CLIENT ALERT

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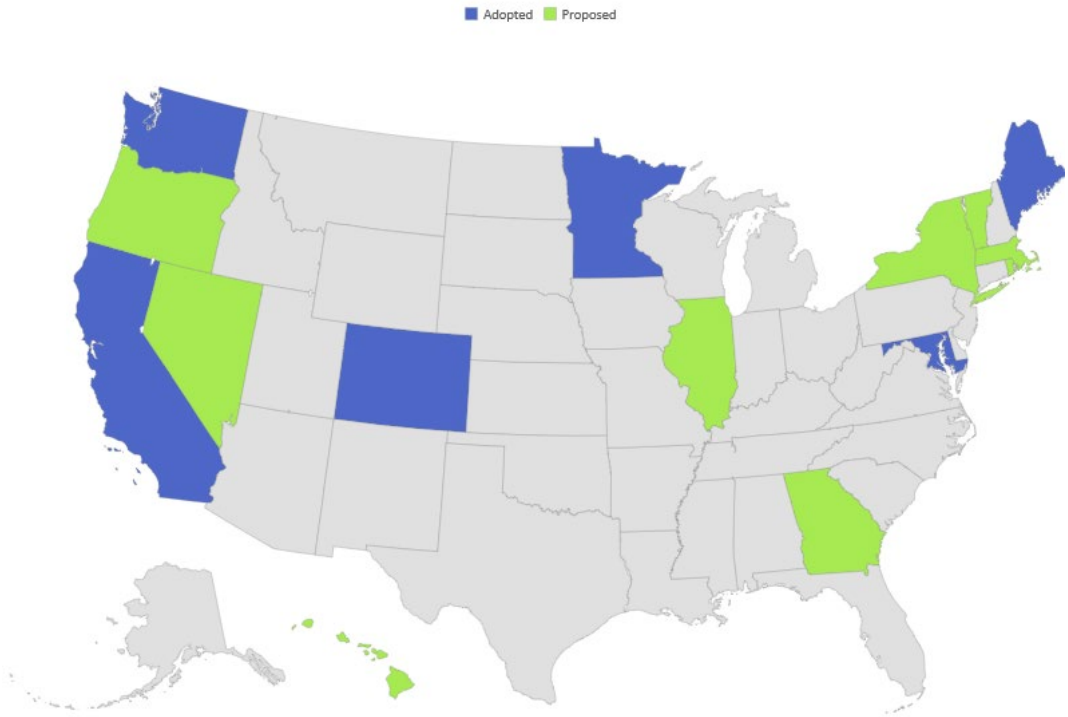
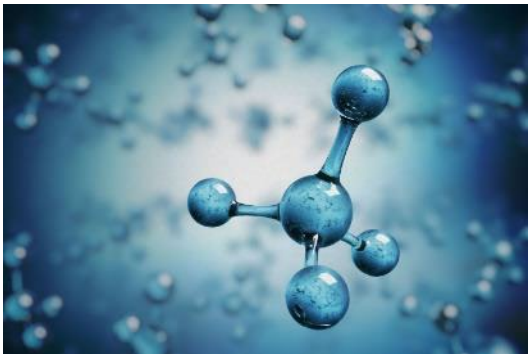
A Growing Number of States are Banning PFAS in Cosmetics and Personal Care Products

On May 24, 2023, Minnesota's Governor signed into law a ban on all uses of per- and polyfluoroalkyl substances (PFAS) in products by 2032—except those that are necessary for public health. This law also requires manufacturers to report their use of PFAS in products to the state by 2026 and bans specific uses in several products starting in 2025. Specifically, this ban eliminates PFAS from 13 product categories including cosmetics and personal care products and enables the state to levy fines and penalties for non-compliance with any part of the law.

Certain PFAS are intentionally added as ingredients in some cosmetic products, including lotions, cleansers, nail polish, shaving cream, foundation, lipstick, eyeliner, eyeshadow, and mascara. Some PFAS may also be present in cosmetics unintentionally as the result of raw material impurities or due to the breakdown of PFAS ingredients that form other types of PFAS.

Due to the nature of PFAS and the high potential for exposure, several other states in addition to Minnesota have proposed or enacted prohibitions or restrictions on cosmetics and other personal care products that contain PFAS. As shown in the graphic below, five additional states (California, Colorado, Maine, Maryland, and Washington) have passed legislation prohibiting PFAS while nine others (Georgia, Hawaii, Illinois, Massachusetts, New York, Nevada, Oregon, Rhode Island, and Vermont) have proposed similar bills.





Depending on the state, these regulatory rulemaking efforts will require the disclosure of PFAS content and/or the restriction or prohibition of either individual PFAS or **all** PFAS in cosmetics and personal care products. Overall, states are trending towards regulating PFAS as a class rather than on an individual basis. In Maine, for example, the statute requires any chemical containing at least one fully fluorinated carbon atom—which is a carbon atom on which all the hydrogen substituents have been replaced by fluorine—that is intentionally added to a product to be reported to the Department, regardless of whether it is found on any list. This broad and ambiguous definition results in thousands of substances, including organofluorine pharmaceuticals, potentially falling within the scope of the regulation.

However, some states have proposed exemptions as part of the rulemaking. For example, in Maryland, exemptions will be provided if:

1. PFAS was manufactured through a process intended to comply with the current regulations.
2. The product contains a technically unavoidable trace quantity of PFAS due to the manufacturing process, storage, or packaging.

In Illinois, proposed bill HB 1282 will provide exemptions if:

1. The cosmetic product is made through manufacturing processes that are intended to comply with these regulations.
2. The cosmetic product contains a technically unavoidable trace quantity of PFAS.
3. The trace quantity of PFAS from the impurities of the natural or synthetic ingredients, the manufacturing process, storage, or migration from packaging.

And the State of Nevada's proposed bill SB 76 will provide exemptions for recycled materials that may contain PFAS in the original product.

Reporting/notification requirements for most of these regulations begin in January 2025. Additionally, at the Federal level, the Food and Drug Administration's (FDA) 2022 Modernization of Cosmetics Regulation Act (MoCRA) states that the FDA will also evaluate the use, safety, and risks of PFAS in cosmetic products. A report summarizing the results of this assessment is expected to be published by December 2025. The Personal Care Products Council, in collaboration with the Environmental Working Group, has supported the prohibition of certain PFAS from use in cosmetics.

Questions? We're here to help.
EHS Support has a reputation for developing innovative approaches to client advocacy and offers a wide range of services to support PFAS challenges in the changing regulatory landscape. Reach out to Damani Parran, Dana McCue, or Jalissa Nguyen and explore how the EHS Support Team can help you. Visit our **website** to learn more about our Product Stewardship & Toxicology and PFAS Assessment & Management Services.