

**CHAPTER 337**  
**SB 257-FN - FINAL VERSION**

03/14/2019 0845s  
8May2019... 1547h

2019 SESSION

19-1011  
08/03

SENATE BILL            ***257-FN***

AN ACT                prohibiting foams containing perfluoroalkyl chemicals for use in fighting fires.

SPONSORS:            Sen. Sherman, Dist 24; Sen. Rosenwald, Dist 13; Sen. Hennessey, Dist 5; Sen. Levesque, Dist 12; Sen. Fuller Clark, Dist 21; Sen. Kahn, Dist 10; Sen. Cavanaugh, Dist 16; Rep. Goley, Hills. 8

COMMITTEE:          Executive Departments and Administration

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ANALYSIS

This bill prohibits the use of foams containing perfluoroalkyl chemicals in fighting fires.

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Explanation:        Matter added to current law appears in ***bold italics***.  
                         Matter removed from current law appears ~~[in brackets and struckthrough]~~  
                         Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Nineteen*

AN ACT                    prohibiting foams containing perfluoroalkyl chemicals for use in fighting fires.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1            337:1 New Sections; Certain Chemicals Prohibited in Firefighting Foam. Amend RSA 154 by  
2 inserting after section 8-a the following new sections:

3            154:8-b Certain Chemicals Prohibited in Firefighting Foam.

4            I. In this section:

5                    (a) "Chemical plant" means chemical plants, refineries, and re-refineries.

6                    (b) "Class B firefighting foam" means foam designed for flammable liquid fires.

7                    (c) "Department" means the department of environmental services.

8                    (d) "Legacy foams" mean firefighting foams manufactured prior to January 1, 2004,  
9 containing perfluorooctanesulfonic acid and/or perfluorooctanoic acid-related long chain PFAS  
10 chemicals.

11                    (e) "Manufacturer" includes any person, firm, association, partnership, corporation,  
12 organization, joint venture, importer, or domestic manufacturer or distributor of firefighting agents  
13 or firefighting equipment. For the purposes of this section, "importer" means the owner of the  
14 product.

15                    (f) "Municipalities" means any county, city, town, fire district, regional fire district, or  
16 other special purpose district that provides firefighting services.

17                    (g) "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS chemicals" means, for the  
18 purposes of firefighting agents and firefighting equipment, a class of fluorinated organic chemicals  
19 containing at least one fully fluorinated carbon atom.

20                    (h) "Testing" includes calibration testing, conformance testing, and fixed system testing.

21            II. Beginning on January 1, 2020, no person, local government, or state agency shall  
22 discharge or otherwise use for training or testing purposes class B firefighting foam to which PFAS  
23 chemicals have been intentionally added. However, the testing of class B firefighting foam to which  
24 PFAS chemicals have been intentionally added may occur if the department has evaluated the  
25 testing facility for containment, treatment, and disposal measures to prevent uncontrolled release of  
26 foam to the environment.

27            III. Beginning January 1, 2020, a manufacturer of class B firefighting foam shall not  
28 knowingly sell, offer for sale, distribute for sale, or distribute for use in this state class B firefighting  
29 foam to which PFAS chemicals have been intentionally added. However:

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1           (a) The restrictions in this paragraph shall not apply to any sale or use of class B  
2 firefighting foam where the inclusion of PFAS chemicals are required by federal law, including but  
3 not limited to the requirements of 14 C.F.R. section 139.317, as that section existed as of January 1,  
4 2018. In the event that applicable federal regulations change after January 1, 2018, to allow the use  
5 of alternative firefighting agents that do not contain PFAS chemicals, the department may adopt  
6 rules for the sale and uses of firefighting foam that are addressed by the federal regulation that  
7 restrict the use of firefighting foam that contains PFAS chemicals.

8           (b) The restrictions under this paragraph shall not apply to any sale or distribution of  
9 class B firefighting foam to which PFAS chemicals have been intentionally added for use at a  
10 chemical plant.

11           (c) The restrictions under this paragraph shall not apply to any sale or distribution of  
12 class B firefighting foam to which PFAS chemicals have been intentionally added for use at a storage  
13 or distribution facility, tank farm, or terminal for flammable liquids.

14           IV. The manufacturer that produces, sells, or distributes a class B firefighting foam to which  
15 PFAS chemicals have been intentionally added following the effective date of this section shall recall  
16 the product and reimburse the retailer or any other purchaser for the product.

17           V. A manufacturer of class B firefighting foam in violation of paragraph III shall be subject  
18 to an administrative fine not to exceed \$5,000 for each violation in the case of a first offense.  
19 Manufacturers or persons that are repeat violators shall be subject to an administrative fine not to  
20 exceed \$10,000 for each repeat offense.

21           VI. A manufacturer of class B firefighting foam restricted under paragraph III shall notify,  
22 in writing, persons that sell the manufacturer's products in this state about the provisions of this  
23 chapter no less than one year after the effective date of the restrictions.

24           VII. The department shall assist other state agencies, fire protection districts, and other  
25 municipalities in avoiding purchasing or using firefighting agents containing PFAS chemicals, as  
26 required under paragraph III.

27           VIII. The department shall survey municipalities throughout the state on the quantitative  
28 stock of legacy foams and determine the cost of instituting a take-back program for the purpose of  
29 safe and contained disposal. The development and processing of the survey shall be subject to rules  
30 adopted by the commissioner of the department of environmental services pursuant to RSA 541-A.  
31 On or before December 1, 2020, the department shall submit a report of its findings and any  
32 recommendations for proposed legislation to the president of the senate, the speaker of the house of  
33 representatives, the senate clerk, the house clerk, the governor, and the state library. Beginning on  
34 July 1, 2021, the department shall institute a take-back program of legacy foams for the purpose of  
35 safe and contained disposal.

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IX. Fire departments which use remaining class B firefighting foam to which PFAS chemicals have been intentionally added shall be immune from civil or criminal damages only if such foam is discharged in an emergency situation.

X. Nothing in this section shall be construed to create a new civil or criminal right of action against a fire department if class B firefighting foam to which PFAS chemicals have been added has been discharged either unintentionally or in an emergency situation.

XI. Any time a class B firefighting foam to which PFAS chemicals have been intentionally added is discharged, the municipality making such discharge shall notify the department of environmental services within 48 hours of such discharge.

154:8-c Firefighting Personal Protective Equipment.

I. In this section:

(a) "Department" means the department of safety.

(b) "Firefighting personal protective equipment" means any clothing designed, intended, or marketed to be worn by firefighting personnel in the performance of their duties, designed with the intent for use in fire and rescue activities, including jackets, pants, shoes, gloves, helmets, hoods, and respiratory equipment.

(c) "Manufacturer" includes any person, firm, association, partnership, corporation, governmental entity, organization, joint venture, importer, or domestic manufacturer or distributor of firefighting agents or firefighting equipment. For the purposes of this section, "importer" means the owner of the product.

(d) "Municipalities" means any county, city, town, fire district, regional fire district, or other special purpose district that provides firefighting services.

(e) "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS chemicals" means, for the purposes of firefighting agents and firefighting equipment, a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

II. Beginning January 1, 2020, a manufacturer or other person that sells firefighting personal protective equipment to any person, municipality, or state agency shall provide written notice to the purchaser at the time of sale if the firefighting personal protective equipment contains PFAS chemicals. The written notice shall include a statement that the firefighting personnel protective equipment contains PFAS chemicals. All notices shall be included in all personnel files of all employees using the firefighting personal protective equipment which contain PFAS chemicals.

III. The manufacturer or person selling firefighting personal protective equipment and the purchaser of the equipment shall retain the notice in procurement files for at least 3 years from the date of the transaction. Upon the request of the department, a person, manufacturer, or purchaser shall furnish the notice, or written copies, and associated sales documentation to the department within 60 days.

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- 1           IV. The department shall assist other state agencies, fire protection districts, and other  
2 municipalities to give priority and preference to the purchase of firefighting personal protective  
3 equipment that does not contain PFAS chemicals.
- 4           337:2 Effective Date. This act shall take effect upon its passage.

Approved: September 03, 2019  
Effective Date: September 03, 2019