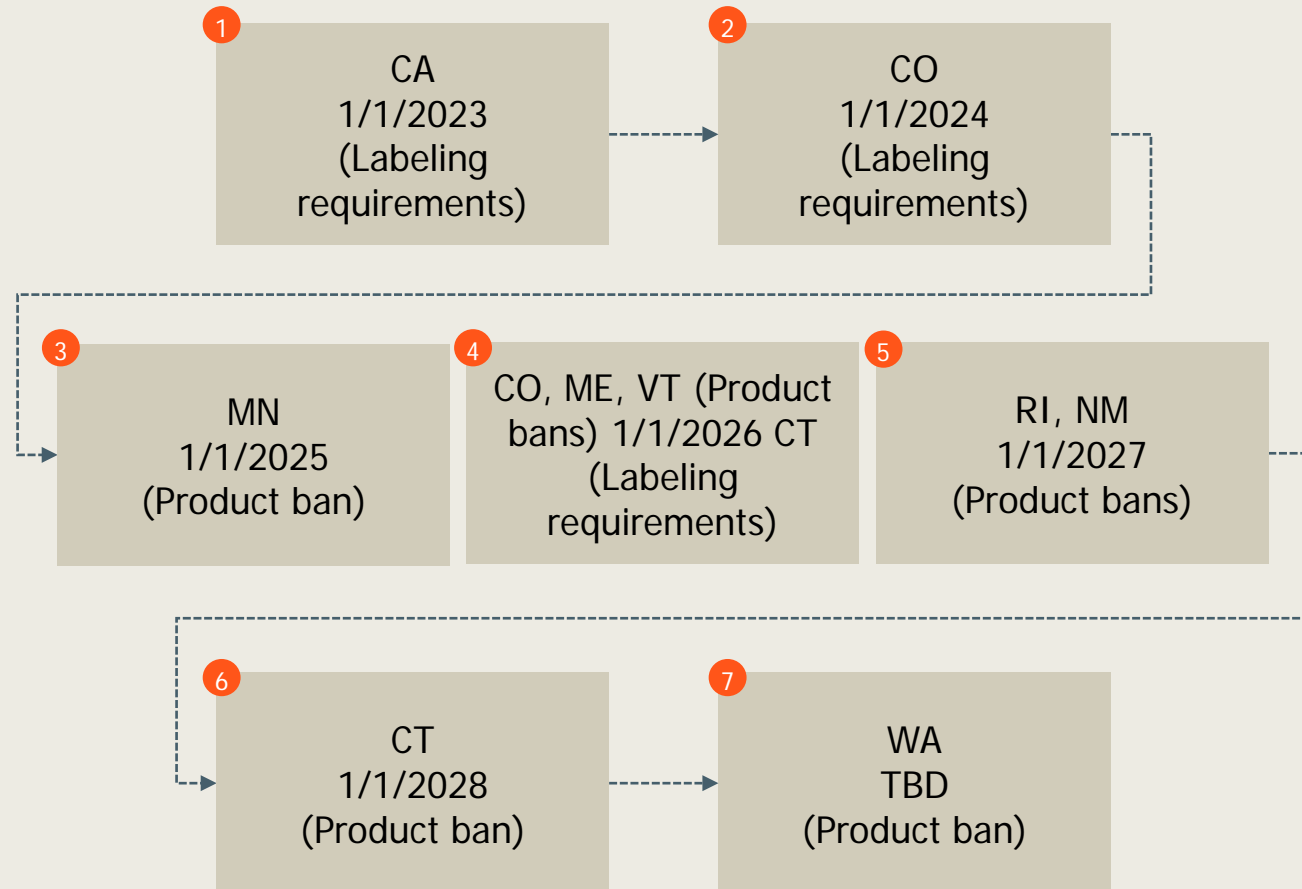
**“Intentionally added PFAS”** means either of the following:

- 1) PFAS chemicals that a manufacturer has intentionally added to a product and that have a functional or technical effect in the product.
- 2) PFAS chemicals that are intentional breakdown products of an added chemical.

# Cookware Laws



- **Use prohibition** – **January 1, 2025 (Minnesota)** – No intentionally added PFAS
- **Cookware** – durable houseware items that are used in homes and restaurants to prepare, dispense, or store food or beverages. Includes pots, pans, skillets, grills, baking sheets, baking molds, trays, bowls, and cooking utensils.



# New Mexico: Fluoropolymer Exemption



## Fluoropolymer Exemption:

66

A product that contains fluoropolymers consisting of polymeric substances for which the backbone of the polymer is either a per- or polyfluorinated carbon-only backbone or a perfluorinated polyether backbone that is a solid at standard temperature and pressure.

99

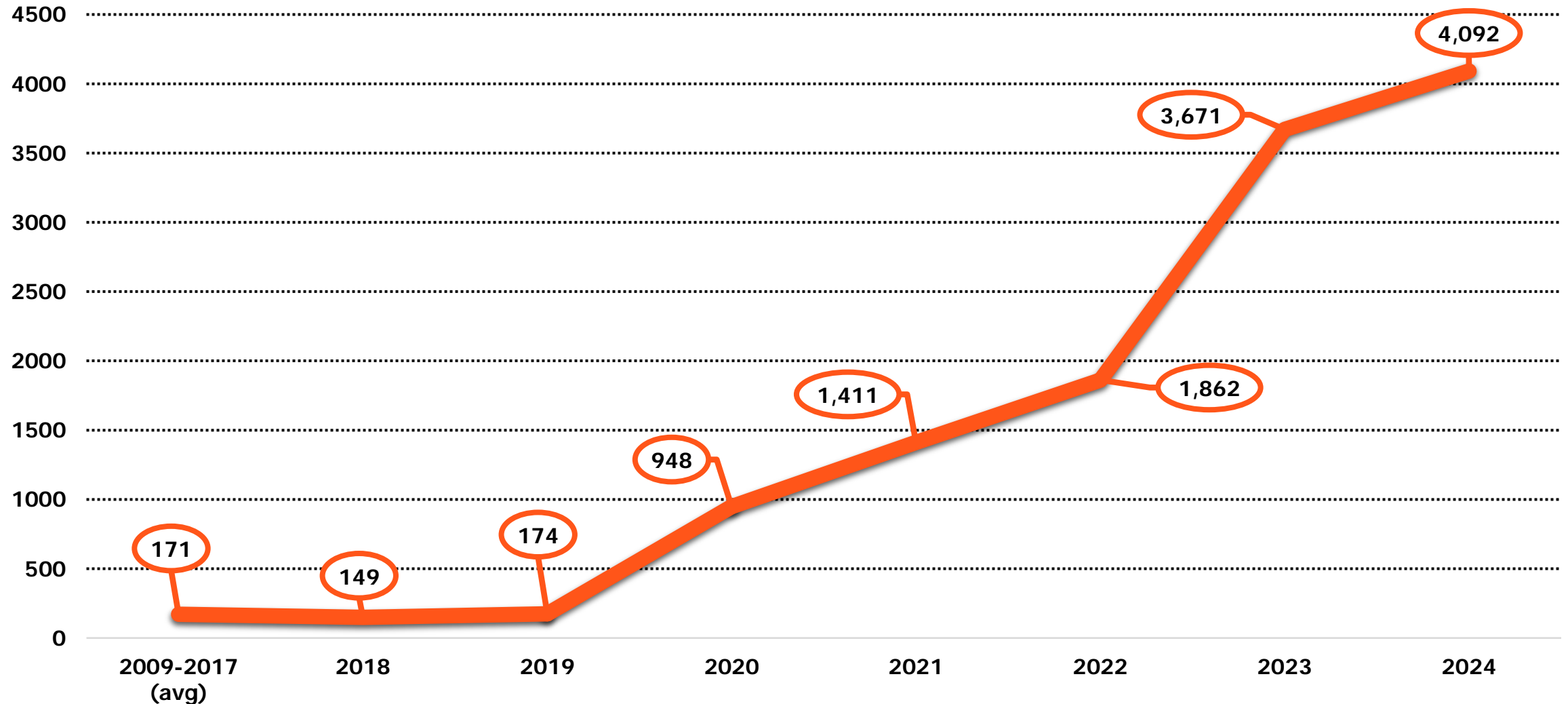
# What should we ask our suppliers?

## What might our customers ask us?



# LITIGATION TRENDS

# U.S. DISTRICT COURT CASES FILED PER YEAR



Source: Bloomberg Law, Federal District Court cases filed between 2009-2024 referencing "PFAS"



# PFAS Litigation: A Historical Perspective



## 1980s – Early 2000s: chemical manufacturer litigation

- **1980s:** claims against DuPont related to PFOA byproduct used in Teflon
- **Late 1990s:** PFOS & PFOA identified in blood samples
- **1999:** claims against DuPont by WV farm owner
- **2000s:** class action against DuPont by WV employees and neighbors



## 2010s – 2020s: AFFF (aqueous film- forming foam)

- **AFFF:** aqueous film-forming foam



## 2020 – Today: consumer products, labeling, etc.

- **Environment:** drinking water; biosolids
- **Consumer Products:** personal care products / cosmetics; food & food packaging; “PFAS=Free” labeling

## 3M Reaches \$10.3 Billion Settlement in 'Forever Chemicals' Suits

The deal followed an agreement by Chemours, DuPont and Corteva to pay \$1.19 billion to help resolve claims that the chemical manufacturers contaminated drinking water across the country.

Share full article



## First US Trial in PFAS Foam Lawsuit on Hold to Vet Case Load

Aug. 18, 2025, 2:46 PM EDT



Pat Rizzuto  
Reporter



Photo Illustration: Jonathan Hurtarte/Bloomberg Law; Photos: Getty Images

A federal district judge paused the first bellwether personal injury trial in national PFAS litigation so all parties can determine how many individuals' lawsuits qualify for the legal action.

US District Judge Richard M. Gergel on Aug. 15 vacated the Oct. 20 trial and related actions "until such time as the court deems appropriate."

Bloomberg  
Law

Practice smarter.

# Consumer Product Litigation: 2021 to 2024

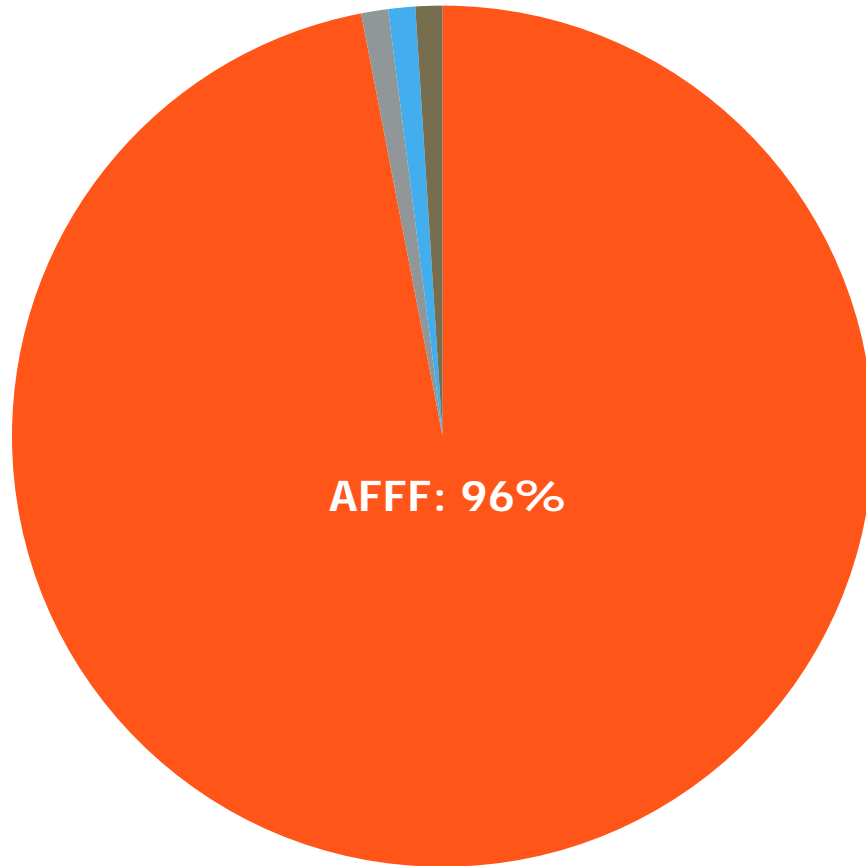
In 2021 and 2022, the lawsuits that were filed predominantly focused on the following product categories:



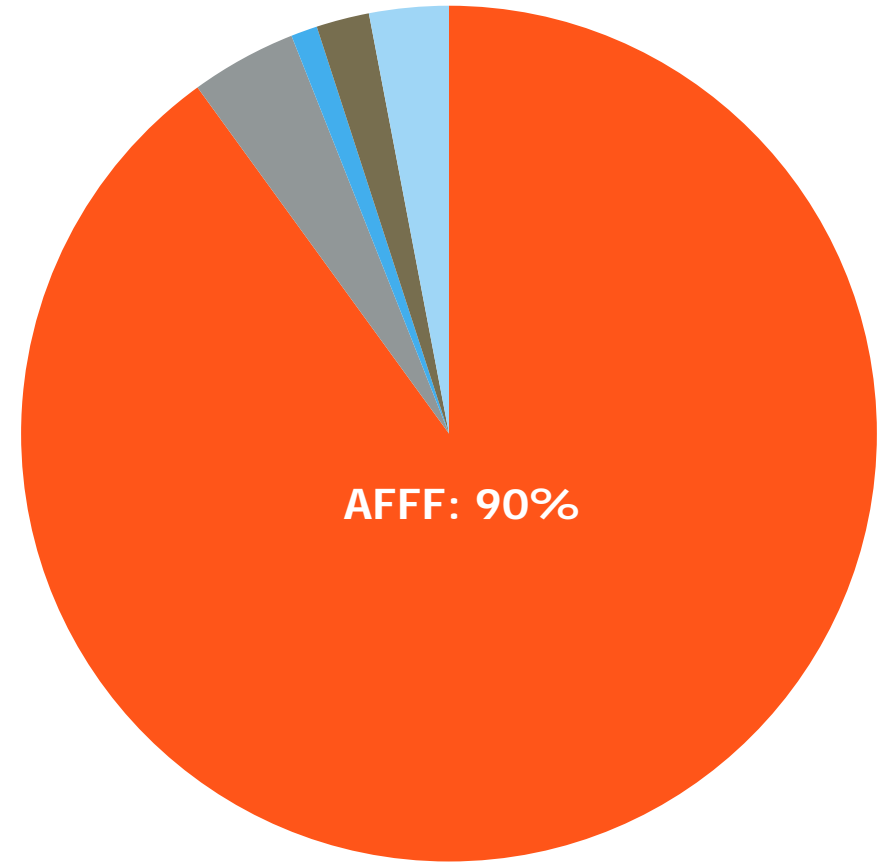
- Aqueous Film Forming Foam (AFFF)
- Food and food packaging products
- Textiles
- Personal care products and cosmetics

# AFFF Cases Dominate Litigation: 2021-2022

2021

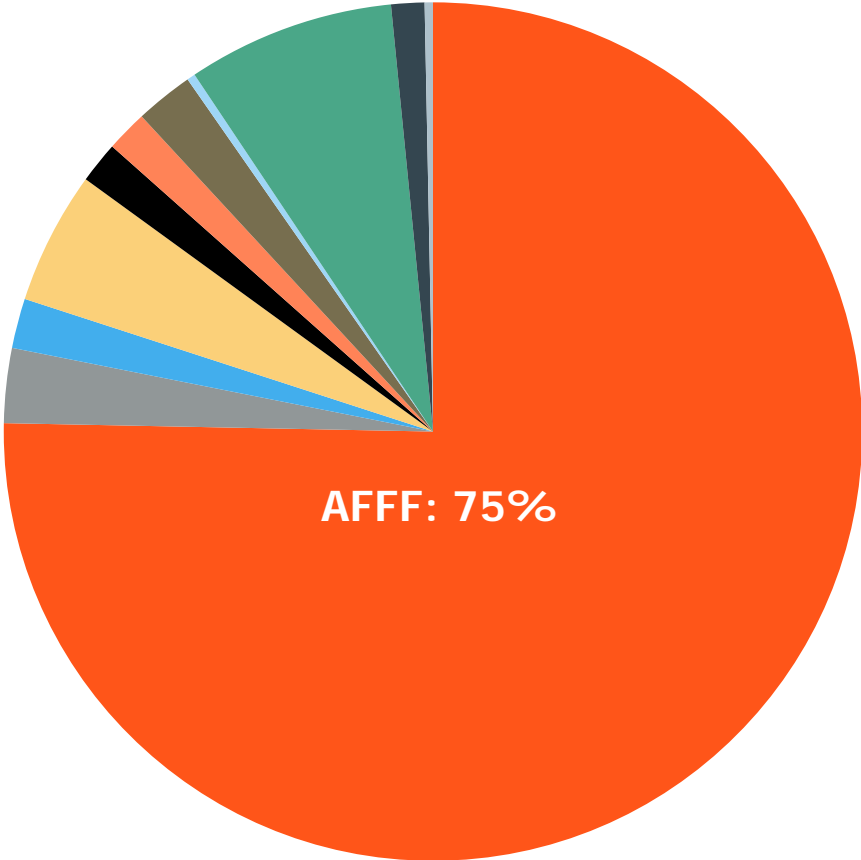


2022

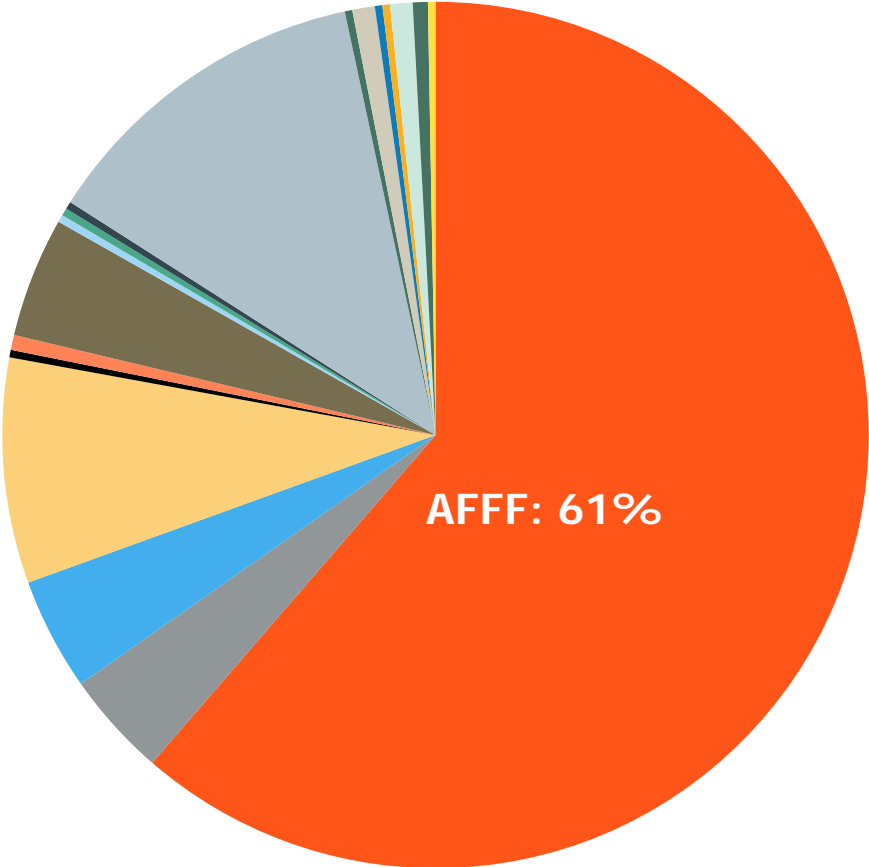


# AFFF Cases Dominate Litigation: 2023-2024

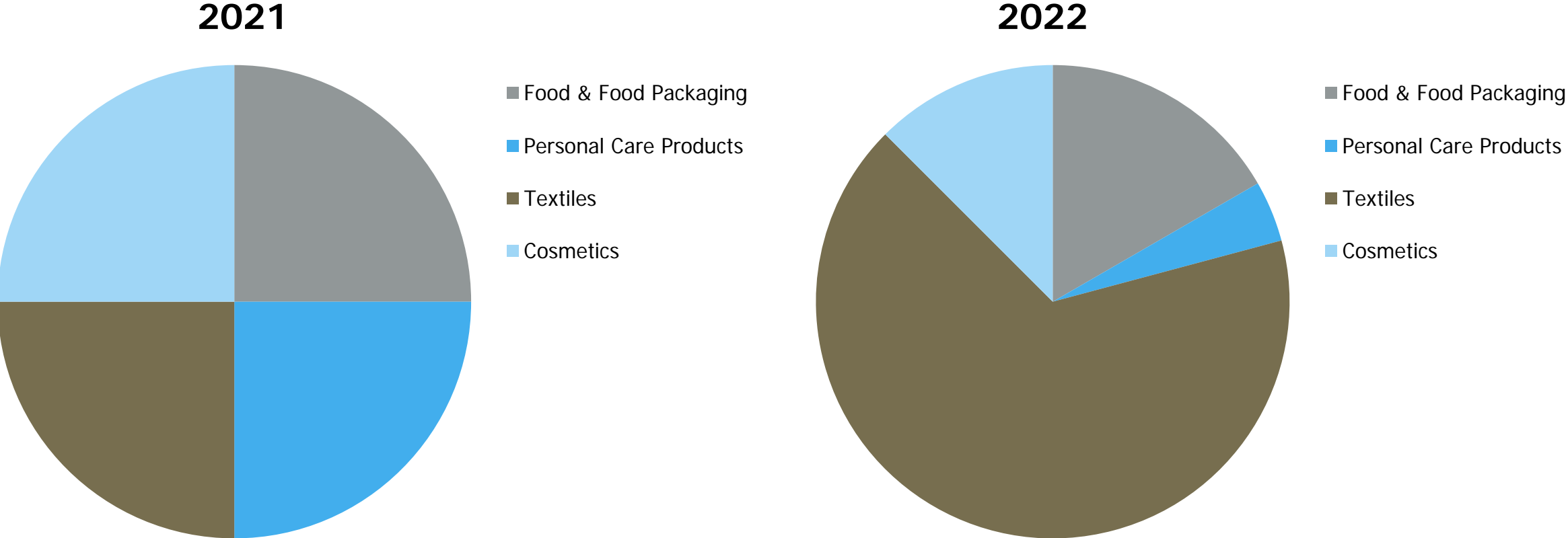
2023



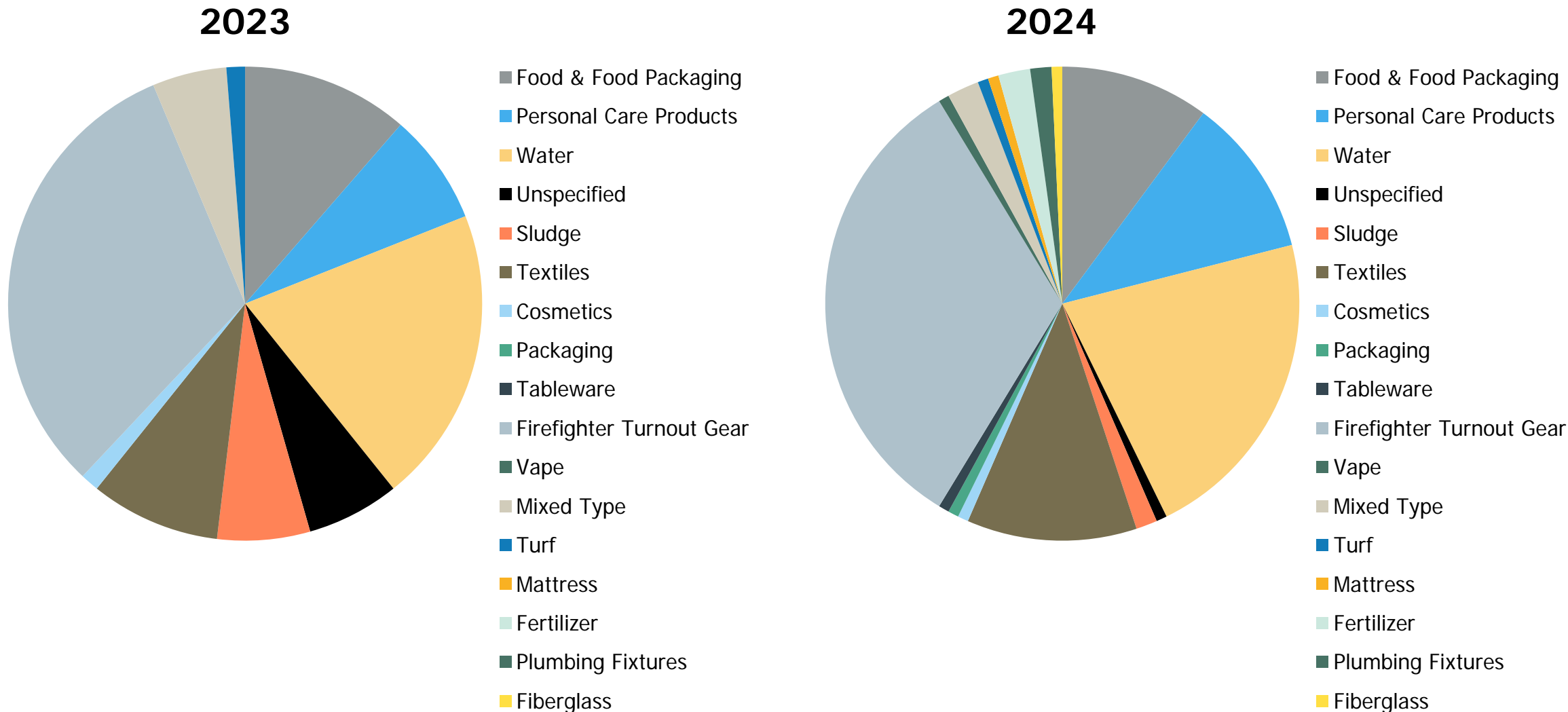
2024



# Other Categories of Litigation: 2021-2022

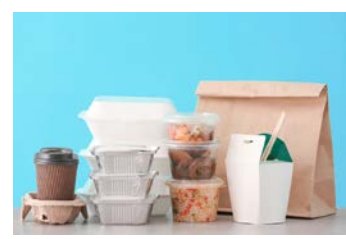
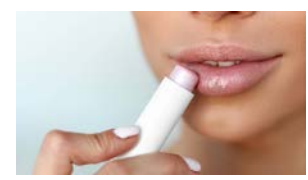


# Other Categories of Litigation: 2023-2024





# Third-Party Product Investigations





***Saedi v. Coterie Baby, Inc.***  
No. 24-cv-3893  
S.D. New York  
(Dismissed Oct. 3, 2024)



***Hicks v. L'Oreal USA, Inc.***  
No. 22-civ-1989  
S.D. New York  
(Survived dismissal Sept. 19, 2024)



***Maketa v. Target Corp.***  
No. 24-cv-02576  
N.D. California  
(Dismissed Sept. 26, 2024)



***Little v. NatureStar N. Am.***  
No. 1:22-cv-00232  
E.D. California  
(Survived dismissal Sept. 11, 2024)



***Endres v. Newell Brands***  
No. 24-00952  
N.D. California  
(Survived dismissal May 14, 2024)



# A tale of two test methods

## Total Organic Fluorine (“tof”) Testing

- Screening test for organic fluorine compounds – a potential indicator or proxy for PFAS content
- Method used by several state laws setting limits on PFAS in consumer products, such as California’s bans on PFAS in textile articles, juvenile products.
- Can be over-inclusive and may result in larger “PFAS” figures
- Some courts have begun rejecting TOF testing as supporting a plausible claim that a product contains PFAS potentially harmful to health.
  - *See Bounthon v. Procter & Gamble Co.*, No. 23-cv-00765 (N.D. Cal. Oct. 15, 2024) (TOF testing insufficient to plausibly support claims that labeling misled consumers regarding the PFAS content, health, or safety of defendant’s menstrual products).

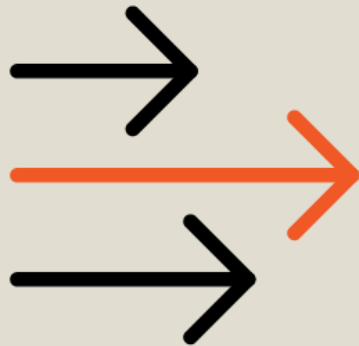
## Specific PFAS Analyte Testing

- Targeted analysis to identify and quantify specific PFAS compounds
- Validated test methods are available for a small subset of the thousands of known PFAS compounds

# FINDING ORDER IN THE CHAOS



# Next steps to consider:



# QUESTIONS?



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