

Regulation to minimise and manage the risks posed by firefighting foams containing per- and poly-fluoroalkyl substances (PFAS) in NSW

This document presents a summary of the key issues raised by stakeholders during external consultation on the proposed Protection of the Environment Operations (General) Amendment (PFAS Firefighting Foam) Regulation 2020 (the proposed Regulation). The feedback given on the proposed Regulation has informed the preparation of the Protection of the Environment Operations (General) Amendment (PFAS Firefighting Foam) Regulation 2021 (the Regulation). The Regulation is the first step to achieving the agreed objectives in the National PFAS Position Statement, which has been endorsed by the NSW Government and is available at: www.coag.gov.au/sites/default/files/agreements/appd-national-pfas-position-statement.pdf.

The consultation was conducted by the NSW Environment Protection Authority (EPA) from 1 October to 21 December 2020. Stakeholders were invited to provide feedback via submission or survey response on the proposed Regulation, including measures to:

- ban the use of any PFAS firefighting foam for the purposes of training or demonstrations
- restrict the use of long-chain PFAS firefighting foam, unless used by a relevant authority in response to a catastrophic fire or by way of portable fire extinguisher
- label portable fire extinguishers containing long-chain PFAS firefighting foam, and
- restrict the use of long-chain PFAS firefighting foam in portable fire extinguishers.

Stakeholders included government agencies, EPA licensed entities, the fire protection industry, and other industry members. The EPA received 16 written submissions and 26 survey responses from stakeholders. The key issues raised in the submissions and survey responses, and the EPA’s responses to these issues, are summarised in Tables 1 to 7 below.

Table 1 Definitions

Key issues	EPA response	Regulation reference
<p>Catastrophic fire</p> <p>Some stakeholders questioned whether the definition of ‘catastrophic fire’ was too broad. Others suggested that it did not clearly reflect the catastrophic potential of fires on vessels.</p>	<p>No changes made.</p> <p>The EPA sought advice from other relevant Government authorities regarding this definition. The EPA notes that the definition needs to include fires that have the potential to become catastrophic. Therefore, the definition has not been changed.</p> <p>An exemption has been included in the Regulation, allowing the discharge of PFAS firefighting foam from a portable fire extinguisher, or prescribed long-chain PFAS firefighting foam, by a relevant authority to prevent, extinguish, or attempt to extinguish a fire that is a catastrophic fire or that has the potential to be a catastrophic fire, or by a person to prevent, extinguish, or attempt to extinguish a fire on a watercraft in relevant waters.</p>	98G, 98I
<p>Relevant authority</p> <p>It was suggested that that ‘ships’ be included in the definition of ‘relevant authority’ due to the catastrophic potential of fires on ships.</p>	<p>A person will be able to discharge PFAS firefighting foam from a portable fire extinguisher or prescribed long-chain PFAS firefighting foam to prevent, extinguish, or attempt to extinguish a fire on a watercraft in relevant waters.</p>	98G, 98I

<p>Firefighting training or demonstration</p> <p>Some stakeholders queried the meaning of 'firefighting training or demonstration' and questioned whether the restriction included safety testing and commissioning (where entities are required to discharge foam to test equipment).</p>	<p>Exemptions may be applied to allow the discharge of PFAS firefighting foam for safety testing and commissioning, as required.</p> <p>Exemptions will only be granted if appropriate. If approved, exemptions will be time-bound to encourage a prompt movement towards compliance with the Regulation.</p>	98H, 95B
<p>PFAS firefighting foam</p> <p>It was suggested by stakeholders that the definition of 'PFAS firefighting foam' should include reference to foam in both concentrate and solution form.</p>	<p>This change was considered unnecessary. This is because while PFAS firefighting foam must not be discharged as a foam (the precursor of which is a solution or concentrate form) under the Regulation, pre-existing offences in the <i>Protection of the Environment Operations Act 1997</i> relating to pollution of waters and pollution of land includes pollution by PFAS firefighting foam.</p>	98G
<p>Portable fire extinguisher</p> <p>Some concerns were raised about the reference to the capacity of portable fire extinguishers (being 9kg) in the definition of 'portable fire extinguisher'.</p>	<p>The definition of 'portable fire extinguisher' now refers to a capacity of no more than 23 kilograms. It has been updated to reflect the definition used in the Australian/New Zealand Standard.</p>	98G

Table 2 Restriction on the discharge of PFAS firefighting foam and prescribed long-chain PFAS firefighting foam

Key issues	EPA response	Regulation reference
<p>It was raised by some stakeholders that relevant authorities should be able to discharge long-chain PFAS firefighting foam to <i>prevent</i> a catastrophic fire.</p>	<p>PFAS firefighting foam from a portable fire extinguisher and prescribed long-chain PFAS firefighting foam will be able to be discharged by relevant authorities to prevent a catastrophic fire or potentially catastrophic fire. Persons will also be able to discharge PFAS firefighting foam and prescribed long-chain PFAS firefighting foam to prevent a fire on a watercraft in relevant waters.</p>	98I
<p>Several stakeholders raised the importance of extending the timeframes for compliance with the restriction on the discharge of long-chain PFAS firefighting foam. In some circumstances, sites may have an extensive foam system and infrastructure, and replacement will require careful planning, assessment, and procurement. Similarly, a stakeholder may have to undertake these changes at several sites. They may also require time to identify what type of firefighting foam they have on site(s).</p>	<p>The timeframe for restricting the discharge of prescribed long-chain PFAS firefighting foam and PFAS from portable fire extinguishers has been extended to 19 months (after publication of the Regulation). This will give stakeholders enough time to change their business practices or apply for an exemption if they deem the 19-month period to be too short for compliance to be achieved.</p> <p>Exemptions will only be granted if appropriate. If approved, exemptions will be time-bound to encourage a prompt movement towards compliance with the Regulation.</p>	98I, 95B
<p>Some stakeholders thought that clause 98I only applied to portable fire extinguishers containing PFAS, not all uses of long-chain PFAS firefighting foam.</p>	<p>This clause applies to both scenarios - the discharge of prescribed long-chain PFAS firefighting foam, and the discharge of PFAS from portable fire extinguishers.</p>	98I

Table 3 Exemptions

Key issues	EPA response	Regulation reference
It was brought to the EPA's attention that there may be circumstances where it is appropriate for a broader range of authorities to hold an exemption.	The Regulation broadens the range of exemptions to include watercraft as a priority category. Other entities may apply for an exemption from a requirement of the Regulation. Exemption applications will be assessed and only be granted if appropriate. If approved, exemptions will be time-bound on a case by case basis.	95B

Table 4 Labelling of portable fire extinguishers

Key issues	EPA response	Regulation reference
While some stakeholders agreed with the proposal to label all portable fire extinguishers and acknowledged its potential usefulness, there was feedback from other stakeholders that this requirement is likely to be impractical and onerous, with limited benefit. For example, it could be costly to implement. There were also concerns that the label could cause an individual to choose (during an incident) not to use the extinguisher, potentially increasing the severity of the fire.	The EPA has carefully considered the feedback and the mandatory labelling requirement has not been included in the Regulation. It has been replaced by a new offence preventing the sale of portable fire extinguishers containing the precursor to PFAS firefighting foam unless sold to a relevant authority, the owner or master of a vessel, or a person who has an exemption to discharge PFAS firefighting foam from a portable fire extinguisher.	98J

Table 5 Portable fire extinguishers containing PFAS

Key issues	EPA response	Regulation reference
The EPA understands from the consultation process that most fires where a portable fire extinguisher would be used can be effectively extinguished using alternative firefighting foam (that does not contain PFAS).	<p>There is a new offence for discharging PFAS firefighting foam from a portable fire extinguisher, unless the foam is discharged by a relevant authority to prevent, extinguish, or attempt to extinguish a catastrophic fire or potentially catastrophic fire, or a person to prevent, extinguish, or attempt to extinguish a fire on a watercraft in relevant waters.</p> <p>There is also a new offence which prohibits the sale of portable fire extinguishers containing the precursor to PFAS firefighting foam unless sold to a relevant authority, the owner or master of a vessel, or a person who has an exemption to discharge PFAS firefighting foam from a portable fire extinguisher.</p> <p>The EPA may grant exemptions from these requirements where appropriate.</p>	98I, 98J, 95B
During the consultation process, it was determined that it may be more appropriate (in the case of portable fire extinguishers) to predominantly place the onus on suppliers to identify whether their portable fire extinguishers contain PFAS. It was also suggested that it	The Regulation has been changed to prohibit the sale of portable fire extinguishers containing the precursor to PFAS firefighting foam unless sold to a relevant authority, the owner or master of a vessel, or a person who has an exemption to discharge PFAS firefighting foam from a portable fire extinguisher.	98J, 95B

could be difficult and potentially time consuming for users to request this information from suppliers, and that it may not be easily accessed.	The EPA may grant exemptions from this requirement where appropriate.	
Some submissions received during consultation supported expanding the restriction on long-chain portable fire extinguishers to include all portable fire extinguishers containing any PFAS (both long- and short-chain). Some stakeholders disagreed with this proposal.	<p>The EPA understands (from the information received during the consultation process) that most fires that require the use of a portable fire extinguisher should be able to be effectively extinguished using alternative firefighting foam (that does not contain PFAS).</p> <p>Portable fire extinguishers containing PFAS firefighting foam will not be able to be discharged unless by a relevant authority to prevent, extinguish, or attempt to extinguish a catastrophic fire or potentially catastrophic fire, or by a person to prevent, extinguish, or attempt to extinguish, a fire on a watercraft in relevant waters.</p> <p>A stakeholder can also apply for an exemption from this requirement.</p>	95I, 95B

Table 6 Containment, storage and disposal of PFAS firefighting foam and related PFAS impacted waste

Key issues	EPA response	Regulation reference
Feedback given during consultation made clear that additional specific guidance material will be needed to assist the regulated community to comply with their obligations under the Regulation to effectively contain, store, test and dispose of PFAS firefighting foam and related PFAS impacted waste (for example, wastewater containing PFAS firefighting foam). Guidance was also requested on the de-contamination of existing infrastructure. Guidance of this nature was requested by several stakeholders.	<p>The EPA will publish guidance material in the first half of 2021. The guidance is likely to include information on a range of topics, such as:</p> <ul style="list-style-type: none"> • containment • storage (for example, if PFAS firefighting foam is being stockpiled prior to disposal) • disposal (including the fact that disposal should not include sale or donation of PFAS firefighting foam) • testing, including for precursors to the firefighting foam • de-contamination (of existing infrastructure used to store PFAS firefighting foam) 	Not applicable
It was highlighted that the EPA needs to set impurity limits for long-chain PFAS compounds in firefighting foam, to provide certainty for stakeholders when switching foams in their fire suppression systems to alternative firefighting foams.	The Regulation includes limits in the definition of prescribed long-chain PFAS firefighting foam.	98G

Table 7 Penalties

Key issues	EPA response	Regulation reference
Some stakeholders suggested that the penalties are too low to pose a significant deterrent, especially for larger companies.	We have increased the maximum penalty for individuals for discharging PFAS firefighting foam for the purpose of training or demonstration. It is possible that substantial maximum penalties may apply under the <i>Protection of the Environment Operations Act 1997</i> where an incident involving PFAS has resulted in a water pollution or land pollution offence.	98H, Schedule 6 of the POEO General Regulation

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