



AFFF Update . . .

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Fire Fighting Foam Coalition

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Special Edition

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&id=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.wa.gov/biennium/2019-20/Pdf/Bills/Session%20Laws/House/2265-S.SL.pdf?q=20200818111816>

<http://lawfilesexternal.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/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 m² 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

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>

Arizona, Georgia, Indiana, Kentucky, Maryland, Michigan, Minnesota, 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>

MD

http://mgaleg.maryland.gov/2020RS/chapters_noln/Ch_277_sb0420E.pdf

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>

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

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 fire fighting 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/P_LAW-115publ254.pdf