

Insights

PFAS UPDATE: CALIFORNIA PROHIBITS PFAS IN APPAREL, TEXTILES, AND COSMETICS

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SUMMARY

On September 29, 2022, California's governor signed two bills which prohibit the manufacture, distribution, or sale of apparel, textiles, and cosmetics that contain "intentionally added" perfluoroalkyl and polyfluoroalkyl chemicals ("PFAS") starting on January 1, 2025. One of the bills also prohibits apparel and textiles which contain certain concentrations of unintentionally added PFAS.

There has been an ongoing debate about the potential need for certain industries to reformulate to remove PFAS from their products and manufacturing process. For manufacturers and distributors of apparel, textiles, and cosmetics in the California market, these bills resolve that debate and mandate reformulation.

California's governor recently signed into law two bills the prohibit the sale of apparel, textiles, and cosmetics that contain "regulated" perfluoroalkyl and polyfluoroalkyl ("PFAS") beginning on January 1, 2025.

I. Apparel and Textiles

Under the Apparel and Textiles bill, the definition of "regulated" PFAS is either:

1. 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
2. The presence of PFAS in a product or product component at or above the following thresholds, as measured in total organic fluorine:
 - a. January 1, 2025 – 100 parts per million ("ppm")
 - b. January 1, 2027 – 50 ppm

In short, California has banned the use of all intentionally added PFAS in apparel and textiles, and has also banned the unintentional use of PFAS if the aggregate concentration of total organic fluorine exceeds certain levels.

According to [the bill](#), “It is the intent of the Legislature that manufacturers of textile articles eliminate the use of PFAS from their materials, and that manufacturers of Personal Protective Equipment, for which there are no current alternatives to PFAS, engage in product development and research in order to phase them out as quickly as possible.”

“Apparel” includes the following:

- “Clothing items intended for regular wear or formal occasions, including, but not limited to, undergarments, shirts, pants, skirts, dresses, overalls, bodysuits, costumes, vests, dancewear, suits, saris, scarves, tops, leggings, school uniforms, leisurewear, athletic wear, sports uniforms, everyday swimwear, formal wear, onesies, bibs, diapers, footwear, and everyday uniforms for workwear. Clothing items intended for regular wear or formal occasions does not include personal protective equipment or clothing items for exclusive use by the United States military.”
- Outdoor apparel is defined as “clothing items intended primarily for outdoor activities, including, but not limited to, hiking, camping, skiing, climbing, bicycling, and fishing.”
- Outdoor apparel for severe wet conditions includes outerwear for activities such as offshore fishing, offshore sailing, whitewater kayaking, and mountaineering.
 - A prohibition for these products begins on **January 1, 2028**.
 - **Beginning on January 1, 2025**, no person shall distribute, sell, or offer any new outdoor apparel for severe wet conditions that contains PFAS substances “unless it is accompanied by a legible and easily discernable disclosure with the statement ‘Made with PFAS chemicals,’ including for online listings of products for sale.”

“Textile articles” are defined as “textile goods of a type customarily and ordinarily used in households and businesses, and include, but are not limited to, apparel, accessories, handbags, backpacks, draperies, shower curtains, furnishings, upholstery, beddings, towels, napkins, and tablecloths.”

Importantly, there are numerous exceptions to the definition of “Textile articles,” and these articles do not include the following:

- Carpets and rugs (governed by the Safer Consumer Products Program);

- Treatments containing PFAS for use on converted textiles or leather (governed by the Safer Consumer Products Program);
- Certain off-highway motor vehicles (defined in the Vehicle Code);
- Certain vessels or component parts (defined in the Harbors and Navigation Code);
- Filtration media and filter products used in industrial applications, including chemical or pharmaceutical manufacturing, and environmental control technologies;
- Textile articles used in or for laboratory analysis and testing;
- Aircraft or its component parts (defined in the Public Utilities Code); or
- Stadium shades or other permanent fabric structures that are intrinsic to a building's design or construction.

II. Cosmetics

Beginning on January 1, 2025, no person or entity shall manufacture, sell, or deliver any cosmetic product that contains intentionally added PFAS substances. Significantly, there are no exceptions or graduated compliance dates associated with this bill.

According to the [bill](#), the Legislature prohibited the use of 13 specified PFAS substances in cosmetic products in 2020 alone. Additionally, the bill states the following: "PFAS chemicals have been found in a wide variety of cosmetics and personal care products, including foundation, mascara, lipstick, and various eye and face products."

Once again, the definitions are important to this legislation.

- **"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."
- **"Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS"** means "a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom."
- **"Intentionally added PFAS"** means either of the following:
 - "PFAS chemicals that a manufacturer has intentionally added to a product and that have a functional or technical effect on the product.
 - PFAS chemicals that are intentional breakdown products of an added chemical."

The blanket prohibition for the use of all intentionally added PFAS substances in cosmetics presents a significant compliance challenge to the industry, and is something that manufacturers, retailers, and distributors should respond to as soon as possible to minimize the impacts on future and existing products.

III. Impacts to Businesses

Businesses should be aware of the prevalence of these actions to restrict PFAS in apparel, cosmetics, and textiles. Importantly, several states have enacted prohibitions on similar products:

- [Colorado](#). Beginning on January 1, 2025, a person shall not sell, offer, or distribute cosmetics that contain intentionally added PFAS substances.
- [Maine](#): Beginning January 1, 2030, a person shall not sell, offer, or distribute any product that contains intentionally added PFAS substances, unless the Maine Department of Environmental Protection has determined that the use of PFAS in the product is a currently unavoidable use.
- [Washington](#). The Washington Department of Ecology may consider any product identified in the 2021 PFAS Chemical Action Plan to be designated as a priority consumer product. Apparel, textiles, and cosmetics have been discussed in the [2021 PFAS Chemical Action Plan](#), so regulatory action in this space is anticipated.

Additionally, various states have proposed bills to prohibit PFAS substances in apparel, textiles, and/or cosmetic products. These bills include [Massachusetts](#), [Minnesota Bill I](#), [Minnesota Bill II](#), [New Hampshire](#), [New York Bill I](#), [New York Bill II](#), [New York Bill III](#), [Rhode Island](#), [Vermont Bill I](#), [Vermont Bill II](#), [Vermont Bill III](#), [Vermont Bill IV](#), [Washington Bill I](#), and [Washington Bill II](#).

IV. Conclusion

There has been an ongoing debate about the potential need for certain industries to reformulate to remove PFAS from their products and manufacturing process. For manufacturers and distributors of apparel, textiles, and cosmetics in the California market, these bills resolve that debate and mandate reformulation.

For more information on PFAS chemicals, and the regulatory and litigation risks that they pose, visit our [PFAS webpage](#). If you believe that you may be impacted by a regulation involving apparel, textiles, or cosmetics, please contact Tom Lee, John Kindschuh, Emma Cormier, or any other member of our PFAS team at Bryan Cave Leighton Paisner LLP.

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