



**EXTRAORDINARY MEETING OF THE COMPETENT AUTHORITIES FOR REGULATION (EU)
2019/1021 ON PERSISTENT ORGANIC POLLUTANTS**

17 APRIL 2024

(Item 2 of the agenda)

Possible extension of the specific exemption for PFOA in fire-fighting foams already installed in systems

I. Background

In Annex I to the POPs Regulation, a specific exemption allows the use of PFOA, its salts and PFOA-related compounds in fire-fighting foam for liquid fuel vapour suppression and liquid fuel fire (Class B fires) already installed in systems, including both mobile and fixed systems, until 4 July 2025, subject to some conditions.

Various authorities and stakeholders have communicated to the Commission that many operators have difficulties to respect this deadline. An expert working for the petrochemical industry has estimated that, in the EU, 4.700 to 11.800 fixed foam suppression systems still need to transition to PFOA-free foams (unverified data). This delay might be due to different reasons, including the difficulties in measuring PFOA-related substances in the foams and underestimation of the volumes of C6-based foams containing PFOA at a level above the UTC set in the POPs Regulation.

The developments under the REACH Regulation should also be considered. A restriction on PFHxA, its salts and PFHxA related compounds (C6 substances, main constituents of PFAS-based foams) has recently been voted and will be adopted and enter into force before the end of the year. It bans the use of C6-based foams for the following uses:

- Training and testing (18 months after entry into force)
- Public fire services (18 months after entry into force)
- Civil aviation (5 years after entry into force)

The Commission received ECHA's opinion on a restriction on all PFAS in fire-fighting foams and is working on a restriction, that will cover all the other uses of PFAS-based foams, with the objective of a complete substitution with fluorine-free foams.

Operators are already working to a transition to fluorine free foams, but this takes longer than the current deadline, especially for complex fire-fighting systems and for uses in sites with

large volumes of liquid fuels. There is a concrete risk that operators that have foams that contain PFOA above the current UTC move to C6-foams with a higher level of purity, then needing a second substitution when the upcoming requirements of REACH start applying to their sectors.

II. Pros and cons of an extension of the exemption

Pros:

- Avoid non-compliance
- Less cases of regrettable substitution with C6-foams

Cons:

- Setting a precedent: first case of requesting an extension of a specific exemption under the Stockholm Convention
- Complicated process: need to discuss and adopt the extension at next COP in 2025 and in parallel draft the delegated act to amend Annex I to the POPs Regulation
- Timing is tight (the COP is in May 2025 and adoption of the delegated act can only take place after the COP decision)

III. Process under the Stockholm Convention

Specific exemptions under the Stockholm Convention have a 5 years duration and can be extended for 5 additional years. We understand that a request for extension for another 5 years would have to be sent to the Secretariat at the latest 12 months before the last COP that takes place before the expiry of the exemption, which would be COP12 in 2025.

Furthermore, we understand that an extension would be done by a COP decision that would not constitute an amendment to the Convention since the duration of the exemption is not reflected in the entry on PFOA in Annex A to the Convention.

We have asked the Secretariat to confirm our understanding and to inform us by when at the latest we would have to submit a request. We also asked whether another Party has the intention or has already submitted a request for extension of that specific exemption.

IV. Process in the European Union

In accordance with the rules under the Stockholm Convention, a request for extension of a specific exemption would have to be sent to the Secretariat at the latest 12 months before the last COP that takes place before the expiry of the exemption, which would be COP12 that takes place from 28 April to 9 May 2025. So the request would have to be sent to the Secretariat before 28 April 2024.

The registration of the European Union for the use of the specific exemption for use of PFOA in fire-fighting foams had been submitted by the Commission. In accordance with that approach, the Commission suggests sending the request for an extension of the specific exemption on behalf of the European Union, provided that this request is agreed by the Member States. The registration for use of the specific exemption is based on Council

Decision (EU) 2019/639 of 15 April 2019 on the position to be taken on behalf of the European Union at the ninth meeting of the Conference of the Parties as regards amendments to Annexes A and B to the Stockholm Convention on Persistent Organic Pollutants. In that Council Decision, the European Union supports the listing of PFOA with inter alia the specific exemption for use in fire-fighting foam for liquid fuel vapour suppression and liquid fuel fires already in installed systems, including both mobile and fixed systems.

V. Alternative solution: establishment of a higher UTC for PFOA in Annex I to the POPs Regulation

An alternative solution to asking for an extension of the PFOA specific exemption could be to set a higher Unintentional Trace Contaminant limit for fire-fighting foams already installed in systems. This limit could be temporary and would be different from the one to be set after cleaning and substitution. It would allow C6 fire-fighting foams that contain PFOA as an impurity above the current UTC to be still compliant with the POPs Regulation and the Stockholm Convention. Foams based on a C6 and C8 mixture would still be non-compliant after the expiry of the specific exemption under the Convention. It is currently unclear at which level such a UTC should be set and which percentage of the “old” foams would still need to be substituted before the expiry of the exemption since they would not meet the higher UTC. Information could be collected by the MSs and with the Have your say public consultation on the draft delegated act to amend Annex I to the POPs Regulation.

VI. Actions and next steps

Member States to communicate their position on the possible request for an extension of the specific exemption under the Stockholm Convention.

The Commission to draft the request for an extension (see Annex A), to consult Member States on the draft and to submit the request to the Secretariat.

Member States to communicate their position on a potential amendment of the POPs Regulation that addresses PFOA in fire-fighting foams, including an extension of the exemption and the duration of the extension.

The Commission to prepare a delegated act to amend the Annex I entry on PFOA in order to inter alia extend the exemption.