



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-
MAKING REVIEW COMMITTEE**

AGENCY: Fire Commission TITLE-SERIES: 87-14
RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: No
RULE NAME: 87-14 Use of Aqueous Film-Forming Foam (AFFF) for Fire Training Program Purposes

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: 29-3-5g

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

The rule establishes the rules and regulations deemed necessary by the State Fire Commission for establishing criteria for use of Aqueous Film-Forming Foam (herein after AFFF) during qualified training programs in fire-fighting and hazardous substance emergency response activities and procedures for such qualified training programs to be certified by the state fire marshal

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/23/2021

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/26/2021

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

No

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

The rule establishes the rules and regulations deemed necessary by the State Fire Commission for establishing criteria for use of Aqueous Film-Forming Foam (herein after AFFF) during qualified training programs in fire-fighting and hazardous substance emergency response activities and procedures for such qualified training programs to be certified by the state fire marshal

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

The rule prevents the use of AFFF during firefighting training operations for health and safety purposes.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

N/A

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

N/A

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

N/A

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2021 Increase/Decrease (use "-")	2022 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

N/A

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Stacy L Nowicki-Eldridge -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 87
LEGISLATIVE RULE
STATE FIRE COMMISSION

SERIES 14
USE OF AQUEOUS FILM-FORMING FOAM (AFFF) FOR FIRE TRAINING PROGRAM PURPOSES

§87-14-1. General.

1.1 Scope. -- These regulations establish the rules and regulations deemed necessary by the State Fire Commission for establishing criteria for use of Aqueous Film-Forming Foam (herein after "AFFF") during qualified training programs in fire-fighting and hazardous substance emergency response activities and procedures for such qualified training programs to be certified by the state fire marshal.

1.2 Authority. -- WV Code §29-3-5g.

1.3 Filing Date. -- XXXXXXXXXXXX, XXXX

1.4 Effective Date. XXXXXXXXXXXX, XXXX

1.5 Sunset Provision. -- This rule shall terminate and have no further force or effect upon the expiration of five years from its effective date.

§87-14-2. Procedures for Certification of Training Programs.

2.1 Any person, firm, corporation, or governmental entity may request certification of their hazardous material response training program by submitting a copy of the program to the State Fire Marshal.

2.2 The desired program level of certification such as fire department personnel or industrial responder must be designated.

2.3 The State Fire Marshal shall approve the program contingent upon compliance with Section 4 of these rules and regulations.

2.4 A copy of all training/certifications records and approved training programs shall be provided to the State Fire Marshal Office for record keeping purposes.

§87-14-3. Record of Participation.

3.1. The individual organization, agency, department or enterprise is responsible for maintaining a record of those individuals receiving the appropriate training.

§87-14-4. Use of AFFF During Training.

4.1. Fire Department fire-fighting and hazardous material training programs where use of AFFF exist.

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4.1.1. Active and specialized support members of a volunteer fire department, combination fire department or county fire prevention unit(s), and paid fire departments that respond but do not operate at hazardous material incidents must have completed and achieved certification for training at or above the level of Hazardous Material Awareness, and have passed any and all testing required for this certification. Active and specialized support members that operate at hazardous materials incidents must have completed and achieved, at the minimum, certification for training at the Hazardous Materials Operations Level, as set forth by NFPA 1001, Standard for Fire Fighter Professional Qualifications or equivalent, and have passed any and all testing required for this certification. Additionally, all active members and firefighters shall have the training available to them to allow them to become compliant with the NIMS Training Guidelines for West Virginia as established by the West Virginia Division of Homeland Security and Emergency Management.

4.1.2. Standard safe practices for the discharge or otherwise use class B fire-fighting foam that contains intentionally added polyfluoroalkyl substances (PFAS).

4.1.2.a. For purposes of this section:

4.1.2.a.1. "Class B fire-fighting foam" means any foam designed to extinguish flammable liquid fires.

4.1.2.a.2. "PFAS chemicals" means nonpolymeric perfluoroalkyl and polyfluoroalkyl substances that are a group of man-made chemicals that contain at least two (2) fully fluorinated carbon atoms, excluding gases, and volatile liquids.

4.1.2.a.3. "Testing" means calibration testing, conformance testing, or fixed system testing.

4.1.2.a.4. "Testing Facility" allows the discharge of foam in a non-emergency situation for the evaluation and calibration of firefighting equipment and foam. This facility may also have the capability to provide some level of needed training for firefighters.

4.1.2.a.5. "Fixed Foam System" means a complete installation piped from a central foam station, discharging through fixed discharge devices on the flammable liquid hazard being protected. Foam proportioning components are permanently installed. The system has been engineered for the hazard and often contains multiple (UL or FM) listed components and foam.

4.1.2.a.6. "Foam Training Facility" shall mean to allow the discharge of foam in a non-emergency situation for the training of firefighters and readiness of equipment. This facility may also have the capability to provide some level of needed evaluation and calibration of equipment and foam.

4.1.3. On or after July 1, 2021, no person, fire department, state department, agency, board, bureau, office, commission, public corporation, or authority; county, municipal corporation, school district, or other political subdivision of this state may discharge or otherwise use class B fire-fighting foam that contains intentionally added PFAS chemicals unless:

4.1.3.a. The discharge or other use occurs in fire prevention or in response to an emergency fire-fighting operation; or

4.1.3.b. The discharge or other use is for training or testing purposes which occurs at a facility that has implemented containment, storage, treatment, and disposal measures to prevent uncontrolled

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releases of such class B fire-fighting foam into the environment.

4.1.4. Nothing in this code section may be construed to:

4.1.4.a. Restrict the manufacture, sale, or distribution of class B fire-fighting foam that contains intentionally added PFAS chemicals or restrict the discharge or other use of class B fire-fighting foam in response to an emergency fire-fighting operation; or

4.1.4.b. Prevent the use of nonfluorinated foams, including other class B fire-fighting foams, for purposes of training for fire-fighting operations.

4.1.5. Training certification records shall be maintained and retained by the fire department and/or their governing authority having jurisdiction when use of allowable AFFFs for training purposes are used.