

# FINAL BILL REPORT

## ESHB 2265

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Synopsis as Enacted

**Brief Description:** Eliminating exemptions from restrictions on the use of perfluoroalkyl and polyfluoroalkyl substances in firefighting foam.

**Sponsors:** House Committee on Environment & Energy (originally sponsored by Representatives Doglio, Leavitt, Shewmake, Duerr, Fey, Peterson and Pollet).

**House Committee on Environment & Energy**  
**Senate Committee on Environment, Energy & Technology**

### **Background:**

According to the Department of Ecology (Ecology), perfluoroalkyl and polyfluoroalkyl (PFAS) chemicals are characterized by their resistance to oil, stains, grease, and water, as well as their durability, heat resistance, and anti-corrosive properties. Ecology has also identified PFAS chemicals as persistent bioaccumulative toxins (PBTs).

In 2018 legislation was enacted to restrict firefighting foam, designed for flammable liquid fires, that contains intentionally added PFAS chemicals (PFAS foam). Under that legislation, since July 1, 2018, the use or discharge of PFAS foam for training purposes has been prohibited. In addition, beginning July 1, 2020, manufacturers, importers, and distributors may not manufacture, sell, or distribute PFAS foam. The 2020 restriction on manufacture, sale, and distribution of PFAS foam does not apply:

- to the manufacture, sale, and distribution of firefighting foam to persons operating oil terminals, oil refineries, or certain chemical plants that use or produce flammable liquids, for the use of PFAS foam by those persons at those facilities; or
- where the inclusion of PFAS chemicals in firefighting foam for liquid flammable fires is required by federal law, including where required under Federal Aviation Administration (FAA) regulations. In the event that the FAA regulations or other federal regulations change after January 1, 2018, Ecology is authorized to adopt rules for the manufacture, sale, and distribution of PFAS chemicals in firefighting foams for uses that are addressed by the federal regulation. In October 2018, as part of the FAA Reauthorization Act of 2018, the United States Congress directed the FAA to revise its regulations by 2021 to no longer require the use of fluorinated chemicals to meet performance standards for firefighting foam at airports.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Violations of manufacture, sale, distribution, and use restrictions on PFAS foam are subject to civil penalties of up to \$5,000 per violation for initial offenses and up to \$10,000 for repeat offenses.

**Summary:**

Beginning January 1, 2024, the manufacture, sale, and distribution of PFAS foam for use in chemical plants, oil refineries, and oil terminals is prohibited.

However, chemical plants, oil refineries, and oil terminals may apply to the Department of Ecology (Ecology) for a waiver from PFAS foam restrictions. Ecology may issue up to two two-year waivers to an applicant that provides:

- clear and convincing evidence that there is not a commercially available substitute to PFAS foam that is capable of suppressing a large atmospheric tank fire;
- information on the amount of PFAS foam annually stored, used, or released on-site;
- a report on facility-specific progress to phase out the use of PFAS foam; and
- an explanation of how firefighting foam releases will be contained on-site and not released to the environment.

Restrictions on the manufacture, sale, or distribution of PFAS foam to persons that operate oil refineries or terminals do not prohibit a refinery or terminal from providing mutual aid to another refinery or terminal in the event of a fire.

Restrictions on the manufacture, sale, and distribution of PFAS foam for uses subject to Federal Aviation Authority (FAA) regulation, or where otherwise required by federal law, take effect two years after Ecology publishes findings in the Washington State Register relating to how federal regulations have changed so as to no longer require the use of PFAS foam. The Washington State Register publication must be specific with respect to the involved federal agency, PFAS foam use, and, if identified by the federal agency, the alternative firefighting agent authorized under the federal law or regulation. Eighteen months after Ecology's publication in the Washington State Register, FAA-certified airports must report to Ecology regarding their status with respect to obtaining PFAS-free firefighting agents and infrastructure. If any FAA-certified airport is unable to obtain PFAS-free firefighting agents or infrastructure due to lack of commercial availability, the restrictions on PFAS foam sales and distribution for use at airports do not take effect until three years after Ecology's original publication of findings in the Washington State Register.

**Votes on Final Passage:**

House	92	4
Senate	36	12

**Effective:** June 11, 2020