



General Assembly

Amendment

January Session, 2021

LCO No. 8517



Offered by:

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SEN. MINER, 30th Dist.
SEN. LOONEY, 11th Dist.
SEN. DUFF, 25th Dist.

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REP. GRESKO, 121st Dist.
REP. HARDING, 107th Dist.

To: Subst. Senate Bill No. 837

File No. 126

Cal. No. 126

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

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

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

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

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

9 (3) "Testing" includes calibration testing, conformance testing and

10 fixed system testing as required by state or municipal law or policy.

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

15 (2) Except as provided in subdivisions (3) to (5), inclusive, of this
16 subsection, on and after October 1, 2021, no person shall use a class B
17 firefighting foam that contains an intentionally added perfluoroalkyl or
18 polyfluoroalkyl substance for any vapor suppression or firefighting
19 purpose unless such fire is a flammable liquid-based fire and the
20 Commissioner of Energy and Environmental Protection fails to identify
21 an alternative to such use on or before July 1, 2021.

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

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

39 (5) Any person who operates a chemical plant, oil refinery, or
40 terminal, storage or distribution facility for flammable liquids may
41 request an extension of time for compliance with the requirements of

42 subdivision (2) of this subsection by applying to the Commissioner of
43 Energy and Environmental Protection for such an extension. Any such
44 request shall specify why such extension is necessary and what
45 containment, treatment, and disposal measures will be employed to
46 prevent releases of such class B firefighting foam that contains an
47 intentionally added perfluoroalkyl or polyfluoroalkyl substance into the
48 environment until compliance with subdivision (2) of this subsection
49 can be achieved. The Commissioner of Energy and Environmental
50 Protection may grant such an extension if the commissioner determines
51 that such extension is necessary to remove or repurpose a fire
52 suppression system containing such foam. Any such extension that is
53 granted by the commissioner pursuant to this subdivision shall be
54 limited to not longer than two years.

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

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

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

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

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

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

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

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

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

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

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

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

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

103 (10) "Intentionally introduced" means deliberately utilized regulated

104 metal or PFAS in the formulation of a package or packaging component
105 where the continued presence of such metal or PFAS is desired in the
106 final package or packaging component to provide a specific
107 characteristic, appearance or quality. The use of a regulated metal as a
108 processing agent or intermediate to impart certain chemical or physical
109 changes during manufacturing where the incidental retention of a
110 residue of said metal in the final package or packaging component is
111 neither desired nor deliberate shall not be considered intentional
112 introduction for the purposes of this section where such package or
113 component is in compliance with subsection (c) of section 22a-255i, as
114 amended by this act. The use of PFAS as a processing agent, mold
115 release agent or intermediate is considered intentional introduction for
116 the purposes of this section where PFAS is detected in the final package
117 or packaging component. The use of post-consumer recycled materials
118 as feedstock for the manufacture of new packaging materials where
119 some portion of the recycled materials may contain amounts of the
120 regulated metals or PFAS shall not be considered intentional
121 introduction for the purposes of this section provided the new package
122 or packaging component is in compliance with subsection (c) or (e) of
123 section 22a-255i, as amended by this act, as applicable.

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

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

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

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

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

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

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

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

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

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

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

165 (c) No package or packaging component shall be offered for sale or

166 promotional purposes in this state by its manufacturer or distributor if
167 the sum of the incidental concentration levels of lead, cadmium,
168 mercury and hexavalent chromium present in such package or
169 packaging component exceeds the following: Six hundred parts per
170 million by weight, effective October 1, 1992; two hundred fifty parts per
171 million, effective October 1, 1993; and one hundred parts per million by
172 weight, effective October 1, 1994.

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

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

181 (f) No material used to replace a chemical regulated by sections 22a-
182 255g to 22a-255m, inclusive, in a package or packaging component may
183 be used in a quantity or manner that creates a hazard as great as, or
184 greater than, the hazard created by the chemical regulated by sections
185 22a-255g to 22a-255m, inclusive.

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

188 [No manufacturer or distributor of a product shall be deemed to have
189 violated any provision of sections 22a-255g to 22a-255m, inclusive, if
190 such manufacturer or distributor can show that, in the purchase of a
191 package or packaging component, he relied in good faith on the written
192 assurance of the manufacturer of such packaging or packaging
193 component that such packaging or packaging component met the
194 requirements of section 22a-255i. Such written assurance shall take the
195 form of a certificate of compliance stating that a package or packaging
196 component is in compliance with the requirements of sections 22a-255g
197 to 22a-255m, inclusive, provided if compliance is achieved pursuant to

198 an exemption provided in section 22a-255j, the certificate shall state the
199 specific basis upon which the exemption is claimed. The certificate of
200 compliance shall be signed by an authorized official of the manufacturer
201 or distributor. A manufacturer or distributor of a package or packaging
202 component shall furnish a copy of the certificate of compliance to the
203 commissioner upon his request.]

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

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

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

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| This act shall take effect as follows and shall amend the following sections: | | |
| Section 1 | <i>from passage</i> | New section |
| Sec. 2 | <i>July 1, 2021</i> | 22a-255h |
| Sec. 3 | <i>July 1, 2021</i> | 22a-255i |
| Sec. 4 | <i>July 1, 2021</i> | 22a-255k |