

California Adopts Enforcement Criteria and Testing and Registration Requirements for PFAS in Textiles, Juvenile Products and Food Packaging

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Recently adopted California legislation ([AB 347](#)) aims to fill fundamental gaps in implementation of the state's restrictions on per- and polyfluoroalkyl substances ("PFAS") in juvenile products, textile articles, and food packaging. As companies face immediate deadlines to comply with PFAS restrictions, the legislation provides needed clarity on enforcement; imposes registration requirements on manufacturers of covered products; and seeks to answer questions about proper test methods for establishing compliance.

Enforcement

While penalties are to be assessed on a "case-by-case" basis under AB 347, the minimum penalty for a first-time violation is \$10,000. The factors to be considered by the Department of Toxic Substances Control ("DTSC") in assessing the penalty are common ones: nature and severity of the violation; whether the entity acted in good faith; history of prior violations; evidence that the violation was willful; and the degree of cooperation exhibited by the alleged violator.

The enforcement process will be initiated by DTSC's issuance of a Notice of Violation ("NOV"), which is to be based on:

- (1) Testing: Either testing by the Department or test results submitted by the manufacturer (as part of the registration process discussed below) showing a violation;
- (2) Ingredients: The Department determines that "an ingredient identified on a covered product's label" is a violation of a PFAS restriction; or
- (3) Other: The Department finds a violation of AB 347 (including the registration requirement).

AB 347 also provides authority to prohibit the sale of noncompliant products in the state.

While the bill does not expressly allow citizens to initiate enforcement proceedings, citizens are likely to independently test, verify or inspect products and report this information to the Department.

Notably, NOVs are to be made public and published on the DTSC website, including relevant product information.

Manufacturer Registration

On or before July 1, 2029, manufacturers of covered products must register with DTSC, pay a registration fee, and provide a statement certifying compliance with the applicable prohibitions on the use of PFAS to the Department. While the statute does not provide what must be included in this statement, it authorizes the Department specifically to request “technical documentation, including analytical test results, to demonstrate compliance with the applicable covered PFAS restriction.”

The bill does not include any exemptions for small businesses or *de minimis* sales, which are increasingly [common in PFAS bans in sister states](#). It is possible that such exemptions may be adopted as DTSC establishes implementing regulations.

Testing

As highlighted [in a recent court case](#), a significant PFAS enforcement challenge is the identification and use of appropriate testing methods to determine the presence of PFAS in products. AB 347 directs DTSC, by January 1, 2029, to publish online a list of accepted methods for testing to determine whether a covered product complies with PFAS restrictions and appropriate third-party accreditations for testing laboratories.

In particular, it will be interesting to see how DTSC wrestles with testing for compliance with the 100 ppm “total organic fluorine” (“TOF”) limits for textiles and other products. As TOF testing captures fluorine sources other than PFAS, it is unclear whether a “positive” TOF test result should be considered a violation without further inquiry.