
ENGROSSED SUBSTITUTE HOUSE BILL 2265

State of Washington

66th Legislature

2020 Regular Session

By House Environment & Energy (originally sponsored by Representatives Doglio, Leavitt, Shewmake, Duerr, Fey, Peterson, and Pollet)

READ FIRST TIME 02/03/20.

1 AN ACT Relating to eliminating exemptions from restrictions on
2 the use of perfluoroalkyl and polyfluoroalkyl substances in
3 firefighting foam; and amending RCW 70.75A.020.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 70.75A.020 and 2018 c 286 s 3 are each amended to
6 read as follows:

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

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

17 (b) In the event that the requirements of 14 C.F.R. Sec. 139.317
18 or other applicable federal regulations change after January 1, 2018,
19 to allow the use of alternative firefighting agents that do not
20 contain PFAS chemicals, then ~~((the department may adopt rules that~~
21 ~~restrict PFAS chemicals for the manufacture, sale, and distribution~~

1 ~~of firefighting foam for uses that are addressed by the federal~~
2 ~~regulation)) as of the effective date of that change, the department~~
3 ~~shall publish a finding to that effect in the Washington State~~
4 ~~Register and submit this finding to the appropriate committees of the~~
5 ~~house of representatives and the senate. The department's publication~~
6 ~~regarding a change in the federal regulations must be specific with~~
7 ~~respect to the involved federal agency and use and, if identified by~~
8 ~~the federal agency, the alternative firefighting agent. Two years~~
9 ~~after publication in the Washington State Register, the restrictions~~
10 ~~of subsection (1) of this section apply to the manufacture, sale, and~~
11 ~~distribution of class B firefighting foam that contains intentionally~~
12 ~~added PFAS chemicals for the uses specified in 14 C.F.R. Sec. 139.317~~
13 ~~or other applicable federal regulations. However, the restrictions of~~
14 ~~subsection (1) of this section do not take effect for an additional~~
15 ~~year if all of the airports in Washington certificated under 14~~
16 ~~C.F.R. Sec. 139 have not been able to secure alternative firefighting~~
17 ~~agents and any necessary infrastructure to apply the agent in order~~
18 ~~to meet certification requirements, as determined by the department.~~
19 ~~Eighteen months after the department's original publication in the~~
20 ~~Washington State Register, each section 139 licensed airport shall~~
21 ~~report to the department on the airport's status with respect to~~
22 ~~obtaining alternative firefighting agents approved by the federal~~
23 ~~aviation administration and any necessary infrastructure. The~~
24 ~~department must publish a second notice delaying the restrictions~~
25 ~~under subsection (1) of this section for an additional year if the~~
26 ~~department has determined that any section 139 airport is unable to~~
27 ~~secure alternative firefighting agents without intentionally added~~
28 ~~PFAS chemicals or infrastructure to meet certification requirements~~
29 ~~because the agents or infrastructure are not commercially available.~~

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

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

1 (i) Clear and convincing evidence that there is no commercially
2 available replacement that does not contain intentionally added PFAS
3 chemicals that is capable of suppressing a large atmospheric storage
4 tank fire;

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

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

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

17 (c) Nothing in this section prohibits an oil refinery or terminal
18 from providing class B firefighting foam in the form of mutual aid to
19 another refinery or terminal in the event of a class B fire.

20 ~~((4) The restrictions in subsection (1) of this section do not~~
21 ~~apply to any manufacture, sale, or distribution of class B~~
22 ~~firefighting foam to a person for use at a chemical plant operated by~~
23 ~~the person.))~~

--- END ---