

PFAS UPDATE: CALIFORNIA ENACTS NEW PFAS ENFORCEMENT AND REGISTRATION LAW

Oct 31, 2024

On September 29, 2024, Governor Newsom approved AB 347 which, among other things, finally answers the question of which California agency will be tasked with enforcing and interpreting at least some of California's PFAS in consumer products laws. The California Department of Toxic Substances Control ("DTSC") has been identified as the responsible agency for enforcing California laws regulating the use of PFAS substances in certain covered products such as children's or juvenile products, textile articles, and food packaging.

Notably, Governor Newsom vetoed some prior California PFAS legislative efforts in large part because there were no enforcement provisions, so the new law may also have an impact on the viability of future legislation. But enforcement is not the only focus of AB 347; it also creates new obligations for manufacturers to register products with DTSC, it requires DTSC to identify appropriate test methods for PFAS in these product categories, and it establishes a PFAS Enforcement Fund to implement its requirements.

The following are the key compliance deadlines:

- **January 1, 2029.** DTSC must publish the following information on its website: 1) a list of accepted methods for testing whether a covered product complies with the applicable PFAS restrictions; and 2) appropriate third-party accreditations for laboratories.
- **July 1, 2029.** A manufacturer of a covered product shall register the product and provide all required information to the DTSC, including the following: 1) a description of each covered product it manufactures; 2) the registration fee; and 3) a statement of compliance certifying that each covered product complies with the relevant PFAS restriction. The statute also authorizes DTSC to require manufacturers to submit additional "technical documentation" which could include test results.
- **July 1, 2030.** DTSC enforcement begins.

ENFORCEMENT PROVISIONS

Under AB 347, DTSC is directly authorized to take specific enforcement actions, including the following:

- **Notice of Violation (“NOV”).** DTSC is authorized to issue a NOV to commence enforcement proceedings (including cessation of activities and/or penalties), and the NOV can be issued based on:
 - DTSC’s test results or test results submitted as part of the registration process indicate that a product violates a PFAS restriction;
 - DTSC’s determination that an ingredient identified on a label violates a PFAS restriction;
 - DTSC finds a violation of any rule, regulation, or requirement of this law; or
 - A report from “consumers, businesses, research institutions, persons, entities, and not-for-profit entities” that a product is non-compliant after DTSC has verified the conclusion, and if the violation is based on a failure to disclose information.
- **Penalties.**
 - A penalty shall not be less than ten thousand dollars (\$10,000) for the first violation.
 - For continuing violations, a penalty may be assessed for **each day** that the violation continues.
 - In determining the amount of a penalty, the DTSC shall consider:
 - The nature and severity of the violation;
 - The good or bad faith of the entity;
 - The history of prior violations, if any;
 - Evidence that the violation was willful; and
 - The extent that the entity has cooperated with DTSC.
- **Injunction.** The California Attorney General may bring an action in court on behalf of the DTSC, and the court can grant a temporary or permanent injunction restraining any person or entity from violating any provision of this law. DTSC is not required “to allege facts necessary to show or tending to show lack of adequate remedy at law or to show or tending to show irreparable damage or loss.”

- **Information.** DTSC may receive reports of alleged violations of covered PFAS restrictions, “including analytical test results, from consumers, businesses, research institutions, persons, entities, and not-for-profit entities,” and DTSC shall verify that information through its own independent methods.

CLARIFIED DEFINITION OF “JUVENILE PRODUCTS”

While the principal focus of the law is the enforcement provisions discussed above, it also includes a material revision to the definition of “juvenile products” in [Health and Safety Code Section 108945](#). Notably, the revised definition narrows the scope of impacted products to just those specifically identified in the statute, and does away with the “including but not limited to” concept that existed in the original definition.

As revised, California’s juvenile products law now applies only to “the following products designed for use by infants and children under 12 years of age: a baby or toddler foam pillow, bassinet, bedside sleeper, booster seat, changing pad, child restraint system for use in motor vehicles and aircraft, co-sleeper, crib mattress, floor playmat, highchair, highchair pad, infant bouncer, infant carrier, infant seat, infant sleep positioner, infant swing, infant travel bed, infant walker, nap cot, nursing pad, nursing pillow, playmat, playpen, play yard, polyurethane foam mat, pad, or pillow, portable foam nap mat, portable infant sleeper, portable hook-on chair, soft-sided portable crib, stroller, and toddler mattress.”

Juvenile product **do not** include any of the following:

- A [children’s electronic product](#);
- A [medical device](#);
- An internal component of a juvenile product that would not come into direct contact with a child’s skin or mouth; or
- An [adult mattress](#).

CONCLUSION

AB 347 gives DTSC the authority to enforce some of California’s existing PFAS laws. Although business entities may struggle with the costs associated with compliance, this law provides much-needed uniformity to industries seeking to comply, as well as an agency that can be contacted for guidance.

For more information on PFAS chemicals, and the regulatory and litigation risks that they pose, please visit our [PFAS webpage](#). If you believe that you may be impacted by AB 347, please contact Tom Lee, Merrit Jones, Nora Faris, John Kindschuh, or any other member of our PFAS team at BCLP.

RELATED CAPABILITIES

- PFAS
- Retail & Consumer Products

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