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Environment & Energy

# States Weigh 'Everywhere Chemicals' Bans to Exceed Federal Rules

By Zach Bright

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- Advocates press Maine to enforce state food packaging ban
  - Four other states considering phthalates bills
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Phthalates found across households—from cosmetics and detergents to shower curtains and vinyl flooring—are called “everywhere chemicals.” But they’re not close to being regulated everywhere.

With no recent national rules on phthalates, states have been left to roll out their own regulations on the chemical class. Studies show high accumulations of phthalates, used to soften plastics like PVC, can lead to serious health issues in pregnancy and childhood development if consumed faster than excreted.

Some states are considering bills to limit phthalates. If toxics ban advocates amass enough attention to enact and enforce that legislation, manufacturers could face more pressure to either change national product lines or forgo markets with restrictions.

Minnesota, Michigan, New Jersey, and New York are currently considering in their legislative sessions bills with protections.

Maine has a ban on phthalates in food packaging, passed in 2019. Recently the state’s attorney general received a letter from toxics regulation advocates alleging that Goya and Constellation Brands violated it.

The letter follows what chemical protection advocates called the Food and Drug Administration’s inaction and inattention on phthalates.

But an FDA spokesperson said in a statement the agency is committed “to the use of scientifically sound principles in developing our approach to food safety issues.”

The agency authorizes phthalate use in food packaging and similar items based on an assessment they cause no harm, the statement added. "We will continue to monitor scientific developments regarding food contact substances and take appropriate steps to protect public health as new information becomes available," the agency's statement said.

### **FDA 'Asleep at the Wheel'**

The landmark 2008 Consumer Product Safety Improvement Act banned children's products from having high phthalate concentrations. But the chemical class remains present in packaging materials and food containers that children and pregnant people still end up using.

Toxics ban advocates in Maine like Defend Our Health still sought more protections, pushing for a ban on phthalates intentionally added to food packaging that Maine passed in 2019. Maine was the latest to join the ranks of states with limits on phthalates in food packaging including Vermont, California, and Washington.

In April, Defend Our Health called on the Maine attorney general to enforce the law, citing its own findings that 14 of 82 food and drink products sold still tested positive for phthalates.

Danna Hayes, press liaison for the state attorney general, told Bloomberg Law that the office is "working closely with the Maine Department of Environmental Protection as it follows up on this new information."

The Maine Department of Environmental Protection in December issued a statement saying it would exercise enforcement discretion on the ban in early 2022 because of supply scarcity caused by the pandemic. The environmental agency sent letters to Goya Foods Inc. and Constellation Brands asking for compliance certification with the law or the steps they were taking to comply.

"We have plans in place to eliminate phthalates from our bottle caps by the time the new laws in Maine and Vermont take effect," Constellation spokesperson Maggie Bowman said in a statement. Goya didn't respond to a request for comment.

But phthalates protections should be resolved beyond the state level, Defend Our Health Deputy Director Patrick MacRoy said.

"It's just become increasingly clear that the FDA is asleep at the wheel when it comes to chemicals in food packaging," MacRoy said. The FDA statement said the characterization was inaccurate.

### **Phthalates Lack 'Poster Child'**

In Minnesota, lawmakers are passing on phthalate policy in favor of restrictions on per- and polyfluoroalkyl substances, or PFAS.

Known as "forever chemicals," PFAS are found everywhere from cookware to clothing. Adverse health effects from the chemicals may include reproductive problems, developmental delays in children, and increased risk of some cancers, according to the Environmental Protection Agency.

Deanna White, Minnesota director for Clean Water Action, said a clear example was in the state's omnibus bill negotiations last year. PFAS and phthalates restrictions were both initially introduced, but only PFAS remained once signed.

White said phthalates still need their day in the sun to drive policy action.

"It just hasn't had its poster child," White said. "It hasn't had either the horrible experience or the surprise discovery to draw the kind of attention to it that PFAS and some other chemicals have."

Seven bills to disclose and ban PFAS in certain products are moving forward in Minnesota, which White said was a "ridiculously ambitious agenda for a split control legislature." Democrats control the state House and Republicans control the state Senate.

Only one Minnesota bill, S.F. 4518 / H.F. 4132, introduced this year includes phthalate restrictions, setting limits for its use in packaging or reusable products. It would set limits on PFAs and bisphenol, known commonly as BPA.



**WATCH: PFAS: The 'Forever Chemicals'**

### **Beyond Phthalates**

New York has seen some action on phthalates, with its Child Safe Products Act passed with amendments in the state's 2020-2021 budget.

Gov. Kathy Hochul (D) initially included an expansion of toxics and packaging law that included phthalate protections in her proposed 2022-2023 budget. But the final draft signed this April excluded those protections.

Advocates like Clean & Healthy New York want limits on toxics including phthalates included in an extended producer responsibility bill, S 1185C. Bobbi Wilding, the group's executive director, said it's also pushing for A 143 / S 3331 which would restrict toxics like phthalates in cosmetics.

Wilding said groups like hers are looking to move past phthalate restrictions to the source by limiting the use of vinyl—which phthalates are added to—in consumer packaging.

"We want to focus on taking as big of bite as we can," Wilding said.

To contact the reporter on this story: Zach Bright at [zbright@bloombergindustry.com](mailto:zbright@bloombergindustry.com)

To contact the editors responsible for this story: Renee Schoof at [rschoof@bloombergindustry.com](mailto:rschoof@bloombergindustry.com); Zachary Sherwood at [zsherwood@bloombergindustry.com](mailto:zsherwood@bloombergindustry.com)

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