

§ 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 **one year 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.