STATE OF NEW YORK

439--A

Cal. No. 594

2019-2020 Regular Sessions

IN SENATE

(Prefiled)

January 9, 2019

Introduced by Sens. HOYLMAN, BIAGGI, BRESLIN, BROOKS, CARLUCCI, HARCKHAM, KAVANAGH, MAYER, METZGER, SERRANO, SKOUFIS, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the executive law, in relation to reducing the use of PFAS chemicals in firefighting activities

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

Section 1. The executive law is amended by adding a new section 159-b to read as follows:

§ 159-b. Restrictions on the use of firefighting equipment containing PFAS chemicals. 1. As used in this section, unless the context clearly requires otherwise:

(a) "Chemical plant" means a large integrated plant or that portion of such a plant other than a refinery or distillery where flammable liquids are produced by chemical reactions or used in chemical reactions.

(b) "Class B firefighting foam" means foams designed to extinguish flammable liquid fires.

(c) "Firefighting personal protective equipment" means any clothing designed, intended, or marketed to be worn by firefighting personnel in the performance of their duties, designed with the intent for the use in firefighting and rescue activities, including jackets, pants, shoes, gloves, helmets, and respiratory equipment.

(d) "Local governments" includes any county, city, town, fire district, regional fire protection authority, or other special purpose district that provides firefighting services.

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

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(e) "Manufacturer" includes any person, firm, association, partnership, corporation, organization, joint venture, importer or domestic distributor of firefighting agents or firefighting equipment.

(f) "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS chemicals" means, for the purposes of firefighting agents and firefighting equipment, a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

(g) "Person" means any individual, partnership, association, public or private corporation, limited liability company or any other type of legal or commercial entity, including their members, managers, partners, directors, or officers.

(h) "Terminal" means a fuel storage and distribution facility that has been assigned a terminal control number by the internal revenue service.

2. No person, local government, or state agency may discharge or otherwise use for training purposes class B firefighting foam that contains intentionally added perfluoroalkyl and polyfluoroalkyl substances (PFAS chemicals).

3. (a) Commencing two years after the effective date of this section, no manufacturer of class B firefighting foam may manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in this state class B firefighting foam to which perfluoroalkyl and polyfluoroalkyl substances (PFAS chemicals) have been intentionally added except as provided in paragraph (b) of this subdivision.

(b) The restrictions in paragraph (a) of this subdivision shall not apply to the manufacture, sale, or distribution of class B firefighting foam:

(1) to a person for use at a terminal operated by the person or an oil refinery operated by the person;

(2) to a person for use at a chemical plant operated by the person;

(3) to a fire department, for a period not to exceed five years after the effective date of this section, for use by such department solely in emergency situations for the purpose of fighting large-scale fires caused by combustible liquids which occur:

(i) at a terminal, oil refinery, chemical plant, or dedicated fuel storage facility; or

(ii) during the process of transporting such liquids; or

(4) where the inclusion of PFAS chemicals are required by federal law, including but not limited to the requirements of 1421 C.F.R. 139.317, as that section exists as of the effective date of this section. In the event that applicable federal regulations change after the effective date of this section to allow the use of alternative firefighting agents that do not contain PFAS chemicals, the office of fire prevention and control may adopt rules that restrict PFAS chemicals for the manufacture, sale, and distribution of firefighting foam for uses that are addressed by the federal regulation.

(c) (1) A manufacturer of class B firefighting foam restricted under this subdivision shall notify, in writing, persons that sell the manufacturer's products in this state about the provisions of this section no less than one year prior to the implementation date of the restrictions set forth in this subdivision.

(2) A manufacturer that produces, sells, or distributes a class B firefighting foam prohibited under this subdivision shall recall the product prior to the implementation date of the restrictions set forth in this subdivision and reimburse the retailer or any other purchaser for the product.

4. (a) A manufacturer or other person that sells firefighting personal protective equipment to any person, local government, or state agency must provide written notice to the purchaser at the time of sale if the firefighting personal protective equipment contains PFAS chemicals. The written notice must include a statement that the firefighting personal protective equipment contains PFAS chemicals and the reason PFAS chemicals are added to the equipment.

(b) The manufacturer or person selling firefighting personal protective equipment and the purchaser of the equipment must retain the notice on file for at least three years from the date of the transaction. Upon the request of the office of fire prevention and control, a person, manufacturer, or purchaser must furnish the notice, or written copies, and associated sales documentation to the office of fire prevention and control within sixty days.

5. The office of fire prevention and control may request a certificate of compliance from a manufacturer of class B firefighting foam or firefighting personal protective equipment attesting to the manufacturer's compliance with the provisions of this section.

6. The office of fire prevention and control shall promulgate regulations to provide guidance to state agencies, fire protection districts and local governments in avoiding the purchase or use of class B firefighting foams to which PFAS chemicals have been intentionally added and to give priority and preference to the purchase of firefighting personal protective equipment that does not contain PFAS chemicals.

7. Any manufacturer or person in violation of the provisions of this section shall be subject to a civil penalty not to exceed five thousand dollars for each violation in the case of a first offense. Manufacturers, local governments, or persons that are repeat violators of the provisions of this section shall be subject to a civil penalty not to exceed ten thousand dollars for each repeat offense. Penalties collected under this section shall be deposited in the hazardous waste remedial fund created by section ninety-seven-b of the state finance law.

§ 2. This act shall take effect on the ninetieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.