
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)

1 AN ACT Relating to eliminating exemptions from restrictions on
2 the use of perfluoroalkyl and polyfluoroalkyl substances in
3 firefighting foam; amending RCW 70.75A.020; and adding a new section
4 to chapter 4.92 RCW.

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

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

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

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

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

1 ~~restrict PFAS chemicals for the manufacture, sale, and distribution~~
2 ~~of firefighting foam for uses that are addressed by the federal~~
3 ~~regulation))~~ as of the effective date of that change, the department
4 shall publish a finding to that effect in the Washington State
5 Register and submit this finding to the appropriate committees of the
6 house of representatives and the senate. The department's publication
7 regarding a change in the federal regulations must be specific with
8 respect to the involved federal agency and use and, if identified by
9 the federal agency, the alternative firefighting agent. Three hundred
10 sixty-five days after publication in the Washington State Register,
11 the restrictions of subsection (1) of this section apply to the
12 manufacture, sale, and distribution of class B firefighting foam that
13 contains intentionally added PFAS chemicals for the uses specified in
14 14 C.F.R. Sec. 139.317 or other applicable federal regulations.

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

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

24 (i) Clear and convincing evidence that there is no commercially
25 available replacement that does not contain intentionally added PFAS
26 chemicals that is capable of suppressing a large atmospheric storage
27 tank fire;

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

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

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

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

4 (4) The restrictions in subsection (1) of this section do not
5 apply until January 1, 2024, to any manufacture, sale, or
6 distribution of class B firefighting foam to a person for use at a
7 chemical plant operated by the person.

8 NEW SECTION. **Sec. 2.** A new section is added to chapter 4.92 RCW
9 to read as follows:

10 The state of Washington is liable for all damages arising out of
11 a class B fire at a terminal, as defined in RCW 82.23A.010, oil
12 refinery, or a chemical plant, as defined in RCW 70.75A.005, as a
13 result of the prohibition against the sale or distribution of class B
14 firefighting foam in RCW 70.75A.020.

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