

WSR 23-19-066

DEPARTMENT OF ECOLOGY

[Filed September 18, 2023, 10:17 a.m.]

Finding: Pursuant to RCW 70A.400.020 (2)(b), the Washington state department of ecology (ecology) finds that federal regulations have changed to allow the use of alternative firefighting agents that do not contain perfluoroalkyl and polyfluoroalkyl substances (also known as "PFAS" or "PFAS chemicals") at airports that are subject to 14 C.F.R. Sec. 139.317(k) (Section 139 Certificated airports).

Effect: Two years after the publication date of this state Register notice, a manufacturer of class B firefighting foam may not manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in Washington to Section 139 certificated airports any class B firefighting foam to which PFAS chemicals have been intentionally added.

Eighteen months after the publication date of this state register notice, each Section 139 certificated airport must report to ecology about the airport's procurement of approved alternative firefighting agents and any necessary related infrastructure.

In the event any Section 139 certificated airport is unable to secure alternative firefighting agents, ecology will publish a second notice delaying the restrictions for an additional year. This notice does not affect restrictions related to the discharge or use of class B firefighting foam for nontraining purposes or existing restrictions on the manufacture and distribution of class B foams containing PFAS chemicals to facilities not subject to federal requirements, nor does this notice affect those restrictions in effect starting January 2020 on manufacturers and retailers regarding their sale, manufacture, and distribution of class B firefighting foam.

Background: RCW 70A.400.050(2) defines "class B firefighting foam" as "foams designated for flammable liquid fires." Beginning in 2020, manufacturers of these foams were no longer allowed to manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in this state class B firefighting foam if PFAS chemicals were intentionally added to the foam.

This restriction on the distribution of class B firefighting foam containing PFAS chemicals in Washington does not apply if the inclusion of PFAS chemicals is required by federal law, including the requirements of 14 C.F.R. 139.317, adopted by the Federal Aviation Administration (FAA). RCW 70A.400.020 (2)(a) allows for the continued distribution of class B firefighting foams containing PFAS chemicals until federal requirements change. Upon the change in federal requirements, ecology must make findings, report on those findings in the Washington State Register, and submit the findings to the appropriate committees of the Washington state house of representatives and senate. Ecology is publishing this document in fulfillment of those requirements.

Federal changes: The National Defense Authorization Act (NDAA) for fiscal year 2020, P.L. 116-92, §322, 133 Stat. 1198 (2019), required the United States Department of Defense (DOD) to release a military specification for fluorine-free firefighting foam (F3) by January 31, 2023. The NDAA also required the DOD to ensure a fluorine-free firefighting alternative that meets that specification be available for use by October 1, 2023. Additionally, the NDAA prohibits the use of aqueous film-forming foam (AFFF) containing PFAS at military shore-based installations after October 1, 2024.

On January 6, 2023, the DOD released the new military specification no. MIL-PRF-32725 for the purchasing and use of F3—that is, class B firefighting foam that does not include intentionally-added PFAS chemicals. The new specification requires that the PFAS content must be less than one part per billion.

On January 12, 2023, the FAA released a CertAlert to all Title 14 C.F.R. Part 139 certificated Airport Operators informing them of the new military specification. Currently, AFFF that contains PFAS is the primary firefighting agent used at airports for fighting aircraft fuel fires. In the alert, the FAA noted it will "accept the airport operator's use of the new F3 extinguishing agent at certificated Part 139 airports," replacing AFFF, once F3 passes the military's performance standards qualification testing and is added to the Navy's Qualified Product List (QPL) and database. The FAA has authority under 14 C.F.R. Sec. 139.317(h) to allow this switch.

On September 12, 2023, the DOD certified Solberg three percent five-gallon SFFF and Solberg three percent 55-gallon SFFF as non-PFAS F3 firefighting agents that meet the military performance standard. The same day, the DOD added these two non-PFAS F3 foams to the Navy's QPL/Qualified Products Database (QPD). The DOD also authorized the use of these non-PFAS F3 firefighting agents at the military's shore-based installations. A list of the approved non-PFAS F3 firefighting agents appears at the end of this notice.

Conclusion: Ecology finds that DOD's certification of non-PFAS F3 agents, the addition of non-PFAS F3 agents to the Navy's QPL/QPD, DOD's authorization of non-PFAS F3 agents at the military's shore-based facilities, and FAA's authorization for the use of certified non-PFAS F3 agents at Section 139 certificated airports, combine to constitute a change in federal regulations.

As such, no later than March 31, 2025, each Section 139 certificated airport must report to ecology about the airport's procurement of DOD approved non-PFAS F3 firefighting agents and any necessary related infrastructure.

Effective September 30, 2025, a manufacturer of class B firefighting foam may not manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use at part [section] 139 certificated airports in Washington any class B firefighting foam to which PFAS chemicals have been intentionally added. This date may be extended by one year if any of Washington's Section 139 certificated airports are unable to secure approved F3 alternative firefighting agents and related infrastructure as determined by ecology. In case of a delay, ecology will publish a new notice in the Washington State Register reflecting an updated compliance deadline.

Questions regarding this notice should be directed to Sean Smith, product replacement coordinator, sean.smith@ecy.wa.gov, 425-324-0328.

Approved F3 firefighting agents as of the date of this posting: The following are F3 firefighting agents that currently appear in the Navy's QPL/QPD:

- Type 3, five Gallon Solberg three percent Mil-Spec SFFF, Perimeter Solutions LP; and
- Type 3, 55 Gallon three percent Mil-Spec SFFF, Perimeter Solutions LP.