

PFAS STATE SNAPSHOT: CALIFORNIA PFAS REGULATION

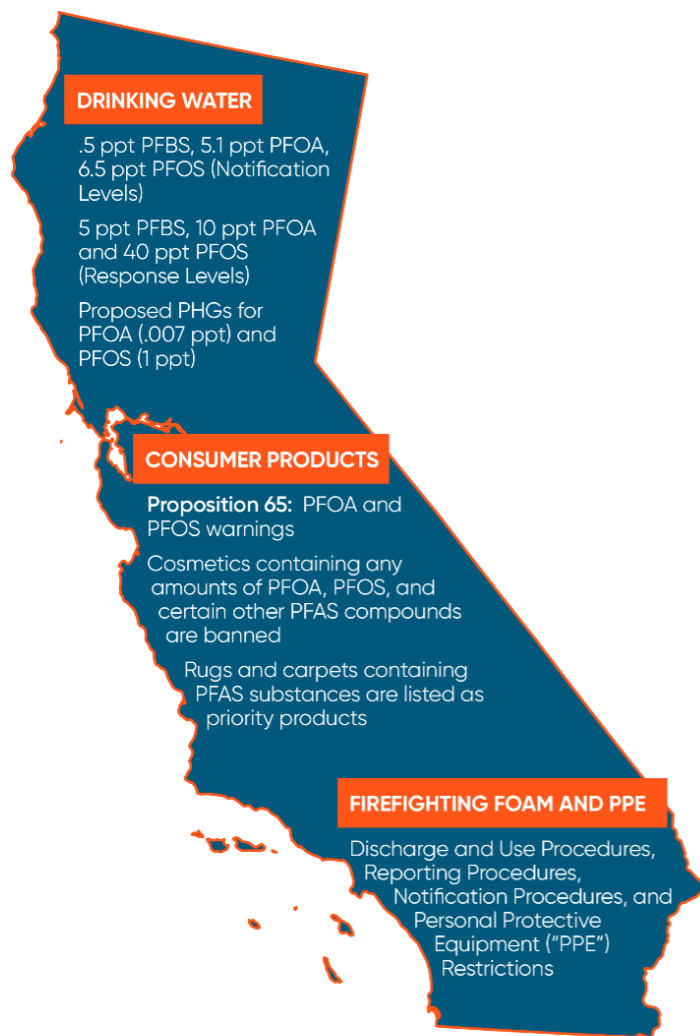
Aug 27, 2021

SUMMARY

California is one of several states that has started regulating per- and polyfluoroalkyl substances (“PFAS”) in drinking water, consumer products, personal protective equipment (“PPE”), and firefighting foam.

In addition to the enacted regulations described below, a public comment period is currently underway regarding proposed Public Health Goals (“PHGs”) for PFOA and PFOS in drinking water. California’s Office of Environmental Health Hazard Assessment (“OEHHA”) has proposed PHGs of 0.007 ppt for PFOA and 1 ppt for PFOS, both of which will be considered by the State Water Board when setting Maximum Contaminant Levels for these compounds. Businesses that discharge PFAS compounds in wastewater or into groundwater that may enter drinking water sources should be aware of the proposed PHGs, and evaluate whether a public comment is warranted.

This client alert reflects the status of PFAS regulations in California as of August 26, 2021.



DRINKING WATER

All public water systems, community water systems, and nontransient noncommunity water systems must monitor for PFOA and PFOS. Water systems that exceed the Notification Levels of these PFAS substances must notify the public and issue a statement in their annual reports.

If the Response Level is exceeded, the source should be removed or treated, if possible, or the server's customers must be notified. This advisory level triggers quarterly monitoring and public notification requirements.

California's Office of Environmental Health Hazard Assessment ("OEHHHA") has proposed a PHG for PFOA and PFOS.

CONSUMER PRODUCTS

Proposition 65: Businesses with 10 or more employees are required to provide a clear and reasonable warning if California consumers can be exposed to PFOA or PFOS from a product. The statute allows private enforcement groups to collect attorneys' fees, and includes a maximum penalty of \$2,500 for each sale of an unlabeled product.

Cosmetics: Certain PFAS substances cannot be added to cosmetics beginning January 1, 2025. The law prohibits the sale, manufacture, or delivery of certain PFAS substances in cosmetics.

Rugs and Carpets: Manufacturers whose products contain PFAS substances must complete a Priority Product Notification by August 30, 2021, and must submit a more complex document by December 28, 2021.

FIREFIGHTING FOAM AND PPE

Beginning on January 1, 2022, manufacturers of AFFF are prohibited from selling or distributing foam, and certain discharges or uses of foam for training purposes are also prohibited. With respect to notification, entities who use AFFF shall report a number of requirements to the State Fire Marshal within five business days of the use. With respect to reporting, a manufacturer of AFFF shall provide written notification for products sold on or before July 1, 2021; a manufacturer shall provide written notification on or before December 31, 2021 for products sold after July 1, 2021.

Beginning on January 1, 2022, a person, including a manufacturer, that sells PPE must provide a written notice to the purchaser at the time of sale if the PPE contains PFAS substances.

Drinking Water:

California Health and Safety Code 116378 authorizes the State Water Board to require public water supply systems to monitor for PFAS, as described in more detail in the Water Board Fact Sheet. The Water Board issued specific notification levels for PFBS, PFOA, and PFOS.

Proposition 65:

OEHHHA added PFOA and PFOS to the list of chemicals which require a warning if they are present in products sold to California customers. Failure to provide a warning, or demonstrate that one is not required for a product, can result in private enforcement actions.

Cosmetics:

Health and Safety Code 108980 prohibits the manufacture or sale of cosmetics which contain certain PFAS compounds including PFOA, PFOS, and PFNA.

Rugs and Carpets:

[Regulation](#) and [Important Information](#)

Firefighting Foam and PPE:

[Senate Bill No. 1044](#)

For more information on PFAS chemicals, and the regulatory and litigation risks that they pose, please visit our [PFAS webpage](#). If you have a question about how to manage PFAS risk in California, or in any other jurisdiction, please contact Tom Lee, John Kindschuh, or any other member of our PFAS team at Bryan Cave Leighton Paisner LLP.

RELATED CAPABILITIES

- PFAS
- Environment
- Regulation, Compliance & Advisory

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