

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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16
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 FINAL extinguishment of a Class B fire AND/OR VAPOR RELEASE, AND THE
83 TERMINATION OF ASSOCIATED PFAS, AFFF-USAGE.

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

87
88 **Perfluoroalkyl and polyfluoroalkyl substances take-back program** means the program created by 25-
89 5-1311, C.R.S.

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

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

99 passenger boardings each year and to receive scheduled passenger aircraft service per 49 USC §
100 47102(22) (2023).

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

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

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

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

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

121
122 **§ 267.605 Applicability of ~~R~~requirements.**

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

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

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

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

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

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

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

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

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

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

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

159
160 **§ 267.606 Use prohibitions.**

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

165
166
167
168
169 **6) Section 267.610 (Registration and certificate program) is amended to read as follows:**

170
171 **§ 267.610 Registration and ~~C~~ertificate ~~P~~rogram**

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

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

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

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

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

195
196 **§ 267.611 Additional reporting.**

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

201
202 (ba) Persons who store or use one or more gallons of PFAS AFFF and who receive a self-certification
203 checklist from the Department shall complete and return the checklist within the time specified in the
204 instructions provided by the Department.

205
206 (1) The Department shall provide persons who store or use one or more gallons of PFAS AFFF a
207 minimum of 14 days from the date of receipt to return the checklist. A checklist is deemed returned on
208 the date it is received by the Department. The Department may provide an extension of time to
209 complete and return a checklist upon request.

210
211 (2) Persons who use PFAS AFFF and are required or authorized to do so under federal law, including
212 14 CFR § 139, or are otherwise required to do so for a military purpose shall only be required to certify
213 their exemption from the requirements described in the self certification checklist.

214
215 (23) The self-certification checklist shall contain a certification in substantially the following form, which
216 must be signed by an authorized representative of the facilitygenerator:

217
218 "I, the undersigned facility representative, certify that:

219
220 i. I have personally examined and am familiar with the information contained in this submittal;

221
222 ii. the information contained in this submittal is to the best of my knowledge true, accurate, and
223 complete in all respects;

224
225 iii. I am fully authorized to make this certification on behalf of this facility; and

226
227 iv. I am aware that there are significant penalties including, but not limited to, possible fines and
228 imprisonment for willfully submitting false, inaccurate, or incomplete information."

229
230 (34) The completed and certified checklist must be maintained and made readily available for
231 inspection by persons who store or use one or more gallons of PFAS AFFF for three years following
232 the date the checklist was certified.

233
234 (eb) The use or release of PFAS AFFF must be reported to the water quality spills hotline within twenty-
235 four hours after its use or release.

236
237 (1) Except as provided by subsection (fe) of this Section, the requirements described in subsections
238 (eb) through (ed) of this Section do not apply to persons who use PFAS AFFF and are required or
239 authorized to do so under federal law, including 14 CFR 139, or otherwise required for a military
240 purpose.

241
242 (ec) In accordance with paragraph (eb) of this section, the following information must be reported to the
243 water quality spills hotline within twenty-four hours of the use or release of PFAS AFFF and must be
244 maintained and made readily available for inspection for three years following the date the information
245 was reported:

246
247 (1) A description of the event which resulted in the use or release of PFAS AFFF;

248
249 (2) The trade name and product name of the PFAS AFFF;

250
251 (3) The amount and type of PFAS chemicals in the PFAS AFFF; and

252

253 (4) The quantity of PFAS AFFF or any associated firewater, wastewater, runoff, and other waste that is
254 used or released.

255
256 ~~(ed)~~ Users of PFAS AFFF must document any measures undertaken pursuant to the requirements of this
257 section. In investigating compliance with the requirements of this section, the attorney general may
258 request that the user provide the documentation created pursuant to the requirements of this subsection
259 to the attorney general.

260
261 ~~(fe)~~ If the Director, through the Solid and Hazardous Waste Commission, determines by rule that the laws
262 or requirements described in subsection ~~(eb)~~(1) of this Section no longer apply to a particular industry or
263 sector, the Director shall provide notice on the department's website of this determination and shall
264 promulgate rules, through the Solid and Hazardous Waste Commission, prohibiting users of PFAS AFFF
265 within that industry or sector from using PFAS AFFF in violation of this section, which rules shall apply no
266 sooner than two years after the Director's determination.

267
268
269 **8) Section 267.615 (Capture requirements) is amended to read as follows:**

270
271 **§ 267.615 Capture ~~R~~requirements.**

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

280
281 ~~(1) The persons who discharge or otherwise use PFAS AFFF are required or authorized to do so~~
282 ~~under federal law, including 14 CFR 139, or otherwise required for a military purpose.~~

283
284 ~~(b) A containment system used to capture Class B firefighting foam containing intentionally added PFAS~~
285 ~~discharged during testing must be designed and constructed as follows:~~

286
287 ~~(1) Portions of containment systems comprised of concrete must be:~~

288
289 ~~i. constructed of man-made materials of sufficient strength and thickness to contain spent foam and~~
290 ~~liquids;~~

291
292 ~~ii. supported by an adequate foundation;~~

293
294 ~~iii. free of cracks and gaps and be sufficiently impervious to contain spent foams and liquids; and~~

295
296 ~~iv. sloped or otherwise designed to drain and remove liquids;~~

297
298 ~~(2) Portions of containment systems comprised of pipes must function as designed to contain spent~~
299 ~~foams and liquids;~~

300
301 ~~(3) All containment systems must be designed and constructed to contain 110% of the expected foam~~
302 ~~and liquids discharged during testing.~~

303

304 (b) Pursuant to subsection (a) of this Section, containment measures meeting the following specifications
305 shall be implemented to capture **FINISHED** PFAS AFFF discharged during use:
306

307 (1) Containment measures must be under the control of the user of PFAS AFFF;
308

309 (2) Containment measures must be impervious to PFAS chemicals to prevent
310 the lateral escape of finished foam from the containment measures, and may absorb
311 PFAS chemicals to help prevent such escape. Containment measures may include:
312

313 i. Bunds, dikes, berms or culverting sufficient to contain finished PFAS AFFF;
314

315 ii. Spill diversion or retention ponds;
316

317 iii. Weirs, booms, or other barriers;
318

319 iv. Sorbent materials; or
320

321 v. Any equivalent means of implementing containment measures which are impervious to PFAS
322 to prevent the lateral escape of the finished foam from the containment measures; and
323

324 (3) Containment measures must not allow the finished PFAS AFFF, or any associated firewater,
325 wastewater, runoff, or other waste to be released.
326

327 ~~(c) A containment system used to capture Class B firefighting foam containing intentionally added PFAS~~
328 ~~discharged during testing must be operated as follows:~~
329

330 ~~—(1) The containment system must be fit for use and must not leak.~~
331

332 ~~i.—Persons subject to these regulations must obtain and keep on file and available for inspection a~~
333 ~~written assessment reviewed and certified by an independent qualified professional engineer that attests~~
334 ~~to the containment system's integrity by June 1, 2021, or, for new systems, prior to operating the system.~~
335

336 ~~ii.—An independent qualified professional engineer must review and re-certify the written assessment~~
337 ~~prior to the next testing event, but no more often than annually. If the system fails a testing event, an~~
338 ~~independent qualified professional engineer must review and re-certify the written assessment following~~
339 ~~any repairs or modifications to the system.~~
340

341 ~~iii.—This assessment must determine that the containment system is adequately designed and has~~
342 ~~sufficient structural strength to ensure it will not collapse, rupture, or fail. At a minimum this assessment~~
343 ~~must consider the following:~~
344

345 ~~A.—Documented age of the containment system; and~~
346

347 ~~B.—Results of a leak test, internal inspection, video inspection or other integrity examination that~~
348 ~~addresses cracks, leaks, corrosion, and erosion of the containment system.~~
349

350 ~~iv.—If, as a result of the assessment, a containment system is found to be leaking or unfit for use, it must~~
351 ~~immediately be taken out of service and repaired.~~
352

353 ~~(2) The containment system must be operated to capture all spent foam and liquids during testing without~~
354 ~~splashing or spraying wastes outside of the system.~~
355

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

359
360 (c) Containment measures used to capture FINISHED PFAS AFFF cannot be used for long term storage of
361 the FINISHED PFAS AFFF. Following the initial response to an immediate emergency, the captured
362 finished PFAS AFFF must be removed from containment measures and placed in storage containers to
363 the extent possible, but within 2448 hours of use. Containers used to store the captured finished PFAS
364 AFFF must be managed in accordance with the safe storage requirements of § 267.620.

365
366 (1) USERS OF PFAS AFFF MAY REQUEST AN EXTENSION OF TIME FOR COMPLIANCE WITH THE
367 REQUIREMENTS OF SUBSECTION (C) OF THIS SUBSECTION BY APPLYING TO THE DEPARTMENT IN WRITING FOR
368 SUCH AN EXTENSION. ANY SUCH REQUEST SHALL SPECIFY WHY SUCH EXTENSION IS NECESSARY AND WHAT
369 CONTAINMENT MEASURES WILL BE EMPLOYED TO PREVENT RELEASES OF FINISHED PFAS AFFF INTO THE
370 ENVIRONMENT UNTIL COMPLIANCE WITH SUBSECTION (C) OF THIS SUBSECTION CAN BE ACHIEVED.

371
372 ~~(d) Containment systems used to capture Class B firefighting foam containing intentionally added PFAS~~
373 ~~discharged during testing activities must be designed or operated to prevent run-on or infiltration of~~
374 ~~precipitation into the system.~~

375
376 **9) Section 267.620 is amended to read as follows:**

377
378 **§ 267.620 Spent-Class B Firefighting Foam PFAS AFFF Sstorage**

379
380
381 (a) Persons who store spent PFAS AFFF must safely store such material and any associated firewater,
382 wastewater, runoff, and other waste in a way which prevents their release until further revisions to these
383 regulations are issued. Spent Class B firefighting foam containing intentionally added PFAS generated
384 during testing must be shipped off-site for treatment and disposal as soon as possible. Waste foam may
385 be stored on-site in containers prior to disposal provided that:

386
387 (1) On-site storage is necessary to facilitate, including to accumulate quantities sufficient to facilitate,
388 proper off-site treatment and disposal; and The requirements described in subsections (b)(2)
389 through (b)(6) of this Section do not apply to persons who store spent PFAS AFFF taken out of
390 service through participation in the perfluoroalkyl and polyfluoroalkyl substances take-back
391 program in its original factory-sealed container, so long as the container is managed in
392 accordance with subsection (b)(1) of this Section.

393
394 (2) On-site storage does not occur longer than 120 days, unless a variance is granted by the Director
395 in writing extending the storage duration. Absent a demonstration that disposal capacity is not
396 available, any extension shall be limited to an additional 120 days. The requirements described in
397 this Section do not apply to persons who store or use PFAS AFFF and are required or authorized
398 to do so under federal law, including 14 CFR 139, or otherwise required for a military purpose.

399
400 (b) Containers used to store spent Class B firefighting foam containing intentionally added PFAS AFFF
401 used in testing must be:

402
403 (1) DOT approved containers; Made of materials that will not react with, and are otherwise compatible
404 with the spent PFAS AFFF to be accumulated, so that the ability of the container to contain the spent
405 PFAS AFFF is not impaired.

406
407 i. -If a container holding spent PFAS AFFF is not in good condition, or if it begins to

408 leak, persons who store the spent PFAS AFFF must immediately transfer the
409 spent PFAS AFFF from this container to a container that is in good condition and
410 does not leak.

411
412 (2) Labelled with content and accumulation start date;

413
414 (3) Kept closed except when adding or removing spent PFAS AFFF wastes;

415
416 (4) Arranged in a stable configuration ~~(not stacked) with aisle space to facilitate their inspection and~~
417 ~~movement in event of an~~ to allow the unobstructed movement of personnel, fire protection equipment,
418 spill control equipment, and decontamination equipment to any area of the facility operation in an
419 emergency; and to allow for inspection of containers.

420
421 i. Containers which have a volume of 20 gallons or less may be stacked in an alternate stable
422 arrangement, up to three high and three wide, not to exceed six feet.

423
424 (5) Stored on a flat surface that is bermed or otherwise designed to prevent run-on or run-off of
425 precipitation; and

426
427 (6) Stored in a manner that provides secondary containment that is either:

428
429 i. a concrete pad(s) free of cracks and gaps and otherwise impervious constructed to prevent
430 releases to the environment in the event of a spill or leak; or

431
432 ii. a liner that has sufficient strength and thickness, and that is otherwise impervious constructed
433 to prevent releases to the environment in the event of a spill or leak; or

434
435 iii. an equivalent means of providing secondary containment.

436
437 (7) At least weekly, the owner or operator must inspect areas where containers are stored. The owner
438 or operator must look for leaking containers and for deterioration of containers and the containment
439 system caused by corrosion or other factors.

440
441 i. Problems identified during the inspection shall be remedied within 24 hours of identifying; and

442
443 ii. The date and time and content of the inspections must be documented and recorded, and
444 retained at the facility for 3 years of the date of storage.

445
446 **10) Section 267.630 is deleted and reserved to read as follows:**

447
448 **§ 267.630 Penalties Reserved.**

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

451
452
453
454
455 **11) Section 8.103 (Statement of Basis for the Rulemaking Hearing of February 20, 2024) is**
456 **added to Part 8 of the Regulations to read as follows:**

457
458
459 **Statement of Basis and Purpose**

460 **Rulemaking Hearing of February 20, 2024**

461
462 **8.103 Basis and Purpose.**

463
464 These amendments to 6 CCR 1007-3, Part 267 are made pursuant to the authority granted to the Solid
465 and Hazardous Waste Commission in § 25-15-302(2), C.R.S.
466

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

468
469 HB19-1279 amended C.R.S. 24-33.5-1234 to prohibit persons or fire departments from discharging or
470 otherwise using Class B firefighting foam (PFAS AFFF) for training or for testing purposes. HB20-1119
471 amended C.R.S. 25-15-302 to require the Solid and Hazardous Waste Commission (SHWC) to establish
472 a Certificate of Registration for any facility or fire department, or lessee subject to federal rules and
473 regulations, that use or store PFAS AFFF. The Bill further amended C.R.S. 24-33.5-1234 to establish an
474 exemption for certain testing activities which employ PFAS AFFF, so long as the testing activities were
475 conducted in accordance with standards for capture and disposal of PFAS AFFF used for testing
476 purposes and the person or fire department who conducted the testing activities had obtained a
477 Certificate of Registration. Those standards were established and became effective on April 14, 2021
478 under the existing 6 CCR 1007-3, Part 267, Subpart Q. The exemption created by HB20-1119 was
479 repealed effective January 1, 2023, rendering the existing 6 CCR 1007-3, Part 267, Subpart Q exemption
480 language obsolete.
481

482 HB20-1119 amended C.R.S. 25-5-1309 to restrict the use of PFAS AFFF at Colorado public-use airports
483 structures used for the storage or maintenance of aircraft beginning January 1, 2023. HB22-1345 further
484 amended C.R.S. 25-5-1309, deferring the restriction to take effect January 1, 2024.
485

486 HB22-1345 also amended C.R.S. 25-5-1303.5 to require that persons who use PFAS AFFF not allow a
487 release, contain PFAS AFFF and all associated waste during use, safely store all PFAS AFFF and all
488 associated wastes, and report all uses and releases of the material to the Water Quality Spills Hotline.
489

490 Part 267 of the Colorado Hazardous Waste Regulations (6 CCR 1007-3) is being amended at this time to
491 remove requirements which correspond to repealed statutory requirements found in C.R.S. 24-33.5-1234
492 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.
493 The revised Subpart requires all persons who store or use one or more gallons of PFAS AFFF to comply
494 with the requirements of the registration and certificate program, the restrictions surrounding certain uses
495 of PFAS AFFF, the additional reporting requirements which pertain to self certification and water quality
496 spills hotline reporting, capture requirements for the containment of finished PFAS AFFF during use, and
497 the safe storage requirements for the storage of spent PFAS AFFF and all associated wastes. These
498 amendments incorporate the exemption criteria created by HB22-1345 and found in 25-5-1303.5 for the
499 use of PFAS AFFF as required or authorized by federal law or implemented as required for a military
500 purpose. These amendments do not prohibit the use of PFAS AFFF for real-world Class B fire responses,
501 nor do they establish requirements for persons using or storing Class B firefighting foams which do not
502 contain PFAS. The proposed regulatory changes were developed utilizing a series of two stakeholder
503 meetings at which comments were received from interested parties, discussed, and incorporated as
504 appropriate. The group of stakeholders who participated in this process included fire departments,
505 airports, and military personnel registered under the Subpart Q Registration and Certification Program,

506 non-profit Colorado trade associations, international trade associations, members of local governments
507 and utilities, and other interested individuals. Comments received in writing from individual stakeholders,
508 on two separate drafts of the proposed revisions, were incorporated as well. The Department believes
509 that all stakeholder concerns have been resolved to the extent possible.

510
511 Class B firefighting foams are used to put out fires involving Class B materials, which include gasoline, oil,
512 and jet fuel. Class B foams can be categorized into two broad categories from a PFAS perspective:
513 fluorinated foams that contain PFAS, like Aqueous Film Forming Foam (AFFF), and fluorine free foams.
514 AFFF is usually created by combining foaming agents with fluorine surfactants. PFAS are the active
515 ingredients in the fluorinated surfactants used in the foams and are typically contained in the foams at up
516 to 3% concentrations, or 300,000 parts per million. When mixed with water and discharged, the foam
517 forms an aqueous film that quickly cuts off the oxygen to a flame, extinguishing the fire, and stopping the
518 fire from relighting.

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

537
538 While Class B firefighting foams containing PFAS are slowly being replaced with alternative products that
539 do not contain the toxic compounds, many of these alternative products have not been completely tested
540 and approved for fighting high hazard flammable liquid fires. For example, the U.S. Department of
541 Defense (DoD) published a military specification (MIL-PRF-32725) for fluorine-free firefighting foam (F3)
542 in January 2023. The Naval Sea Systems Command (NAVSEA) oversees the qualification process of F3,
543 and as of January 2024, one product has been qualified and listed in the DoD Qualified Products
544 Database (QPD)/Qualified Products List (QPL). Additionally, the Federal Aviation Administration (FAA)
545 informed Airport operators and industry stakeholders in its January 2023 National Part 139 CertAlert No.
546 23-01 that it will accept airport operator's use of F3s qualified under MIL-PRF-32725, but will not require
547 their use as of the date of the CertAlert. For these reasons, large inventories of the Class B firefighting
548 foam containing PFAS still remain, and PFAS containing firefighting foams are still used routinely to
549 extinguish these dangerous fires.

550

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

558
559 The amendments establish new definitions in Section 267.601 for the following terms used throughout the
560 amended Subpart Q:

- 561
- 562 1) The definition of “Emergency” is adapted from 6 CCR 1007-2, Part 1, Section 1.2. The purpose of
563 its insertion into the Subpart is to clarify the Section 267.615 requirement to remove finished
564 PFAS AFFF from containment measures within 48-hours of the initial response to an immediate
565 emergency.
 - 566 2) The definition of “Finished PFAS AFFF” is adapted from industry terminology. The purpose of its
567 insertion into the Subpart is to clarify the definition of “Spent PFAS AFFF” and differentiate it
568 between PFAS AFFF concentrate.
 - 569 3) The definition of “Initial response” is adapted from 6 CCR 1007-2, Part 1, Section 5.5.4. The
570 purpose of its insertion into the Subpart is to clarify when the Section 267.615(c) removal
571 requirement is triggered.
 - 572 4) The definition of “Perfluoroalkyl and polyfluoroalkyl substances take-back program” is
573 incorporated by reference to C.R.S. 25-5-1311. The purpose of its insertion into the Subpart is to
574 define the materials that may be exempt from the Section 267.620 storage requirements.
 - 575 5) The definition of “Public use airport” is adapted from the definition found in 40 USC § 47102(22)
576 (2023). The purpose of its insertion into the Subpart is to clarify which airports may be subject to
577 the Section 267.606 use prohibitions.
 - 578 6) The definition of “Release” is adapted from C.R.S. 25-5-1302. The purpose of its insertion into the
579 Subpart is to define those circumstances which would constitute a release, and therefore to what
580 circumstances the requirements of the Subpart would be applicable.
 - 581 7) The definition of “Spent PFAS AFFF” is adapted from industry terminology. The purpose of its
582 insertion into the Subpart is to define what materials would be subject to the Section 267.620
583 Spent PFAS AFFF storage requirements and to differentiate it from PFAS AFFF concentrate.
 - 584 8) The definition of “Water quality spills hotline” is adapted from the Water Quality Control Division’s
585 website. One purpose of its insertion into the Subpart is to include for reference the phone
586 number and website of the hotline for ease of access. Another purpose of its insertion is to define
587 the hotline that must be contacted pursuant to the requirements of Section 267.611.

588
589 The amendments establish revised definitions in Section 267.601 for the following terms used throughout
590 the amended Subpart Q:

- 591
- 592 1) The definition of “Class B firefighting foam containing intentionally added PFAS” is amended to
593 state that the term Class B Firefighting foam is referred to as “PFAS AFFF” throughout the
594 Subpart. The purpose of this revision is to improve the clarity of the regulation and reduce its
595 length.

596 2) The definition of “Fire department” is amended to align with the definition of “fire department”
597 found in C.R.S. 25-5-1302. The purpose of this revision is to better align the regulation with the
598 corresponding Statute.

599 3) The definition of “Person” is adapted from 6 CCR 1007-3, Part 260.10. The purpose of its
600 insertion is to ensure the regulation encompasses all applicable entities.

601
602 The amendments revise Section 267.605 - Applicability of requirements of Subpart Q to revise the
603 applicability of capture, containment, and storage requirements from only those who use PFAS AFFF for
604 testing activities to those who use PFAS AFFF for any purpose.

605
606 Additionally, the amendments revise the applicability of the existing Section 267.605(c), which requires
607 the capture, containment, and storage of spent PFAS AFFF created specifically from conversions of
608 PFAS AFFF systems used for testing to F3 systems. Due to the repealed testing exemption found in
609 C.R.S. 24-33.5-1234, the section is revised to be applicable to all conversions of PFAS AFFF systems to
610 F3 systems.

611
612 The amendments revise Subpart Q to include a new Use prohibitions Section 267.606. The purpose of
613 this section is to list two relevant statutory restrictions on the use of PFAS AFFF in regulation: the existing
614 restriction of C.R.S. 24-33.5-1234 on the use of PFAS AFFF for training or testing firefighting foam fire
615 systems and the new restriction of C.R.S. 25-5-1309 on the use of PFAS AFFF at Colorado public-use
616 airport structures used for the storage or maintenance of aircraft.

617
618 The amendments retain the existing, mandatory on-line registration program for all those who store or
619 use PFAS AFFF. The registration requires that basic information about the fire department or facility be
620 provided to the Division along with information concerning the quantities and configurations of the storage
621 of the PFAS AFFF. Once information is provided to the Division through the on-line registration, the
622 Division will continue to review the information and issue a Certificate of Registration. Certificates must
623 be obtained from the Division within six (6) months after the fire department or facility first stores or uses
624 the PFAS AFFF.

625
626 The amendments revise Subpart Q to include a new additional reporting requirements section, Section
627 267.611, which requires those who have registered and obtained a certificate of registration in
628 accordance with Section 267.610 to furnish additional reporting concerning quantities and disposition of
629 PFAS AFFF. This new section implements a self certification program for which those who have
630 registered and obtained a certificate of registration must complete and return a checklist summarizing
631 their compliance status with individual requirements found in 6 CCR 1007-3, Part 267, Subpart Q. This
632 requirement is added under the authority of C.R.S. 25-5-1303.5(e). The self certification checklist will be
633 designed to help those subject to regulatory requirements understand and comply with the regulations
634 that are applicable to them. The section also requires the use or release of PFAS AFFF be reported to the
635 water quality spills hotline. This requirement corresponds with 25-5-1303.5(d) and (e), and includes an
636 exemption for the use of PFAS AFFF as required or authorized by federal law or implemented as required
637 for a military purpose. To ensure the records necessary to verify compliance are maintained by persons
638 who use or store one or more gallons of PFAS AFFF, Section 267.611 is amended to include a record
639 retention requirement of 3 years for measures undertaken pursuant to the requirements of the section.
640 Many of the requirements included in the amendments are derived from requirements of Colorado House
641 Bill 22-1345 and have an effective date of January 1, 2024, including: users must not allow a release;

642 contain PFAS AFFF and all associated waste during use; safely store all PFAS AFFF and all associated
643 wastes; report all uses and releases to the Water Quality Spills Hotline; and PFAS AFFF use is prohibited
644 at all Colorado public use airport hangars. For this reason, information which may be requested pursuant
645 to 6 CCR 1007-3, Part 267.611 may include information relevant to activities which took place after the
646 January 1, 2024, but before the effective date of the rule.

647
648 The amendments revise the scope of Section 267.615 from the capture requirements for PFAS AFFF
649 specifically used in testing activities in dedicated containment systems to the requirements for the capture
650 of PFAS AFFF created in real-world emergency situations using appropriate containment measures. One
651 purpose of this revision is to remove the specifications for the design, construction and operation of
652 containment systems used to capture PFAS AFFF discharged during testing activities due to the repealed
653 testing exemption found in C.R.S. 24-33.5-1234. Another is to implement regulations that correspond with
654 the requirement to contain PFAS AFFF during use using appropriate containment measures in
655 accordance with C.R.S. 25-5-1303.5. Examples of appropriate containment measures found in the
656 amendment include bunds, ponds or any other equivalent means of providing containment, but other
657 appropriate containment measures may also include barriers, berms, booms, storm drain covers, dikes,
658 trenches, and conveyances. The section requires containment measures to be impervious to PFAS
659 chemicals to prevent the lateral escape of finished foam from the containment measures as described in
660 C.R.S. 25-5-1303.5(1)(b)(ii), and may absorb PFAS chemicals to help prevent such escape. The
661 requirement applies to temporary controls deployed by PFAS AFFF users during emergency situations for
662 the purpose of limiting the lateral spread of finished PFAS AFFF to only those areas necessary for vapor
663 suppression and extinguishment of Class B fires. Furthermore, the intended applicability of this
664 requirement is not to the actual location where PFAS AFFF is applied. The amended language replaces
665 the requirement to remove spent foam and liquids generated from testing activities, and place into
666 storage within 24 hours of completing testing, with the requirement to remove finished PFAS AFFF used
667 during real-world emergency situations from containment measures and place into storage within 48-
668 hours of the extinguishment of the Class B Fire. One purpose of this revision is to remove the
669 requirements applicable to spent PFAS AFFF created from testing activities due to the repealed testing
670 exemption found in C.R.S. 24-33.5-1234. Another purpose is to extend the allotted time to remove
671 finished PFAS AFFF from containment measures, and placement into storage, from 24-hours to 48-hours
672 in consideration of the fact that the original 24-hour requirement was intended for dedicated containment
673 systems specifically designed for testing firefighting foam systems which employed PFAS AFFF. The
674 intent of this requirement is to limit the potential risks to human health and the environment associated
675 with long term storage of finished PFAS AFFF in temporary containment measures.

676
677 The amendments revise the scope of Section 267.620 from only storage requirements applicable to spent
678 PFAS AFFF created during testing activities to storage requirements applicable to all spent PFAS AFFF.
679 One purpose of this revision is to remove the requirements applicable to spent PFAS AFFF created from
680 testing activities due to the repealed testing exemption found in C.R.S. 24-33.5-1234. Another purpose is
681 to replace the requirement to ship spent PFAS AFFF off-site for treatment and disposal as soon as
682 possible with the requirement to safely store spent PFAS AFFF and any associated waste until further
683 revisions to the regulations are made. This requirement is amended due to the requirement of C.R.S. 25-
684 5-1303.5 to safely store PFAS AFFF and all associated waste until the federal environmental protection
685 agency has published guidance on the proper disposal and destruction methods for PFAS chemicals. The
686 amendments include this safe storage requirement due to the federal environmental protection agency
687 not publishing such guidance as of the time of this rulemaking. Additionally, the amendments create an

688 exemption from the safe storage requirements for those who store spent PFAS AFFF taken out of service
689 through participation in the perfluoroalkyl and polyfluoroalkyl substances take-back program in its original
690 factory-sealed container, so long as the PFAS AFFF is managed in compatible containers that are in
691 good condition. The purpose of this exemption is to ensure that both active and prospective participants
692 in the perfluoroalkyl and polyfluoroalkyl substances take-back program are not disincentivized from doing
693 so. The amendments retain the existing container requirements.

694
695 Compliance with the registration and certificate program, the restrictions surrounding certain uses of
696 PFAS AFFF, the additional reporting requirements which pertain to self certification and water quality
697 spills hotline, capture requirements for the containment of finished PFAS AFFF during use, and the safe
698 storage requirements for the storage of spent PFAS AFFF and any associated waste is mandatory, not
699 voluntary. Therefore, to ensure that these rules for persons using or storing one or more gallons of PFAS
700 AFFF are effective and efficient, the proposed amendments establish mandatory requirements, which are
701 subject to penalties for non-compliance. In accordance with C.R.S. 25-5-1307, persons who violate any of
702 the requirements of Part 267, Subpart Q shall be subject to enforcement, including the possible
703 assessment of a civil penalty not to exceed five thousand dollars for each violation in the case of a first
704 offense. A manufacturer or a person who violates this part 13 repeatedly is subject to a civil penalty not to
705 exceed ten thousand dollars for each repeat offense.

706
707 ~~These amendments are more stringent than the federal regulations, which do not contain these~~
708 ~~requirements~~Add final SBP LanguageThe Commission has evaluated the information presented at the
709 rulemaking hearing, as well as the information in the Statement of Basis and Purpose. It is the finding of
710 the Commission that these regulations are not more stringent than federal requirements.