STATE OF NEW YORK

8491

2021-2022 Regular Sessions

IN ASSEMBLY

November 17, 2021

Introduced by M. of A. ZEBROWSKI, THIELE, SIMON, BUTTENSCHON, DICKENS, GOTTFRIED, SEAWRIGHT, STECK, GALEF, O'DONNELL, ZINERMAN, CAHILL -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to phasing out the sale of products that contain intentionally added PFAS

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

Section 1. Article 37 of the environmental conservation law is amended by adding a new title 4 to read as follows:

TITLE 4

PRODUCTS CONTAINING PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES

Section 37-0401. Definitions.
37-0403. Notification.
37-0405. Exemptions.
37-0407. Prohibition on sale of products containing intentionally added PFAS.
37-0409. Failure to provide notice.
37-0411. Violations.
37-0413. Rules and regulations.

§ 37-0401. Definitions.

For the purposes of this title, the term: 1. "Currently unavoidable use" means a use of PFAS that the department has determined to be essential for health, safety or the functioning of society and for which alternatives are not reasonably available.

2. "Intentionally added chemical" shall have the same meaning as subdivision 11 of section 37-0901 of this article.

3. "Manufacturer" means the person that manufactures a product or whose brand name is affixed to the product. In the case of a product imported into the United States, "manufacturer" includes the importer or first domestic distributor of the product if the person that manufac-

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

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tured or assembled the product or whose brand name is affixed to the product does not have a presence in the United States.

4. "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS" means substances that include any member of the class of fluorinated organic chemicals containing at least one fully flourished carbon atom.

5. "Product" means an item manufactured, assembled, packaged or otherwise prepared for sale to consumers, including its product components, sold or distributed for personal, residential, commercial or industrial use, including for use in making other products.

6. "Product component" means an identifiable component of a product, regardless of whether the manufacturer of the product is the manufacturer of the component.

7. "Carpet or rug" means a fabric marketed or intended to be used as a flooring covering.

8. "Cookware" means a durable houseware item that is used in homes and restaurants to prepare, dispense, or store food, foodstuffs or beverages. "Cookware" includes but is not limited to pots, pans, skillets, grills, baking sheets, baking molds, trays, bowls and cooking utensils.

9. "Cosmetic product" shall have the same meaning as subdivision 1 of section 37-0117 of this article.

10. "Personal care product" shall have the same meaning as subdivision 2 of section 37-0117 of this article.

11. "Fabric treatment" means a substance applied to a fabric to give the fabric one or more characteristics including but not limited to stain or water resistance.

§ 37-0403. Notification.

A manufacturer of a product for sale in the state that contains perfluoroalkyl and polyfluoroalkyl substances (PFAS) as intentionally added chemicals shall comply with the requirements of this section.

1. Beginning January first, two thousand twenty-four, a manufacturer of a product for sale in the state that contains perfluoroalkyl and polyfluoroalkyl substances (PFAS) as intentionally added chemicals shall submit to the department a written notification that includes:

(a) a brief description of the product;

(b) the purpose for which PFAS are used in the product, including any product components;

(c) the amount of each of the PFAS, identified by its chemical abstracts service registry number, in the product, reported as an exact quantity determined using commercially available analytic methods or as falling within a range approved for reporting purposes by the department;

(d) the name and address of the manufacturer, and the name, address and phone number of a contact person for the manufacturer; and

(e) any additional information established by the department by rule as necessary to implement the requirements of this section.

2. With the approval of the department, a manufacturer may supply the information required in subdivision 1 of this section for a category or type of product rather than for each individual product.

3. A manufacturer shall update and revise the information in the written notification required in subdivision 1 of this section whenever there is significant change in the information or when requested to do so by the department.

4. The department may extend the deadline for submission by a manufacturer of the information required under this section if deemed necessary.

§ 37-0405. Exemptions.

The following are exempt from this section:

1. A product for which federal law governs the presence of PFAS in the product in a manner that preempts state authority; and

2. Any product containing perfluoroalkyl and polyfluoroalkyl substances (PFAS) as intentionally added chemicals which have been deemed by the department as a currently unavoidable use.

§ 37-0407. Prohibition on sale of products containing intentionally added PFAS.

1. Beginning January first, two thousand twenty-five, a person shall not distribute, sell or offer for sale in this state any carpet or rug, cookware, cosmetic product, fabric treatment or personal care product that contains perfluoroalkyl and polyfluoroalkyl substances (PFAS) as intentionally added chemicals, unless the department has determined that the use of PFAS in such product is currently an unavoidable use.

2. The department may identify products by category or use that may not be sold, offered for sale or distributed in this state if they contain perfluoroalkyl and polyfluoroalkyl substances (PFAS) as intentionally added chemicals if the department determines that such products are likely to cause contamination of land or water resources and are a threat to human health or safety.

3. Beginning January first, two thousand thirty, a person shall not distribute, sell or offer for sale in this state any product that contains perfluoroalkyl and polyfluoroalkyl substances (PFAS) as intentionally added chemicals unless the department has determined that the use of PFAS is a currently unavoidable use.

4. The department shall publish and maintain a list of products that are exempt from the prohibition on distribution, sale or offer of sale as determined to be a currently unavoidable use.

5. The prohibition on distribution, sale or offer of sale in this section does not apply to the sale or resale of used products.

§ 37-0409. Failure to provide notice.

1. (a) A person shall not distribute, sell or offer for sale in this state a product that contains perfluoroalkyl and polyfluoroalkyl substances (PFAS) as intentionally added chemicals if the manufacturer has failed to comply with requirements in section 37-0403 of this title except where such product containing perfluoroalkyl and polyfluoroalkyl substances (PFAS) as intentionally added chemicals, which have been deemed by the department as a currently unavoidable use.

(b) The prohibition in this section shall not apply to a retailer in the state unless the retailer distributes, sells, or offers for sale a product for which the retailer has received notification that the sale of the product is prohibited.

2. If the department has reason to believe that a product contains perfluoroalkyl and polyfluoroalkyl substances (PFAS) as intentionally added chemicals being distributed, sold or offered for sale in violation of this section, the department may direct the manufacturer of the product to, within thirty days:

(a) provide the department with a statement attesting that the product does not contain perfluoroalkyl and polyfluoroalkyl substances (PFAS) as intentionally added chemicals; or

(b) notify persons who sell that product in this state that the sale of that product is prohibited in this state and provide the department with a list of the names and addresses of those notified.

§ 37-0411. Violations.

1. A violation of any of the provisions of this title or any rule or regulation promulgated pursuant thereto shall be punishable in the case

of a first violation, by a civil penalty not to exceed ten thousand dollars. In the case of a second and any further violation, the liability shall be for a civil penalty not to exceed twenty-five thousand dollars for each violation.

2. No manufacturer, distributor or retailer of a product shall be held in violation of this title who can show that he or she relied in good faith on the written assurance of the manufacturer of such covered product that such product met the requirements of this title. Such written assurance shall take the form of a certificate of compliance stating that a product is in compliance with the requirements of this title, provided however, where compliance is achieved because the product is exempt pursuant to section 37-0405 of this title, the certificate shall state the specific basis upon which the product is exempt. The certificate of compliance shall be signed by an authorized official of the manufacturing or distributing company.

§ 37-0413. Rules and regulations.

The commissioner shall have the power to adopt such rules and regulations to provide for the effective application and enforcement of this title as deemed necessary.

§ 2. This act shall take effect immediately.