PA 21-191—sSB 837
Environment Committee

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

SUMMARY: This act generally prohibits (1) using class B firefighting foam with intentionally added perfluoroalkyl or polyfluoroalkyl substance (PFAS) and (2) offering for sale or promotional purposes food packaging with PFAS intentionally introduced during manufacturing or distribution. Under the act, class B firefighting foam is used to extinguish flammable liquid fires, and PFAS is a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

With respect to the foam, the act prohibits, upon passage, any person, local government, or state agency from using class B firefighting foam with intentionally added PFAS in any amount for training purposes or testing purposes (i.e., calibration, conformance, and fixed system testing). Beginning October 1, 2021, it also generally prohibits anyone from using this foam for vapor suppression or firefighting purposes unless the fire is flammable liquid-based and the Department of Energy and Environmental Protection (DEEP) commissioner does not identify an alternative to the foam by July 1, 2021.

Despite this ban, the act allows foam usage for vapor suppression or firefighting by (1) anyone required to use it under federal law; (2) certain facility operators who obtain a limited extension of time for compliance; and (3) until October 1, 2023, airport-related entities with systems that prevent its release into the environment.

For food packaging, the act prohibits (1) by December 31, 2023, manufacturers and distributors from offering for sale or promotional purposes food packaging or packaging components with intentionally introduced PFAS and (2) using a material that replaces a chemical regulated by the state packaging and packaging components law in an amount or way that creates an equal or greater hazard than the regulated chemical (see BACKGROUND).

The act expands the procedures required to show that a package or packaging component complies with the law's restrictions (i.e., certificates of compliance), which applies to existing restrictions on lead, mercury, cadmium, and hexavalent chromium and the act's PFAS ban. It applies existing civil and criminal penalties for violating the packaging and component law to the ban on PFAS in food packaging, including those for making false statements in certificates of compliance (see BACKGROUND).

The act requires the DEEP commissioner, by October 1, 2021, to develop or identify a take-back program for municipally owned class B firefighting foam with PFAS that applies best management practices for its disposal.

Lastly, the act makes minor, technical, and conforming changes.

EFFECTIVE DATE: Upon passage, except that the provisions on PFAS in food packaging and packaging components are effective October 1, 2021.

§ 1 — FIREFIGHTING FOAM

Firefighting and Vapor Suppression Use Exemptions

Beginning October 1, 2021, the act generally prohibits using class B firefighting foam with intentionally added PFAS for vapor suppression or firefighting purposes. However, the act allows the foam to be used when:

1. the fire is a flammable liquid-based fire and the DEEP commissioner does not identify an alternative by July 1, 2021, or
2. federal law requires someone to use the foam, but only until the earlier of (a) a change in federal law prohibiting the foam's use or (b) one year after federal law no longer requires its use.

The act also allows the foam to be used by (1) certain facility operators who obtain a limited extension of time for compliance from the DEEP commissioner and (2) an airport-related entity, until October 1, 2023, if it has a fire suppression system that uses the foam and has measures to prevent its release into the environment (see below).

Extension of Time to Comply. Under the act, the operator of a chemical plant; oil refinery; or flammable liquid terminal, storage, or distribution facility may apply to the DEEP commissioner for an extension of time to comply with the restrictions on using the foam for vapor suppression or firefighting purposes. The extension request must specify (1) why the extension is necessary and (2) what containment, treatment, and disposal measures will be used to prevent releases of the foam into the environment until compliance can occur.

The act allows the commissioner to grant up to a two-year extension if she determines that it is needed to remove or repurpose a fire suppression system containing the foam.

Airport Entities. The act exempts, until October 1, 2023, fire suppression systems containing the foam that are used by airport-related entity facilities as long as, by the date of the act's passage, the system uses mitigation measures to prevent releases of the foam into the environment. These measures must include implementing plans and physical features designed to prevent the releases by containment, treatment, and disposal, even when the foam is used in its intended manner. By October 1, 2023, the act requires the suppression systems to be removed entirely or repurposed so that the foam is removed from them.

Enforcement

The act authorizes the DEEP commissioner, within available appropriations, to enforce the restrictions on using this firefighting foam.

§§ 2-4 — PACKAGING AND PACKAGING COMPONENTS

PFAS in Food Packaging

The act prohibits, as soon as feasible but no later than December 31, 2023, manufacturers and distributors from offering for sale or promotional purposes food packages with PFAS that was intentionally introduced during manufacturing or distribution. It also prohibits using a material to replace PFAS or any other chemical regulated by the packaging and packaging component law that, either in amount or manner, equals or exceeds the hazard created by the regulated chemical.

Under the act, "food packaging" is a package or packaging component applied to or in direct contact with food or beverage. Additionally, the act considers "intentional introduction" of PFAS to be deliberate use to make a package or component where PFAS is wanted in the final product for a specific characteristic, appearance, or quality.

However, the act also specifies that it is not considered "intentional introduction" to use some amounts of PFAS in the part of post-consumer recycled materials as feedstock for manufacturing new packaging materials, so long as the new package or packaging component complies with the packaging and packaging component law. Under the act, "post-consumer recycled material" is household-generated material or a material generated 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. It does not include refuse-derived fuel or other material destroyed by incineration.

Certificate of Compliance

Prior law allowed product manufacturers and distributors to show that they complied with the law's composition restrictions by providing a certificate of compliance stating that they relied on the written assurance from the manufacturer about a package's or component's content. The provision applied to the following four metals: lead, cadmium, mercury, and hexavalent chromium.

The act replaces and expands upon these provisions. Under the act, upon request by either a packaging or packaging component purchaser or the DEEP commissioner, a manufacturer or distributor must provide a certificate of compliance, stating that it meets the law's content requirements for either PFAS or the four metals. As under prior law, (1) the certificate must be signed by an authorized official of the manufacturer or distributor and (2) if the package or component meets one of the existing exemptions that generally apply to the restricted metals, the certificate must state the specific reason it applies.

Under the act, such a request must be in writing and specific as to the requested package or component information. The manufacturer or distributor, as applicable, must respond to the request within 60 days after receiving it.

Manufacturers and suppliers must keep copies of their certificates on file, but they may make the certificates available on their websites or through an

authorized representative, such as a packaging clearinghouse.

Amended Certificates

If a package or packaging component manufacturer or distributor reformulates or creates a new package or component, the act requires it to amend the applicable certificate of compliance for the reformulated or new product.

Suspected Violation

Under the act, if the commissioner has grounds to suspect that a package (but not a packaging component) is offered for sale in violation of existing law and the act, she may ask its manufacturer or distributor to provide a certificate of compliance within the next 30 days.

The act requires the manufacturer or distributor to (1) give the commissioner the certificate attesting that the package complies with the law or (2) notify anyone selling the package in Connecticut that doing so is prohibited and give the commissioner a copy of the notice with the names and addresses of those sellers who received it.

BACKGROUND

Packaging and Components

Under existing law, a "package" is a container used to market, protect, or handle a product and includes a unit package, intermediate package, and shipping container. It also includes an unsealed receptacle such as a crate, cup, tray, wrapper, or bag, among other things. "Packaging components" are package parts such as interior or exterior blocking, bracing, cushioning, weatherproofing, exterior strapping, coating, closure, ink, label, dye, pigment, adhesive, stabilizer, or another additive (CGS § 22a-255h).

Penalties

By law, anyone who violates the packaging and packaging component law is subject to a civil penalty of up to $10,000 per offense, which the court sets. A violation includes making a false statement in a certificate of compliance. Each violation, and each day a violation continues, is a separate and distinct offense.

Knowingly violating this law, including false statements in certificates of compliance, is punishable by a fine of up to $50,000, up to one year in prison, or both. Each false statement is subject to the possible fine.

The law also allows the DEEP commissioner to ask the attorney general to seek an injunction to stop someone from continuing a violation (CGS § 22a-255*l*).