

Below are recommended amendments for firefighting foam and food packaging.

In addition, we recommend striking Section 5 from the bill.

Changes from language in S.20 as passed by the Senate are underlined.

I. FIREFIGHTING FOAM

Based on Washington's waiver options in 2024 for specified exemptions, with the addition of a new waiver option for other users otherwise subject to the July 2022 effective date in the bill as passed by the Senate:

Sec. 1. 18 V.S.A. chapter 33 is added to read: CHAPTER 33. PFAS IN FIREFIGHTING AGENTS AND EQUIPMENT

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§ 1662. PROHIBITION OF CERTAIN CLASS B FIREFIGHTING FOAM

A person, municipality, or State agency shall not discharge or otherwise use for training purposes class B firefighting foam that contains intentionally added PFAS.

§ 1663. RESTRICTION ON MANUFACTURE, SALE, AND DISTRIBUTION; EXCEPTIONS

(a) A manufacturer of class B firefighting foam shall not manufacture, sell, offer for sale, or distribute for sale or use in this State class B firefighting foam to which PFAS have been intentionally added.

(b) Notwithstanding subsection (a) of this section, any manufacture, sale, or distribution of class B firefighting foam where the inclusion of PFAS is required by federal law, including the requirements of 14 C.F.R. 139.317 (aircraft rescue and firefighting: equipment and agents), as that section existed as of January 1, 2020, is allowed. In the event that applicable federal regulations change after that date to allow the use of alternative firefighting agents that do not contain PFAS, the Department shall adopt rules that restrict PFAS for the manufacture, sale, and distribution of firefighting foam for uses that are addressed by federal regulation.

From Washington state, with highlighted additions:

(c)~~(1)~~The restrictions in subsection (a) of this section do not apply until January 1, 2024, to any manufacture, sale, or distribution of class B firefighting foam to a person for use at a terminal operated by the person, a chemical plant operated by the person, or an oil refinery operated by the person.

(d) A person who operates a chemical plant, refinery, or terminal, or other facility who wishes to purchase Class B firefighting foam for the purpose of fighting emergency Class B fires, may apply to the department for a waiver of the restrictions in subsection (a) or (c). A waiver may only be for two years and may only be extended by the department for one additional two-year term. The department may grant a waiver if the applicant provides:

(i) Clear and convincing evidence that there is no commercially available replacement that does not contain intentionally added PFAS chemicals that is capable of suppressing a large atmospheric storage tank fire or emergency Class B fire at their facility;

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

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

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

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

Additional definitions required for the amendments above:

Sec. 1. 18 V.S.A. chapter 33 is added to read: CHAPTER 33. PFAS IN FIREFIGHTING AGENTS AND EQUIPMENT

§ 1661. DEFINITIONS

(x) "Terminal" means a fuel storage and distribution facility that has been assigned a terminal control number by the internal revenue service.

(x) A Class B fire is defined as flame spread index 26–75; smoke developed index 0–450. Defined by National Fire Protection Association Life Safety Code, NFPA No. 101.

II. FOOD PACKAGING

Definition of Food Packaging (as defined in Washington and New York). Preferred option of dropping the language after "contact" (highlighted):

Sec. 2. 18 V.S.A. chapter 33A is added to read: CHAPTER 33A. CHEMICALS OF CONCERN IN FOOD PACKAGING

§ 1671. DEFINITIONS

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(3) "Food packaging" means a package or packaging component that is intended for direct food contact and is comprised, in substantial part, of paper, paperboard, or other materials originally derived from plant fibers.

Definitions of Bisphenols and Phthalates (highlighted language optional):

Sec. 2. 18 V.S.A. chapter 33A is added after to read: CHAPTER 33A. CHEMICALS OF CONCERN IN FOOD PACKAGING

§ 1671. DEFINITIONS

(1) "Bisphenols" means endocrine active industrial chemical compounds used primarily in the manufacture of polycarbonate plastic and epoxy resins in which bisphenols are present in any amount greater than an incidental presence.

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(8) "Phthalates" means any member of the class of organic chemicals that are esters of phthalic acid except that it does not include those phthalates authorized in food contact use by FDA and subject to review by FDA under a Food Additive Petition.

Scheduled Phase Out of PFAS in Food Packaging:

Sec. 2. 18 V.S.A. chapter 33A is added to read: CHAPTER 33A. CHEMICALS OF CONCERN IN FOOD PACKAGING

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§ 1672. FOOD PACKAGING

(a) Beginning on December 31, 2023, no manufacturer, wholesaler, or retailer may manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in this state food packaging to which a PFAS substance has been intentionally added.

(1) To demonstrate compliance with this Section, the Department may require a manufacturer, wholesaler, or retailer of food packaging in Vermont to certify in writing that any PFAS substance that has been intentionally added to that food packaging is the subject of an effective food contact notification.

(2) These restrictions shall not apply to affected products that are already in commerce in Vermont as of the effective date of the act.

Alternatives review provisions for bisphenols and phthalates (modeled on the existing language for bisphenols with the addition of report and recommendations based on actual action following an alternatives review in other states). This would be language that could be used individually for bisphenols and phthalates. If the scheduled phase out of PFAS in food packaging is not included as above, we would recommend using the language below for PFAS as well:

Sec. 2. 18 V.S.A. chapter 33A is added to read: CHAPTER 33A. CHEMICALS OF CONCERN IN FOOD PACKAGING

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§ 1672. FOOD PACKAGING

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(b/c) Pursuant to 3 V.S.A. chapter 25, the Department may adopt rules prohibiting a manufacturer, supplier, or distributor from selling or offering for sale or for promotional distribution a food package ~~or the packaging component of a food package~~ to which **[bisphenols/phthalates]** have been intentionally added and are present in any amount greater than an incidental presence.

(1) The Department may only prohibit a manufacturer, supplier, or distributor from selling or offering for sale or for promotional distribution a food package or the packaging component of a food package in accordance with this subsection if the Department has determined that a safer alternative is readily available in sufficient quantity and at a comparable cost and that the safer alternative performs as well as or better than **[bisphenols/phthalates]** in a specific application of **[bisphenols/phthalates]** to a food package or the packaging component of a food package.

(2) If another state prohibits a manufacturer, supplier, or distributor from selling or offering for sale or for promotional distribution a food package or the packaging component of a food package after formally determining in accordance with that state's law that a safer alternative is readily available in sufficient quantity and at a comparable cost and that the safer alternative performs as well as or better than [bisphenols/phthalates] in a specific application of [bisphenols/phthalates] to a food package or the packaging component of a food package, the Department shall report to the Legislature the action taken in that state and make a recommendation as to whether the Legislature should adopt similar legislation.

(23) If the Department prohibits a manufacturer, supplier, or distributor from selling or offering for sale or for promotional distribution a food package or the packaging component of a food package in accordance with this subsection, the prohibition shall not take effect until two years after the Department determines that a safer alternative to **[bisphenols/phthalates]** is available.