

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

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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

- isobutylparaben
- 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

			<ul style="list-style-type: none"> • Boron Substances: • Perboric acids: <ul style="list-style-type: none"> ◦ sodium salt ◦ sodium salt, monohydrate ◦ sodium perborate monohydrate • Boric acid • Borates, tetraborates, octaborates, and boric acid salts and esters, including all of the following: <ul style="list-style-type: none"> ◦ disodium octaborate anhydrous ◦ disodium octaborate tetrahydrate ◦ 2-aminoethanol, monoester with boric acid ◦ 2-hydroxypropyl ammonium dihydrogen orthoborate ◦ potassium borate, boric acid potassium salt ◦ trioctyldecyl 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	<p>All chemicals in section 1 of California's ban including:</p> <ul style="list-style-type: none"> • dibutyl phthalate • diethylhexyl phthalate • lead and lead compounds • formaldehyde • formalin • paraformaldehyde • toluene • methylene glycol • diethylhexyl phthalate (DEHP), • butyl benzyl phthalate, and related phthalates • methylparaben, 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.

			<ul style="list-style-type: none"> phthalate 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
Maine	Yes	January 1, 2026	PFAs
Minnesota	Yes	January 1, 2025	PFAs
Nevada	No	January 1, 2025	PFAs chemicals in section 1 of California's ban
New Jersey	1. No 2. No	TBD 2. TBD	<ol style="list-style-type: none"> 1. dibutyl phthalate, toluene, or formaldehyde used in nail polish 2. trioxane used in the size of hand and body cleansers, 3. PFAs including arsenic, cadmium, cadmium compounds,
New York	No	TBD	<ol style="list-style-type: none"> 1. All chemicals in section 1 of California's ban, 2. PFAs 3. dibutyl phthalate (DBP), talc, formaldehyde, formaldehyde resin, p-phenyl tosylamide, and xylene used in hair dyes 4. triclosan, triclocarban, heptyl phthalate, diisobutyl phthalate, diisopropyl phthalate, and benzoin products,
North Carolina	No	TBD	PFAs dioctyl phthalate, diethyl phthalate, and benzyl butyl
Oregon	Yes	January 1, 2027	<p>Limits the following ingredients to 10ppm:</p> <ul style="list-style-type: none"> 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

			<ul style="list-style-type: none"> • styrene • 1,4-dioxane • cadmium and cadmium compounds • octamethylcyclotetrasiloxane • decamethylcyclopentasiloxane • toluene • parabens • lead and lead compounds* • asbestos • hydroquinone • ethylhexyl 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 2025	<p>All chemicals in section 1 of California's ban including:</p> <ul style="list-style-type: none"> • ortho-phthalates • parabens • formaldehyde releasing agents • triphenyl glycol • 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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