FAA Issues Plan for Transition to Fluorine-Free Firefighting Foam

On May 8, FAA published its Aircraft Firefighting Foam Transition Plan, which outlines additional information, timelines, and preparatory steps for airports to consider as the federal government's search for PFAS-free firefighting foam continues. The plan, which was required by Congress in 2022, provides an important "next step" in helping airports who *wish to* transition from PFAS containing foams, but, importantly, does not mandate such a transition.

As we've covered previously, the Department of Defense (DoD) and Federal Aviation Administration (FAA) have been investigating fluorine free foam (F3) replacements for currently used aqueous film forming foam (AFFF), which contains per- and polyfluoroalkyl substances (PFAS).

Airports that provide commercial passenger service have been required to use AFFF since 1988. There are currently no approved alternatives. However, in January 2023, DoD published, and FAA adopted, a new Military Specification (MILSPEC), MIL-PRF-32725, that establishes performance requirements F3s must meet to be qualified as acceptable alternatives to AFFF. Once DoD certifies that a foam meets the new MILSPEC, airports may opt to use F3 to satisfy federal regulatory requirements. DoD is expected to approve at least one F3 by the end of the year.

While the transition to F3 promises environmental and public health benefits, it presents significant challenges. Personnel must be trained on how to effectively use F3s to combat liquid fuel spill fires because they require different application techniques than AFFF. Additionally, there is currently no federal guidance on decontamination and disposal of AFFF-contaminated equipment, and the cost of acquiring new equipment is substantial.

Although there is no federal requirement for airports to transition to F3, concerns over public and employee health and potential liability exposure may prompt airports to make this change. In April 2023, EPA issued an advanced notice of proposed rulemaking announcing its intention to issue a determination later this year that two of the PFAS compounds commonly found in AFFF (PFOA and PFOS) are "hazardous substances" under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Many states have already done so under CERCLA's state analogs. Because CERCLA and these state statutes typically impose strict liability for past and present releases of hazardous substances into the environment, the impending designation will trigger extensive reporting requirements and remediation obligations for the past, present, and future use of firefighting foam.

EPA is pursuing additional regulatory actions concerning PFAS under the Safe Drinking Water Act, the Clean Water Act, and the Resource Conservation and Recovery Act. Airports must also continue to monitor applicable state laws, which may require their transition to F3 foams.

Transitioning from AFFF to F3 will position airports to more easily comply with evolving state and federal regulatory requirements. Whether or not they plan to transition to F3, airports should consider switching to fire suppression testing systems that satisfy regulatory requirements without dispersing foam. These systems are compatible with both types of firefighting foam, and eligible airports can use Airport Improvement Program (AIP) grant funds to purchase them.

As it is made available, the FAA will share guidance on environmental limits and key environmental compliance considerations associated with the transition from AFFFs to F3s on its Aircraft Rescue and Fire Fighting webpage. FAA will also continue to provide guidance to airport operators on issues falling within its regulatory purview, and will share industry best practices for issues that are not.