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# Wisconsin Legislative Council

## ACT MEMO

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**Prepared by:** Anna Henning, Senior Staff Attorney

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### 2019 Wisconsin Act 101 [2019 Senate Bill 310]

### Regulating Fire Fighting Foam Containing PFAS

2019 Wisconsin Act 101 generally prohibits the use or discharge, including for training<sup>1</sup> purposes, of Class B fire fighting foam,<sup>2</sup> if the foam contains intentionally added per- and polyfluoroalkyl substances (PFAS).<sup>3</sup>

The act provides two exemptions from that prohibition, for: (1) use of such foam as part of an emergency fire fighting or fire prevention operation; and (2) use of such foam for testing<sup>4</sup> purposes, if the testing facility has implemented appropriate containment, treatment, and disposal or storage measures<sup>5</sup> to prevent discharges of the foam to the environment. The act requires a person to notify the Department of Natural Resources (DNR) of the use or discharge of fire fighting foam under the exemption for emergency situations and to notify DNR if foam is discharged into the environment under the testing exemption. The act also requires a person who possesses fire fighting foam for emergency fire fighting purposes to request and retain “safety data sheets,” which are required under federal law for chemical manufacturers.

The act authorizes DNR to promulgate rules to implement and administer the act. The act requires DNR to promulgate emergency rules no later than September 1, 2020, and exempts such emergency rules from a general requirement to make a finding that an emergency rule is necessary. Notwithstanding general time periods for emergency rules, the act also provides that the emergency rules remain in effect until February 7, 2023, or until the day on which permanent rules take effect, whichever is sooner.

**Effective date:** The provision of the act relating to emergency rules took effect on February 7, 2020. All other provisions of the act take effect on September 1, 2020.

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<sup>1</sup> The act defines “training” to mean providing first-hand field experience to a person who may use a fire fighting foam as part of an emergency fire fighting or fire prevention operation.

<sup>2</sup> The act defines “Class B fire fighting foam” to mean foam, including dual action Class A and B foam, that is designed for use on a flammable liquid fire.

<sup>3</sup> PFAS are a group of man-made chemicals found in a variety of commercial and industrial products, including fire fighting foam, nonstick cookware, and stain- and water-repellent fabrics. For more background information regarding PFAS, see [Wisconsin Legislative Council Issue Brief, Per- and Polyfluoroalkyl Substances \(October 2019\)](#).

<sup>4</sup> The act defines “testing” to include testing of a fire fighting foam to evaluate its effectiveness and testing of a fire fighting foam delivery system or equipment.

<sup>5</sup> The act specifies that such measures may not include flushing, draining, or otherwise releasing foam into a storm or sanitary sewer.