



## Airport Law Alert – New FAA Guidance on Firefighting Foam

01.18.19

### New FAA Guidance on Testing Equipment Used to Deploy Firefighting Foams Containing PFAS

On January 17, 2018, the FAA issued a CertAlert to all certificated Part 139 Airports providing new guidance to assist airports seeking to manage environmental, liability, and community risks associated with certain chemicals found in airport firefighting foams. Airports have been in a bind because Part 139 currently *requires* the use and periodic discharge of these foams, even though doing so can release more of the chemicals into stormwater, groundwater, and soils. All airports should carefully examine their current and past use of these foams and take steps to manage the environmental and liability risks associated with them.

The CertAlert provides an interim way to reduce potential environmental contamination from mandatory testing of Aircraft Rescue and Firefighting (ARFF) equipment using Aqueous Film Forming Foam (AFFF), which contains a class of chemicals known as per- and polyfluoroalkyl substances (PFAS). Presently, FAA regulations require airport operators to use firefighting foams that contain PFAS. Although foams with PFAS are highly effective at extinguishing fires, they also have come under increasing scrutiny from the EPA and state environmental regulators over concerns about groundwater contamination and risks to public health impacts. The FAA Reauthorization Act of 2018 requires the FAA to stop mandating the use of PFAS in firefighting foams by October 4, 2021, but the FAA has not yet identified an equally effective substitute.

The FAA's current requirements mandate that airport operators regularly test firefighting equipment, including by discharging foam that contains PFAS onto the ground. If not properly managed, such discharges can result in PFAS being released into groundwater.

The FAA's new CertAlert announces that airport operators may immediately begin using three new testing systems that *do not* involve dispensing foam onto the ground.

The CertAlert further recommends that airport operators:

- Consider establishing standard guidelines to identify a suitable location/storage container to discharge AFFF for training and/or testing.
- Consider establishing safe and environmentally effective handling and disposal procedures during testing and re-servicing.
- Periodically visit the FAA ARFF webpage for further guidance.

Although these latest recommendations are not legally binding, airport operators should carefully evaluate implementing these recommendations as soon as possible as part of an overall plan to manage risks associated with PFAS in AFFF. For more information, please contact Polly Jessen.

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