

**RCW 70A.400.020 Manufacture, sale, or distribution of certain class B firefighting foam restricted—Publication of findings—**

**Exceptions.** (1) Beginning July 1, 2020, a manufacturer of class B firefighting foam may not manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in this state class B firefighting foam to which PFAS chemicals have been intentionally added.

(2) (a) The restrictions in subsection (1) of this section do not apply to any manufacture, sale, or distribution of class B firefighting foam where the inclusion of PFAS chemicals are required by federal law, including but not limited to the requirements of 14 C.F.R. 139.317, as that section existed as of January 1, 2018.

(b) In the event that the requirements of 14 C.F.R. Sec. 139.317 or other applicable federal regulations change after January 1, 2018, to allow the use of alternative firefighting agents that do not contain PFAS chemicals, then as of the effective date of that change, the department shall publish a finding to that effect in the Washington State Register and submit this finding to the appropriate committees of the house of representatives and the senate. The department's publication regarding a change in the federal regulations must be specific with respect to the involved federal agency and use and, if identified by the federal agency, the alternative firefighting agent. Two years after publication in the Washington State Register, the restrictions of subsection (1) of this section apply to the manufacture, sale, and distribution of class B firefighting foam that contains intentionally added PFAS chemicals for the uses specified in 14 C.F.R. Sec. 139.317 or other applicable federal regulations. However, the restrictions of subsection (1) of this section do not take effect for an additional year if all of the airports in Washington certificated under 14 C.F.R. Sec. 139 have not been able to secure alternative firefighting agents and any necessary infrastructure to apply the agent in order to meet certification requirements, as determined by the department. Eighteen months after the department's original publication in the Washington State Register, each section 139 licensed airport shall report to the department on the airport's status with respect to obtaining alternative firefighting agents approved by the federal aviation administration and any necessary infrastructure. The department must publish a second notice delaying the restrictions under subsection (1) of this section for an additional year if the department has determined that any section 139 airport is unable to secure alternative firefighting agents without intentionally added PFAS chemicals or infrastructure to meet certification requirements because the agents or infrastructure are not commercially available.

(3) (a) The restrictions in subsection (1) of this section do not apply until January 1, 2024, to any manufacture, sale, or distribution of class B firefighting foam to a person for use at a terminal, as defined in RCW 82.23A.010, operated by the person, a chemical plant operated by the person, or an oil refinery operated by the person.

(b) A person who operates a chemical plant, refinery, or terminal may apply to the department for a waiver. A waiver may only be for two years and may only be extended by the department for one additional two-year term. The department may grant a waiver if the applicant provides:

(i) Clear and convincing evidence that there is no commercially available replacement that does not contain intentionally added PFAS

chemicals that is capable of suppressing a large atmospheric storage tank fire;

(ii) Information on the amount of firefighting foam containing intentionally added PFAS chemicals stored, used, or released on-site on an annual basis;

(iii) A report on the progress being made by the operator of the chemical plant, terminal, or refinery to transition to use of firefighting foam at the facility that does not contain intentionally added PFAS chemicals; and

(iv) An explanation of how all releases of firefighting foam will be fully contained on-site and how existing containment measures will not allow firewater, wastewater, runoff, and other wastes to be released to the environment including, but not limited to, soils, groundwater, waterways, and stormwater.

(c) Nothing in this section prohibits an oil refinery or terminal from providing class B firefighting foam in the form of mutual aid to another refinery or terminal in the event of a class B fire. [2020 c 23 § 1; 2018 c 286 § 3. Formerly RCW 70.75A.020.]