Dispatches from the PFAS regulatory front: California “bans” PFAS in cosmetics and textiles but vetoes reporting obligations for manufacturers

Environmental Alert

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California Governor Gavin Newsom has signed into law AB 2771, banning intentionally added perfluoroalkyl and polyfluoroalkyl substances (PFAS) in cosmetics, and AB 1817, limiting total organic fluorine in textiles. While Governor Newsom vetoed a third law, the two that are now in force are more than enough to keep California at the forefront of legislation targeting PFAS in consumer products.

The new laws, signed into law on September 30, broaden several existing PFAS regulations in California, including a 2020 law banning the intentional addition of 13 specific PFAS chemicals in cosmetics, as well as bans on firefighting foams, paper-based food packaging, and certain children’s products that contain PFAS chemicals.

As mentioned, Governor Newsom vetoed a third law, AB 2247, stopping short of imposing annual reporting requirements on manufacturers of consumer goods containing “intentionally added” PFAS.

We have been tracking both AB 1817 and AB 2247 for some time. Here, we examine key provisions of these laws governing cosmetics and textiles. In particular, the paths each bill followed as it worked its way through the legislature suggest the way future bills may move forward across the country.
AB 2771: California bans intentionally added PFAS in cosmetics

Regulation of PFAS in cosmetics: the big picture

PFAS has been typically used in products designed to be heat, oil and water resistant and, for these purposes, may be intentionally added to various cosmetic products – including, some argue, to aid in consistency and texture. PFAS may also be unintentionally found in products, likely including cosmetics, as a byproduct of the manufacturing process, an undisclosed component in the supply chain, or because of cross-contamination in packaging or distribution.

At the federal level, Senator Susan Collins (R-ME) introduced the No PFAS in Cosmetics Act, which seeks to restrict the use of intentionally added PFAS in cosmetics. More broadly, the Toxic Free Beauty Act of 2021 also proposes to ban the entire class of PFAS, along with other chemicals, from cosmetics. Neither bill has gained significant traction.

Several states have made progress through enacted or proposed legislation specific to PFAS and cosmetics, including Maryland, Minnesota, Colorado, Maine, New Hampshire, Rhode Island, and Washington.

In 2020, California enacted AB 2762, which bans the “manufacturing, selling, delivering, holding, or offering for sale” cosmetics containing 13 intentionally added PFAS, among other ingredients. The law goes into effect on January 1, 2025.

Key provisions of AB 2771

Now, through AB 2771, California prohibits the sale, delivery, holding, or offering for sale in commerce any cosmetic product that contains intentionally added PFAS. “PFAS” is defined as “a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.”

The law defines a “cosmetic product” as:

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.

Significantly, the law bans only intentionally added PFAS, which is defined as either:

1. PFAS chemicals that a manufacturer has intentionally added to a product and that have a functional or technical effect on the product or
2. PFAS chemicals that are intentional breakdown products of an added chemical.

The ban goes into effect January 1, 2025, leaving time for manufacturers to reformulate or phase out products with intentionally added PFAS.

AB 1817: California bans PFAS in textiles based on total organic fluorine content

California has also enacted a sweeping ban on PFAS in textiles articles, which includes products ranging from everyday apparel, accessories, handbags, backpacks, draperies, furnishings, bedding, towels, napkins, and tablecloths. The law does not apply to single-use hygiene paper products, carpets and rugs, vehicles, vessels, or aircraft.

Focus on total organic fluorine content

Unlike California’s PFAS cosmetics ban, AB 1817 uses the defined term “regulated perfluoroalkyl and polyfluoroalkyl substances or PFAS.” This term includes intentionally added PFAS, but also utilizes total organic fluorine (TOF) content as a proxy for PFAS.

The bill underwent several revisions after its introduction. At first, the bill sought to ban TOF “at or above the practical quantitation limit.” This was patently unworkable and overly broad. The bill was then revised to a “300 parts per billion” TOF threshold. Possibly because the 300 parts per billion threshold was inconsistent with analysis that guided earlier laws and was not grounded in risk-based study, AB 1817 was revised again.

As signed into law, the bill bans the presence of PFAS in a product or product component at or above the
following thresholds: 100 parts per million by January 1, 2025 and 50 parts per million by January 1, 2027. A further threshold of 10 parts per million by January 1, 2029 was rejected shortly before the bill passed.

AB 1817 also uses the same definition of PFAS, to include the entire class of fluorinated organic chemicals that contain at least one fully fluorinated atom.

Other revisions to AB 1817 include eliminating a provision that stated a distributor could not rely in good faith on a certificate of compliance by a manufacturer if the distributor or retailer knew or should have known that the textile article contains regulated PFAS. The law requires that a manufacturer of a textile “shall” provide persons that offer a product for sale or distribution in the state with a certificate of compliance stating that the textile is in compliance with the law’s requirements. Now, distributors or retailers will not be held in violation of the law if they relied in good faith on the certificate of compliance.

When removing regulated PFAS in textile articles, AB 1817 requires a manufacturer to use the “least toxic alternative, including alternative design” to comply.

The law does not apply to outdoor apparel for severe wet conditions until January 1, 2028. But significantly, effective January 1, 2025, no person shall distribute, sell, or offer for sale in California any new, not previously used, outdoor apparel for severe wet conditions that contain regulated PFAS (intentionally added or at thresholds identified above) unless it is accompanied by a “Made with PFAS chemicals” disclosure.

Several industry associations worked with the bill sponsors on revisions meant to address the effective date, proposed compliance thresholds based on testing methodologies and laboratory testing capabilities, exemptions, and certificates of compliance.

**AB 2247: California declines to impose reporting requirements for PFAS-containing products**

California’s PFAS AB 2247 would have required that on or before July 1, 2026, a manufacturer of PFAS or a product or product component containing intentionally added PFAS that is sold, distributed, promoted, or imported into the state in the prior calendar year, to provide the following information on a publicly accessible reporting platform:

1. The name and type of product or product component containing intentionally added PFAS
2. The UPC of the product or product component containing intentionally added PFAS
3. The purpose or function for which the intentionally added PFAS are used
4. The identify and amount of all PFAS compounds in the product or product component
5. The amount of the product or component sold, delivered, or imported into the state in the prior calendar year and
6. The name and address of the manufacturer and a contact person for the manufacturer.

In vetoing the bill, Governor Newsom cited the cost of implementing a publicly accessible reporting platform, including increased environmental fee rates, General Fund resources, staff support, and state oversight responsibilities.

We are continuing to track PFAS legislation in California and across the US. To learn more about the implications of these new California laws for your business, please contact the authors.

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