

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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HOUSE BILL 732

Short Title: Manage PFAS Firefighting Foam/Gear. (Public)

Sponsors: Representatives Longest, Harrison, Butler, and Budd (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Rules, Calendar, and Operations of the House

April 19, 2023

A BILL TO BE ENTITLED

AN ACT TO PROTECT THE FIREFIGHTERS OF THE STATE FROM THE HEALTH
CONSEQUENCES OF EXPOSURE TO PFAS CHEMICALS BY PROHIBITION OF
FIREFIGHTING FOAM CONTAINING PFAS CHEMICALS AND BY REQUIRING
NOTICE OF FIREFIGHTING EQUIPMENT CONTAINING PFAS CHEMICALS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) This act shall be known as and may be cited as the "Responsible
Firefighting Foam Management Act."

SECTION 1.(b) Article 21A of Chapter 143 of the General Statutes is amended by
adding a new Part to read:

"Part 8. Protect Firefighters from PFAS in Firefighting Foam and Protective Equipment.
"§ 143-215.104CC. Definitions.

The following definitions apply in this Part:

- (1) Class B firefighting foam. – Foams designed for flammable liquid fires.
- (2) Firefighting personal protective equipment. – Any clothing designed, intended, or marketed to be worn by firefighting personnel in conducting fire and rescue activities, including jackets, pants, shoes, gloves, helmets, and respiratory equipment.
- (3) Local government. – Any county, city, town, fire district, regional fire protection authority, or other special purpose district that provides firefighting services.
- (4) Manufacturer. – Any of the following:
 - a. A person, firm, association, partnership, corporation, organization, joint venture manufacturing firefighting foam, or firefighting personal protective equipment.
 - b. An importer, or domestic distributor of firefighting foam or firefighting personal protective equipment. For the purposes of this sub-subdivision, "importer" is limited to the entity that owns the firefighting foam or firefighting personal protective equipment at the time of importation.
- (5) OSFM. – The Office of the State Fire Marshal of the Department of Insurance.
- (6) PFAS chemicals. – Per-fluoroalkyl and poly-fluoroalkyl substances that are members of a class of group of manufactured fluorinated organic chemicals containing at least one fully fluorinated carbon atom.



1 (7) Terminal. – An establishment primarily engaged in the wholesale distribution
2 of petroleum products, including liquefied petroleum gas from bulk liquid
3 storage facilities.

4 **"§ 143-215.104DD. Prohibition of certain firefighting foams for training or practice.**

5 (a) Training Prohibition. – No person, local government, or State agency may discharge
6 for training or practice purposes class B firefighting foam that contains intentionally added PFAS
7 chemicals.

8 (b) Use of Alternatives. – Non-fluorinated training foams or other non-fluorinated
9 surrogates shall be used for firefighting training, and training shall be conducted under conditions
10 conducive to the collection of spent foam regardless of foam type.

11 **"§ 143-215.104EE. Prohibition and recall of manufacture of certain firefighting foams.**

12 (a) Prohibition. – No manufacturer of class B firefighting foam may manufacture,
13 knowingly sell, offer for sale, distribute for sale, or distribute for use in the State class B
14 firefighting foam to which PFAS chemicals have been intentionally added.

15 (b) Notice. – All manufacturers of class B firefighting foam restricted under this section
16 must provide written notice to persons that sell the manufacturer's products in the State about the
17 provisions of this Part.

18 (c) Recall. – A manufacturer that produces, sells, or distributes a class B firefighting foam
19 prohibited under this section shall no later than March 1, 2024, recall the product and reimburse
20 the retailer or any other purchaser for the recalled product. A recall of the product shall include
21 safe transport and storage and documentation of the amount and storage location of the
22 PFAS-containing firefighting foam until the Department formally identifies a safe disposal
23 technology and adopts rules for such safe disposal.

24 **"§ 143-215.104FF. Exemption.**

25 (a) Exemption. – The prohibitions in G.S. 143-215.104DD and G.S. 143-215.104EE do
26 not apply to any manufacture, sale, or distribution of class B firefighting foam where the
27 inclusion of PFAS chemicals is required by federal law, including, but not limited to,
28 requirements of 14 C.F.R. § 139.317, as that section existed as of January 1, 2024. In the event
29 that applicable federal regulations change after January 1, 2024, to allow the use of alternative
30 firefighting agents that do not contain PFAS chemicals, the exemption set forth in this section
31 shall no longer apply.

32 (b) Report. – Any person using class B firefighting foam containing PFAS chemicals
33 under the exemption provided by this section shall report the use of the foam to OSFM within
34 five business days of the use, including the identity of the foam, the quantity used, the total PFAS
35 concentration, the application for which the foam was used, and the duration of the fire.

36 (c) Required Practices. – Any person using class B firefighting foam containing PFAS
37 chemicals under this section shall comply with the following requirements:

38 (1) Allow no release directly to the environment, such as to unsealed ground,
39 soakage pits, waterways, or uncontrolled drains.

40 (2) Fully contain all releases onsite.

41 (3) Implement containment measures such as bunds and ponds that are controlled,
42 impervious to PFAS chemicals, and do not allow firewater, wastewater,
43 runoff, and other wastes to be released to the environment, such as to soils,
44 groundwater, waterways, or stormwater.

45 (4) Dispose of all firewater, wastewater, runoff, and other wastes in a way that
46 prevents release to the environment.

47 (5) If there is a release to the environment, report the identity of the foam, the
48 quantity used, the total PFAS concentration, and the form of any waste that
49 contains PFAS chemicals that is released into the environment to OSFM
50 within five business days of the release.

(6) Document the measures undertaken pursuant to this subsection. This documentation is a public record under Chapter 132 of the General Statutes.

"§ 143-215.104GG. Waiver for petroleum product terminals.

(a) A person operating a terminal after January 1, 2024, who seeks to purchase class B firefighting foam containing intentionally added PFAS for the purpose of fighting emergency class B fires, may apply to OSFM for a temporary waiver of no more than one year from the prohibitions imposed in this Part. The Department may grant an exemption under this subsection if the applicant provides all of the following in a form and manner that the Department may specify:

(1) Clear and convincing evidence that there is not a commercially available alternative that (i) does not contain intentionally added PFAS and (ii) is capable of suppressing a large atmospheric tank fire or emergency class B fire at the terminal.

(2) Records showing the amount of class B firefighting foam containing intentionally added PFAS that is annually stored, used, or released at the terminal.

(3) A report on the progress being made by the applicant to transition at the terminal to class B firefighting foam that does not contain intentionally added PFAS.

(4) A plan that demonstrates how all releases of class B firefighting foam containing intentionally added PFAS shall be fully contained at the terminal and describes existing containment measures to prevent firewater, wastewater, runoff, and other wastes from being released into the environment, including into soil, groundwater, waterways, and stormwater.

(b) Nothing in this section shall prohibit a terminal from providing class B firefighting foam in the form of aid to another terminal in the event of a class B fire.

"§ 143-215.104HH. Notice of firefighting personal protective equipment containing PFAS.

(a) A manufacturer or other person that sells firefighting personal protective equipment must provide written notice to the purchaser at the time of sale if the firefighting personal protective equipment contains any PFAS chemicals. The written notice must include a statement that the firefighting personal protective equipment contains PFAS chemicals and the reason PFAS chemicals are added to the equipment.

(b) The manufacturer or person selling firefighting personal protective equipment and the purchaser of the equipment must retain the notice on file for at least three years from the date of the transaction. Upon the request of the Department, a person, manufacturer, or purchaser must furnish the notice and associated sales documentation to the Department within 60 days.

"§ 143-215.104II. Certificate of compliance.

OSFM may request a certificate of compliance from manufacturers of class B firefighting foam and manufacturers of firefighting personal protective equipment sold in this State. A certificate of compliance attests that a manufacturer's product or products meet the requirements of this Part. If the Department requests such a certificate, the manufacturer shall provide the certificate within 30 calendar days after the request is made.

"§ 143-215.104JJ. Technical assistance.

(a) OSFM shall assist State agencies, fire protection districts, and other local governments in avoiding purchasing or using class B firefighting foams to which PFAS chemicals have been intentionally added.

(b) OSFM shall assist State agencies, fire protection districts, and other local governments to give priority and preference to the purchase of firefighting personal protective equipment that does not contain PFAS chemicals.

"§ 143-215.104KK. Enforcement procedures: civil penalties.

1 Any manufacturer of class B firefighting foam that violates the prohibition set forth in
2 G.S. 143-215.104EE without obtaining an exemption or waiver under this Part shall incur, in
3 addition to any other penalty provided by law, a penalty in an amount not to exceed five thousand
4 dollars (\$5,000) for an initial violation and an amount not to exceed ten thousand dollars
5 (\$10,000) for a repeated violation. The penalty amount shall be determined by the Secretary after
6 taking into consideration the factors set out in G.S. 143B-282.1(b) and the amount expended by
7 the violator in complying with the provisions of this Part.

8 **"§ 143-215.104LL. Rules authorized.**

9 The Department and OSFM may adopt rules to implement this Part."

10 **SECTION 2.** This act becomes effective January 1, 2024.