



Substitute Senate Bill No. 837

Public Act No. 21-191

AN ACT CONCERNING THE USE OF PERFLUOROALKYL OR POLYFLUOROALKYL SUBSTANCES IN CLASS B FIREFIGHTING FOAM.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective from passage*) (a) As used in this section:

(1) "Perfluoroalkyl or polyfluoroalkyl substance" means a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom;

(2) "Class B firefighting foam" means a foam used for the purpose of extinguishing flammable liquid fires; and

(3) "Testing" includes calibration testing, conformance testing and fixed system testing as required by state or municipal law or policy.

(b) (1) On and after the effective date of this section, no person, local government or state agency shall use a class B firefighting foam that contains an intentionally added perfluoroalkyl or polyfluoroalkyl substance in any amount for training or testing purposes.

(2) Except as provided in subdivisions (3) to (5), inclusive, of this subsection, on and after October 1, 2021, no person shall use a class B

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firefighting foam that contains an intentionally added perfluoroalkyl or polyfluoroalkyl substance for any vapor suppression or firefighting purpose unless such fire is a flammable liquid-based fire and the Commissioner of Energy and Environmental Protection fails to identify an alternative to such use on or before July 1, 2021.

(3) For any airport-related entity with a facility that utilizes a fire suppression system containing class B firefighting foam that contains an intentionally added perfluoroalkyl or polyfluoroalkyl substance, on or before the effective date of this section, mitigation measures shall be employed to prevent releases of such foam into the environment, including the implementation of plans and physical features that are designed to prevent releases of such foam into the environment through the use of containment, treatment, and disposal of such foam, even when such foam is deployed in its intended manner. Not later than October 1, 2023, any such system shall be removed or repurposed to remove such firefighting foam.

(4) No person required by federal law to use a class B firefighting foam that contains an intentionally added perfluoroalkyl or polyfluoroalkyl substance in any amount shall use such foam upon the earlier of the following: (A) A change in federal law prohibiting the use of such foam, or (B) one year after a change in federal law to no longer require the use of such foam.

(5) Any person who operates a chemical plant, oil refinery, or terminal, storage or distribution facility for flammable liquids may request an extension of time for compliance with the requirements of subdivision (2) of this subsection by applying to the Commissioner of Energy and Environmental Protection for such an extension. Any such request shall specify why such extension is necessary and what containment, treatment, and disposal measures will be employed to prevent releases of such class B firefighting foam that contains an intentionally added perfluoroalkyl or polyfluoroalkyl substance into the

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environment until compliance with subdivision (2) of this subsection can be achieved. The Commissioner of Energy and Environmental Protection may grant such an extension if the commissioner determines that such extension is necessary to remove or repurpose a fire suppression system containing such foam. Any such extension that is granted by the commissioner pursuant to this subdivision shall be limited to not longer than two years.

(c) Not later than October 1, 2021, the Commissioner of Energy and Environmental Protection shall develop or identify a take-back program for municipally owned class B firefighting foam containing perfluoroalkyl and polyfluoroalkyl substances that results in the application of best management practices for the disposal of such substances.

(d) The provisions of this section may be enforced, within available appropriations, by the Commissioner of Energy and Environmental Protection.

Sec. 2. Section 22a-255h of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2021*):

As used in sections 22a-255g to 22a-255m, inclusive:

(1) "Package" means any container, produced either domestically or in a foreign country, used for the marketing, protecting or handling of a product and includes a unit package, an intermediate package and a shipping container, as defined in the American Society of Testing and Materials specification D966. "Package" also means any unsealed receptacle such as a carrying case, crate, cup, pail, rigid foil or other tray, wrapper or wrapping film, bag or tub.

(2) "Distributor" means any person who takes title or delivery from the manufacturer of a package, packaging component or product, produced either domestically or in a foreign country, to use for

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promotional purposes or to sell.

(3) "Packaging component" means any part of a package, produced either domestically or in a foreign country, including, but not limited to, any interior or exterior blocking, bracing, cushioning, weatherproofing, exterior strapping, coating, closure, ink, label, dye, pigment, adhesive, stabilizer or other additive. Tin-plated steel that meets specification A623 of the American Society of Testing and Materials shall be considered as a single packaging component. Electro-galvanized coated steel and hot dipped coated galvanized steel that meets the American Society of Testing and Materials specifications A653, A924, A879 and A591 shall be treated in the same manner as tin-plated steel.

(4) "Commissioner" means the Commissioner of Energy and Environmental Protection or an authorized agent or designee of the commissioner.

(5) "Department" means the Department of Energy and Environmental Protection.

(6) "Intermediate package" means a wrap, box, or bundle which contains two or more unit packages of identical items.

(7) "Unit package" means the first tie, wrap, or container applied to a single item, a quantity of the same item, a set, or an item with all its component parts, which constitutes a complete and identifiable package containing the unit of issue of a product for ultimate use.

(8) "Shipping container" means a container which is sufficiently strong to be used in commerce for packing, storing and shipping commodities.

(9) "Container" means a receptacle capable of closure.

(10) "Intentionally introduced" means deliberately utilized regulated

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metal or PFAS in the formulation of a package or packaging component where the continued presence of such metal or PFAS is desired in the final package or packaging component to provide a specific characteristic, appearance or quality. The use of a regulated metal as a processing agent or intermediate to impart certain chemical or physical changes during manufacturing where the incidental retention of a residue of said metal in the final package or packaging component is neither desired nor deliberate shall not be considered intentional introduction for the purposes of this section where such package or component is in compliance with subsection (c) of section 22a-255i, as amended by this act. The use of post-consumer recycled materials as feedstock for the manufacture of new packaging materials where some portion of the recycled materials may contain amounts of the regulated metals or PFAS shall not be considered intentional introduction for the purposes of this section provided the new package or packaging component is in compliance with subsection (c) or (e) of section 22a-255i, as amended by this act, as applicable.

(11) "Distribution" means the process for transferring a package or packaging component for promotional purposes or resale. Persons involved solely in delivering a package or packaging component on behalf of third parties shall not be considered distributors.

(12) "Manufacturer" means any person producing a package or packaging component as defined in subdivision (3) of this section.

(13) "Manufacturing" means the physical or chemical modification of a material to produce packaging or packaging components.

[(14) "Supplier" means any person, firm, association, partnership or corporation which sells, offers for sale or offers for promotional purposes packages or packaging components which will be used by any other person to package a product.]

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(14) "Incidental presence" means the presence of a regulated metal as an unintended or undesired ingredient of a package or packaging component.

(15) "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS" means all members of the class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

(16) "Post-consumer recycled material" means a material generated by households or by commercial, industrial and institutional facilities as end-users of the product which can no longer be used for its intended purpose, including returns of material from the distribution chain. "Post-consumer recycled material" does not include refuse-derived fuel or other material that is destroyed by incineration.

(17) "Food packaging" means any package or packaging component that is applied to or in direct contact with any food or beverage.

Sec. 3. Section 22a-255i of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2021*):

(a) As soon as feasible, but not later than October 1, 1992, no package or packaging component shall be offered for sale or promotional purposes in this state, by its manufacturer or distributor, if it is composed of any lead, cadmium, mercury or hexavalent chromium which has been intentionally introduced during manufacturing or distribution, as opposed to the incidental presence of any of these substances.

(b) As soon as feasible, but not later than October 1, 1992, no product shall be offered for sale or promotional purposes, in this state by its manufacturer or distributor, in a package which is composed of any lead, cadmium, mercury or hexavalent chromium which has been intentionally introduced during manufacturing or distribution, as opposed to the incidental presence of any of these substances.

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(c) No package or packaging component shall be offered for sale or promotional purposes in this state by its manufacturer or distributor if the sum of the incidental concentration levels of lead, cadmium, mercury and hexavalent chromium present in such package or packaging component exceeds the following: Six hundred parts per million by weight, effective October 1, 1992; two hundred fifty parts per million, effective October 1, 1993; and one hundred parts per million by weight, effective October 1, 1994.

(d) Concentration levels of lead, cadmium, mercury, and hexavalent chromium shall be determined using the United States Environmental Protection Agency Tests Methods for Evaluating Solid Waste, SW-846, as revised.

(e) As soon as feasible, but not later than December 31, 2023, no food package to which PFAS has been intentionally introduced during manufacturing or distribution in any amount shall be offered for sale or for promotional purposes in this state by its manufacturer or distributor.

(f) No material used to replace a chemical regulated by sections 22a-255g to 22a-255m, inclusive, in a package or packaging component may be used in a quantity or manner that creates a hazard as great as, or greater than, the hazard created by the chemical regulated by sections 22a-255g to 22a-255m, inclusive.

Sec. 4. Section 22a-255k of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2021*):

[No manufacturer or distributor of a product shall be deemed to have violated any provision of sections 22a-255g to 22a-255m, inclusive, if such manufacturer or distributor can show that, in the purchase of a package or packaging component, he relied in good faith on the written assurance of the manufacturer of such packaging or packaging component that such packaging or packaging component met the

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requirements of section 22a-255i. Such written assurance shall take the form of a certificate of compliance stating that a package or packaging component is in compliance with the requirements of sections 22a-255g to 22a-255m, inclusive, provided if compliance is achieved pursuant to an exemption provided in section 22a-255j, the certificate shall state the specific basis upon which the exemption is claimed. The certificate of compliance shall be signed by an authorized official of the manufacturer or distributor. A manufacturer or distributor of a package or packaging component shall furnish a copy of the certificate of compliance to the commissioner upon his request.]

(a) Upon request, a certificate of compliance stating that a package or packaging component is in compliance with the requirements of sections 22a-255g to 22a-255m, inclusive, shall be furnished by its manufacturer or distributor to the purchaser of the packaging or packaging component or the Commissioner of Energy and Environmental Protection, as applicable. In the event that an exemption is claimed pursuant to section 22a-255j, such certificate of compliance shall state the specific basis upon which the exemption is claimed. Any such certificate of compliance shall be signed by an authorized official of the manufacturing or distributor. A copy of the certificate of compliance shall be kept on file by the manufacturer or distributor of the package or packaging component provided any manufacturer or distributor may make the certificate of compliance available on such manufacturer's or distributor's Internet web site or through an authorized representative of such manufacturer or distributor, including, but not limited to, a packaging clearinghouse. Any request made pursuant to this subsection for any certificate of compliance from the manufacturer or distributor of a package or packaging component shall be: (1) Made in writing, (2) made specific as to the package or packaging component information requested, and (3) responded to by the manufacturer or distributor not later than sixty days after receipt of such request.

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(b) If the manufacturer or distributor of the package or packaging component reformulates or creates a new package or packaging component, the manufacturer or distributor shall amend the applicable certificate of compliance for the reformulated or new package or packaging component.

(c) If the commissioner has grounds to suspect that a package is offered for sale in violation of this chapter, the commissioner may request that the manufacturer or distributor of the package provide a certificate of compliance with the applicable provisions of this chapter. Not later than thirty days after receipt of a request under this subsection, the manufacturer or distributor shall: (1) Provide the commissioner with the certificate attesting that the package complies with the provisions of this chapter, or (2) notify persons who sell the package in this state that the sale of the package is prohibited and provide the commissioner with a copy of the notice and a list of the names and addresses of those persons notified pursuant to this section.