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Navigating New PFAS Regulations in California and New York: Critical Updates for the Textile and Apparel Industries

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Buchalter can assist by providing you with recommendations for testing laboratories, detailed analysis of state and federal PFAS regulations, create compliance programs tailored to meet regulatory requirements, assist in the preparation of necessary documentation including certificates of compliance, review and draft supplier contracts to include PFAS compliance and liability provisions, review your product lines, work with suppliers to understand PFAS usage, and provide litigation defense.

Overview

Recent legislative developments in California and New York have introduced stringent measures to regulate the use of perfluoroalkyl and polyfluoroalkyl substances (PFAS) in consumer products. These laws target the reduction and eventual prohibition of PFAS in textiles, apparel, and other specific items, reflecting growing concerns over the environmental and health impacts of these substances.

California AB 1817

California Assembly Bill 1817, signed into law and effective January 1, 2025, specifically targets PFAS in textiles (which is defined broadly). Key provisions include:

- 1. Scope and Definitions:**
 - **PFAS Definition:** The bill defines PFAS as substances that contain at least one fully fluorinated carbon atom.
 - **Textiles:** Encompasses a wide range of products including clothing, accessories, bedding, and upholstery.
- 2. Prohibitions:**
 - **Sales Ban:** Prohibits the manufacture, distribution, and sale of new textile articles containing intentionally added PFAS from January 1, 2025 or PFAS measured in Total Organic Fluorine at 100ppm on January 1, 2025, phasing down to 50ppm by January 1, 2027.
 - **Disclosure Requirements:** Manufacturers must use a certificate of compliance to demonstrate adherence to the regulations.
- 3. Labeling and Testing:**
 - **Certification:** Mandates that manufacturers provide a certificate of compliance to downstream retailers indicating that the textile articles do not contain intentionally added PFAS. These must be signed by an authorized official of the company.
 - **Record-Keeping:** retailers and distributors are permitted to rely on these in the event of a violation.



4. **Special Provision for Severe Outdoor Conditions:**

- **Definition:** "Outdoor apparel for severe wet conditions" includes garments such as rain jackets, snow pants, and other gear designed for extreme weather.
- **Effective Date:** While general textiles must comply by January 1, 2025, outdoor apparel for severe wet conditions has until January 1, 2028, to meet the requirements.
- **Regulatory Adjustments:** The extended timeline accounts for the current technological and commercial challenges in producing effective alternatives to PFAS for these specific applications.
- **Compliance Requirements:** By 2028, manufacturers must either eliminate intentionally added PFAS or meet the concentration limits above.
- **Labeling:** manufacturers must include a legible disclosure "Made with PFAS Chemicals" on products along with an online listings by January 1, 2025.

New York Environmental Conservation Law Section 37-0121

New York's Environmental Conservation Law § 37-0121 imposes a phased ban on PFAS in apparel only (not textiles), distinguishing between general apparel and outdoor apparel for severe wet conditions:

1. **General Prohibitions:**

- **Effective January 1, 2025:** Bans the sale of any new, previously unused apparel containing intentionally added PFAS.
- **Additional Limits by January 1, 2027:** Introduces stricter PFAS concentration limits to be established by the Department of Environmental Conservation (DEC).

2. **Special Provisions for Outdoor Apparel:**

- **Effective January 1, 2028:** Bans PFAS in outdoor apparel for severe wet conditions, unless they fall below the concentration limits set by the DEC or contain no intentionally added PFAS.

3. **Definitions and Exemptions:**

- **Apparel:** Includes clothing items intended for regular or formal wear, such as undergarments, shirts, pants, skirts, and more.
- **Exemptions:** Does not apply to professional uniforms designed to protect the wearer from health or environmental hazards, including personal protective equipment.

4. **Compliance and Enforcement:**

- **Certification Requirement:** Sellers may rely on manufacturers' certificates of compliance, confirming that the apparel meets regulatory standards.
- **Penalties:** Providing false certificates of compliance is subject to penalties.

Implications for Manufacturers and Retailers

Manufacturers and retailers operating in California and New York must prepare for these upcoming regulations by:

- **Revising Product Formulations:** Eliminating PFAS from textile products.
- **Updating Compliance Documentation:** Ensuring accurate certificates of compliance and maintaining appropriate records.
- **Monitoring Regulatory Developments:** Staying informed on the concentration limits and other requirements that the respective state agencies will establish.



Conclusion

Both California AB 1817 and New York Environmental Conservation Law § 37-0121 reflect a significant regulatory shift towards reducing PFAS in consumer products. Entities involved in the manufacture, distribution, or sale of textiles and apparel should take immediate steps to align with these new legal standards to avoid potential penalties and ensure market access.

These are not the only states with onerous PFAS compliance laws. State level reporting prohibitions include Maine, Minnesota, New Jersey, Illinois, New Hampshire and Connecticut.

For further details and support, contact Buchalter's legal team specialized in product liability and regulatory compliance.



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