



Navigating Prop. 65 and PFAS Regulations for Consumer Products

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TH-N2

March 23, 2023



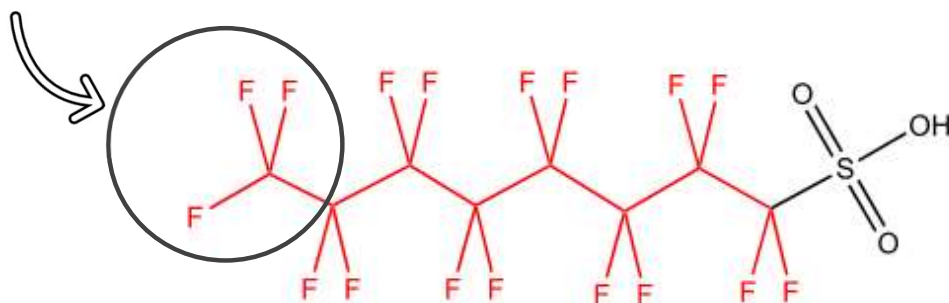
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PFAS Chemicals



Acronym for per- and polyfluoroalkyl substances



↑ bioaccumulate
concern to
public

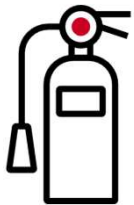


Stain-resistant, water-repellent, and grease-proofing treatments deliver the required performance.

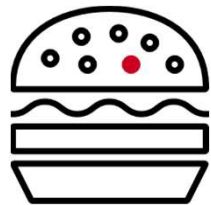


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PFAS: Regulated product categories



Firefighting foams



Food contact materials



Juvenile products



Formulated products



Manufactured articles



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California PFAS definition



A class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.



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Firefighting Foams (SB 1044)



Effective date: January 1, 2022

Description: SB 1044 prohibits the manufacture and sale of class B firefighting foam containing intentionally added PFAS, prohibits the use of PFAS foam for training purposes, requires manufacturers of firefighter protective equipment to disclose the inclusion of intentionally added PFAS in their products.



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Food contact materials

Key definitions



Food packaging refers to a nondurable package, packaging component, or food service ware that is intended to contain, serve, store, handle, protect, or market food, foodstuffs, or beverages, and is comprised, in substantial part, of paper, paperboard, or other materials originally derived from plant fibers.



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Food contact materials



Key definitions



Cookware means durable houseware items that are used in homes and restaurants to prepare, dispense, or store food, foodstuffs, or beverages.

Including:

Pots

Pans

Skillets

Grills

Baking sheet

Baking molds

Trays

Bowls

Cooking Utensils



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Food contact materials - Packaging (AB 1200)



Effective Date: January 1, 2023

Description: Prohibits the sale of food packaging containing regulated PFAS.

Regulated PFAS means either:

- PFAS that a manufacturer has intentionally added to a product and that have a functional or technical effect in the product.
- The presence of PFAS in a product or product component at or above 100 ppm, as measured in total organic fluorine.



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Food contact materials - Cookware (AB 1200)



- Applies to cookware containing intentionally added chemicals that are present on the designated list.
- **Designated list** means the list of chemicals identified as candidate chemicals that exhibit a hazard trait or an environmental or toxicological endpoint that meets the criteria specified in regulations adopted by the Department of Toxic Substances Control (DTSC) pursuant to Article 14 (commencing with Section 25251) of Chapter 6.5 of Division 20, and is published on the DTSC's internet website.



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Food contact materials - Cookware (AB 1200)



Effective date: January 1, 2023

Description: Requires manufacturers to disclose, on their website, intentionally added restricted chemicals, as well as identify and link to the list(s) containing the chemical.



Effective date: January 1, 2024


Description: Requires the product label disclose intentionally added restricted chemicals and provide a website address and QR code with additional information.



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Food contact materials - Cookware (AB 1200)



 **Manufacturer** can mean the entity manufacturing the cookware or the entity it is manufactured for or distributed by.



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Juvenile Products (AB 652)



Effective date: July 1, 2023

Description: Prohibits the sale and distribution of any new juvenile product that contains regulated PFAS.

Regulated PFAS means either:

- PFAS that a manufacturer has intentionally added to a product and that have a functional or technical effect in the product.
- The presence of PFAS in a product or product component at or above 100 ppm, as measured in total organic fluorine.





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Textile articles – AB 1817



Key definitions

-  **Textile articles** means textile goods of a type customarily and ordinarily used in households and businesses.
-  **Regulated PFAS** means either:
 - PFAS that a manufacturer has intentionally added to a product and that have a functional or technical effect in the product.
 - The presence of PFAS in a product or product component at or above 100 ppm, as measured in total organic fluorine beginning January 1, 2025. This is reduced to 50 ppm beginning January 1, 2027.



Textile articles (AB 1817)



Compliance dates



Effective date: January 1, 2025

Description: Prohibits the manufacture, sale or distribution of any new textile articles that contain regulated PFAS. (Excludes outdoor apparel for severe wet conditions).



Effective date: January 1, 2025

Description: Manufacturers of textile articles must provide a signed certificate of compliance declaring products are in compliance with this rule. Distributors and retailers will not be held liable for violations if they relied on the certificate of compliance from the manufacturer.



Textile articles (AB 1817)



Compliance dates continued



Effective date: January 1, 2025

Description: Outdoor apparel for severe wet conditions must be accompanied by the disclosure statement “Made with PFAS chemicals”. Disclosure must also be provided for online listings.



Effective date: January 1, 2028

Description: Prohibits the manufacture, sale or distribution of any new outdoor apparel for severe wet conditions that contains regulated PFAS.



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Cosmetics



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.



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Cosmetics (AB 2771)



Effective Date: January 1, 2025

Description: Prohibits the manufacture, sale, delivery, hold, or offer for sale in commerce of any cosmetic product that contains intentionally added PFAS.



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



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Cosmetics (SB 312)



Effective date: January 1, 2022

Description: manufacturers of cosmetic products must provide the following to DTSC:

- A list of each flavor or fragrance ingredient that is included on a designated list and their CAS number(s).
- A list of each fragrance allergen present in a rinse-off cosmetic at 100 ppm or greater or present in a leave-on cosmetic at 10 ppm or greater, and their CAS number(s).
- Whether the product is for personal or professional use.
- The UPC for each product.



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Recyclable packaging (SB 343)



A product or packaging is not considered recyclable if:

- It contains intentionally added PFAS or if PFAS are present at 100 ppm or greater.
- It includes components, such as dyes or adhesives, that prevent recycling.
- It contains intentionally added chemicals identified by subparagraph (4) of subdivision (g) of Section 42370.2.



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Recyclable packaging (SB 343)



Effective Date: January 1, 2024




Description: Deadline for the Department of Resources Recycling and Recovery to publish information on whether a material is recyclable in the state. Once published, prohibits the sale, distribution, and import of any products or packaging's carrying the “chasing arrows” symbol if the item is not recyclable.



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Compostable packaging (AB 1201)



-  **Product** includes but is not limited to a consumer product; a package or packaging component; a bag, sack, wrap or other thin plastic sheet film product; a food or beverage container or container equipment (such as a straw, lid, or utensil).
-  **Manufacturer** means a person, firm, association, partnership, or corporation that produces a product.
-  **Supplier** means a person who sells, offers for sale or offers for promotional purposes a product or a person who takes title to a product that is purchased for resale or promotional purposes.



Compostable packaging (AB 1201)



Prohibits the sale, distribution, and import of any products labeled with the term “compostable” or “home compostable” unless it meets criteria:

- It does not contain more than 100 ppm total organic fluorine.
- It is labeled in a manner that distinguishes the product from a noncompostable product upon reasonable inspection by consumers and to help enable efficient processing by solid waste processing facilities.
- It is designed to be associated with the recovery of desirable organic wastes.



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Compostable packaging – compliance dates (AB1201)



Effective date: January 1, 2024

Description: Product must be certified as meeting an applicable standard specification by an approved third-party certification entity that has existed for at least one year prior to the product being offered for sale.



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Compostable packaging – compliance dates (AB1201)



Effective Date: January 1, 2026

Description: Product must be an allowable agricultural organic input under the requirements of the United States Department of Agriculture National Organic Program, unless CalRecycle determines that it is possible to recover organic waste for use in agricultural applications from the collection of products that are not suitable for such application.



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Safer Consumer Products



- California legislature passed the Green Chemistry Law in 2008.
- Authorizes DTSC to adopt regulations to identify hazardous chemicals in consumer products, evaluate safer alternatives, and implement a regulatory response.
- The goals are a reduction of hazardous chemicals in consumer products and to increase the adoption of green chemistry and safer chemical alternatives in consumer products.
- Regulations can be found at 22 CCR 69501 through 69511



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Safer Consumer Products



Carpets and Rugs



Effective date: July 1, 2021

Description: Carpet and rug manufacturers must submit a Priority Product Notification (PPN) identifying all products sold in the state. They must also submit, by December 28, 2021 one of the following:

- A chemical removal intent/confirmation notification
- A product removal intent/confirmation notification
- A product-chemical replacement intent/confirmation notification
- A preliminary alternatives analysis report



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Safer Consumer Products



Treatments for converted textiles or leather



Effective date: April 1, 2022

Description: Treatments containing PFAS for use on converted textiles or leathers must submit a PPN identifying all products sold in the state. They must also submit, by September 28, 2022, one of the following:

- A chemical removal intent/confirmation notification
- A product removal intent/confirmation notification
- A product-chemical replacement intent/confirmation notification
- A preliminary alternative analysis report



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Practical Considerations



- ✓ Identify restricted products containing PFAS for sales restrictions.
- ✓ Identify private label restricted products containing PFAS.
- ✓ Note the implementation dates for each bill.
- ✓ Ensure products containing restricted substances are not imported, distributed or sold after the effective date.



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What's next?



Proposed regulations



AB 246: Eliminate PFAS from menstrual products

AB 1290: Beginning January 1, 2026, prohibit the manufacture, sale, and distribution of:

- Opaque or pigmented polyethylene terephthalate bottles.
- Plastic packaging that contains nondetectable pigments, oxo-degradable additives, PFAS, polyvinyl chloride, polyvinylidene chloride.
- Rigid plastic packaging containing polyethylene terephthalate glycol.



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Proposed regulations



AB 727: Beginning January 1, 2025, prohibits the manufacture, sale, delivery, distribution and holding of cleaning products with regulated PFAS

AB 1423: Beginning January 1, 2024, require manufacturers of artificial turf or synthetic surfaces resembling grass to disclose the presence of PFAS on the label.



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Federal PFAS Developments



CERCLA



- In September 2022, EPA published a notice of proposed rulemaking (NPRM) designating perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic Acid (PFOS), including their salts and structural isomers, as hazardous substances under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).



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CERCLA



- If finalized, there may be significant new reporting obligations as well as enforcement and litigation related to site cleanup.
- The final rule is expected in August 2023.



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RCRA



- In 2021, EPA announced plans to address PFAS under the Resource Conservation and Recovery Act (RCRA)
- EPA has proposed adding four PFAS to Appendix VIII to 40 CFR 261 (PFOA, PFOS, PFBS and GenX)
- A rule has been proposed to clarify the RCRA Corrective Action Program can apply to emerging contaminants



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TSCA Proposed PFAS reporting rule



- Under the proposed rule from the Toxic Substances Control Act (TSCA), persons who have manufactured or imported PFAS in any year since January 1, 2011, to the effective date of the final rule.
- This is a one-time reporting requirement.
- Proposed rule - June 28, 2021.
- Comment deadline - September 27, 2021.
- Final rule – expected in March 2023



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TSCA Proposed PFAS reporting rule



What information must be reported?

- Company and plant site information.
- Chemical identity.
- Physical forms.
- Industrial processing and use information.
- Consumer and commercial use information.
- Production volumes.
- Byproduct information.
- Environmental and health effects information.
- The number of individuals exposed in their places of employment and the duration of such exposures.
- Manners or methods of disposal.



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White House



- On March 14, 2023, the White House Office of Science and Technology Policy (OSTP) released a state of science report of PFAS.
- The report summarized the current research available in key areas and highlighted the importance of information sharing.
- OSTP will utilize the report as part of a roadmap for federal PFAS goals and priorities



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PFAS Testing Developments



PFAS testing developments



- There is no standard method for measuring PFAS in consumer products.
- In 2022, American Society for Testing and Materials (ASTM) International announced a new subcommittee aimed at developing standards for analyzing PFAS in a variety of consumer products.
- The subcommittee operates under the ASTM consumer products committee and plans to focus on PFAS compounds that pose the largest risks to human health and the environment.



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Proposition 65



Prop. 65 Overview



- Prop. 65 is also known as The Safe Drinking Water and Toxic Enforcement Act of 1986.
- Administered by the California's Office of Environmental Health Hazard Assessment (OEHHA).
- Requires businesses to provide warnings about exposures to chemicals that cause cancer, birth defects, or other reproductive harm.
- The list updated at least once a year and includes over 900 substances.
- Once a chemical is listed, businesses have:
 - 12 months to comply with the warning requirements.
 - 20 months to comply with the discharge prohibition.



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Prop. 65 recent updates



January 27, 2023:

- 1-Bromo-3-chloropropane
- 1-Butyl glycidyl ether
- Glycidyl methacrylate

February 25, 2022:

- PFOA (CAS 335-67-1) – carcinogenicity
 - PFOA has been listed for reproductive toxicity since 2017

December 2021

- 2-Ethylhexyl acrylate
- Methyl acrylate
- Perfluorononanoic acid (PFNA) and its salts
- Perfluorooctane sulfonic acid (PFOS) and its salts and transformation and degradation precursors
- Tetrahydrofuran
- Trimethylpropane triacrylate (technical grade)



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Prop. 65 recent updates



January 27, 2023:

- 1-Bromo-3-chloropropane
 - Pharmaceuticals
- 1-Butyl glycidyl ether
 - Epoxy resins, adhesives, sealants, coatings, finishes, primers
- Glycidyl methacrylate
 - Coatings, finishes, adhesives



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Prop. 65 recent updates



December 2021

- 2-Ethylhexyl acrylate
 - Widely used in paints, stains, coatings, craft paint, temporary tattoos, adhesives (including eyelash and nail).
- Methyl acrylate
 - Used in bandages, adhesives, coatings.
- Trimethylpropane triacrylate (technical grade)
 - Used in adhesives, inks, coatings.
- Tetrahydrofuran
 - Widely used in adhesives, paint removers, primers.



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Prop. 65 and PFAS



- Several PFAS are listed on Prop. 65 including perfluorononanoic acid and its salts (PFNA), perfluorooctanoic acid (PFOA), and perfluorooctane sulfonate and its salts (PFOS).
- Private enforcement of PFAS-containing textiles has been on the rise in recent months and is expected to continue growing.
- Notices of violation (NOV) related to PFAS have included umbrellas, shower liners, tablecloths, jackets, bibs, and bath pillows.



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Prop. 65 enforcement



- Private parties are allowed to bring an enforcement action if they can show companies failed to provide a Prop 65 exposure warning.
- Private enforcement is expected to grow in 2023 and often targets newer additions to the list.



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Prop. 65 enforcement



- From January 1, 2023 to March 1, 2023, 606 NOVs were filed. The same period in 2022 saw 443 notices.
- In 2023, NOVs and litigation have largely targeted:
 - Phthalates in a variety of goods.
 - Titanium dioxide in cosmetics.
 - Benzene in dry shampoos.
 - BPA in apparel and accessories.
 - Lead in household and grocery items



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Practical considerations



- Review product formulations to ensure all applicable exposure warnings are present.
- Manufacturers should promptly add warnings when new substances are added to the list.
- Retailers should carefully monitor product information received from upstream sellers and take necessary steps to ensure a warning is provided.



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What's next?



The state has identified two PFAS as candidates for future listing:

- Perfluorobutane sulfonic acid and its potassium salt (PFBS) (CAS 375-73-5 and 29420-49-3).
- Hexafluoropropylene oxide (HFPO) dimer acid and its ammonium salt (referred to as "GenX") (CAS 13252-13-6 and 62037-80-3).
- PFBS and GenX are no longer widely used in the US.
- PFBS can be found in consumer products such as articles that have been treated for water, stain, or grease resistance, as well as formulated products like cleaners, paints, inks, and pesticides.
- GenX serves as a processing aid in some types of manufacturing.



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What's next?



The state has issued a notice of intent to list the following chemicals:

- 1,1,1-Trichloroethane (CAS 71-55-6)
 - Solvent
- Leucomalachite green (CAS 129-73-7)
 - Dye

The public comment period is currently open. Comments can be submitted to OEHHA until April 3, 2023 through their website, the mail, or in person.



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References



- [Bill Text - SB-1044 Firefighting equipment and foam: PFAS chemicals.](#)
- [Bill Text - AB-1200 Plant-based food packaging: cookware: hazardous chemicals.](#)
- [Bill Text - AB-652 Product safety: juvenile products: chemicals: perfluoroalkyl and polyfluoroalkyl substances.](#)
- [Bill Text - SB-343 Environmental advertising: recycling symbol: recyclability: products and packaging. \(ca.gov\)](#)
- [Bill Text - AB-1201 Solid waste: products: labeling: compostability and biodegradability. \(ca.gov\)](#)
- [Bill Text - AB-1817 Product safety: textile articles: perfluoroalkyl and polyfluoroalkyl substances \(PFAS\). \(ca.gov\)](#)
- [Bill Text - SB-312 Cosmetic Fragrance and Flavor Ingredient Right to Know Act of 2020. \(ca.gov\)](#)
- [Bill Text - AB-2771 Cosmetic products: safety. \(ca.gov\)](#)
- [Proposed Designation of Perfluorooctanoic Acid \(PFOA\) and Perfluorooctanesulfonic Acid \(PFOS\) as CERCLA Hazardous Substances | US EPA Regulations.gov](#)
- [TSCA Section 8\(a\)\(7\) Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances | US EPA](#)
- [Proposition 65 - OEHHA \(ca.gov\)](#)
- [Additional U.S. States Ban PFAS-Containing Products | UL Solutions](#)
- <https://www.epa.gov/newsreleases/epa-responds-new-mexico-governor-and-acts-address-pfas-under-hazardous-waste-law>
- [Per- and Polyfluoroalkyl Substances \(PFAS\) Report \(whitehouse.gov\)](#)
- <https://dtsc.ca.gov/scp/>



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Any Questions?

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