

# Heightened California Compliance Obligations for Cosmetic Companies on the Horizon

## The Bottom Line

- In 2022, cosmetic companies in California will be subject to heightened reporting obligations under the California Fragrance and Flavor Ingredient Right to Know Act.
- Keep in mind that federal law prohibits the marketing of adulterated or misbranded cosmetics in interstate commerce, and the FDA may take regulatory action if a cosmetic is likely adulterated or misbranded.

Companies and individuals who manufacture or market cosmetics in California will soon be subject to heightened reporting obligations under the recently-enacted California Fragrance and Flavor Ingredient Right to Know Act.

## Regulatory Landscape

By way of background, the Federal Food, Drug, and Cosmetic Act (FD&C Act) does not require that cosmetic products and ingredients (with the exception of color additives) be approved by the US Food and Drug Administration (FDA) before being put on the market. Instead, companies and individuals who manufacture or market cosmetics have a legal responsibility to ensure the safety of their products.

To help ensure that cosmetic products do not contain carcinogens or reproductive toxicants, California enacted the California Safe Cosmetic Act of 2005 (CSCA). The CSCA, which is currently in effect, generally requires that cosmetics manufacturers that sell products in California disclose to the state any product ingredient that is identified on state or federal lists of chemicals that cause cancer or birth defects. The state operates the California Safe Cosmetics Program Product Database, a searchable, public online database.

## The California Fragrance and Flavor Ingredient Right to Know Act of 2020

The California Fragrance and Flavor Ingredient Right to Know Act of 2020 (SB 312) (CFFIRKA) creates heightened reporting obligations. Effective January 1, 2022, CFFIRKA

requires companies selling retail cosmetic or professional salon products in California to report the presence of any fragrance or flavor ingredient that appears on one or more of designated authoritative hazard lists to the California Safe Cosmetics Program. The agency will make this information public through the California Safe Cosmetics Program Product Database.

In addition to disclosing the above ingredients, manufacturers must also disclose:

- Whether the product is intended for professional or retail use;
- The Chemical Abstracts Service number for each ingredient and allergen; and
- The corresponding Universal Product Code for the product.

## Compliance

The company whose name appears on the label is responsible for CFFIRKA compliance – this may be the product’s manufacturer, packer or distributor. The agency expects that companies will start reporting on January 1, 2022, and does not provide exemptions for companies who post fragrance ingredients on their label or website. Impacted companies should ensure that they obtain all information necessary to comply from their suppliers.

CFFIRKA does not provide a private right of action. However, the California Attorney General and private enforcers may bring claims for violations of the law under California’s Unfair Competition Law, which provides for monetary penalties of up to \$2,500 per violation.

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## For More Information

Please contact the attorneys listed below or the Davis+Gilbert attorney with whom you have regular contact.

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