

FINAL BILL REPORT

ESHB 2658

C 138 L 18
Synopsis as Enacted

Brief Description: Concerning the use of perfluorinated chemicals in food packaging.

Sponsors: House Committee on Environment (originally sponsored by Representatives McBride, Kagi, Peterson, Fitzgibbon, Doglio, Gregerson, Appleton, Jinkins, Ortiz-Self, Macri, Ryu, Pollet, Kloba, Goodman, Frame and Stanford).

House Committee on Environment
Senate Committee on Agriculture, Water, Natural Resources & Parks

Background:

Prohibited Substances in Packaging.

Since 1991 state law has restricted the intentional use of lead, cadmium, mercury, and hexavalent chromium in packaging or packaging components. Packaging includes containers used to market, protect, or handle a product, including shipping containers and unsealed receptacles like cups, crates, wrappers, bags, and tubs.

Manufacturers must develop certificates of compliance for packaging or packaging components certifying that the packaging does not include restricted substances in prohibited amounts, and noting the basis for any claimed exemption from those restrictions. Certificates of compliance must be kept on file by a manufacturer while packaging or packaging components are in use, and for three years after the last date of sale or distribution. When a manufacturer reformulates or develops a new package or packaging component, the manufacturer must update the certificate of compliance.

The Department of Ecology (ECY) may prohibit the sale of packages by a manufacturer if the manufacturer does not provide a certificate of compliance within 60 days of an ECY request.

Perfluoroalkyl and Polyfluoroalkyl Chemicals.

According to the ECY, perfluoroalkyl and polyfluoroalkyl chemicals (PFAS) are characterized by their resistance to oil, stains, grease, and water, as well as their durability, heat resistance, and anti-corrosive properties. The ECY has also identified PFAS as persistent, bioaccumulative, and toxic (PBT) substances. In 2016 under the ECY's PBT substances rule, the ECY began developing a chemical action plan (CAP) for PFAs in

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conjunction with the Department of Health to evaluate the chemical's uses, releases, impacts, and management. As of January 14, 2018, the ECY had published and solicited public feedback on a draft CAP, but has not yet published a final CAP.

Alternatives Assessments.

The Interstate Chemicals Clearinghouse (ICC), which is an association focused on safe chemical use and of which Washington is a member, published an alternatives assessment guide in January 2014, and an updated guide in January 2017. This alternatives assessment guide provides evaluative tools and processes for manufacturers, governments, and others to compare performance, hazard, cost, availability, exposure, and other relevant characteristics of chemicals used in processes or products. In January of 2015, the ECY published a state-specific alternatives assessment guide for small and medium-sized businesses based on the original ICC guide.

Federal Food Contact Product Approvals.

The United States Food and Drug Administration (U.S. FDA) oversees the safety of food, drugs, and cosmetics under the federal Food, Drug, and Cosmetic Act. Among the U.S. FDA's responsibilities is to regulate components of materials, including packaging, that act as indirect food additives or food contact materials. Food manufacturers must submit to the U.S. FDA a food contact notification containing certain information about a new substance in order to receive U.S. FDA approval to use a new substance as a food contact substance.

Summary:

Contingent upon the outcome of an alternatives assessment, manufacturers that apply a package to a product are restricted from selling, offering for sale, or distributing food packaging to which PFAS have been intentionally added. Food packaging is defined as paper, paperboard, or fiber-based materials that are intended for direct food contact.

The restrictions on PFAS in specific applications of food packaging are effective no earlier than January 1, 2022, and take effect only after the ECY identifies safer alternatives during an alternatives assessment as part of the PFAS CAP. The alternatives assessment must:

- evaluate less toxic chemicals and nonchemical alternatives;
- follow the ICC alternatives assessment guidelines;
- evaluate chemical hazard, performance, cost, and availability, at minimum; and
- result in the publication of findings in the Washington State Register and a report to the Legislature by January 1, 2020. The report to the Legislature must be accompanied by the feedback received by the ECY from an external peer review of its alternatives assessment.

A safer alternative must have improved hazard and exposure considerations and be able to be practicably and economically substituted for the original chemical in a specific food packaging application. Safer alternatives must be available in sufficient availability and at comparable cost, and must perform at least as well as PFAS. Chemical alternatives must have received U.S. FDA food contact approval. A safer alternative determination must be supported by feedback from an external peer review.

If the January 1, 2020 findings do not identify safer alternatives for specific applications of food packaging, then the ECY must continue to review the availability of safer alternatives to PFAS in food packaging applications annually by January 1 until safer alternatives are identified, after which the restrictions will take effect two years later.

Manufacturers must develop a compliance certificate by the time the prohibition on PFAS in a specific food packaging application becomes effective, and must provide that certificate to the ECY within 60 days of a request.

Votes on Final Passage:

House	56	41
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Senate	30	17

Effective: June 7, 2018