

CHAPTER 243

AN ACT concerning perfluoroalkyl and polyfluoroalkyl substances in firefighting foam, supplementing Title 56 and Title 58 of the Revised Statutes, and making an appropriation.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.56:8-229 Class B firefighting foam containing intentionally added PFAS, use, sell, offer for sale, manufacture, distribution, prohibited, exceptions; definitions.

1. a. Beginning two years after the effective date of this act, no person shall use, or shall sell, offer for sale, manufacture, or distribute for sale or use in the State any class B firefighting foam containing intentionally added PFAS.

b. Subsection a. of this section shall not apply to the sale, manufacture, distribution, or use of class B firefighting foam for which the inclusion of PFAS is required by federal law, or by a rule or regulation adopted pursuant thereto, including, but not limited to, 14 C.F.R. s.139.317. If a federal requirement to include PFAS in class B firefighting foam is revoked, subsection a. of this section shall apply one year after the requirement is revoked.

c. Notwithstanding the provisions of subsection a. to the contrary, the owner or operator of a facility that uses a fixed foam fire suppression system for class B fires, which system is designed for 110 percent containment of any expected discharge volume, may use any class B firefighting foam containing intentionally added PFAS until four years after the effective date of this act, provided that the use complies with the provisions of subsection e. of this section. A manufacturer or distributor may manufacture class B firefighting foam for, or distribute or sell class B firefighting foam to, a facility owner or operator for use pursuant to this subsection.

d. (1) Notwithstanding the provisions of subsection a. to the contrary, the owner or operator of an oil refinery or petroleum terminal may use any class B firefighting foam containing intentionally added PFAS for fire suppression on a storage tank for combustible or flammable liquids with a surface area of 120 square meters or greater, or for fire suppression on a fuel-in-depth pool until eight years after the effective date of this act, provided that the use complies with the provisions of subsection e. of this section. A manufacturer or distributor may manufacture class B firefighting foam for, or distribute or sell class B firefighting foam to, a facility owner or operator for use pursuant to this subsection.

(2) The owner or operator of an oil refinery or petroleum terminal that intends to continue the use of class B firefighting foam containing intentionally added PFAS pursuant to paragraph (1) of this subsection shall disclose this information to the Commissioner of Community Affairs no later than two years after the effective date of this act. If, after providing this information to the Commissioner of Community Affairs, the owner or operator of the oil refinery or petroleum terminal intends to transition a facility to PFAS-free firefighting foam, the owner or operator shall inform the Commissioner of Community Affairs no later than 90 days prior to the proposed transition date.

(3) (a) An owner or operator of an oil refinery or petroleum terminal may apply to the Commissioner of Community Affairs for a waiver to extend the exemption provided in paragraph (1) of this subsection.

(b) An owner or operator of an oil refinery or petroleum terminal that anticipates applying for a waiver pursuant to this paragraph shall submit a notice of intent to the Commissioner of Community Affairs no later than five years after the effective date of this act.

(c) The Commissioner of Community Affairs may grant a waiver if the applicant provides:

(i) clear and convincing evidence that there is no commercially available replacement that does not contain intentionally added PFAS and that is capable of suppressing fire for that specific use;

(ii) information on the amount of firefighting foam containing intentionally added PFAS stored, used, or released by the applicant on an annual basis;

(iii) a detailed transition plan, including a timeline, for the owner or operator of the oil refinery or petroleum terminal to transition to firefighting foam that does not contain intentionally added PFAS chemicals for that specific use; and

(iv) a plan for meeting the requirements of subsection e. of this section.

(d) The Commissioner of Community Affairs shall provide an applicant an opportunity to correct deficiencies in an application for a waiver.

(e) The Commissioner of Community Affairs shall not grant a waiver under this paragraph for a specific use if any other oil refinery or petroleum terminal is known to have transitioned to commercially available class B firefighting foam that does not contain intentionally added PFAS chemicals for that specific use. The applicant may provide evidence as to why this subparagraph is inapplicable, including evidence that the specific use is different. In making a decision on a waiver, the Commissioner of Community Affairs shall consider both information provided by the applicant and information provided through public comment.

(f) The term of a waiver under this paragraph shall not exceed two years. A waiver may be extended for one additional consecutive term. All waivers shall expire no later than twelve years after the effective date of this act.

(g) The Commissioner of Community Affairs shall provide an opportunity for public comment during the waiver application and review process.

(h) The owner or operator of an oil refinery or petroleum terminal that has received a waiver may provide and use class B firefighting foam containing intentionally added PFAS chemicals in the form of mutual aid to another oil refinery or petroleum terminal at the request of authorities only if the other oil refinery or petroleum terminal also has a waiver.

(i) The Commissioner of Community Affairs shall notify the waiver applicant of a decision within one year after the date the application is received.

(j) The Department of Community Affairs shall impose a fee on an applicant who requests a waiver or waiver extension pursuant to this paragraph, in an amount not to exceed the reasonable costs of administering the provisions of this paragraph.

e. (1) A person that uses class B firefighting foam containing intentionally added PFAS pursuant to subsection c. or d. of this section shall report the use of the foam to the Commissioner of Community Affairs within five business days after the use, including the identity of the foam, the quantity used, the total PFAS concentration, the application for which the foam was used, and the duration of the fire.

(2) A person that uses, or plans to use, class B firefighting foam containing intentionally added PFAS pursuant to subsection c. or d. of this section shall:

(a) not release PFAS chemicals directly to the environment, such as to unsealed ground, soakage pits, waterways, or uncontrolled drains;

(b) fully contain all releases onsite;

(c) implement containment measures such as bunds and ponds that are controlled, impervious to PFAS chemicals, and do not allow water used for firefighting, wastewater, runoff, or other wastes to be released to the environment, such as to soils, groundwater, waterways, or stormwater;

(d) dispose of all water used for firefighting, wastewater, runoff, and other wastes in a manner that prevents releases to the environment;

(e) in the event of a release of PFAS chemicals, report the identity of the foam, the quantity used, the total PFAS concentration, and the form of any waste that contains PFAS chemicals

that is released into the environment immediately to the Department of Environmental Protection; and

(f) document the measures undertaken to comply with the provisions of this paragraph, which documentation shall be retained by the person and made available to any State or local official enforcing the provisions of this act, upon request.

f. No later than one year after the effective date of this act, a manufacturer of class B firefighting foam containing intentionally added PFAS shall notify, in writing, persons that sell the manufacturer's products in the State about the provisions of this act.

g. A manufacturer that manufactures, sells, or distributes class B firefighting foam containing intentionally added PFAS in the State after one year after the effective date of this act, except as authorized pursuant to subsections c. and d. of this section, shall recall the product no later than 27 months after the effective date of this act, and shall reimburse the retailer or any other purchaser for the product. A recall of the product shall include safe transport and storage, and documentation of the amount and storage location of the class B firefighting foam containing intentionally added PFAS, until the Department of Environmental Protection formally identifies a safe disposal technology. The manufacturer shall retain this documentation and shall provide it to any State or local official enforcing the provisions of this act, upon request.

h. After the expiration of any applicable exemption or waiver pursuant to subsections c. or d. of this section, the owner or operator of a facility that uses a fixed foam fire suppression system for class B fires, an oil refinery, or a petroleum terminal, as applicable, shall safely store any remaining class B firefighting foam containing intentionally added PFAS until the Department of Environmental Protection formally identifies a safe disposal technology. Safe storage shall include safe transport and documentation of the amount and storage location of the class B firefighting foam containing intentionally added PFAS. The operator shall retain this documentation and shall provide it to any State or local official enforcing the provisions of this act, upon request.

i. A violation of the provisions of this section shall constitute an unlawful practice for the purposes of P.L.1960, c.39 (C.56:8-1 et seq.), and the violator shall be subject to all remedies and penalties available pursuant to P.L.1960, c.39 (C.56:8-1 et seq.).

j. Nothing in this section shall be construed to impose liability on any news media that accepts or publishes advertising for any product that may fall within the scope of the provisions of this section.

k. As used in this section:

"Class B firefighting foam" means foam designed to prevent or extinguish a fire in flammable liquids, combustible liquids, petroleum greases, tars, oils, oil-based paints, solvents, lacquers, alcohols, and flammable gases.

"Fixed foam fire suppression system" means: (1) an engineered or pre-engineered total flooding or local application system consisting of a fixed supply of extinguishing agent permanently connected for fixed agent distribution to fixed nozzles that are arranged to discharge an extinguishing agent into an enclosure, directly onto a hazard, or a combination of both; or (2) an automatic sprinkler system.

"Fuel-in-depth pool" means fuel pooling in an area bounded by contours of land or physical barriers that are at least six inches in height, surround a surface area greater than 500 square meters, and are designed to retain fuel.

"Intentionally added PFAS" means PFAS added to a product or one of the product's components to provide a specific characteristic, appearance, or quality or to perform a specific function. "Intentionally added PFAS" also includes any degradation byproducts of PFAS.

“Perfluoroalkyl and polyfluoroalkyl substances” or “PFAS” means substances that include any member of the class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

“Petroleum terminal” means: (1) a bulk liquid storage facility exclusively engaged in the merchant wholesale distribution of petroleum products, including liquefied petroleum gas, which contains at least one storage tank containing petroleum products with a surface area of 120 square meters or greater; or (2) a facility engaged in the distribution of crude petroleum from extraction or processing facilities, which includes at least one storage tank containing crude petroleum with a surface area of 120 square meters or greater.

C.13:1K-43 Definitions; Department of Environmental Protection, program established, provide for the collection, safe disposal, Class B firefighting foams containing intentionally added PFAS, certain.

2. a. As used in this section:

"Class B firefighting foam" means the same as defined in subsection k. of section 1 of P.L.2023, c.243 (C.56:8-229).

"Intentionally added PFAS" means the same as defined in subsection k. of section 1 of P.L.2023, c.243 (C.56:8-229).

"Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS" means the same as defined in subsection k. of section 1 of P.L.2023, c.243 (C.56:8-229).

b. The Department of Environmental Protection shall establish a program to provide for the collection and safe disposal of certain Class B firefighting foams containing intentionally added PFAS, the use of which has been prohibited pursuant to section 1 of P.L.2023, c.243 (C.56:8-229), from fire departments in the State. The purpose of the program shall be to ensure that the Class B firefighting foams containing intentionally added PFAS are disposed of in a manner that protects the public health and the environment and to facilitate compliance by fire departments with the provisions of section 1 of P.L.2023, c.243 (C.56:8-229).

c. Under the program:

(1) the department shall be responsible for, and bear the cost of, collecting Class B firefighting foams containing intentionally added PFAS from fire departments that participate in the program and disposing of the foam in an environmentally sound manner; and

(2) except as provided in subsection d. of this section, the participating fire department shall be responsible for, and bear the cost of, obtaining replacement firefighting foams that comply with the provisions of section 1 of P.L.2023, c.243 (C.56:8-229) and all other applicable State and federal laws.

d. The department shall establish a procedure by which fire departments may voluntarily opt in to the program established pursuant to this section.

e. As part of the program, the department shall award grants to qualifying municipalities to cover the costs of replacement class B firefighting foams that are purchased to replace firefighting foams that are prohibited under the provisions of section 1 of P.L.2023, c.243 (C.56:8-229). A municipality may apply to the department, in a form and manner determined by the department, for a grant, which shall be in an amount sufficient to fully reimburse the municipality for the costs of the replacement class B firefighting foam. In order to be eligible for a grant, a municipality shall demonstrate, to the department's satisfaction, that the costs of the replacement firefighting foam exceed 5 percent of annual operating expenses of the municipality's fire department, for municipalities having a population in excess of 40,000 persons and a population density in excess of 3,000 persons per square mile, or 2.5 percent of annual operating expenses of the municipality's fire department, for all other municipalities.

3. There is appropriated from the General Fund to the Department of Environmental Protection the sum of \$250,000 to provide the initial funding for the grant program established pursuant to section 2 of this act.

4. This act shall take effect immediately.

Approved January 8, 2024.