

PFAS-Containing Consumer Products Under Attack in California

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Per- and polyfluoroalkyl substances (PFAS) are present in a variety of consumer products. PFAS have been increasingly targeted in laws and regulations and have served as a hotbed for class action lawsuits, particularly in California. As discussed below, a wave of prohibitions on PFAS in consumer products has recently or will soon come into effect in California and we expect to see an increase in related consumer products class action lawsuits.

Use of PFAS in Consumer Products

PFAS can be present in a [variety of consumer products](#), such as food packaging, cleaning products, non-stick cookware, paints and varnishes, and personal care products like shampoo, dental floss, and cosmetics. PFAS can also be used in manufacturing processes for electronics, textiles, and paper.[1]

California Safer Food Packaging & Cookware Act of 2021

The latest prohibition on PFAS comes from the California Safer Food Packaging & Cookware Act of 2021, with two specific requirements that became effective on January 1, 2023. First, PFAS is now prohibited in food packaging at or above 100 parts per million,[2] measured as total organic fluorine.[3] Second, intentionally added PFAS that appear on the state's Department of Toxic Substances Control's (DTSC) Candidate Chemicals List (of which 66 are PFAS) in cookware must be disclosed on the manufacturer's website.[4]

Proposition 65 Warning Requirements

California's Proposition 65 is a consumer protection statute that requires businesses selling consumer products in California to provide warnings to consumers about significant exposures to

chemicals that cause cancer and/or birth defects or other reproductive harm.

The Proposition 65 warning requirements for PFAS have also seen recent changes. In December 2022, warning requirements for the following PFAS went into effect. Currently, no safe harbor limits have been established for PFAS in consumer products.

- Perfluorononanoic acid (PFNA) and its salts for reproductive toxicity
- Perfluorooctane sulfonate (PFOS) for cancer (reproductive toxicity warning already in effect)
- Perfluorooctane Sulfonic Acid (PFOS) and its Salts and Transformation and Degradation Precursors for cancer (reproductive toxicity warning already in effect)

Additional Changes Coming

The following are additional upcoming changes to PFAS regulation:

- February 25, 2023: Proposition 65 warning requirement for perfluorooctanoic acid (PFOA) for cancer will go into effect (reproductive toxicity warning already in effect).
- July 1, 2023: Limitations on PFAS in juvenile products under Health & Safety Code § 108945, *et seq.* go into effect.
- January 1, 2024: Intentionally added PFAS that appear on the DTSC's Candidate Chemicals List (of which 66 are PFAS) in cookware sold in California must be disclosed on the product label.[5]
- January 1, 2025:
 - Ban on intentionally added PFAS or PFAS that are intentional breakdown products of an added chemical, in cosmetics.[6]
 - Ban on PFAS in new textiles or textile components, except for outdoor apparel for severe wet conditions, when accompanied by a legible and easily discernable disclosure with the statement "Made with PFAS chemicals," including for online listings of products for sale.[7]
- January 1, 2028: Textile ban on PFAS does not apply to outdoor apparel for severe wet conditions until January 1, 2028.

Takeaways

- California law around PFAS is expanding into a wide array of consumer products. These new laws and implementing regulations will likely impact many companies selling consumer products into California.
- Companies selling consumer products into California should stay abreast of the developing

laws and regulations around PFAS restrictions and labeling requirements.

- A comprehensive compliance plan that includes product testing for PFAS is an effective way to mitigate risk of enforcement actions and potential litigation, including class actions.
- When reviewing supply agreements, it may be useful to consider the potential implications of the PFAS restrictions.
- In addition to the California PFAS laws and regulations, companies should be aware that other states are drafting similar PFAS laws.

[1] *Id.*

[2] See Health & Safety Code § 109000.

[3] It should be noted that a total organic fluorine test itself does not test for the presence of PFAS, only the presence of organic fluorine. While all PFAS are organofluorine compounds, not all organofluorine compounds are necessarily PFAS.

[4] See Health & Safety Code § 109012.

[5] See Health & Safety Code § 109011.

[6] See Health & Safety Code §§ 108981.5, 108982.

[7] See Health & Safety Code §§ 108970; 108971.

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National Law Review, Volumess XIII, Number 23

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