

§ 1663. RESTRICTION ON MANUFACTURE, SALE, AND  
DISTRIBUTION; EXCEPTIONS

(a)(1) Unless otherwise required under federal law, a manufacturer of class B firefighting foam shall not manufacture, sell, offer for sale, or distribute for sale or use in this State class B firefighting foam to which PFAS have been intentionally added.

(2) Notwithstanding subdivision (1) of this subsection, the restriction on the manufacture, sale, offer for sale, or distribution of class B firefighting foam containing intentionally added PFAS for use at a terminal shall not apply until January 1, 2024.

(b) A person operating a terminal after January 1, 2024, and who seeks to purchase class B firefighting foam containing intentionally added PFAS for the purpose of fighting emergency class B fires, may apply to the Department of Environmental Conservation for a temporary exemption from the restrictions on the manufacture, sale, offer for sale, or distribution of class B firefighting foam for use at a terminal. An initial exemption shall not exceed a two-year term and may only be extended for one additional two-year term. The Department of Environmental Conservation, in consultation with the Department of Health, may grant an exemption under this subsection if the applicant provides:

(1) clear and convincing evidence that there is not a commercially available alternative that:

(A) does not contain intentionally added PFAS; and

(B) is capable of suppressing a large atmospheric tank fire or emergency class B fire at the terminal;

(2) information on 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; and~~

~~(4) an explanation of how:~~

~~(A) all releases of class B firefighting foam containing intentionally added PFAS shall be fully contained at the terminal; and~~

~~(B) existing containment measures prevent firewater, wastewater, runoff, and other wastes from being released into the environment, including into soil, groundwater, waterways, and stormwater.~~

~~(c) 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.~~