



# AFFF Update . . .

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## State and Federal Legislation on AFFF

Over the last two years state and federal laws have been passed in the United States that restrict the sale and use of aqueous film-forming foam (AFFF). These laws are focused on eliminating the use of PFAS (per- and polyfluoroalkyl substances), which include the fluorosurfactants that are key ingredients in AFFF.

PFAS is a term used to describe a broad category of persistent fluorochemicals of different carbon chain lengths, physical and toxicological properties, and environmental impacts. Long-chain PFAS such as PFOS and PFOA are considered to be bioaccumulative and toxic, whereas the short-chain PFAS used in modern foams are not. Nevertheless, over the last few years some legislators and regulators have been advocating for broadly regulating PFAS substances as a group.

Below are summaries of state and federal laws that impact the sale and use of AFFF and other less common fluorinated class B foams such as FFFP and FP.

### New Hampshire

Beginning on January 1, 2020, PFAS-containing foams (AFFF) may not be discharged or otherwise used in New Hampshire for training or testing purposes. However, testing may occur if the Department of Environmental Services has evaluated the testing facility for containment, treatment, and disposal measures to prevent uncontrolled release of foam to the environment.

“Testing” includes calibration testing, conformance testing, and fixed system testing.

Beginning on January 1, 2020, manufacturers may sell or distribute PFAS-containing foams (AFFF) in New Hampshire only for the following specific uses:

- Applications where the use of a PFAS-containing firefighting foam is required by Federal law, including but not limited to the requirements of 14 C.F.R. 139.317 (such as military and FAA airports)
- Chemical plants, refineries, re-refineries
- Storage or distribution facility, tank farm, or terminal for flammable liquids

Manufacturers of PFAS-containing foams must notify sellers of their products in New Hampshire of these restrictions in writing before January 1, 2021.

A manufacturer that produces, sells, or distributes PFAS-containing foam (AFFF) to a prohibited use after January 1, 2020 shall recall the product and reimburse the retailer or any other purchaser for the product.

“Manufacturer” includes any person, firm, association, partnership, corporation, organization, joint venture, importer, or domestic manufacturer or distributor of firefighting agents or firefighting equipment.

[http://gencourt.state.nh.us/bill\\_Status/billText.aspx?sy=2019&cid=1050&txtFormat=pdf&v=current](http://gencourt.state.nh.us/bill_Status/billText.aspx?sy=2019&cid=1050&txtFormat=pdf&v=current)

<https://www.nh.gov/safety/divisions/firesafety/documents/PFASFoamFactSheet-FINAL.pdf>

## Washington

Beginning on July 1, 2018, PFAS-containing foams (AFFF) may not be discharged or otherwise used in Washington State for training purposes.

Beginning on July 1, 2020, manufacturers may sell or distribute PFAS-containing foams (AFFF) in Washington State only for the following specific uses:

- Applications where the use of a PFAS-containing firefighting foam is required by Federal law, including but not limited to the requirements of 14 C.F.R. 139.317 (such as military and FAA airports)
- Terminals (until January 1, 2024)
- Oil refineries (until January 1, 2024)
- Chemical plants (until January 1, 2024)

Terminals, oil refineries and chemical plants can apply to the state for waivers that could extend until January 1, 2028.

A use that becomes no longer Federally mandated would be banned within two years of the date that occurs.

Manufacturers of PFAS-containing foams must notify sellers of their products in Washington State of these restrictions in writing before July 1, 2019.

A manufacturer that produces, sells, or distributes a class B firefighting foam prohibited under this law shall recall the product and reimburse the retailer or any other purchaser for the product.

“Manufacturer” includes any person, firm, association, partnership, corporation, organization, joint venture, importer, or domestic distributor of firefighting agents or firefighting equipment.

<http://lawfilesexternal.leg.wa.gov/biennium/2019-20/Pdf/Bills/Session%20Laws/House/2265-S.SL.pdf?q=20200818111816>

<http://lawfilesexternal.leg.wa.gov/biennium/2017-18/Pdf/Bills/Session%20Laws/Senate/6413-S.SL.pdf?q=20200818112207>

<https://ecology.wa.gov/Waste-Toxics/Reducing-toxic-chemicals/Addressing-priority-toxic-chemicals/PFAS/Toxics-in-firefighting>

## Colorado

Beginning August 2, 2019, a person or fire department may not discharge or otherwise use for training purposes or for testing firefighting foam fire systems, class B firefighting foam that contains intentionally added PFAS (AFFF).

Any testing at a structure that is used for the storage or maintenance of aircraft is exempt from the testing restrictions as long as the structure is located in an FAA airport and has constructed containment systems capable of capturing all discharged firefighting foam.

Beginning on August 2, 2021, manufacturers may sell or distribute PFAS-containing foams (AFFF) in Colorado only for the following specific uses:

- Where the inclusion of PFAS chemicals is required by or authorized by Federal law including but not limited to 14 C.F.R. part 139, or implemented in accordance with FAA guidance, or otherwise required for a military purpose
- For use at a gasoline, special fuel, or jet fuel storage and distribution facility that is supplied by a pipeline, vessel, or refinery; a tank farm from which gasoline, special fuel, or jet fuel may be removed for distribution; or a refinery
- For use at a chemical plant
- For use at the Eisenhower-Johnson Tunnels, if deemed necessary by the DOT

Beginning January 1, 2023, the use of PFAS-containing foam (AFFF) shall be prohibited at structures used for the storage or maintenance of aircraft where the structure is located in an FAA airport.

Manufacturers of PFAS-containing foams must notify sellers of their products in Colorado of these restrictions in writing before August 2, 2020.

“Manufacturer” means a person or entity that manufactures firefighting agents or firefighting equipment and any agents of that person or entity, including an importer, a distributor, an authorized servicer, a factory branch, and a distributor branch.

[https://leg.colorado.gov/sites/default/files/2019a\\_1279\\_signed.pdf](https://leg.colorado.gov/sites/default/files/2019a_1279_signed.pdf)

[https://leg.colorado.gov/sites/default/files/2020a\\_1119\\_signed.pdf](https://leg.colorado.gov/sites/default/files/2020a_1119_signed.pdf)

## California

Beginning January 1, 2022 manufacturers may sell or distribute PFAS-containing foams and PFAS-containing foams may only be used for the following purposes:

- Where the inclusion of PFAS chemicals is required by federal law, including, but not limited to, Section 139.317 of Title 14 of the CFR
- For use in a fixed foam fire suppression system for class B fires that has in place a system designed for 110% containment (until January 1, 2024)

At a terminal or an oil refinery, which may include a fixed foam fire suppression system, for either of the following uses (until January 1, 2028):

- For use on a storage tank for combustible or flammable liquids with a surface area of 120 m<sup>2</sup> or greater
- For use for fire suppression on a fuel-in-depth pool

Terminals and oil refineries can apply to the state for waivers that could extend until January 1, 2032.

A use that becomes no longer Federally mandated would be banned one year after the date that occurs.

Manufacturers of PFAS-containing foams must notify sellers of their products in California of these restrictions in writing before July 1, 2021.

A manufacturer that produces, sells, or distributes PFAS-containing foam (AFFF) to a non-exempt use after January 1, 2021 shall recall the product by March 1, 2022 and reimburse the retailer or any other purchaser of the product. A manufacturer that produces, sells, or distributes PFAS-containing foam (AFFF) for use in a fixed foam fire suppression system after January 1, 2022 shall recall the product by March 1, 2024. A recall of the product shall include safe transport and storage and documentation of the amount and storage location of the PFAS-containing foam, unless and until the California Environmental Protection Agency formally identifies a safe disposal technology.

“Manufacturer” means a person that manufactures, imports, or distributes class B firefighting foam.

[http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200SB1044](http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB1044)

## New York

No person or state agency shall discharge or otherwise use for training purposes PFAS-containing foam (AFFF).

Beginning May 18, 2022, manufacturers may sell or distribute PFAS-containing foams (AFFF) in New York only for the following specific uses:

- Where the inclusion of PFAS chemicals are required by federal law or regulations
- For use in suppressing or preventing an ignitable liquid fire where the Office of Fire Prevention and Control, through promulgation of a rule, exempts a use of class B fire-fighting foam on the basis that an alternative firefighting agent that is effective in suppressing or preventing an ignitable liquid fire is not available

Manufacturers of PFAS-containing foams must notify sellers of their products in New York of these restrictions in writing within one year of the implementation date.

A manufacturer that produces, sells, or distributes a class B firefighting foam prohibited under this law shall recall the product, which includes collection, transport, treatment, storage and safe disposal, after the implementation date of the restrictions and reimburse the retailer or any other purchaser for the product.

“Manufacturer” includes any person, firm, association, partnership, corporation, organization, joint venture, importer or domestic distributor of firefighting agents or firefighting equipment.

<https://legislation.nysenate.gov/pdf/bills/2019/A8979>

## Illinois

Beginning January 1, 2022, a person, local government, fire department, or State agency may not use for training or testing purposes a Class B firefighting foam containing intentionally added PFAS. However, testing may occur if the facility has appropriate containment, treatment and disposal.

On and after January 1, 2025, a manufacturer of class B firefighting foam may not knowingly manufacture, sell, offer for sale, distribute for sale, or distribute for use a class B firefighting foam containing intentionally added PFAS.

Prohibitions do not apply where the inclusion of PFAS chemicals is required or authorized under federal law or local building or fire codes. However, if applicable federal law allows the use of alternative firefighting agents that do not contain PFAS chemicals, the restrictions shall apply.

Allows the following users to notify the Office of the State Fire Marshall indicating they will need until January 1, 2027 to come into compliance:

- Refinery or chemical plant or ethanol plant
- Storage and distribution facility, or a tank farm or terminal for flammable liquids
- Fixed foam system in use at a manufacturing facility or warehouse

Manufacturers are required to notify any fire department that they sell PFAS foam to after January 1, 2022 that the product contains PFAS and inform them of other class B foam options.

Manufacturers of PFAS-containing foams must notify sellers of their products in Illinois of these restrictions in writing.

Any person that uses a PFAS foam must report it to the Illinois Environmental Protection Agency within 48 hours.

“Manufacturer” means a person that manufactures Class B firefighting foam and any agents of that person, including an importer, distributor, authorized servicer, factory branch, or distributor branch.

<https://www.ilga.gov/legislation/102/SB/PDF/10200SB0561lv.pdf>

## Vermont

Beginning July 1, 2022, a person, municipality, or State agency shall not discharge or otherwise use for training or testing purposes class B firefighting foam that contains intentionally added PFAS (AFFF).

Beginning October 1, 2023, a manufacturer shall not manufacture, sell, offer for sale, or distribute for sale or use class B firefighting foam to which PFAS have been intentionally added, unless required by federal law.

These restrictions do not apply for use at a terminal until January 1, 2024, and a terminal may apply to the Department of Environmental Conservation for a one-year exemption beyond that date.

Manufacturers of PFAS-containing foams must notify sellers of their products in Vermont of these restrictions in writing before October 1, 2022.

A manufacturer that produces, sells, or distributes a class B firefighting foam prohibited under this law shall recall the product and reimburse the retailer or any other purchaser for the product. The manufacturer is also required to issue a press release or a notice on their website describing the recall and the reimbursement.

The Attorney General may request a certificate of compliance from a manufacturer of class B foam attesting that their products comply with the requirements of the law.

“Manufacturer” means any person, firm, association, partnership, corporation, organization, joint venture, importer, or domestic distributor of firefighting agents or equipment.

<https://legislature.vermont.gov/Documents/2022/Docs/ACTS/ACT036/ACT036%20As%20Enacted.pdf>

## Maine

Beginning January 1, 2022, a person may not discharge or cause to be discharged for testing or training purposes a firefighting or fire-suppressing foam to which PFAS have been intentionally added unless the foam is entirely collected by the person for proper disposal.

Beginning January 1, 2022, a person may not manufacture, sell, offer for sale, distribute for sale or distribute for use a firefighting or fire-suppressing foam to which PFAS have been intentionally added, except:

- For use at an oil terminal facility until January 1, 2025.
- For use at an airport as long as PFAS-containing foam is required by federal law or regulation to be used at airports. If no federal law or regulation requires the use of such foam at airports, the exception does not apply.

Manufacturers of PFAS-containing foams must notify sellers of their products in Maine of these restrictions in writing on or before January 1, 2022.

Manufacturers that sold PFAS-containing foam in Maine prior to January 1, 2022, must recall that product on or before January 1, 2022, and provide reimbursement for the foam.

Any person that discharges PFAS foam into or near any body of water must report it to the Maine Department of Environmental Protection within 24 hours.

The law does not prohibit discharge of a PFAS-containing foam in an emergency situation to protect life or property.

<http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=HP1115&item=2&snum=130>

## Connecticut

Beginning October 1, 2021, no person, local government or state agency shall use a class B firefighting foam that contains intentionally added PFAS in any amount for training or testing purposes.

Beginning October 1, 2021, no person shall use PFAS-containing foam for any vapor suppression or firefighting purpose unless the fire is a flammable liquid-based fire and the Commissioner of Energy and Environmental Protection fails to identify an alternative to the use on or before July 1, 2021.

A chemical plant, oil refinery, or terminal, storage or distribution facility for flammable liquids may request an extension of time for compliance with the Commissioner of Energy and Environmental Protection for no more than two years.

By October 1, 2021, any airport-related entity with a facility that utilizes a fire suppression system containing PFAS foam shall employ mitigation measures to prevent releases of the foam into the environment through the use of containment, treatment, and disposal. Not later than October 1, 2023, any such system shall be removed or repurposed to remove the PFAS-containing foam.

PFAS-containing foam can be used where required by federal law until one year after it is no longer required by federal law.

By October 1, 2021, the Commissioner of Energy and Environmental Protection shall develop or identify a take-back program for municipally owned PFAS-containing foam that results in the application of best management practices for the disposal.

<https://www.cga.ct.gov/2021/ACT/PA/PDF/2021PA-00191-R00SB-00837-PA.PDF>

## Maryland

Beginning October 1, 2021, class B foams that contain intentionally added PFAS chemicals may not be used for training purposes.

Beginning October 1, 2021, class B foams that contain intentionally added PFAS chemicals may not be used for testing purposes unless the use is required by law or the authority having jurisdiction, and the testing facility has implemented appropriate containment, treatment, and disposal measures.

Beginning January 1, 2024, a person may not use, manufacture, knowingly sell, offer for sale, or distribute for sale or use a firefighting foam that contains intentionally added PFAS chemicals.

These restrictions do not apply if the use is required by federal law.

These restrictions do not apply for use at an airport, a port, a refinery, or a chemical plant until September 30, 2024.

These restrictions do not apply for use at a terminal until December 31, 2027.

A person authorized to use PFAS foam after January 1, 2024, may not release the foam directly to the environment, shall implement containment measures and fully contain all releases on site, dispose of all firewater runoff in a way that prevents release to the environment, and report any release to the state within 5 days.

[https://mgaleg.maryland.gov/2022RS/Chapters\\_noln/CH\\_138\\_hb0275e.pdf](https://mgaleg.maryland.gov/2022RS/Chapters_noln/CH_138_hb0275e.pdf)

## Arizona, Georgia, Indiana, Kentucky, Michigan, Minnesota, Nevada, Virginia, Wisconsin

The states listed above have passed legislation that restricts the use of PFAS-containing foam (AFFF) for training and testing. These state laws do not restrict the sale or distribution of AFFF. Some of these state laws and the state laws summarized above have reporting and certification requirements for the use and storage of PFAS-containing foams (AFFF).

AZ <https://www.azleg.gov/legtext/54leg/1R/bills/sb1526h.pdf>

GA <http://www.legis.ga.gov/Legislation/en-US/display/20192020/HB/458>

IN <http://iga.in.gov/static-documents/7/4/b/a/74ba44f0/HB1189.04.ENRS.pdf>

KY <https://apps.legislature.ky.gov/record/19rs/sb104.html>

MI <http://www.legislature.mi.gov/documents/2019-2020/publicact/pdf/2020-PA-0143.pdf>

MN <https://www.revisor.mn.gov/statutes/cite/325F.072/pdf>

NV <https://www.leg.state.nv.us/App/NELIS/REL/81st2021/Bill/7397/Text>

VA <https://law.lis.virginia.gov/vacode/title9.1/chapter2/section9.1-207.1/>

WI [https://docs.legis.wisconsin.gov/2019/related/acts/101/1/\\_2](https://docs.legis.wisconsin.gov/2019/related/acts/101/1/_2)

## **Department of Defense**

The 2019 National Defense Authorization Act (NDAA) contains the following provisions requiring the replacement of AFFF with fluorine-free alternatives:

- Directs the Secretary of the Navy to publish a military specification for fluorine-free firefighting agent by January 31, 2023 and ensure that such agent is available for use no later than October 1, 2023
- Directs the Secretary of Defense to submit a plan to Congress for implementing the transition to fluorine-free firefighting agent by October 1, 2023
- Prohibits purchase of foam that contains PFAS (AFFF) after October 1, 2023, except for military shipboard use
- Prohibits use of AFFF by DOD after October 1, 2024 or earlier, except for military shipboard use
- Allows for a 1-year waiver of prohibition of use of AFFF after Oct 2024 provided an explanation by DOD is provided to Congress; allows for a 1-year extension of the waiver

<https://www.congress.gov/bill/115th-congress/house-bill/5515/text>

## **Federal Aviation Administration (FAA)**

The FAA Reauthorization Act of 2018 includes a provision requiring the FAA to change its standards for aircraft rescue and firefighting at airports by October 2021 to no longer require the use of fluorinated foam (AFFF). If implemented, this change could result in a future prohibition on the sale of AFFF to airports in states such as California, Washington and possibly others.

<https://www.congress.gov/115/plaws/publ254/PLAW-115publ254.pdf>