Articles + Publications | December 14, 2023

Locke Lord QuickStudy: This Will Not Make You Blush. States ?Are ?Making Regulation of Cosmetics a Priority

Locke Lord LLP

WRITTEN BY

Jeremy Murphy

Cosmetics Regulation

Currently, cosmetics are regulated through the Federal Food, Drug, and Cosmetic Act (FDCA)– ?which has recently been revamped by the Modernization of Cosmetics Regulation Act (MoCRA)–and ?various state legislation. At the national level cosmetic ingredients other than color additives do not ?require FDA approval although each ingredient must be safe for humans. FDA, however, will review ?specific ingredients that cause particular harm or concern. For example, FDA will likely ban the use ?of formaldehyde and formaldehyde releasing chemicals including methylene glycol from hair ?relaxers given a recent proposed rule.?

MoCRA includes a provision expressly providing that nothing in the act would prevent a state from regulating particular cosmetics or ingredients. Thus, States may still pass laws regulating cosmetics subject to potential FDA preemption. This has the potential to create uncertainty when it comes to various state regulation on cosmetics.

Breadth

Multiple states have taken steps to independently ban ingredients from cosmetics following the European Union law passed in 2021. Such laws will require market participants to reformulate regardless of FDA intervention.

Below are a few states that either have passed or are considering legislation covering cosmetic ingredients: *(Mobile users: rotate your phone horizontally to view the chart)*

State	Legislation Passed	Effective Date	Ingredients

- isopropylparaben
- m-phenylenediamine and its salts
- o-phenylenediamine and its salts
- The following per- and polyfluoroalkyl substances (PFAS) and their salts:
- perfluorooctane sulfonate (PFOS); heptadecafluorooctane-1-sulfonic acid-potassium perfluorooctanesulfonate; potassium heptadecafluorooctane-1-sulfonate

- diethanolamine perfluorooctane sulfonate
- ammonium perfluorooctane sulfonate; ammonium heptadecafluorooctanesulfonate
- lithium perfluorooctane sulfonate; lithium heptadecafluorooctanesulfonate
- perfluorooctanoic acid (PFOA)
- ammonium pentadecafluorooctanoate
- nonadecafluorodecanoic acid
- ammonium nonadecafluorodecanoate
- sodium nonadecafluorodecanoate
- perfluorononanoic acid (PFNA)
- sodium heptadecafluorononanoate
- ammonium perfluorononanoate

2.

- lily aldehyde
- acetaldehyde
- cyclohexylamine
- cyclotetrasiloxane
- phytonadione
- sodium perborate
- styrene
- trichloroacetic acid
- tricresyl phosphate
- vinyl acetate
- 2-chloracetamide
- allyl isothiocyanate
- anthraquinone
- malachite green oil from the seeds of laurus nobilis l.
- pyrogallol
- C.I. disperse blue 1
- trisodium nitrilotriacetate
- C.I. disperse blue 3
- basic green 1
- basic blue 7
- 3(or5)-((4-(benzylmethylamino)phenyl)azo)-1,2 -(or1,4)-dimethyl-1h-1,2,4-triazolium and its salts
- basic violet 4

- basic blue 3
- basic blue 9
- Boron Substances:

			• Perboric acids: ◦ sodium salt ◦ sodium salt, monohydrate ◦ sodium perborate monohydrate • Boric acid • Borates, tetraborates, octaborates, and boric acid salts and esters, including all of the following: ◦ disodium octaborate anhydrous ◦ disodium octaborate tetrahydrate ◦ 2-aminoethanol, monoester with boric acid ◦ 2-hydroxypropyl ammonium dihydrogen orthoborate ◦ potassium borate, boric acid potassium salt ◦ trioctyldodecyl borate. ◦ zinc borate ◦ sodium borate, disodium tetraborate anhydrous; boric acid, sodium salt tetraboron disodium heptaoxide, hydrate ◦ orthoboric acid, sodium salt ◦ disodium tetraborate decahydrate; borax decahydrate ◦ disodium tetraborate pentahydrate; borax pentahydrate
California	Yes	January 1, 2025	PFAs
Georgia	No	January 1, 2026 2. January 1, 2027	All chemicals in section 1 of California's ban including: • dibutyl phthalate • diethylhexyl phthalate • formaldehyde • paraformaldehyde • methylene glycol • quaternium-15 • mercury* • isobutylparaben • lead and lead compounds • triclosan • toluene • di-2-ethylhexyl phthalate (DEHP), butyl benzyl phthalate, and related phthalates • butylparaben, methylparaben, propylparaben, and related parabens • methanediol and formaldehyde monohydrate • oxybenzone
Hawaii	No	December 31, 2026	PFAs
Illinois	No	January 1, 2025	All chemicals in section 1 of California's ban.

			• formaldehyde releasers including diazolidinyl urea, DMDM hydantoin, imidazolidinyl urea and sodium hydroxymethylglycinate • benzophenones, including benzophenone, benzophenone-1, benzophenone-2, benzophenone-3, dihydroxybenzophenone, resbenzophenone and oxybenzone • known carcinogens, including benzene, carbon black, coal tar, ethylene oxide, toluene, naphthalene, metallic nickel, styrene and xylene • asbestos and asbestos-containing compounds, including talc-butylated compounds, including butylated hydroxytoluene and butylated hydroxyanisole-siloxanes, including cyclotetrasiloxane, cyclopentasiloxane, octamethylcyclotetrasiloxane and cyclosiloxanes; • phenylenediamines, including p-phenylenediamine, triclosan, triclocarban and nonylphenol • nitrosamine and nitrosamine releasers, including diethanolamine and triethanolamine
Maryland	Yes	January 1, 2030	All chemicals in section 1 of California's ban.
Minnesota	Yes	January 1, 2025	PFAs
Nevada	No	January 1, 2025	PFAs
New Jersey	No 2. No	TBD 2. TBD	1. All chemicals in section 1 of California's ban, excluding PFAs and including: • dibutyl phthalates, toluene, or formaldehyde used in nail polish • triclosan used in sanitizer or hand and body cleansers • heavy metals and heavy metal-containing compounds, including arsenic, cadmium, cadmium compounds, chromium, lead, lead compounds, nickel, and selenium 2. PFAs 3. All chemicals in section 2 of Maine's ban.
New York	No	TBD	1. All chemicals in section 2 of Maine's ban. 2. PFAs 3. parabens, including butylparaben, ethylparaben, methylparaben and propylparaben • ortho-phthalates and their esters, including, dicyclohexyl phthalate, hexyl phthalate, diisobutyl phthalate, diisooctyl phthalate, diisononyl phthalate, diisodecyl phthalate, diisoundecyl phthalate, diisododecyl phthalate, diisooctyl phthalate, diethyl phthalate, and benzyl butyl phthalate 4. dibutyl phthalate (DBP), toluene, formaldehyde, formaldehyde resin, camphor, ethyl tosylamide, and xylene used in nail polish • triclosan, triclocarban, or derivatives of such materials, including chlorinated phenols
North Carolina	No	TBD	PFAs
Oregon	Yes	January 1, 2027	Limits the following ingredients to 10ppm: • ortho-phthalates • PFAs • formaldehyde and formaldehyde releasing agents • methylene glycol • mercury and mercury compounds* • triclosan • m-Phenylenediamine and its salts • o-Phenylenediamine and its salts
Rhode Island	Yes	January 1, 2025	PFAs

			• 1,4-dioxane • cadmium and cadmium compounds • octamethylcyclotetrasiloxane • decamethylcyclopentasiloxane • toluene • parabens • lead and lead compounds* • asbestos • hydroquinone • ethyhexyl acrylate • ethyl acrylate • aluminum salts • benzalkonium chloride • coal tar compounds • triclosan • methylisothiazolinone • methylchloroisothiazolinone • p-phenylenediamine and its salts • any undisclosed synthetic fragrances not listed in this subsection
Washington	Yes	January 1, 2025	All chemicals in section 1 of California's ban including: • ortho-phthalates • BPAs • formaldehyde releasing agents • triclosan • products containing more than one ppm of lead*

?*Denotes compound already banned in cosmetics by federal statute or regulation.?

Conclusion

While most laws passed or proposed target similar ingredients, market participants would be wise to conduct their independent research to assure they are in compliance with state law. With many states moving to enact bans on various ingredients it may be easy for companies to lose track of what is acceptable and where. A new era of cosmetics is around the bend and Locke Lord's FDA Regulatory and Cosmetic and Personal Care teams can help you prepare for what is to come.

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