

PFAS IN FIREFIGHTING FOAM (AFFF) AND EQUIPMENT: STATE-BY-STATE REGULATIONS

UPDATED: DECEMBER 2023

Dec 19, 2023

SUMMARY

Numerous states have either enacted or proposed regulations regarding per- or polyfluoroalkyl substances (“PFAS”) present in Class B Aqueous Film-Forming Foams (“AFFF”) used for firefighting, or present in firefighters’ clothing and equipment. These regulations typically involve restrictions in four general areas:

1. **Discharge or Use Restrictions.** These regulations usually limit or prohibit the use of AFFF in training or testing exercises, and may only allow the use of AFFF in active firefighting situations;
2. **Disposal, Storage, Inventory or “Take-back” Provisions.** Some states have enacted state run programs to purchase and dispose of AFFF, usually purchasing supplies from government agencies;
3. **Notification or Reporting Requirements.** When continued use of AFFF is allowed, some states have required that businesses report specific details regarding their discharge; and
4. **Limitations on Personal Protective Equipment (“PPE”).** Some states have limited or prohibited PPE for firefighters that contains PFAS compounds.

BACKGROUND

The specific regulations are described in the chart below, but the following is an overview of the potential risks that businesses may encounter as a result of AFFF use or storage.

- **Investigation and Remediation.** Businesses that own(ed) or operate(d) property where AFFF was historically used, stored, or disposed of may be the focus of investigation and remediation actions based upon PFAS impacts to drinking water, groundwater, and other media, as well as municipal systems like sewers and water treatment plants.

- **Impacted Industries.** To date, airports have been a significant focus of investigations by regulatory agencies, usually concentrating upon impacts to drinking water wells and groundwater resources on or adjacent to the property. If your business is involved in aviation, it may be advisable to review your company's current or historic use of AFFF. Other impacted industries include the oil and gas sector, military bases, marine facilities, mining, and certain types of industrial facilities.
- **Regulatory Compliance.** Some AFFF regulations impose use restrictions and reporting requirements on businesses that choose to continue to use AFFF. Failure to comply with those requirements creates additional regulatory enforcement risk.
- **Litigation.** Certain states, cities, and individual plaintiffs have filed suits based on impacts from AFFF, usually targeting the manufacturers of these chemicals as well as businesses that stored, used, or disposed of the chemicals.

While there are many technical AFFF resources available, the materials available on the [Interstate Technology Regulatory Council website](#) are particularly helpful. Additionally, [Michigan](#) and [New York](#) have provided useful information about AFFF that may assist interested parties both in those states and elsewhere.

NATIONAL DEFENSE AUTHORIZATION ACT

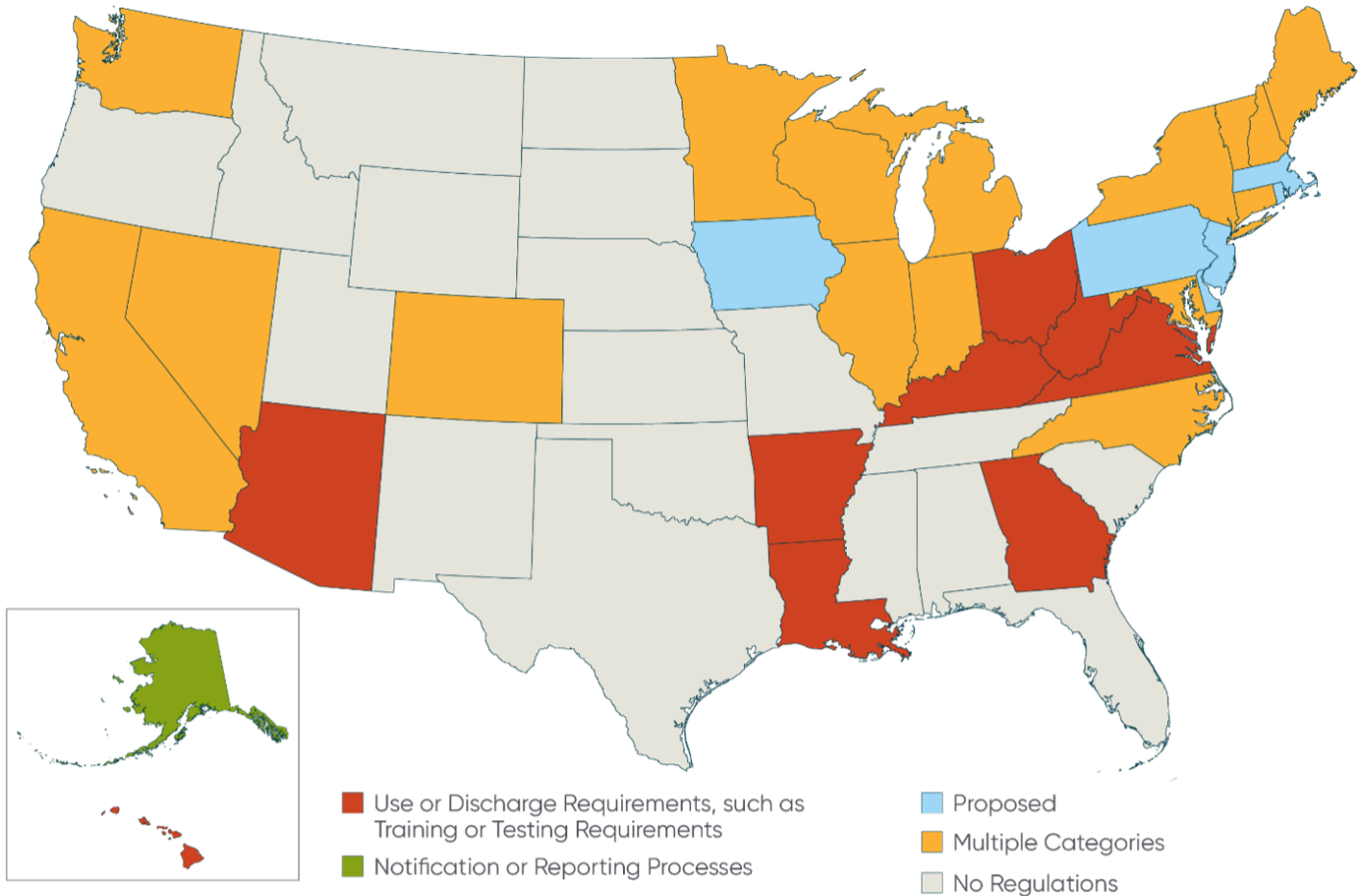
On December 20, 2019, Congress passed the [National Defense Authorization Act](#) ("NDAA") which requires the Department of Defense ("DOD") to stop purchasing PFAS-based firefighting foams by October 1, 2023, and stop using them completely by October 1, 2024. In the meantime, the NDAA forbids training exercises which cause any AFFF releases. The [NDAA FY 2024](#) recently passed both houses of Congress, but it does not specifically contain provisions relating to AFFF or PPE.

Importantly, the provisions of the NDAA only apply to military facilities on property owned by the federal government, and do not apply to any civilian facilities. However, defense contractors should be aware of the provisions of the NDAA both for planning and risk mitigation purposes.

INDIVIDUAL STATE REGULATIONS AND BILLS

A map showing the states that have enacted or proposed regulations regarding AFFF is below, along with detailed dropdowns providing more information regarding the specific provisions of those regulations. Because the regulation of AFFF is developing rapidly, it is important to note that this client alert reflects the status of state regulations in AFFF as of **December 15, 2023**.

ENACTED AND PROPOSED PFAS FIREFIGHTING FOAM REGULATIONS



As of December 15, 2023

ALASKA

PRODUCT CATEGORY

Notification: Immediately report discharges of AFFF as certain PFAS materials are defined as Hazardous Substances.

REGULATORY STATUS

Enacted

REFERENCE

Reporting discharges in regions pursuant to [18 AAC 75](#)

PRODUCT CATEGORY

Use and Storage Provisions: A person may not use a firefighting substance that contains PFAS compounds unless the use is permitted under federal or state law.

REGULATORY STATUS

Proposed

REFERENCE

[SB 67](#)

ARIZONA

PRODUCT CATEGORY

Use and Discharge: A person, local government or state agency may not discharge or use AFFF for training or testing purposes, unless the testing facility has implemented appropriate containment, treatment, and disposal measures to prevent releases to the environment.

REGULATORY STATUS

Enacted

REFERENCE

[Ariz. Rev. Stat. 36-1696](#)

[Related information](#)

ARKANSAS

PRODUCT CATEGORY

Use and Discharge: A person, local government, or state agency shall not discharge AFFF for training or testing purposes, unless the testing facility has implemented appropriate containment, treatment, and disposal measures to prevent releases to the environment.

REGULATORY STATUS

Enacted

REFERENCE

CALIFORNIA

PRODUCT CATEGORY

Use and Discharge: Manufacturers of AFFF are prohibited from selling or distributing AFFF. Discharges or uses of AFFF for training purposes are also prohibited.

REGULATORY STATUS

Enacted

REFERENCE

[Cal. Health & Safety Code 13061](#)

[Cal. Health & Safety Code 13062](#)

[Related information](#)

PRODUCT CATEGORY

Reporting: Entities that use AFFF shall report their use to the State Fire Marshal within five (5) business days.

REGULATORY STATUS

Enacted

REFERENCE

[Cal. Health & Safety Code 13061](#)

PRODUCT CATEGORY

Notification: A manufacturer of AFFF shall provide written notification to persons that sell the manufacturer's products. A manufacturer shall provide written notification for products sold after July 1, 2021.

REGULATORY STATUS

Enacted

REFERENCE

[Cal. Health & Safety Code 13061](#)

[Related information](#)

PRODUCT CATEGORY

PPE: A person, including a manufacturer, that sells PPE must provide written notification to the purchaser at the time of sale if the PPE contains PFAS substances.

REGULATORY STATUS

Enacted

REFERENCE

[Cal. Health & Safety Code 13029](#)

COLORADO

PRODUCT CATEGORY

Use and Discharge:

1. A person or fire department may not use or discharge any AFFF for training or testing purposes, subject to certain exceptions.
2. A manufacturer may not sell or distribute any AFFF that contains PFAS substances, subject to certain exceptions.
3. Beginning on January 1, 2024, a person that uses firefighting foam that contains intentionally added PFAS substances shall not use the foam and must fully contain the foam by implementing appropriate containment measures.

REGULATORY STATUS

Enacted

REFERENCE

[CRS §24-33.5-1234](#)

[CRS §25-5-1303](#)

PRODUCT CATEGORY

Notification:

1. A manufacturer of AFFF must provide written notification to anyone who sells the products prior to August 2, 2020.
2. A person that releases firefighting foam that contains intentionally added PFAS chemicals must report the release to the water quality spills hotline within 24 hours.
3. Beginning on January 1, 2024, a person that uses firefighting foam that contains intentionally added PFAS substances must report the use to the water quality spills hotline within 24 hours after use.

REGULATORY STATUS

Enacted

REFERENCE

[CRS §25-5-1304](#)

[HB22-1345](#)

PRODUCT CATEGORY

PPE: A person, including a manufacturer, that sells PPE must provide written notification to the purchaser at the time of sale if the PPE contains PFAS substances.

REGULATORY STATUS

Enacted

REFERENCE

[CRS §25-5-1305](#)

PRODUCT CATEGORY

Storage Program: The Department of Public Health and the Environment shall purchase and dispose of eligible materials, subject to available funds.

REGULATORY STATUS

Enacted

REFERENCE

[CRS §25-5-1311](#)

[Program details](#)

CONNECTICUT

PRODUCT CATEGORY

Use: No person, local government, or state agency shall use a foam with intentionally added PFAS substances for training or testing purposes. Also, no person shall use a firefighting foam that contains PFAS substances for any vapor suppression or firefighting purpose unless such fire is a flammable liquid-based fire, and the Commissioner of Energy and Environmental Protection failed to identify an alternative to such use before July 1, 2021.

REGULATORY STATUS

Enacted

REFERENCE

[Public Act 21-191](#)

[Related information](#)

PRODUCT CATEGORY

Storage Program: An agency shall develop a take-back program for municipal sources of PFAS substances.

REGULATORY STATUS

Enacted

REFERENCE

[Public Act 21-191](#)

[Program details](#)

PRODUCT CATEGORY

Funding: Provides funding to fire departments to remove PFAS from fire equipment and provides renovation and replacement of fire equipment affected by PFAS.

REGULATORY STATUS

Proposed

REFERENCE

[HB 6070](#)

[HB 5250](#)

DELAWARE

PRODUCT CATEGORY

Storage: The Fire School should: 1) ascertain the inventory of the AFFF currently stored within Delaware Fire Departments; and 2) to propose a plan for the safe disposal of inventory of AFFF.

REGULATORY STATUS

Proposed

REFERENCE

[HB 8](#)

GEORGIA

PRODUCT CATEGORY

Use and Discharge: No person, including fire departments, state agencies, and political subdivisions, shall discharge or use AFFF, subject to some exceptions.

REGULATORY STATUS

Enacted

REFERENCE

[O.C.G.A. §25-2-41](#)

HAWAII

PRODUCT CATEGORY

Use and Discharge: On July 1, 2024, any person, state or county department, or agency shall not discharge or use a Class B firefighting foam that contains PFAS chemicals for training purposes. Additionally, beginning on July 1, 2024, it shall be unlawful to manufacture, sell, or distribute a Class B firefighting foam that contains PFAS chemicals. Moreover, a manufacturer that produces, sells, or distributes a class B firefighting foam shall recall the product and reimburse the purchaser for the product.

REGULATORY STATUS

Enacted

REFERENCE

[HB 1644](#)

ILLINOIS

PRODUCT CATEGORY

Use and Discharge: A person, local government, fire department, or agency may not discharge AFFF for training or testing purposes. Also, beginning on January 1, 2025, the manufacture, sale, or distribution of a Class B Firefighting Foam is prohibited, subject to a few exceptions.

REGULATORY STATUS

Enacted

REFERENCE

[Public Act 102-0290](#)

[Related information](#)

PRODUCT CATEGORY

Notification: A person, local government, fire department, or agency that discharges firefighting foam that contains intentionally added PFAS substances must notify the Illinois Emergency Management Agency within 48 hours of the discharge.

REGULATORY STATUS

Enacted

REFERENCE

[Public Act 102-0290](#)

[Related information](#)

PRODUCT CATEGORY

Disposal: Incineration of any PFAS substance is prohibited, with the exception of landfill gas from decomposing materials that contain PFAS substances or other exceptions.

REGULATORY STATUS

Enacted

REFERENCE

[Public Act 102-1048](#)

[Related information](#)

PRODUCT CATEGORY

Storage Program: A voluntary take-back program is established for local fire departments and fire protection districts that store older firefighting foam made with PFAS materials.

REGULATORY STATUS

Proposed

REFERENCE

[HB 3128](#)

[SB 1927](#)

INDIANA

PRODUCT CATEGORY

Use: A person, unit, or state agency shall not use AFFF for training or testing purposes, unless the testing facility has implemented the appropriate containment, treatment, and disposal measures to prevent releases to the environment.

REGULATORY STATUS

Enacted

REFERENCE

[Indiana Code 36-8-10.7 et. seq](#)

[Related information](#)

PRODUCT CATEGORY

Disposal: The Indiana Department of Homeland Security and the Indiana Department of Environmental Management collects AFFF from fire departments or state agencies.

REGULATORY STATUS

In effect

REFERENCE

[Program details](#)

PRODUCT CATEGORY

Testing: The Department of Homeland Security will establish a biomonitoring program where firefighters will have their blood samples collected and analyzed.

REGULATORY STATUS

Proposed

REFERENCE

[SB 482](#)

IOWA

PRODUCT CATEGORY

Use: A person shall not manufacture, sell, or distribute Class B Firefighting Foam with PFAS substances, subject to an exception. Also, no person, including fire departments, shall discharge or use AFFF, subject to some exceptions.

REGULATORY STATUS

Proposed

REFERENCE

[HF 62](#)

PRODUCT CATEGORY

PPE: A person shall not manufacture, sell, or distribute PPE with PFAS substances.

REGULATORY STATUS

Proposed

REFERENCE

[HF 62](#)

KENTUCKY

PRODUCT CATEGORY

Use: AFFF shall not be used for training or testing purposes, unless the testing facility has implemented best industry practices to prevent uncontrolled releases into the environment.

REGULATORY STATUS

Enacted

REFERENCE

[Ky. Rev. Stat. 227.395](#)

LOUISIANA

PRODUCT CATEGORY

Use and Discharge: No person shall use or discharge AFFF unless such use or discharge occurs in fire prevention or in response to an emergency firefighting operation.

REGULATORY STATUS

Enacted

REFERENCE

[La Stat. 40 §1615](#)

MAINE

PRODUCT CATEGORY

Use and Discharge:

1. A person, local government, or state agency may not discharge firefighting foam to which PFAS substances have been added for testing or training, subject to some exceptions. Also, a person may not manufacture, sell, or distribute a firefighting foam to which PFAS substances have been added, subject to some exceptions.
2. Beginning on January 1, 2030, a person may not sell or distribute any product that contains intentionally added PFAS, unless it has been determined that the use of PFAS in the product is a currently unavoidable use.

REGULATORY STATUS

Enacted

REFERENCE

[Public Law Chapter 449](#) and [Public Law Chapter 477](#)

[Related information](#)

PRODUCT CATEGORY

Notification: A person that discharges a firefighting foam to which PFAS substances have been added shall report the discharge as soon as practicable, but no later than 24 hours after the discharge occurs.

REGULATORY STATUS

Enacted

REFERENCE

[Public Law Chapter 449](#)

MARYLAND

PRODUCT CATEGORY

Use: AFFF may not be used for training or testing purposes, subject to some exceptions. Also, after January 1, 2024, a person may not use, manufacture, or distribute Class B fire-fighting foam that contains intentionally added PFAS chemicals, subject to some exceptions.

REGULATORY STATUS

Enacted

REFERENCE

[Md. Code, Envir. §6-1603](#)

[Related information](#)

PRODUCT CATEGORY

PPE: If a person sells PPE that contains PFAS chemicals, the person shall provide written notice to the purchaser at the time of the sale.

REGULATORY STATUS

Enacted

REFERENCE

[Md. Code, Envir. §6-1603](#)

PRODUCT CATEGORY

Notification: Within five (5) days of a release, a person should report the release to the Maryland Department of the Environment.

REGULATORY STATUS

Enacted

REFERENCE

[HB 275](#)

PRODUCT CATEGORY

Disposal: A person may not dispose of AFFF using incineration or in landfills.

REGULATORY STATUS

Enacted

REFERENCE

[HB 275](#)

MASSACHUSETTS

PRODUCT CATEGORY

Storage Program: Beginning in 2018, this program has collected more than 330,000 pounds of foam.

REGULATORY STATUS

In effect

REFERENCE

[Program details](#)

[Related information](#)

PRODUCT CATEGORY

PPE: Beginning on January 1, 2025, a manufacturer or other person that sells PPE containing PFAS chemicals to any person, local government, or state agency shall provide written notification to the purchaser at the time of sale. Also, beginning on January 1, 2027, a manufacturer or other person that sells PPE containing PFAS chemicals shall not manufacture, sell, or distribute these materials.

REGULATORY STATUS

Proposed

REFERENCE

[S 1556](#)

MICHIGAN

PRODUCT CATEGORY

PPE: The Director of the Department of Licensing and Regulatory Affairs establishes rules involving the containment and handling of PFAS materials, including the decontamination of PPE, following the use of AFFF.

REGULATORY STATUS

Enacted

REFERENCE

[Mich. Comp. Laws 408-1014r](#)

PRODUCT CATEGORY

Use:

1. AFFF should not be used for equipment calibration purposes, subject to two exceptions.
2. AFFF must not be used in any training. Also, until December 31, 2023, the training must follow two requirements: (1) include the proper use, handling, and storage of the AFFF; and (2) adhere to the best environmental and public health practices, including the containment, disposal, and decontamination of the PPE used.

REGULATORY STATUS

Enacted

REFERENCE

[Mich. Comp. Laws 408-1014r](#)

[Mich. Comp. Laws 29-369c](#)

[Related information](#)

PRODUCT CATEGORY

Notification: The fire chief shall report to the Michigan Pollution Emergency Alert System immediately when a fire department uses AFFF.

REGULATORY STATUS

Enacted

REFERENCE

[Mich. Comp. Laws 324.14703](#)

PRODUCT CATEGORY

Storage Program: A collection program is available for entities properly disposing of any firefighting foam containing PFAS substances.

REGULATORY STATUS

Enacted

REFERENCE

[Mich. Comp. Laws 324.14705](#)

[Program details](#)

MINNESOTA

PRODUCT CATEGORY

Use and Discharge: No person, political subdivision, or state agency shall discharge AFFF for training purposes, subject to some exceptions, and for testing purposes, unless the testing facility has implemented appropriate containment, treatment, and disposal measures to prevent releases to the environment.

Note: There is a proposal to revise this statute to declare that no person, political subdivision, or state agency shall manufacture, sell, or distribute Class B firefighting foam containing PFAS substances. This proposal also creates some exemptions.

REGULATORY STATUS

Enacted and Proposed

REFERENCE

[Minn. Stat. 325F.072](#)

[HF 742 \(Proposed\)](#)

[Related information](#)

PRODUCT CATEGORY

Notification: Any person, political subdivision, or state agency that discharges AFFF must be reported to the Minnesota Fire Incident Reporting System within 24 hours of the discharge.

REGULATORY STATUS

Enacted

REFERENCE

[Minn. Stat. 325F.072](#)

NEVADA

PRODUCT CATEGORY

Notification: Any person, political subdivision, local government or agency that discharges, uses, or releases foam that contains PFAS substances shall notify the Division of Environmental Protection of the State Department of Conservation and Natural Resources within 24 hours after the release.

REGULATORY STATUS

Enacted

REFERENCE

[Nev. Rev. Stat. § 459.684](#)

PRODUCT CATEGORY

Use: A person should prevent the release of firefighting foam that contains PFAS substances to the surrounding environment, and requires that a person testing the foam has ensured that the proper containment, treatment and disposal of the foam are available at the testing location.

REGULATORY STATUS

Enacted

REFERENCE

[Nev. Rev. Stat. § 459.682](#)

[Related information](#)

NEW HAMPSHIRE

PRODUCT CATEGORY

Use and Discharge: No person, local government, or state agency may use AFFF for training or testing purposes, but the testing may occur if the facility implements the proper containment, treatment, and disposal measures to prevent any releases to the environment. Also, a manufacturer shall not sell or distribute AFFF, subject to some exceptions.

REGULATORY STATUS

Enacted

REFERENCE

[N.H. Rev. Statute §154:8-b](#)

[Related information](#)

PRODUCT CATEGORY

Storage: After evaluating some additional information, the Department of Environmental Services will establish a take-back program for the purpose of safe and contained disposal of firefighting foams containing PFAS materials.

REGULATORY STATUS

Enacted

REFERENCE

[N.H. Rev. Statute §154:8-b](#)

PRODUCT CATEGORY

Notification: The municipality discharging the AFFF shall notify the Department of Environmental Services within 48 hours of the discharge.

REGULATORY STATUS

Enacted

REFERENCE

[N.H. Rev. Statute §154:8-b](#)

[Related information](#)

PRODUCT CATEGORY

PPE: A manufacturer or other entity that sells PPE to any person, municipality, or state agency must provide written notice to the purchaser at the time of sale if the PPE contains PFAS chemicals.

REGULATORY STATUS

Enacted

REFERENCE

[N.H. Rev. Statute §154:8-c](#)

NEW JERSEY

PRODUCT CATEGORY

Use and Discharge: Beginning two years from the date of enactment, no person shall use or discharge a firefighting foam containing PFAS substances for training or testing purposes unless the testing facility has implemented containment, treatment, and disposal measures to prevent releases to the environment.

REGULATORY STATUS

Proposed

REFERENCE

[S402](#) and [S2712](#)

[Related information](#)

PRODUCT CATEGORY

Storage Program: AFFF materials (18,000 gallons) were disposed in this program in 2020.

REGULATORY STATUS

In effect

REFERENCE

[Program details](#)

NEW YORK

PRODUCT CATEGORY

Use and Discharge: No person, local government, or state agency will discharge or use AFFF for training purposes. Also, manufacturers may not manufacture, sell, or distribute AFFF, subject to some exceptions.

REGULATORY STATUS

Enacted

REFERENCE

[N.Y. Gen. Bus. Law § 391-U](#)

[Related information](#)

PRODUCT CATEGORY

PPE: A manufacturer or other person that sells PPE to any person, local government, or state agency must provide written notice to the purchaser at the time of sale if the PPE contains PFAS substances.

REGULATORY STATUS

Enacted

REFERENCE

[N.Y. Gen. Bus. Law § 391-U](#)

[Related information](#)

PRODUCT CATEGORY

Notification: Releases of a Hazardous Substance must be reported by an employee, agent, or representative of the person who has knowledge of the release to the Department's Spill Hotline within two (2) hours after discovery of the release. PFOS and PFOA are specifically listed as Hazardous Substances.

REGULATORY STATUS

Enacted

REFERENCE

[6 NYCRR 597](#)

[PFOS and PFOA - Hazardous Substances](#)

PRODUCT CATEGORY

Incineration: Incineration of AFFF shall be prohibited in a city with a population between 16,000 and 17,000 and in a region designated by the Department of Environmental Conservation as an environmental justice area.

REGULATORY STATUS

Enacted

REFERENCE

[A 9952](#)

PRODUCT CATEGORY

Recall: A manufacturer that produces, sells, or distributes a Class B firefighting foam that contains intentionally added PFAS shall recall the product sold or distributed prior to March 22, 2022.

REGULATORY STATUS

Proposed

REFERENCE

[S 7136](#)

NORTH CAROLINA

PRODUCT CATEGORY

Storage: The North Carolina Policy Collaboratory (“Collaboratory”) shall create an inventory of AFFF used or stored by fire departments in North Carolina operated, managed, or overseen by units of local government.

REGULATORY STATUS

Enacted

REFERENCE

[SB 433](#)

[Related information](#)

PRODUCT CATEGORY

Funding: Funding shall be allocated to the Collaboratory for programs related to management of AFFF and to PFAS-related research.

REGULATORY STATUS

Proposed

REFERENCE

[H 349](#)

[Collaboratory information](#)

PRODUCT CATEGORY

Use and Discharge: No manufacturer may manufacture, sell, or distribute Class B firefighting foam. Additionally, no person, local government, or agency may discharge Class B firefighting foam for training or practice purposes.

REGULATORY STATUS

Proposed

REFERENCE

H 732

OHIO

PRODUCT CATEGORY

Use: No person shall use AFFF for training or testing purposes, unless the facility has implemented appropriate containment, treatment, and disposal measures to prevent releases into the environment.

REGULATORY STATUS

Enacted

REFERENCE

Ohio Revised Code §3737.52

PENNSYLVANIA

PRODUCT CATEGORY

PPE: Beginning on January 1, 2028, a person may not distribute, manufacture, produce or sell PPE.

REGULATORY STATUS

Proposed

REFERENCE

HB 1541

RHODE ISLAND

PRODUCT CATEGORY

Disposal: The Rhode Island Department of Environmental Management established the AFFF Take Back initiative, and is coordinating with fire departments to assist with AFFF disposal.

REGULATORY STATUS

In effect

REFERENCE

[Program details](#) (See pgs. 7-8)

PRODUCT CATEGORY

Use and Discharge:

1. Beginning on January 1, 2024, no person, local government, or state agency may discharge Class B firefighting foam for training purposes.
2. Beginning on January 1, 2024, no manufacturer may manufacture, sell, or distribute a Class B firefighting foam.

REGULATORY STATUS

Proposed

REFERENCE

[S 16](#) and [S 196](#)

PRODUCT CATEGORY

Notification: Beginning on January 1, 2024, any person, local government or state agency that uses Class B firefighting foam shall report the use of the foam to the state fire marshal within five (5) business days of the use.

REGULATORY STATUS

Proposed

REFERENCE

[S 16](#) and [S 196](#)

PRODUCT CATEGORY

PPE: Beginning on January 1, 2024, a manufacturer of PPE to any person, local government, or state agency shall provide written notice to the purchaser at the time of sale if the PPE contains any PFAS substances.

REGULATORY STATUS

Proposed

REFERENCE

[S 16](#) and [S 196](#)

VERMONT

PRODUCT CATEGORY

Use and Discharge: A person, municipality, or state agency must not discharge or use AFFF for training purposes. Also, beginning on January 1, 2024, a manufacturer of AFFF shall not manufacture, sell, or distribute AFFF, subject to numerous exceptions.

REGULATORY STATUS

Enacted

REFERENCE

[18 VSA §1662](#) and [18 VSA §1663](#)

PRODUCT CATEGORY

PPE: A manufacturer that sells PPE to any person, municipality, or state agency shall provide written notice to the purchaser at the time of sale if the PPE contains PFAS substances.

REGULATORY STATUS

Enacted

REFERENCE

[18 VSA §1664](#)

PRODUCT CATEGORY

Disposal Program: The Vermont Department of Conservation and the Division of Fire Safety are working with state agencies or waste districts that assist fire departments with the disposal of AFFF.

REGULATORY STATUS

In effect

REFERENCE

[Program details](#)

VIRGINIA

PRODUCT CATEGORY

Use and Discharge: No person, local government, or agency shall discharge or use AFFF for training, subject to an exception. AFFF can only be used for testing purposes if the facility has implemented appropriate containment, treatment, and disposal measures to prevent releases into the environment.

REGULATORY STATUS

Enacted

REFERENCE

[VA Code Ann. §9.1-207.1](#)

WASHINGTON

PRODUCT CATEGORY

Use and Discharge: A person, local government, or state agency may not discharge or use AFFF for training purposes. Also, a manufacturer of AFFF may not manufacture, sell or distribute any AFFF, subject to some exceptions.

REGULATORY STATUS

Enacted

REFERENCE

[RCW 70A.400.010](#)

[RCW 70A.400.020](#)

[Related information](#)

PRODUCT CATEGORY

PPE: A manufacturer that sells PPE to any person, local government, or state agency must provide written notice to the purchaser at the time of sale if the PPE contains PFAS chemicals.

REGULATORY STATUS

Enacted

REFERENCE

[RCW 70A.400.030](#)

PRODUCT CATEGORY

Disposal: The Washington Department of Ecology is currently reviewing the potential impacts regarding an AFFF disposal program. The draft Environmental Impact Statement (“DEIS”) will be released for public comment until February 5, 2024. Moreover, there will be both an informational meeting and a public hearing in January of 2024. The DEIS reviews five AFFF disposal options and their impact on the environment and public health, including one that requires holding the AFFF in place until emerging destruction technologies come online.

REGULATORY STATUS

Proposed

REFERENCE

[Program details](#)

[Related information](#)

WEST VIRGINIA

PRODUCT CATEGORY

Use and Discharge: No person or other listed entity may discharge or use AFFF, subject to some exceptions.

REGULATORY STATUS

Enacted

REFERENCE

[W. Va. Code §29-3-5g](#)

[Related information](#)

WISCONSIN

PRODUCT CATEGORY

Use and Discharge: No person may discharge or use AFFF, including for training or testing purposes, subject to some exceptions. The testing facility must implement appropriate containment, treatment, disposal, or storage measures to prevent releases to the environment.

REGULATORY STATUS

Enacted

REFERENCE

Wis. Stat. §299.48

[Program details](#)

PRODUCT CATEGORY

Notification: A person who uses or discharges AFFF shall notify the Department of Natural Resources immediately or as soon as practicable without hindering fire prevention operations.

REGULATORY STATUS

Enacted

REFERENCE

Wis. Stat. §299.48

PRODUCT CATEGORY

Notification: Fire departments must disclose their use and possession of fire fighting foam with intentionally added PFAS substances, and a third party will arrange for the collection of the materials.

REGULATORY STATUS

Proposed

REFERENCE

[SB 312](#)

No Regulations (as of the date of publication): Alabama, Florida, Idaho, Kansas, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, and Wyoming.

GROUNDWATER CONTAMINATION IMPACTS TO BUSINESSES

One of the most significant risks that businesses in many industries face is impacts to groundwater from PFAS in AFFF. There have already been reports of economic loss as a result of PFAS groundwater contamination which is believed to have been caused by the historic use of AFFF. For example, in New Mexico, one farmer was reportedly forced to [dispose of 15,000 gallons of milk per day](#), and eventually cull his entire herd because of impacts from PFAS contamination migrating from a nearby Air Force base.

Numerous DOD facilities have contributed to PFAS groundwater contamination which has allegedly migrated onto adjoining properties. DOD has compiled a list of [714 DOD and National Guard sites](#) where the sites “require an assessment of per- and polyfluoroalkyl substances (PFAS) use or potential release.” The numbers are staggering: [one estimate](#) indicates the DOD will need to spend \$31 billion dollars remediating all of the sites, and \$7 billion will be spent alone in the next fiscal year. Additionally, in June of 2022, DOD issued a [report](#) discussing the remediation efforts conducted at some of these facilities.

Notably, an owner of a coal mine located in Illinois was sued by the Illinois Attorney General for extinguishing a fire using AFFF which contained PFAS substances. The [Complaint](#) alleges, among other things, that the Defendant “injected firefighting foam mixture containing PFAS” into portions of the mine, and as a result, is responsible for the water contamination to nearby creeks and ditches. On July 1, 2022, an [interim consent order](#) was filed in this case, and this suit underscores the risks posed by the use of fire suppression materials containing PFAS substances.

Businesses that are purchasing property, or that want to evaluate their PFAS risk profile, should consider whether there are any nearby properties that may have historically used AFFF, and use that as a component of their due diligence and risk assessment.

CONCLUSION

Many states have implemented AFFF regulations, and BCLP expects this trend to continue into the near future as regulators and industry groups try to understand and address the potential risks of AFFF use.

For more information on PFAS chemicals, and the regulatory and litigation risks that they pose, please visit our [PFAS webpage](#). If you believe that you may be impacted by an AFFF regulation, or if you have a question about a regulation in a specific jurisdiction, please contact Tom Lee, Bryan Keyt, John Kindschuh, or Emma Cormier at Bryan Cave Leighton Paisner LLP.

RELATED PRACTICE AREAS

- PFAS Team
- Environment

MEET THE TEAM



Thomas S. Lee

San Francisco

tom.lee@bclplaw.com

[+1 415 675 3447](tel:+14156753447)



Bryan E. Key

Chicago

bryan.keyt@bclplaw.com

[+1 312 602 5036](tel:+13126025036)



Emma R. Cormier

St. Louis

emma.cormier@bclplaw.com

[+1 314 259 2160](tel:+13142592160)



John R. Kindschuh

St. Louis

john.kindschuh@bclplaw.com

+1 314 259 2313

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