



COLORADO

Solid & Hazardous
Waste Commission

Department of Public Health & Environment

NOTICE OF PROPOSED RULEMAKING HEARING BEFORE THE COLORADO SOLID AND HAZARDOUS WASTE COMMISSION

SUBJECT:

For consideration of the amendments to 6 CCR 1007-3, Parts 267, Subpart Q, along with the accompanying Statement of Basis and Purpose, the following will be considered:

Amendment of 6 CCR 1007-3, Parts 267, Subpart Q - Regulations Pertaining to Hazardous Waste - Class B Firefighting Foam Containing PFAS

These modifications are made pursuant to the authority granted to the Solid and Hazardous Waste Commission in Section 25-15-302(2), C.R.S.

Part 267 of the Colorado Hazardous Waste Regulations (6 CCR 1007-3) is being amended at this time to remove requirements which correspond to repealed statutory requirements found in C.R.S. 24-33.5-1234 and to add the current requirements of C.R.S. 24-33.5-1234, 25-5-1303.5, and 25-5-1309 to Subpart Q. The revised Subpart requires all persons who store or use one or more gallons of PFAS AFFF to comply with the requirements of the registration and certificate program, the restrictions surrounding certain uses of PFAS AFFF, the additional reporting requirements which pertain to self-certification and water quality spills hotline reporting, capture requirements for the containment of finished PFAS AFFF during use, and the safe storage requirements for the storage of spent PFAS AFFF and all associated wastes. These amendments incorporate the exemption criteria created by HB22-1345 and found in 25-5-1303.5 for the use of PFAS AFFF as required or authorized by federal law or implemented as required for a military purpose. These amendments do not prohibit the use of PFAS AFFF for real-world Class B fire responses, nor do they establish requirements for persons using or storing Class B firefighting foams which do not contain PFAS.

Any information that is incorporated by reference in these proposed rules is available for review at the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division and any state publications depository library.

Pursuant to C.R.S. §24-4-103(3), a notice of proposed rulemaking was submitted to the Secretary of State on January 12, 2024. Copies of the proposed rulemaking will be mailed to all persons on the Solid and Hazardous Waste Commission's mailing list on or before the date of publication of the notice of proposed rulemaking in the Colorado Register on January 25, 2024.

The proposed rulemaking materials may also be accessed at <https://cdphe.colorado.gov/shwc-rulemaking-hearings>.



WRITTEN TESTIMONY

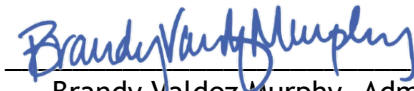
Any alternative proposals for rules or written comments relating to the proposed amendment of the regulation will be considered. The Solid and Hazardous Waste Commission will accept written testimony and materials regarding the proposed alternatives. **The commission strongly encourages interested parties to submit written testimony or materials to the Solid and Hazardous Waste Commission Office, via email to cdphe.hwcrequests@state.co.us by Wednesday, February 7, 2024, at 11:59 p.m. Written materials submitted in advance will be distributed to the commission members prior to the day of the hearing.** Submittal of written testimony and materials on the day of the hearing will be accepted, but is strongly discouraged.

HEARING SCHEDULE:

DATE: Tuesday, February 20, 2024
TIME: 9:00 a.m.
PLACE: This meeting will be held online only at:

<https://us02web.zoom.us/meeting/register/tZ0ldeyvqDktG9A80u-6CDaKszafa2dunsSD>

Oral testimony at the hearing regarding the proposed amendments may be limited.



Brandy Valdez Murphy, Administrator



1 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

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4 Solid and Hazardous Waste Commission/Hazardous Materials and
5 Waste Management Division

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8 6 CCR 1007-3

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11 HAZARDOUS WASTE

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14 Amendments to Part 267, Subpart Q – Class B Firefighting Foam Containing PFAS

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17 1) The Table of Contents for Part 267 is amended by revising Subpart Q to read as
18 follows:

19
20
21 PART 267 STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS
22 WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE
23 MANAGEMENT FACILITIES.

24
25 *****

26
27
28 Subpart Q – Class B Firefighting Foam Containing PFAS

29	Sec.	
30	267.600	Purpose and Applicability Reserved
31	267.601	Definitions
32	267.605	Applicability of Rrequirements
33	267.606	Use prohibitions
34	267.610	Registration and Ccertificate Pprogram
35	267.611	Additional reporting
36	267.615	Capture Rrequirements
37	267.620	Spent Class B Firefighting Foam PFAS AFFF Sstorage
38	267.630	Penalties Reserved
39		
40		

41
42 2) Section 267.600 is deleted and reserved to read as follows:

43
44 **§ 267.600 ~~Purpose and Applicability~~Reserved.**

45 ~~These regulations establish standards for persons that store or use Class B firefighting foam containing~~
46 ~~intentionally added perfluoroalkyl and/or polyfluoroalkyl substances or PFAS. These regulations apply to~~
47 ~~the storage of Class B firefighting foam containing intentionally added PFAS and the use and subsequent~~

48 storage of Class B firefighting foam containing intentionally added PFAS that is generated from testing
49 firefighting foam fire systems.

50
51
52 **3) Section 267.601 Definitions is amended to read as follows:**

53
54 **§ 267.601 Definitions.**

55
56 In addition to the definitions in § 260.10, the following definitions apply to this subpart:

57
58 **Capture** means contained or otherwise controlled to prevent release of spent Class B firefighting foam
59 containing PFAS to the environment, and to facilitate off-site disposal.

60
61 **Class B firefighting foam containing intentionally added PFAS** means foam designed for flammable
62 liquid fires, e.g. Aqueous Film Forming Foam (AFFF) which contains intentionally added perfluoroalkyl
63 and polyfluoroalkyl substances. These materials are referred to throughout this subpart as "PFAS AFFF".

64
65 **Emergency** means an unexpected situation or sudden occurrence of a serious and urgent nature that
66 demands immediate action and that constitutes a threat to life or health, or that may cause major
67 damage to property or the environment.

68
69 **Facility**, as used in the Subpart, means any non-residential place of business.

70
71 **Finished PFAS AFFF** means a mixture of class B firefighting foam containing intentionally added PFAS
72 concentrate and water which has been aerated through a dispensing system.

73
74 **Fire Department** ~~includes, but is not limited to, municipal fire departments, volunteer fire departments,~~
75 ~~and fire protection districts.~~ means the duly authorized fire protection organization of a town, city, county,
76 or city and county, a fire protection district, a metropolitan district or county improvement district that
77 provides fire protection, or a volunteer fire department.

78
79 **Firefighting foam fire systems** means a system designed to provide protection from fire, or for the
80 suppression of fire, through the use of firefighting foam.

81
82 **Initial response** means the extinguishment of a Class B fire.

83
84 **Perfluoroalkyl and polyfluoroalkyl substances or PFAS** means a class of fluorinated organic
85 chemicals containing at least one fully fluorinated carbon atom.

86
87 **Perfluoroalkyl and polyfluoroalkyl substances take-back program** means the program created by 25-
88 5-1311, C.R.S.

89
90 **Person** means ~~(1) a fire department, (2) a facility, or (3) a lessee that is subject to regulation by the~~
91 ~~federal aviation administration.~~ any individual, public or private corporation, partnership, association, firm,
92 trust or estate; the state or any executive department, institution, or agency thereof; any municipal
93 corporation, county, city and county, or other political subdivision of the state; or any other legal entity
94 whatsoever which is recognized by law as the subject of rights and duties.

95
96 **Public-use airport** means a public airport; or a privately-owned airport to be used for public purposes
97 that is a reliever airport; or determined by the U.S. Secretary of Transportation to have at least 2,500

98 passenger boardings each year and to receive scheduled passenger aircraft service per 49 USC §
99 47102(22) (2023).

100
101 **Release** means any spilling, leaking, pumping, pouring, emptying, discharging, injecting, escaping,
102 leaching, dumping, or disposing of a chemical into the environment other than its intended use.

103
104 **Spent PFAS AFFF** means: a) finished PFAS AFFF, b) PFAS AFFF concentrate which has been taken
105 out of service through participation in the perfluoroalkyl and polyfluoroalkyl substances take-back
106 program, and c) PFAS AFFF concentrate created as a result of leaking containers, spills, or other
107 releases.

108
109 **Uses or stores** means actual and intentional ownership and control of Class B firefighting foam
110 containing intentionally added PFAS.

111
112 **Water quality spills hotline** means the Colorado Emergency Planning Committee 24-Hour Emergency
113 and Incident Reporting Line, reached by calling 1-877-518-5608 or filling out this form:
114 <https://cdphe.redcap.state.co.us/surveys/?s=HXEXXDC8T>.

115
116
117 **4) Section 267.605 is amended by revising paragraph (a), deleting existing paragraph (b),**
118 **renumbering existing paragraph (c) as new paragraph (b), revising new paragraph (b),**
119 **and deleting paragraph (d) to read as follows:**

120
121 **§ 267.605 Applicability of ~~R~~requirements.**

122
123 ~~(a) All Persons who store or use one or more gallons of Class B firefighting foam containing intentionally~~
124 ~~added PFAS **AFF** are subject to: the requirements of section 267.610 of these regulations for the~~
125 ~~registration and certificate program.~~

126
127 (1) The requirements of section 267.610 of these regulations for the registration and certificate
128 program;

129
130 (2) The use prohibitions of section 267.606;

131
132 (3) The additional reporting requirements of section 267.611;

133
134 (4) The capture requirements of section 267.615; and

135
136 (5) The storage requirements of section 267.620.

137
138 ~~(b) Persons who use Class B firefighting foam containing intentionally added PFAS for testing firefighting~~
139 ~~foam fire systems are subject to section 267.615 of these regulations for capture and containment of the~~
140 ~~spent firefighting foam containing PFAS.~~

141
142 ~~(c)~~ (b) Persons who use PFAS AFF in the past have used Class B firefighting foam containing intentionally
143 added PFAS for testing firefighting foam fire systems, and convert to **firefighting foam fire systems testing**
144 methods that do not use Class B firefighting foam containing intentionally added PFAS AFFF, are subject
145 to sections 267.615 and 267.620 of these regulations for the capture, containment, and storage of **spent**
146 PFAS AFFF the and wastewater used created to flush the firefighting foam fire system the first time
147 following during conversion activities. Following such conversion activities and flushing, any subsequent
148 use tests of the firefighting foam fire system shall not be subject to the requirements of sections 267.615

149 and 267.620, unless ~~firefighting foam containing intentionally added~~ PFAS AFFF is again intentionally
150 reintroduced into the firefighting foam fire system.

151
152 ~~(d) Persons who store spent Class B firefighting foam containing intentionally added PFAS used in testing~~
153 ~~firefighting foam fire systems are subject to section 267.620 of these regulations.~~

154
155
156 **5) Subpart Q of Part 267 is amended by adding new section 267.606 (Use prohibitions) to**
157 **read as follows:**

158
159 **§ 267.606 Use prohibitions.**

160
161 (a) No persons or fire department may discharge or otherwise use for training purposes or for testing
162 firefighting foam fire systems which employ PFAS AFFF.

163
164 (b) The use of PFAS AFFF is prohibited at all Colorado public-use airport structures used for the
165 storage or maintenance of aircraft.

166
167
168 **6) Section 267.610 (Registration and certificate program) is amended to read as follows:**

169
170 **§ 267.610 Registration and ~~C~~ertificate ~~P~~rogram**

171
172 (a) Persons who store and/or use ~~Class B firefighting foam containing intentionally added~~ PFAS AFFF
173 must register and obtain a certificate of registration ~~from the Department by June 1, 2021, or~~ within six
174 months after ~~they~~ first obtains ~~Class B firefighting foam containing~~ PFAS AFFF.

175
176 (b) Registration must be completed on-line through the Department's Class B firefighting foam web-site at
177 <https://cdphe.colorado.gov/pfcs/pfas-colorado-laws>. Persons may modify their registration information at
178 any time by accessing the Department's Class B firefighting foam web-site.

179
180 (c) The Department will review each registration application, and if it determines the application is
181 complete, will use its best efforts to approve the application within 15 business days of receipt by issuing
182 an electronic certificate to the registrant. If the application is not complete, the Department will use its
183 best efforts to notify the registrant and identify any additional information that is needed to complete the
184 application within 15 business days of receipt.

185
186 ~~(d) A certificate of registration for storage and/or use of Class B firefighting foam containing intentionally~~
187 ~~added PFAS must only be obtained one time. Persons may modify their registration information at any~~
188 ~~time by accessing the Department's Class B firefighting foam web-site at~~
189 ~~<https://cdphe.colorado.gov/pfcs/pfas-colorado-laws>.~~

190
191
192 **7) Subpart Q of Part 267 is amended by adding new section 267.611 (Additional**
193 **reporting) to read as follows:**

194
195 **§ 267.611 Additional reporting.**

196
197 (a) The Department, as deemed necessary, may require persons who store or use one or more gallons of
198 PFAS AFFF, and have registered and obtained a certificate in accordance with section 267.610, to
199 furnish additional reporting concerning the quantities and disposition of PFAS AFFF.

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(b) Persons who store or use one or more gallons of PFAS AFFF and who receive a self-certification checklist from the Department shall complete and return the checklist within the time specified in the instructions provided by the Department.

(1) The Department shall provide persons who store or use one or more gallons of PFAS AFFF a minimum of 14 days from the date of receipt to return the checklist. A checklist is deemed returned on the date it is received by the Department. The Department may provide an extension of time to complete and return a checklist upon request.

(2) The self-certification checklist shall contain a certification in substantially the following form, which must be signed by an authorized representative of the generator:

“I, the undersigned facility representative, certify that:

- i. I have personally examined and am familiar with the information contained in this submittal;
- ii. the information contained in this submittal is to the best of my knowledge true, accurate, and complete in all respects;
- iii. I am fully authorized to make this certification on behalf of this facility; and
- iv. I am aware that there are significant penalties including, but not limited to, possible fines and imprisonment for willfully submitting false, inaccurate, or incomplete information.”

(3) The completed and certified checklist must be maintained and made readily available for inspection by persons who store or use one or more gallons of PFAS AFFF for three years following the date the checklist was certified.

(c) The use or release of PFAS AFFF must be reported to the water quality spills hotline within twenty-four hours after its use or release.

(1) Except as provided by subsection (f) of this Section, the requirements described in subsections (c) through (e) of this Section do not apply to persons who use PFAS AFFF and are required or authorized to do so under federal law, including 14 CFR 139, or otherwise required for a military purpose.

(d) In accordance with paragraph (c) of this section, the following information must be reported to the water quality spills hotline within twenty-four hours of the use or release of PFAS AFFF and must be maintained and made readily available for inspection for three years following the date the information was reported:

- (1) A description of the event which resulted in the use or release of PFAS AFFF;
- (2) The trade name and product name of the PFAS AFFF;
- (3) The amount and type of PFAS chemicals in the PFAS AFFF; and
- (4) The quantity of PFAS AFFF or any associated firewater, wastewater, runoff, and other waste that is used or released.

(e) Users of PFAS AFFF must document any measures undertaken pursuant to the requirements of this section. In investigating compliance with the requirements of this section, the attorney general may

252 request that the user provide the documentation created pursuant to the requirements of this subsection
253 to the attorney general.

254
255 (f) If the Director, through the Solid and Hazardous Waste Commission, determines by rule that the laws
256 or requirements described in subsection (c)(1) of this Section no longer apply to a particular industry or
257 sector, the Director shall provide notice on the department's website of this determination and shall
258 promulgate rules, through the Solid and Hazardous Waste Commission, prohibiting users of PFAS AFFF
259 within that industry or sector from using PFAS AFFF in violation of this section, which rules shall apply no
260 sooner than two years after the Director's determination.

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262
263 **8) Section 267.615 (Capture requirements) is amended to read as follows:**

264
265 **§ 267.615 Capture Requirements.**

266
267 (a) ~~Class B firefighting foam containing intentionally added PFAS shall not be used for testing firefighting~~
268 ~~foam fire systems unless it is captured in containment systems designed and operated to prevent release~~
269 ~~of PFAS to the environment. Pursuant to § 267.606, no persons or fire department may discharge or~~
270 ~~otherwise use for training purposes or for testing firefighting foam fire systems which employ PFAS AFFF.~~
271 PFAS AFFF users must fully contain finished PFAS AFFF by implementing appropriate containment
272 measures during use, which may include bunds, ponds, or an equivalent means of providing containment,
273 unless:

274
275 (1) The persons who discharge or otherwise use PFAS AFFF are required or authorized to do so
276 under federal law, including 14 CFR 139, or otherwise required for a military purpose.

277
278 (b) ~~A containment system used to capture Class B firefighting foam containing intentionally added PFAS~~
279 ~~discharged during testing must be designed and constructed as follows:~~

280
281 ~~(1) Portions of containment systems comprised of concrete must be:~~

282
283 ~~i. constructed of man-made materials of sufficient strength and thickness to contain spent foam and~~
284 ~~liquids;~~

285
286 ~~ii. supported by an adequate foundation;~~

287
288 ~~iii. free of cracks and gaps and be sufficiently impervious to contain spent foams and liquids; and~~

289
290 ~~iv. sloped or otherwise designed to drain and remove liquids;~~

291
292 ~~(2) Portions of containment systems comprised of pipes must function as designed to contain spent~~
293 ~~foams and liquids;~~

294
295 ~~(3) All containment systems must be designed and constructed to contain 110% of the expected foam~~
296 ~~and liquids discharged during testing.~~

297
298 (b) Pursuant to subsection (a) of this Section, containment measures meeting the following specifications
299 shall be implemented to capture PFAS AFFF discharged during use:

300
301 (1) Containment measures must be under the control of the user of PFAS AFFF;

302
303 (2) Containment measures must be impervious to PFAS chemicals to prevent

304 the lateral escape of finished foam from the containment measures, and may absorb
305 PFAS chemicals to help prevent such escape. Containment measures may include:

306
307 i. Bunds, dikes, berms or culverting sufficient to contain finished PFAS AFFF;

308
309 ii. Spill diversion or retention ponds;

310
311 iii. Weirs, booms, or other barriers;

312
313 iv. Sorbent materials; or

314
315 v. Any equivalent means of implementing containment measures which are impervious to PFAS
316 to prevent the lateral escape of the finished foam from the containment measures; and

317
318 (3) Containment measures must not allow the finished PFAS AFFF, or any associated firewater,
319 wastewater, runoff, or other waste to be released.

320
321 ~~(c) A containment system used to capture Class B firefighting foam containing intentionally added PFAS~~
322 ~~discharged during testing must be operated as follows:~~

323
324 ~~— (1) The containment system must be fit for use and must not leak.~~

325
326 ~~i. Persons subject to these regulations must obtain and keep on file and available for inspection a~~
327 ~~written assessment reviewed and certified by an independent qualified professional engineer that attests~~
328 ~~to the containment system's integrity by June 1, 2021, or, for new systems, prior to operating the system.~~

329
330 ~~ii. An independent qualified professional engineer must review and re-certify the written assessment~~
331 ~~prior to the next testing event, but no more often than annually. If the system fails a testing event, an~~
332 ~~independent qualified professional engineer must review and re-certify the written assessment following~~
333 ~~any repairs or modifications to the system.~~

334
335 ~~iii. This assessment must determine that the containment system is adequately designed and has~~
336 ~~sufficient structural strength to ensure it will not collapse, rupture, or fail. At a minimum this assessment~~
337 ~~must consider the following:~~

338
339 ~~A. Documented age of the containment system; and~~

340
341 ~~B. Results of a leak test, internal inspection, video inspection or other integrity examination that~~
342 ~~addresses cracks, leaks, corrosion, and erosion of the containment system.~~

343
344 ~~iv. If, as a result of the assessment, a containment system is found to be leaking or unfit for use, it must~~
345 ~~immediately be taken out of service and repaired.~~

346
347 ~~(2) The containment system must be operated to capture all spent foam and liquids during testing without~~
348 ~~splashing or spraying wastes outside of the system.~~

349
350 ~~(3) Spent foam and liquids generated during testing and collected in the containment system must be~~
351 ~~removed from the containment system and placed in storage as required by section 267.620 within 24~~
352 ~~hours of completing the testing, or at least once per day.~~

353
354 (c) Containment measures used to capture PFAS AFFF cannot be used for long term storage of the
355 PFAS AFFF. Following the initial response to an immediate emergency, the captured finished PFAS

356 AFFF must be removed from containment measures and placed in storage containers to the extent
357 possible, but within 2448 hours of use. Containers used to store the captured finished PFAS AFFF must
358 be managed in accordance with the safe storage requirements of § 267.620.

359
360 ~~(d) Containment systems used to capture Class B firefighting foam containing intentionally added PFAS~~
361 ~~discharged during testing activities must be designed or operated to prevent run-on or infiltration of~~
362 ~~precipitation into the system.~~

363
364
365 **9) Section 267.620 is amended to read as follows:**

366
367 **§ 267.620 Spent-Class B Firefighting Foam PFAS AFFF Sstorage**

368
369 (a) Persons who store spent PFAS AFFF must safely store such material and any associated firewater,
370 wastewater, runoff, and other waste in a way which prevents their release until further revisions to these
371 regulations are issued. Spent Class B firefighting foam containing intentionally added PFAS generated
372 during testing must be shipped off-site for treatment and disposal as soon as possible. Waste foam may
373 be stored on-site in containers prior to disposal provided that:

374
375 (1) ~~On-site storage is necessary to facilitate, including to accumulate quantities sufficient to facilitate,~~
376 ~~proper off-site treatment and disposal; and~~ The requirements described in subsections (b)(2)
377 through (b)(6) of this Section do not apply to persons who store spent PFAS AFFF taken out of
378 service through participation in the perfluoroalkyl and polyfluoroalkyl substances take-back
379 program in its original factory-sealed container, so long as the container is managed in
380 accordance with subsection (b)(1) of this Section.

381
382 (2) ~~On-site storage does not occur longer than 120 days, unless a variance is granted by the Director~~
383 ~~in writing extending the storage duration. Absent a demonstration that disposal capacity is not~~
384 ~~available, any extension shall be limited to an additional 120 days.~~ The requirements described in
385 this Section do not apply to persons who store or use PFAS AFFF and are required or authorized
386 to do so under federal law, including 14 CFR 139, or otherwise required for a military purpose.

387
388 (b) ~~Containers used to store spent Class B firefighting foam containing intentionally added PFAS AFFF~~
389 ~~used in testing must be:~~

390
391 (1) ~~DOT approved containers;~~ Made of materials that will not react with, and are otherwise compatible
392 with the spent PFAS AFFF to be accumulated, so that the ability of the container to contain the spent
393 PFAS AFFF is not impaired.

394
395 i. -If a container holding spent PFAS AFFF is not in good condition, or if it begins to
396 leak, persons who store the spent PFAS AFFF must immediately transfer the
397 spent PFAS AFFF from this container to a container that is in good condition and
398 does not leak.

399
400 (2) Labeled with content and accumulation start date;

401
402 (3) Kept closed except when adding or removing spent PFAS AFFF wastes;

403
404 (4) Arranged in a stable configuration ~~(not stacked)~~ with aisle space to facilitate their inspection and
405 movement in event of an ~~to allow the unobstructed movement of personnel, fire protection equipment,~~
406 spill control equipment, and decontamination equipment to any area of the facility operation in an
407 emergency; ~~and~~ to allow for inspection of containers.

408
409 i. Containers which have a volume of 20 gallons or less may be stacked in an alternate stable
410 arrangement, up to three high and three wide, not to exceed six feet.

411
412 (5) Stored on a flat surface that is bermed or otherwise designed to prevent run-on or run-off of
413 precipitation; and

414
415 (6) Stored in a manner that provides secondary containment that is either:

416
417 i. a concrete pad(s) free of cracks and gaps and otherwise impervious constructed to prevent
418 releases to the environment in the event of a spill or leak; or

419
420 ii. a liner that has sufficient strength and thickness, and that is otherwise impervious constructed
421 to prevent releases to the environment in the event of a spill or leak; or

422
423 iii. an equivalent means of providing secondary containment.

424
425 (7) At least weekly, the owner or operator must inspect areas where containers are stored. The owner
426 or operator must look for leaking containers and for deterioration of containers and the containment
427 system caused by corrosion or other factors.

428
429 i. Problems identified during the inspection shall be remedied within 24 hours of identifying; and

430
431 ii. The date and time and content of the inspections must be documented and recorded, and
432 retained at the facility for 3 years of the date of storage.

433
434 **10) Section 267.630 is deleted and reserved to read as follows:**

435
436 **§ 267.630 Penalties Reserved.**

437 ~~Persons who violate any of the requirements of this Subpart shall be subject to enforcement, including~~
438 ~~assessment of civil or administrative penalties, as provided in §§ 25-15-308(2) and 25-15-309, C.R.S.~~

439
440 **11) Section 8.103 (Statement of Basis for the Rulemaking Hearing of February 20, 2024) is**
441 **added to Part 8 of the Regulations to read as follows:**

442
443 **Statement of Basis and Purpose**
444 **Rulemaking Hearing of February 20, 2024**

445
446 **8.103 Basis and Purpose.**

447
448 These amendments to 6 CCR 1007-3, Part 267 are made pursuant to the authority granted to the Solid
449 and Hazardous Waste Commission in § 25-15-302(2), C.R.S.

450
451 **Amendments to Part 267 Subpart Q - Class B Firefighting Foam Containing PFAS**

452
453 HB19-1279 amended C.R.S. 24-33.5-1234 to prohibit persons or fire departments from discharging or
454 otherwise using Class B firefighting foam (PFAS AFFF) for training or for testing purposes. HB20-1119

459 amended C.R.S. 25-15-302 to require the Solid and Hazardous Waste Commission (SHWC) to establish
460 a Certificate of Registration for any facility or fire department, or lessee subject to federal rules and
461 regulations, that use or store PFAS AFFF. The Bill further amended C.R.S. 24-33.5-1234 to establish an
462 exemption for certain testing activities which employ PFAS AFFF, so long as the testing activities were
463 conducted in accordance with standards for capture and disposal of PFAS AFFF used for testing
464 purposes and the person or fire department who conducted the testing activities had obtained a
465 Certificate of Registration. Those standards were established and became effective on April 14, 2021
466 under the existing 6 CCR 1007-3, Part 267, Subpart Q. The exemption created by HB20-1119 was
467 repealed effective January 1, 2023, rendering the existing 6 CCR 1007-3, Part 267, Subpart Q exemption
468 language obsolete.

469
470 HB20-1119 amended C.R.S. 25-5-1309 to restrict the use of PFAS AFFF at Colorado public-use airports
471 structures used for the storage or maintenance of aircraft beginning January 1, 2023. HB22-1345 further
472 amended C.R.S. 25-5-1309, deferring the restriction to take effect January 1, 2024.

473
474 HB22-1345 also amended C.R.S. 25-5-1303.5 to require that persons who use PFAS AFFF not allow a
475 release, contain PFAS AFFF and all associated waste during use, safely store all PFAS AFFF and all
476 associated wastes, and report all uses and releases of the material to the Water Quality Spills Hotline.

477
478 Part 267 of the Colorado Hazardous Waste Regulations (6 CCR 1007-3) is being amended at this time to
479 remove requirements which correspond to repealed statutory requirements found in C.R.S. 24-33.5-1234
480 and to add the current requirements of C.R.S. 24-33.5-1234, 25-5-1303.5, and 25-5-1309 to Subpart Q.
481 The revised Subpart requires all persons who store or use one or more gallons of PFAS AFFF to comply
482 with the requirements of the registration and certificate program, the restrictions surrounding certain uses
483 of PFAS AFFF, the additional reporting requirements which pertain to self certification and water quality
484 spills hotline reporting, capture requirements for the containment of finished PFAS AFFF during use, and
485 the safe storage requirements for the storage of spent PFAS AFFF and all associated wastes. These
486 amendments incorporate the exemption criteria created by HB22-1345 and found in 25-5-1303.5 for the
487 use of PFAS AFFF as required or authorized by federal law or implemented as required for a military
488 purpose. These amendments do not prohibit the use of PFAS AFFF for real-world Class B fire responses,
489 nor do they establish requirements for persons using or storing Class B firefighting foams which do not
490 contain PFAS. The proposed regulatory changes were developed utilizing a series of two stakeholder
491 meetings at which comments were received from interested parties, discussed, and incorporated as
492 appropriate. The group of stakeholders who participated in this process included fire departments,
493 airports, and military personnel registered under the Subpart Q Registration and Certification Program,
494 non-profit Colorado trade associations, international trade associations, members of local governments
495 and utilities, and other interested individuals. Comments received in writing from individual stakeholders,
496 on two separate drafts of the proposed revisions, were incorporated as well. The Department believes
497 that all stakeholder concerns have been resolved to the extent possible.

498
499 Class B firefighting foams are used to put out fires involving Class B materials, which include gasoline, oil,
500 and jet fuel. Class B foams can be categorized into two broad categories from a PFAS perspective:
501 fluorinated foams that contain PFAS, like Aqueous Film Forming Foam (AFFF), and fluorine free foams.
502 AFFF is usually created by combining foaming agents with fluorine surfactants. PFAS are the active
503 ingredients in the fluorinated surfactants used in the foams and are typically contained in the foams at up
504 to 3% concentrations, or 300,000 parts per million. When mixed with water and discharged, the foam

505 forms an aqueous film that quickly cuts off the oxygen to a flame, extinguishing the fire, and stopping the
506 fire from relighting.

507
508 PFAS are a family of human-made chemicals with over 5,000 compounds that have been used for
509 decades in products like food packaging, carpets, non-stick products, other household items, medical
510 supplies, and firefighting foam due to their ability to resist heat, oil, stains, grease, and water. PFAS can
511 be harmful to human health and the environment when released to the soil, surface water or groundwater.
512 Health effects from PFAS exposure may include pregnancy complications, developmental effects, and
513 liver and kidney effects. Perfluorooctanoic acid (PFOA) and Perfluorooctane sulfonic acid (PFOS) are
514 synthetic, eight carbon non-polymer organic compounds that are PFAS. These two chemicals along with
515 anions, perfluorooctanoate and perfluorooctane sulfonate respectively, were added to the list of
516 hazardous constituents in Appendix VIII to Part 261 of the Colorado Hazardous Waste Regulations (6
517 CCR 1007-3) in 2018 due to their toxicity to humans at very low concentrations. For this reason, in 2022,
518 EPA issued interim lifetime health advisory levels of 0.004 parts per trillion for PFOA and 0.02 parts per
519 trillion for PFOS for safe consumption of drinking water, lowered from the 70 parts per trillion 2016
520 combined health advisory level for PFOA and PFOS. Once released to the environment, PFAS are
521 persistent, and can contaminate environmental media. Human exposure to PFAS through the ingestion of
522 contaminated drinking water is of major concern, but exposure can also happen through dermal and
523 inhalation routes. Class B firefighting foams containing PFAS is a leading source of PFAS contamination
524 impacting Colorado communities.

525
526 While Class B firefighting foams containing PFAS are slowly being replaced with alternative products that
527 do not contain the toxic compounds, many of these alternative products have not been completely tested
528 and approved for fighting high hazard flammable liquid fires. For example, the U.S. Department of
529 Defense (DoD) published a military specification (MIL-PRF-32725) for fluorine-free firefighting foam (F3)
530 in January 2023. The Naval Sea Systems Command (NAVSEA) oversees the qualification process of F3,
531 and as of January 2024, one product has been qualified and listed in the DoD Qualified Products
532 Database (QPD)/Qualified Products List (QPL). Additionally, the Federal Aviation Administration (FAA)
533 informed Airport operators and industry stakeholders in its January 2023 National Part 139 CertAlert No.
534 23-01 that it will accept airport operator's use of F3s qualified under MIL-PRF-32725, but will not require
535 their use as of the date of the CertAlert. For these reasons, large inventories of the Class B firefighting
536 foam containing PFAS still remain, and PFAS containing firefighting foams are still used routinely to
537 extinguish these dangerous fires.

538
539 The requirements in the revised Subpart Q to Part 267 of 6 CCR 1007-3 are focused on addressing the
540 risks associated with the contamination of soil and groundwater with perfluoroalkyl and polyfluoroalkyl
541 chemicals found in PFAS AFFF, as well as removing requirements which correspond to repealed
542 statutes. The revised Subpart requires all persons who store or use one or more gallons of PFAS AFFF to
543 comply with the requirements of the Subpart, with exemption criteria defined in certain sections for the
544 use of PFAS AFFF where required or authorized by federal law or implemented as required for a military
545 purpose.

546
547 The amendments establish new definitions in Section 267.601 for the following terms used throughout the
548 amended Subpart Q:

549

- 550 1) The definition of “Emergency” is adapted from 6 CCR 1007-2, Part 1, Section 1.2. The purpose of
551 its insertion into the Subpart is to clarify the Section 267.615 requirement to remove finished
552 PFAS AFFF from containment measures within 48-hours of the initial response to an immediate
553 emergency.
- 554 2) The definition of “Finished PFAS AFFF” is adapted from industry terminology. The purpose of its
555 insertion into the Subpart is to clarify the definition of “Spent PFAS AFFF” and differentiate it
556 between PFAS AFFF concentrate.
- 557 3) The definition of “Initial response” is adapted from 6 CCR 1007-2, Part 1, Section 5.5.4. The
558 purpose of its insertion into the Subpart is to clarify when the Section 267.615(c) removal
559 requirement is triggered.
- 560 4) The definition of “Perfluoroalkyl and polyfluoroalkyl substances take-back program” is
561 incorporated by reference to C.R.S. 25-5-1311. The purpose of its insertion into the Subpart is to
562 define the materials that may be exempt from the Section 267.620 storage requirements.
- 563 5) The definition of “Public use airport” is adapted from the definition found in 40 USC § 47102(22)
564 (2023). The purpose of its insertion into the Subpart is to clarify which airports may be subject to
565 the Section 267.606 use prohibitions.
- 566 6) The definition of “Release” is adapted from C.R.S. 25-5-1302. The purpose of its insertion into the
567 Subpart is to define those circumstances which would constitute a release, and therefore to what
568 circumstances the requirements of the Subpart would be applicable.
- 569 7) The definition of “Spent PFAS AFFF” is adapted from industry terminology. The purpose of its
570 insertion into the Subpart is to define what materials would be subject to the Section 267.620
571 Spent PFAS AFFF storage requirements and to differentiate it from PFAS AFFF concentrate.
- 572 8) The definition of “Water quality spills hotline” is adapted from the Water Quality Control Division’s
573 website. One purpose of its insertion into the Subpart is to include for reference the phone
574 number and website of the hotline for ease of access. Another purpose of its insertion is to define
575 the hotline that must be contacted pursuant to the requirements of Section 267.611.

576
577 The amendments establish revised definitions in Section 267.601 for the following terms used throughout
578 the amended Subpart Q:

- 579
- 580 1) The definition of “Class B firefighting foam containing intentionally added PFAS” is amended to
581 state that the term Class B Firefighting foam is referred to as “PFAS AFFF” throughout the
582 Subpart. The purpose of this revision is to improve the clarity of the regulation and reduce its
583 length.
- 584 2) The definition of “Fire department” is amended to align with the definition of “fire department”
585 found in C.R.S. 25-5-1302. The purpose of this revision is to better align the regulation with the
586 corresponding Statute.
- 587 3) The definition of “Person” is adapted from 6 CCR 1007-3, Part 260.10. The purpose of its
588 insertion is to ensure the regulation encompasses all applicable entities.

589
590 The amendments revise Section 267.605 - Applicability of requirements of Subpart Q to revise the
591 applicability of capture, containment, and storage requirements from only those who use PFAS AFFF for
592 testing activities to those who use PFAS AFFF for any purpose.

593

594 Additionally, the amendments revise the applicability of the existing Section 267.605(c), which requires
595 the capture, containment, and storage of spent PFAS AFFF created specifically from conversions of
596 PFAS AFFF systems used for testing to F3 systems. Due to the repealed testing exemption found in
597 C.R.S. 24-33.5-1234, the section is revised to be applicable to all conversions of PFAS AFFF systems to
598 F3 systems.
599

600 The amendments revise Subpart Q to include a new Use prohibitions Section 267.606. The purpose of
601 this section is to list two relevant statutory restrictions on the use of PFAS AFFF in regulation: the existing
602 restriction of C.R.S. 24-33.5-1234 on the use of PFAS AFFF for training or testing firefighting foam fire
603 systems and the new restriction of C.R.S. 25-5-1309 on the use of PFAS AFFF at Colorado public-use
604 airport structures used for the storage or maintenance of aircraft.
605

606 The amendments retain the existing, mandatory on-line registration program for all those who store or
607 use PFAS AFFF. The registration requires that basic information about the fire department or facility be
608 provided to the Division along with information concerning the quantities and configurations of the storage
609 of the PFAS AFFF. Once information is provided to the Division through the on-line registration, the
610 Division will continue to review the information and issue a Certificate of Registration. Certificates must
611 be obtained from the Division within six (6) months after the fire department or facility first stores or uses
612 the PFAS AFFF.
613

614 The amendments revise Subpart Q to include a new additional reporting requirements section, Section
615 267.611, which requires those who have registered and obtained a certificate of registration in
616 accordance with Section 267.610 to furnish additional reporting concerning quantities and disposition of
617 PFAS AFFF. This new section implements a self certification program for which those who have
618 registered and obtained a certificate of registration must complete and return a checklist summarizing
619 their compliance status with individual requirements found in 6 CCR 1007-3, Part 267, Subpart Q. This
620 requirement is added under the authority of C.R.S. 25-5-1303.5(e). The self certification checklist will be
621 designed to help those subject to regulatory requirements understand and comply with the regulations
622 that are applicable to them. The section also requires the use or release of PFAS AFFF be reported to the
623 water quality spills hotline. This requirement corresponds with 25-5-1303.5(d) and (e), and includes an
624 exemption for the use of PFAS AFFF as required or authorized by federal law or implemented as required
625 for a military purpose. To ensure the records necessary to verify compliance are maintained by persons
626 who use or store one or more gallons of PFAS AFFF, Section 267.611 is amended to include a record
627 retention requirement of 3 years for measures undertaken pursuant to the requirements of the section.
628 Many of the requirements included in the amendments are derived from requirements of Colorado House
629 Bill 22-1345 and have an effective date of January 1, 2024, including: users must not allow a release;
630 contain PFAS AFFF and all associated waste during use; safely store all PFAS AFFF and all associated
631 wastes; report all uses and releases to the Water Quality Spills Hotline; and PFAS AFFF use is prohibited
632 at all Colorado public use airport hangars. For this reason, information which may be requested pursuant
633 to 6 CCR 1007-3, Part 267.611 may include information relevant to activities which took place after the
634 January 1, 2024, but before the effective date of the rule.
635

636 The amendments revise the scope of Section 267.615 from the capture requirements for PFAS AFFF
637 specifically used in testing activities in dedicated containment systems to the requirements for the capture
638 of PFAS AFFF created in real-world emergency situations using appropriate containment measures. One
639 purpose of this revision is to remove the specifications for the design, construction and operation of

640 containment systems used to capture PFAS AFFF discharged during testing activities due to the repealed
641 testing exemption found in C.R.S. 24-33.5-1234. Another is to implement regulations that correspond with
642 the requirement to contain PFAS AFFF during use using appropriate containment measures in
643 accordance with C.R.S. 25-5-1303.5. Examples of appropriate containment measures found in the
644 amendment include bunds, ponds or any other equivalent means of providing containment, but other
645 appropriate containment measures may also include barriers, berms, booms, storm drain covers, dikes,
646 trenches, and conveyances. The section requires containment measures to be impervious to PFAS
647 chemicals to prevent the lateral escape of finished foam from the containment measures as described in
648 C.R.S. 25-5-1303.5(1)(b)(ii), and may absorb PFAS chemicals to help prevent such escape. The
649 requirement applies to temporary controls deployed by PFAS AFFF users during emergency situations for
650 the purpose of limiting the lateral spread of finished PFAS AFFF to only those areas necessary for vapor
651 suppression and extinguishment of Class B fires. Furthermore, the intended applicability of this
652 requirement is not to the actual location where PFAS AFFF is applied. The amended language replaces
653 the requirement to remove spent foam and liquids generated from testing activities, and place into
654 storage within 24 hours of completing testing, with the requirement to remove finished PFAS AFFF used
655 during real-world emergency situations from containment measures and place into storage within 48-
656 hours of the extinguishment of the Class B Fire. One purpose of this revision is to remove the
657 requirements applicable to spent PFAS AFFF created from testing activities due to the repealed testing
658 exemption found in C.R.S. 24-33.5-1234. Another purpose is to extend the allotted time to remove
659 finished PFAS AFFF from containment measures, and placement into storage, from 24-hours to 48-hours
660 in consideration of the fact that the original 24-hour requirement was intended for dedicated containment
661 systems specifically designed for testing firefighting foam systems which employed PFAS AFFF. The
662 intent of this requirement is to limit the potential risks to human health and the environment associated
663 with long term storage of finished PFAS AFFF in temporary containment measures.

664
665 The amendments revise the scope of Section 267.620 from only storage requirements applicable to spent
666 PFAS AFFF created during testing activities to storage requirements applicable to all spent PFAS AFFF.
667 One purpose of this revision is to remove the requirements applicable to spent PFAS AFFF created from
668 testing activities due to the repealed testing exemption found in C.R.S. 24-33.5-1234. Another purpose is
669 to replace the requirement to ship spent PFAS AFFF off-site for treatment and disposal as soon as
670 possible with the requirement to safely store spent PFAS AFFF and any associated waste until further
671 revisions to the regulations are made. This requirement is amended due to the requirement of C.R.S. 25-
672 5-1303.5 to safely store PFAS AFFF and all associated waste until the federal environmental protection
673 agency has published guidance on the proper disposal and destruction methods for PFAS chemicals. The
674 amendments include this safe storage requirement due to the federal environmental protection agency
675 not publishing such guidance as of the time of this rulemaking. Additionally, the amendments create an
676 exemption from the safe storage requirements for those who store spent PFAS AFFF taken out of service
677 through participation in the perfluoroalkyl and polyfluoroalkyl substances take-back program in its original
678 factory-sealed container, so long as the PFAS AFFF is managed in compatible containers that are in
679 good condition. The purpose of this exemption is to ensure that both active and prospective participants
680 in the perfluoroalkyl and polyfluoroalkyl substances take-back program are not disincentivized from doing
681 so. The amendments retain the existing container requirements.

682
683 Compliance with the registration and certificate program, the restrictions surrounding certain uses of
684 PFAS AFFF, the additional reporting requirements which pertain to self certification and water quality

685 spills hotline, capture requirements for the containment of finished PFAS AFFF during use, and the safe
686 storage requirements for the storage of spent PFAS AFFF and any associated waste is mandatory, not
687 voluntary. Therefore, to ensure that these rules for persons using or storing one or more gallons of PFAS
688 AFFF are effective and efficient, the proposed amendments establish mandatory requirements, which are
689 subject to penalties for non-compliance. In accordance with C.R.S. 25-5-1307, persons who violate any of
690 the requirements of Part 267, Subpart Q shall be subject to enforcement, including the possible
691 assessment of a civil penalty not to exceed five thousand dollars for each violation in the case of a first
692 offense. A manufacturer or a person who violates this part 13 repeatedly is subject to a civil penalty not to
693 exceed ten thousand dollars for each repeat offense.

694
695 These amendments are more stringent than the federal regulations, which do not contain these
696 requirementsAdd final SBP Language