

# STATE OF NEW YORK

8576

## IN SENATE

May 10, 2018

Introduced by Sen. HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to the use of perfluoroalkyl and polyfluoroalkyl chemicals in food packaging

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 2 of section 37-0203 of the environmental  
2 conservation law, as added by chapter 286 of the laws of 1990, is  
3 amended and three new subdivisions 5, 6 and 7 are added to read as  
4 follows:

5 2. "Manufacturer" shall mean a person, firm, association, partnership,  
6 organization, joint venture or corporation, who or which makes contain-  
7 ers to be used to package products.

8 5. "Food package" means a package or packaging component that is  
9 intended for direct food contact and is comprised, in substantial part,  
10 of paper, paperboard, or other materials originally derived from plant  
11 fibers.

12 6. "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS chemicals"  
13 means, for the purposes of food packaging, a class of fluorinated organ-  
14 ic chemicals containing at least one fully fluorinated carbon atom.

15 7. "Safer alternative" means an alternative substance or chemical,  
16 demonstrated by an alternatives assessment, that meets improved hazard  
17 and exposure considerations and can be practicably and economically  
18 substituted for the original chemical.

19 § 2. Sections 37-0209, 37-0211 and 37-0213 of the environmental  
20 conservation law are renumbered sections 37-0211, 37-0213 and 37-0215.

21 § 3. The environmental conservation law is amended by adding a new  
22 section 37-0209 to read as follows:

23 § 37-0209. Prohibition on the use of perfluoroalkyl and polyfluoroalkyl  
24 chemicals in food packaging.

25 1. Subject to the provisions of this section, no person may manufac-  
26 ture, knowingly sell, offer for sale, distribute for sale, or distribute  
27 for use in this state food packaging to which perfluoroalkyl and poly-

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 fluoroalkyl (PFAS) chemicals have been intentionally added in any  
2 amount.

3 2. (a) The department shall conduct a study to determine whether there  
4 are available safer alternatives to food packaging to which PFAS chemi-  
5 cals have been intentionally added. To determine whether safer alterna-  
6 tives to food packaging containing PFAS chemicals exist, the department  
7 shall conduct assessments of various available alternatives that:

8 (i) evaluate less toxic chemicals and nonchemical alternatives to  
9 replace the use of a PFAS chemical;

10 (ii) follow the guidelines for alternatives assessments issued by the  
11 Interstate Chemicals Clearinghouse; and

12 (iii) include, at a minimum, an evaluation of chemical hazards, expo-  
13 sure, performance, cost, and availability of such alternatives.

14 (b) In order to determine that one or more safer alternatives to the  
15 use of PFAS chemicals are available, the department must conclude that  
16 the safer alternatives to PFAS chemicals:

17 (1) are readily available in sufficient quantity and at a comparable  
18 cost to PFAS chemicals; and

19 (2) perform as well as or better than PFAS chemicals in a specific  
20 food packaging application.

21 (c) If the department determines that a safer alternative to the PFAS  
22 chemicals is another chemical, such chemical must have previously been  
23 approved for food contact by the United States food and drug adminis-  
24 tration, such as through the issuance of a determination that the chemi-  
25 cal has a reasonable certainty of causing no harm.

26 3. By January first, two thousand twenty, the department shall publish  
27 on its website its findings on whether a safer alternative to PFAS chemi-  
28 icals in specific applications of food packaging are available for each  
29 assessed application and shall submit a report with the department's  
30 findings, including feedback from peer review of the department's alter-  
31 natives assessment, if any, to the governor and to the legislature.

32 4. (a) If the department determines that a safer alternative is avail-  
33 able for use in a particular category of food packaging, the utilization  
34 of such safer alternative by manufacturers shall be required in accord-  
35 ance with the provisions of subdivision one of this section no later  
36 than two years after the date of the submission of the department's  
37 report to the governor and the legislature as required by subdivision  
38 three of this section.

39 (b) If the department determines that a safer alternative is not  
40 available for some or all categories of food packaging applications  
41 assessed by the department, the department shall annually review alter-  
42 natives for such applications in accordance with the provision of subdi-  
43 vision two of this section and shall report its findings to the governor  
44 and the legislature on such alternatives as required by subdivision  
45 three of this section by January first of each successive year. If the  
46 department subsequently determines that a safer alternative is available  
47 for use in a particular category of food packaging, the provisions of  
48 paragraph (a) of this subdivision shall apply to such packaging.

49 (c) The provisions of subdivision one of this section shall not apply  
50 to a particular category of food packaging until the department deter-  
51 mines that a safer alternative is available for use with respect to such  
52 category and has reported its findings to the governor and the legisla-  
53 ture in accordance with the provisions of this section.

54 § 4. Subdivision 2 of section 37-0211 of the environmental conserva-  
55 tion law, as added by chapter 286 of the laws of 1990, such section as  
56 renumbered by section two of this act, is amended to read as follows:

1     2. (a) No manufacturer or distributor of a product shall be held in  
2 violation of this title who can show that, in the purchase of a package  
3 or packaging component, he or she relied in good faith on the written  
4 assurance of the manufacturer of such packaging or packaging component  
5 that such packaging or packaging component met the requirements of this  
6 title. Such written assurance shall take the form of a certificate of  
7 compliance stating that a package or packaging component is in compli-  
8 ance with the requirements of this title, provided however, where  
9 compliance is achieved under an exemption provided in subdivision two or  
10 three of section 37-0207 of this title, the certificate shall state the  
11 specific basis upon which the exemption is claimed. The certificate of  
12 compliance shall be signed by an authorized official of the manufactur-  
13 ing or distributing company.

14     (b) With respect to the prohibition on the use of perfluoroalkyl and  
15 polyfluoroalkyl chemicals in food packaging as provided in section  
16 37-0209 of this title, a manufacturer shall develop a compliance certifi-  
17 cate by the date of a prohibition taking effect under such section.

18     (c) If the manufacturer or supplier of the package or packaging compo-  
19 nent reformulates or creates a new package or packaging component, the  
20 manufacturer shall develop an amended or new certificate of compliance  
21 for the reformulated or new package or packaging component.

22     § 5. This act shall take effect immediately. Effective immediately,  
23 the addition, amendment and/or repeal of any rule or regulation neces-  
24 sary for the implementation of this act on its effective date are  
25 authorized and directed to be made and completed on or before such  
26 effective date.