

DEPARTMENT OF PERSONNEL AND ADMINISTRATION

Division of Finance and Procurement

STATE FISCAL RULES

1 CCR 101-1

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

PURPOSE

The purpose of these fiscal rules is to set forth policies for state agencies and institutions of higher education concerning internal controls, accounting policies, and financial reporting for the State of Colorado.

STATUTORY AUTHORITY

Colorado Revised Statutes created the State Controller's Office. Part 2, Title 24, Article 30, C.R.S. lists the powers and duties of the State Controller and is incorporated as a reference into each of these state fiscal rules.

DEFINITIONS

The following definitions are incorporated into each of these state fiscal rules:

State agency or institution of higher education - A department, division, section, unit, commission, board, bureau, college, university, or institution in Colorado state government created by law, executive order, or any other authority.

State Financial System - The official financial system for the State of Colorado as prescribed by the State Controller.

APPLICABILITY

These fiscal rules are applicable to all state agencies and institutions of higher education, to all employees of the state, and to all funds in the executive branch of state government.

RESPONSIBILITY

It is the responsibility of the chief executive officer of each state agency or institution of higher education or institution of higher education to ensure compliance with these fiscal rules.

ADMINISTRATIVE HARDSHIP

Should any of these fiscal rules create undue administrative or financial hardship on a state agency or institution of higher education or institution of higher education, a written request for exemption and/or alternative policy may be submitted by the state agency or institution of higher education or institution of higher education's chief fiscal officer to the State Controller with notification to the state agency or institution of higher education or institution of higher education's chief executive officer.

CHAPTER 1 : ACCOUNTING

Rule 1-1 ACCOUNTING PRINCIPLES AND STANDARDS

AUTHORITY:

24-17-102 (1), C.R.S.(Internal Controls)24-17-103, C.R.S. (Annual Internal Control Report)

RULE:

The accounting principles of the state shall be based on generally accepted accounting principles (GAAP) as adopted by the Governmental Accounting Standards Board (GASB). In addition, all applicable statutory provisions shall be met.

When a conflict between statutory provisions and generally accepted accounting principles exists, generally accepted accounting principles take precedence in financial reporting.

When it is necessary to report compliance of financial transactions with statutory requirements, supplemental schedules may be used. Preparation of separate statutory based reports may also be necessary.

The chief executive officer and chief fiscal officer of each state agency or institution of higher education shall annually certify to the State Controller as to the adequacy of its systems of internal accounting and administrative controls. The certification form, content and due date shall be determined by the State Controller.

Rule 1-2 USE OF THE STATE FINANCIAL SYSTEM

AUTHORITY:

24-30-202 (12), C.R.S.

RULE:

All state agencies and institutions of higher education are required to use the state financial system to record their financial transactions and financial information, develop their financial reports and prepare their financial statements.

The state financial system is composed of various systems and sub-systems in the Colorado Financial Reporting System and the state payroll system.

EXCEPTIONS TO RULE:

An exemption is granted by the State Controller to the governing boards and institutions of higher education to transmit summary financial information to the state financial system. This exemption is granted only to those governing boards and institutions of higher education that have an internal accounting system and an electronic interface that have been approved by the State Controller. The electronic interface shall provide timely updates to the state financial system as directed by the State Controller. The governing boards and institutions of higher education are also exempt from the requirement to use the state payroll system.

Rule 1-3 ACCESS TO THE STATE FINANCIAL SYSTEM

AUTHORITY:

2-3-107, C.R.S. (State Auditor)2-3-203 (1), C.R.S. (Joint Budget Committee)24-30-202 (11), C.R.S. (State Controller Authority)

RULE:

The State Controller is the official custodian of the financial portion of the database included within the state's financial system. The official custodian prescribes the rules and regulations with reference to query, use, or inspection of the financial records.

The State Controller, as official custodian of the financial portion of the state financial system database, shall approve access and resolve all disputes regarding access to financial information contained in the database.

Each state agency or institution of higher education is delegated custodial authority for its portion of the financial database on the state financial system.

Electronic Read Only (Query) Access to the State Financial System Data Base

State financial system records contain both public and confidential information; therefore access to financial data contained on the state financial system shall not be granted to anyone for general perusal of a state agency or institution of higher education's financial records.

Specific request for query access to the financial database of the state financial system shall state what information is requested and when the information is desired. The state agency or institution of higher custodian shall have the discretion of requiring that the request for financial information be in writing.

.01 Query access by a citizen or private entity:

Information requested by a citizen or entity other than a state agency or institution of higher education shall be furnished in a timely manner, as provided by statute. The information shall be provided in the form of a copy or printout, or a computer tape or disc. Actual costs, not to exceed the statutory maximum, may be charged by the state agency or institution of higher education for providing the information requested.

.02 Query access to a state agency or institution of higher education's own financial database:

Each state agency or institution of higher education shall be given query access to its portion of the financial database on the state financial system. Each state agency or institution of higher education shall be given query access to the centrally controlled tables maintained on the state financial system.

.03 Query access to another state agency or institution of higher education's financial database:

When a state agency or institution of higher education desires information from another state agency or institution of higher education, the state agency or institution of higher education making the request shall obtain approval from the chief executive officer of the state agency or institution of higher education possessing the information. Once approval has been granted, the information shall be furnished in a timely manner, as provided by statute. No charge shall be made for the information provided. Disputes shall be referred to the State Controller.

.04 Query access to multiple state agencies and institutions of higher education's financial databases:

All requests for financial information concerning multiple state agencies and/or institutions of higher education shall be referred to the State Controller. The State Controller shall have query access to all state agencies and institutions of higher education's financial databases and shall respond to all requests for information requiring multiple accesses.

The State Controller shall notify each state agency or institution of higher education of the request for information and furnish each state agency or institution of higher education a copy of the information provided, as necessary.

.05 Query access by the Office of the State Auditor:

The Office of the State Auditor shall have query access to the financial databases of all state agencies and institutions of higher education on the state financial system.

.06 Query access by the Office of State Planning and Budgeting:

Unless otherwise provided by agreement, the Office of State Planning and Budgeting shall have query access to the financial databases of all state agencies and institutions of higher education on the state financial system only for the purpose of carrying out its statutory responsibilities.

.07 Query access by the legislative Joint Budget Committee:

Unless otherwise provided by agreement, the legislative Joint Budget Committee shall have query access to the financial databases of all state agencies and institutions of higher education on the state financial system only for the purpose of carrying out its statutory responsibilities.

.08 Query access by the state Department of Treasury:

Unless otherwise provided by agreement, the Department of Treasury shall have query access to the state financial system for the purpose of carrying out its statutory responsibilities.

.09 Query access by the Colorado Commission on Higher Education

The Colorado Commission on Higher Education shall have query access to all financial data contained on the state financial system for all institutions, agencies, and boards within the Department of Higher Education.

Rule 1-4 AUTOMATED INTERFACES WITH THE STATE FINANCIAL SYSTEM

AUTHORITY:

24-30-202 (12), C.R.S.

RULE:

Only electronic interfaces approved by the State Controller shall be allowed to feed data into the state financial system

Rule 1-5 STATE FINANCIAL SYSTEM SECURITY

AUTHORITY:

24-30-201 (1)(f), C.R.S.

RULE:

The State Controller is responsible for the overall security of the state financial system. The State Controller may delegate security responsibility to state agencies and institutions of higher education for their portion of the financial database on the state financial system.

If it is determined that a state agency or institution of higher education is not complying with the responsibilities delegated to its state financial system security administrator, the State Controller may withdraw the delegation and assume responsibility of the state financial system security administration for that state agency or institution of higher education.

Rule 1-6 STATE AGENCY OR INSTITUTION OF HIGHER EDUCATION ACCOUNTING SYSTEMS

AUTHORITY:

24-30-202 (12), C.R.S.

DEFINITIONS:

Financial System - All data processing software systems applied to general ledgers and subsidiary ledgers, debt collection, accounts payable, accounts receivable, cost distribution, fixed assets, inventory, payroll, purchasing, and time collection.

RULE:

All financial systems that are used to record state financial information and transactions, or develop financial reports and prepare financial statements for the state shall be approved by the State Controller.

State agencies and institutions of higher education shall strive to improve their efficiency in the collection, maintenance, and reporting of financial information throughout state government. To achieve this goal, state agencies and institutions of higher education shall use the state financial system, unless exempted by the State Controller. Redundancies between state agency or institution of higher education financial systems and the state financial system should be eliminated in order to prevent duplication in the development of financial systems, to improve the compatibility of financial systems, to facilitate inter-system communications and to timely access information, and to improve the efficiency of the collection, maintenance, and reporting of financial information throughout state government.

To accomplish the desired objectives, the State Controller:

- .01 Shall approve the development or acquisition of new or replacement financial systems based upon:
 - a. The compatibility of the proposed financial system with the state financial system or with other approved state agency or institution of higher education financial systems.
 - b. The uniformity of accounting procedures, account structures, object, revenue, and other classifying code definitions.
 - c. The potential benefit and use by other state agencies and institutions of higher education with similar needs.
- .02 May require a state agency or institution of higher education to exclusively use the state financial system.

If the state financial system cannot meet the needs of a state agency or institution of higher education, the chief fiscal officer of the state agency or institution of higher education shall notify the State Controller.

Rule 1-7 DELEGATED SIGNATURE AUTHORITY OF THE STATE CONTROLLER

AUTHORITY:

24-30-202 (1), (2), (3), and (4) C.R.S.

RULE:

State agencies and institutions of higher education shall, upon request of the State Controller, identify and submit a listing of persons authorized to sign or approve specific documents for the State Controller. Such listing shall contain the name, and manual signature of those persons delegated signature authority and be approved by the chief executive officer of the state agency or institution of higher education. Any change to the approved listing must be submitted to the State Controller.

Rule 1-8 PREAUDIT RESPONSIBILITY FOR ACCOUNTING DOCUMENTS AND FINANCIAL TRANSACTIONS

AUTHORITY:

24-30-201 (1)(h), C.R.S.

DEFINITIONS:

Preaudit - A review for compliance with applicable statutes, fiscal rules, and other regulations, and an adherence to accepted business practices.

RULE:

All accounting documents and financial transactions shall be subjected to a preaudit prior to recording the documents on the state financial system or on an approved state agency or institution of higher education accounting system, and prior to making payment. State agencies and institutions of higher education shall implement internal accounting and administrative controls that reasonably ensure that financial transactions are accurate, reliable, and conform to state fiscal rules. The factors of risk, cost, and business requirements shall be considered when establishing these internal controls.

Rule 1-9 REPORTING FRAUD THEFT OR EMBEZZLEMENT

AUTHORITY:

18-4-401, C.R.S. (Theft)

18-5-102, C.R.S. (Forgery)

18-8-407, C.R.S. (Embezzlement of Public Property)

24-17-101, C.R.S. (State Department Financial Responsibility and Accountability Act)

DEFINITIONS

Fraud includes misstatements arising from fraudulent financial reporting, misstatements arising from intentional misappropriation of assets, and theft or embezzlement of public property.

Misstatements arising from fraudulent financial reporting are intentional misstatements, or omissions of amounts or disclosures in financial statements with the intent to deceive financial statement users.

Misstatements arising from misappropriation of assets involve the theft of an entity's assets where the effect of the theft causes the basic financial statements not to be presented in conformity with accounting principles generally accepted in the United States of America.

RULE:

Departments, agencies, and institutions of higher education have the responsibility for the design and implementation of programs and controls to prevent, deter and detect fraud.

Any suspected fraudulent misstatements of the financial statements should be reported to the State Controller.

Any suspected theft or embezzlement of state funds or assets should be immediately reported to the chief executive officer, or delegate, and the chief financial officer of the state agency or institution of higher education and appropriate action taken. A suspected theft or embezzlement of state funds or assets totaling \$5,000 or more, or such amount as designated by the State Controller for a given agency, per incident shall be reported in writing to the State Controller. Also, the results of any investigation or follow-up including corrective measures implemented to prevent or reduce the likelihood of future occurrences must be reported in writing to the State Controller in a timely manner.

Rule 1-10 ACCOUNTABILITY AND CAPITALIZATION OF EQUIPMENT

AUTHORITY:

24-30-201 (1)(k), C.R.S.

DEFINITIONS:

Equipment - Tangible personal property that has a useful life of more than one year and an acquisition cost of more than \$5,000, which is not a permanent part of a building and does not lose its identity through incorporation into a more complex unit.

RULE:

Each state agency or institution of higher education is responsible for ensuring that all equipment acquired by the state is properly accounted for when acquired, inventoried and safeguarded throughout its useful life, and properly accounted for at the time of disposal.

Tangible personal property purchased by the state shall be either capitalized or expensed in the fiscal year in which it was acquired. Equipment purchased by the state shall be capitalized. For control purposes a state agency or institution of higher education may select a minimum acquisition cost or useful life that is less than the stated criteria for capitalization.

CHAPTER 2 : DISBURSEMENT

Rule 2-1 PROPRIETY OF EXPENDITURES

AUTHORITY:

24-30-202 (2) and (5)(a), C.R.S.

RULE:

All expenditures by state agencies and institutions of higher education shall meet the following standards of propriety:

- .01 Are for official state business purposes only.
- .02 Are reasonable and necessary under the circumstances.

Rule 2-2 COMMITMENT VOUCHERS [Eff. 01/01/2009]

1. AUTHORITIES

CRS §24-30-202 (1-4), and (5)(a) (State Controller Authority)

CRS §24-30-1401, et seq., (Professional Services)

CRS §24-102-205 (Centralized Contract Management System)

CRS §24-102-206 (Contract Performance Outside United States or Colorado)

CRS §24-103-601 (Right to Audit Records)

CRS §24-103.5-101 (Monitoring of Vendor Performance)

CRS §24-105-102 (Performance Evaluation Reports)

2. DEFINITIONS

All references to “contract” or “agreement” refer to State contracts, which are formal, legally binding documents. The terms “contract”, and “agreement” are used interchangeably in the following definitions to reflect their common usage in the State and include any amendments and modifications thereto.

2.1 Advance Payment – A payment made for goods or services prior to the receipt thereof.

2.2 Advice of Employment – A document that includes an offer of employment.

2.3 Agency – An executive department of the State of Colorado, or any subdivisions thereof.

2.4 Commitment Voucher

2.4.1 Elements. A document, the form of which has been approved by the State Controller, evidencing the following:

2.4.1.1 A description of goods or services being purchased or other reasons for the disbursement of funds;

2.4.1.2 The amount to be paid;

2.4.1.3 That the obligation of the State is being charged to the appropriate account; and

2.4.1.4 That procurement requirements have been satisfied.

2.4.2 Inclusions. Commitment vouchers include any approved form of purchase order, State contract, travel authorization, advice of employment, grant contract, license agreement, parking license agreement, and other written authorizations for disbursement which satisfy the requirements of subsection 2.4.1 (Elements) of this Fiscal Rule.

2.4.3 Exclusion. Procurement cards are not commitment vouchers. Procurement cards are a method of payment, not a method of procurement. Purchases made with a procurement card also require the use of an appropriate commitment voucher or small purchase documentation.

2.5 Delegated Agency or Institution of Higher Education – An Agency or Institution of Higher Education whose controller has received delegated signature authority from the State Controller.

2.6 Emergency – An unexpected event creating an immediate threat to the public health, welfare, or safety, the functioning of government, or the preservation or protection of property, which requires an immediate response.

2.7 Encumbrance - An amount reserved on the State financial system or an approved Agency or Institution of Higher Education accounting system to reflect a formal obligation of the State. When required by this Fiscal Rule, an Agency or Institution of Higher Education shall encumber funds prior to recording expenditures and disbursing funds.

2.8 Institution of Higher Education - A college or university established as part of the State of Colorado.

2.9 Interagency Agreement - An agreement between two Agencies, two Institutions of Higher Education, or an Agency and Institution of Higher Education, which includes a dispute resolution process giving the State Controller final decision-making authority.

2.10 Interagency Purchase Order - A purchase order issued by an Agency or Institution of Higher Education to another Agency or Institution of Higher Education.

2.11 Procurement Officer – Head of the procurement function for an Institution of Higher Education or for an Agency that has received delegation from the State Purchasing Office.

2.12 Purchase Order - A document, in a form prescribed by the Office of the State Controller, prepared and approved by an authorized employee of an Agency or Institution of Higher Education for the purpose of encumbering funds and securing goods or services from a vendor. For the purpose of this Fiscal Rule, a purchase order is not a State contract.

2.13 Reviewing Attorney – An assistant attorney general, special assistant attorney general, or other attorney authorized by the State Attorney General and employed by an Agency or Institution of Higher Education, who has received a written designation as a Reviewing Attorney from the State Controller. A written designation by the State Controller is personal to the Reviewing Attorney and may not be assigned or further delegated. The designation is limited to the specific responsibilities and authority set forth in the written designation, which may be terminated or modified at any time, at the sole discretion of the State Controller.

2.14 Small Purchase Documentation

2.14.1 Applicability. Small purchase documentation is required for purchases of \$5,000 or less.

2.14.2 Elements.

2.14.2.1 Documentation shall include:

2.14.2.1.1 Description of goods or services being purchased or other reasons for the disbursement of funds; and

2.14.2.1.2 The amount to be paid.

2.14.2.2 The Agency or Institution of Higher Education shall ensure that:

2.14.2.2.1 The State's obligation is being charged to the appropriate account;
and

2.14.2.2.2 Procurement requirements have been satisfied.

2.14.3 Inclusions. Small purchase documentation includes, without limitation, an invoice, billing, receipt, court order, or any other document appropriate to the transaction and approved by the State Controller.

2.14.4 Exclusions. Small purchase documentation is not required for purchases that do not require a receipt under Fiscal Rule 5-1(Travel).

2.15 State Contract – See Fiscal Rule 3-1 (State Contracts).

2.16 Statutory Violation – A statutory violation occurs when liabilities are incurred or payments are made on the State's behalf without prior approval of a State purchase order or contract by the State Controller, when required under this Fiscal Rule.

2.17 Vendor Agreement – A vendor agreement is any form of agreement provided by a vendor, including an on-line agreement, containing contractual provisions relating to the goods and/or services to be provided by such vendor.

3. RULE

An Agency or Institution of Higher Education shall not disburse funds unless the disbursement is supported by a commitment voucher or small purchase documentation. With respect to proposed expenditures, Agencies and Institutions of Higher Education shall ensure that the commitment voucher:

3.1 Expenditure is authorized by the appropriation and required approvals have been received;

3.2 Expenditure is reasonable and necessary;

3.3 Prices or rates are fair and reasonable;

3.4 Expenditure amount is within the available unencumbered balance;

3.5 Adequately defines the requirements, respective performance obligations of the parties, and pricing;

3.6 Terms and conditions represent a commercially reasonable allocation of risks between the parties;

3.7 Complies with applicable statutes, executive orders, rules and policies; and

3.8 Is encumbered, if a purchase order or contract. The encumbrance of funds is not required for interagency agreements between Agencies and Institutions of Higher Education charged to a special line item appropriation dedicated to that commitment, routine internal services, and other items specified in §4.2 (Exempt Disbursements) of this Fiscal Rule.

4. DOLLAR LIMITS AND REQUIREMENTS

<u>TYPE OF AGREEMENT</u>	<u>DOLLAR LIMIT</u>	<u>REQUIREMENTS</u>
	Total value of the commitment; for multiple-year commitments, the total value is equal to the sum of the commitments for all contract years.	
Goods	\$5,000 and less	Small purchase documentation or any commitment voucher
	Above \$5,000	PO or State contract, Create Encumbrance
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Services	\$5,000 and less	Small purchase documentation or any commitment voucher
	\$5,001 to \$100,000	PO or State contract, Create Encumbrance
	Above \$100,000	State contract, Create Encumbrance
Capital Construction / Controlled Maintenance	NA	See Fiscal Rule 4-1, (Capital Construction Administration) and Fiscal Procedures Manual
Professional Services under CRS §24-30-1401, et seq., including architectural, engineering, land surveying, industrial hygienist, and landscape architect services	Any dollar amount	State contract, Create Encumbrance
Real Property lease or	Any dollar amount	State contract, Create

license of land, buildings, or a portion thereof for term of more than 30 days		Encumbrance
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4.1 Protecting the State's Interests. State contracts shall be used in situations in addition to those described in this § 4 if other commitment vouchers do not adequately protect the State's interests. Refer questions regarding the proper form of commitment voucher to the State Controller.

4.2 Exempt Disbursements. A purchase order or State contract is not required for the following types of disbursements regardless of the amount of funds disbursed:

- 4.2.1** Calculated payments required under a program within an Agency or Institution of Higher Education (e.g., formula distributions, other distributions required by regulatory or statutory formulas);
- 4.2.2** Copier rental agreements when the payment is based on cost per copy;
- 4.2.3** Conference registrations;
- 4.2.4** Financial aid or tuition assistance programs;
- 4.2.5** Insurance purchases;
- 4.2.6** Internal services routinely provided by an Agency or Institution of Higher Education (e.g., printing services and materials ordered from the Division of Central Services, Capitol Complex lease payments, or legal services provided to an Agency or Institution of Higher Education by the Department of Law);
- 4.2.7** Intra-Agency or intra-Institution purchases;
- 4.2.8** Moving expenses reimbursed to State employees;
- 4.2.9** Payroll and related disbursements (withholding, authorized benefits, etc.);
- 4.2.10** Postal and other delivery charges, including messenger fees;
- 4.2.11** State program payments to or on behalf of individuals qualified for the program's benefits;
- 4.2.12** Subscriptions for journals, informational publications or similar materials (electronic or hard copy), which do not include services;
- 4.2.13** Utility hook ups and line extensions performed by a utility company;
- 4.2.14** Water, gas, electric, and customary local and long-distance telephone services, including pagers and cell phones, which are routinely purchased by an Agency or Institution of Higher Education; and
- 4.2.15** Other disbursements approved in writing by the State Controller.

5. STATE PURCHASE ORDERS

5.1 Standard Provisions – All purchase orders issued by State Agencies and Institutions of Higher Education shall include the provisions set forth in §11 (Purchase Order Terms and Conditions of this Fiscal Rule.

5.2 Interagency Purchase Orders – An Agency or Institution of Higher Education issuing a purchase order to another Agency or Institution of Higher Education may change or delete any standard provision.

5.3 Revision of Standard Terms and Conditions – An Agency or Institution of Higher Education issuing a purchase order to a party, other than another Agency or Institution of Higher Education, shall not change or delete the standard purchase order provisions unless it obtains prior written approval of a procurement officer or authorized State Controller delegate, in the case of a fully delegated Agency, or the State Purchasing Office or the State Controller, in the case of a partially delegated Agency, except that:

5.3.1 No changes to the provisions governing Changes, Vendor Offset, Assignment and Successor, Independent Contractor, and Funds Availability may be made without the prior approval of the State Controller; and

5.3.2 No changes to the Choice of Law, Public Contracts for Services, or Public Contracts with Natural Persons provisions may be made without legal review and written approval by the Office of the State Controller, Attorney General, or a Reviewing Attorney.

5.4 Services involving transfer of confidential information - All purchase orders issued by an Agency or Institution of Higher Education that involve the transfer of or access to confidential electronic information shall comply with Data Security policies issued by the Governor's Office of Cyber Security or by the contracting Institution of Higher Education.

6. STATE CONTRACTS

Agencies and Institutions of Higher Education shall use a State contract as the commitment voucher for all purchases or leases of goods and services, as required under Fiscal Rule 3-1 (State Contracts). State contracts shall comply with the requirements of Fiscal Rule 3-1 and this Fiscal Rule.

7. STATUTORY VIOLATIONS

A statutory violation occurs when liabilities are incurred or payments are made on the State's behalf without prior approval of a State purchase order or contract, when required under this Fiscal Rule.

7.1 Payment Prohibition. An Agency or Institution of Higher Education shall not make payments to a vendor when a statutory violation has occurred, unless the violation has been ratified by the State Controller.

7.2 Personal Liability. Under CRS §24-30-202(3) any person(s) who incurs, orders or votes for an obligation or makes a payment which creates a statutory violation shall be personally liable for such obligation, unless the statutory violation is ratified by the State Controller.

7.3 Internal Controls. All Agencies and Institutions of Higher Education shall maintain an adequate system of internal controls to identify statutory violations, to prevent or minimize such violations, and to implement the provisions of this section.

7.4 Ratification. The State Controller, in his or her sole discretion, may ratify the expenditure or obligation creating a statutory violation, if he or she finds all of the following:

7.4.1 The prices or rates are fair and reasonable;

- 7.4.2 The amount of the expenditure is within the unencumbered balance;
- 7.4.3 The Agency or Institution of Higher Education provides a written explanation in accordance with the State Controller Policy entitled "Statutory Violations" ;
- 7.4.4 The parties did not act in bad faith or in a fraudulent manner; and
- 7.4.5 The violation is not repeated or part of a consistent pattern of statutory violations.

8. ADVANCE PAYMENTS

An advance payment is a payment made for goods or services prior to the receipt thereof.

8.1 General Prohibition. State contracts and other commitment vouchers shall not provide for advance payment for goods supplied and/or services performed or for any other contractual obligation, except as permitted in subsection 8.3 of this Fiscal Rule.

8.2 Waiver Process, The State Controller, in his or her sole discretion, may grant the request of an Agency or Institution of Higher Education for a waiver, allowing an advance payment not listed in the exceptions in subsection 8.3. The waiver request shall include evidence that advance payment is an established industry standard and/or provides a benefit to the State at least equal to the cost and risk of the advance payment.

8.3 Exceptions - Prior Approval Not Required. Advance payments for a period of one year or less are permitted without prior approval of the State Controller for the following:

- 8.3.1 Advertising services and related goods;
- 8.3.2 Charter transportation;
- 8.3.3 Construction permits;
- 8.3.4 Federal grants awarded by the State to subgrantees (in compliance with Federal requirements);
- 8.3.5 Overnight travel accommodations such as hotels, motels, etc. (See Fiscal Rule 5-1 Travel);
- 8.3.6 Information Technology (IT) service agreements (including internet access, systems and database access),
- 8.3.7 Insurance premiums;
- 8.3.8 Interagency agreements;
- 8.3.9 Licenses, including licenses for software;
- 8.3.10 Maintenance of office equipment or information technology (IT) (software and hardware), and other maintenance agreements;
- 8.3.11 Membership dues;
- 8.3.12 Personal property leases or rentals;
- 8.3.13 Post Office Box rentals;

- 8.3.14** Professional services provided by expert witnesses hired for litigation purposes, mediators, entertainers, and speakers;
- 8.3.15** Real property leases, where the State is a tenant, and perpetual easements, if the entire interest is purchased and all attendant rights are transferred upon payment;
- 8.3.16** Sponsored projects – See Fiscal Rule 3-1 (State Contracts);
- 8.3.17** Subscriptions for journals, informational publications or similar materials (electronic or hard copy), which do not include services;
- 8.3.18** Tuition, registration, and fees charged for trainings, classes, conferences, and seminars;
- 8.3.19** Utility hook ups and line extensions performed by a utility company; and
- 8.3.20** Water rights purchases or temporary leases.

8.4 Exceptions - Prior Delegate Approval. Advance payments of up to \$10,000, for one or more fiscal years, if the State Controller delegate for the Agency or Institution of Higher Education determines, and documents in the contract file, that the advance payment provides a benefit to the State at least equal to the cost and risk of the payment.

9. EMERGENCIES

Disbursements for emergency procurements may be made upon presentation of invoices, receipts, or other statements describing goods or services purchased and the amount to be paid. Goods and services necessary to respond to an emergency may be procured immediately, without issuing a commitment voucher or obtaining a written waiver from the Office of the State Controller, where all of the following conditions are met:

- 9.1** The nature of the threat requires an immediate response and there is insufficient time to issue a commitment voucher;
- 9.2** The procurement is authorized by the individual who has final executive authority for an Agency or Institution of Higher Education, or his or her delegate;
- 9.3** The procurement is made with such competition as is practicable under the circumstances;
- 9.4** A commitment voucher is executed as soon as possible to define future performance obligations, if any, of the vendor and State, as required by Fiscal Rules; and
- 9.5** The Agency or Institution of Higher Education notifies the Office of the State Controller in writing, as soon as possible, of the circumstances, goods and services purchased, and the dollar amount of the commitment.

10. VENDOR AGREEMENTS

A vendor agreement is any form of agreement provided by a vendor, including an on-line agreement, containing contractual provisions relating to the goods and/or services to be provided by such vendor.

- 10.1 Prohibited Use.** A vendor agreement shall not be used in lieu of a State purchase order or contract, where one is required, absent the prior written approval of the State Controller. A vendor agreement shall not be used where a State purchase order or contract is not required, except as provided in this §10.

10.2 Permitted Use. The chief fiscal officer or procurement director of an Agency or Institution of Higher Education may authorize the use of vendor agreements up to \$5,000, if a State contract or purchase order is not required.

10.3 Conditions of Use. All of the conditions set forth in the State Controller Policy entitled "Vendor Agreements" shall be met whenever a vendor agreement is used.

11. PURCHASE ORDER TERMS AND CONDITIONS

- 1. Offer/Acceptance.** If this purchase order ("PO") refers to vendor's bid or proposal, this PO is an ACCEPTANCE of vendor's OFFER TO SELL in accordance with the terms and conditions of the "solicitation" identified in vendor's bid or proposal. The solicitation includes an RFP, IFB, or any other form of order by buyer. If a bid or proposal is not referenced, this PO is an OFFER TO BUY, subject to vendor's acceptance, demonstrated by vendor's performance or written acceptance of this PO. Any COUNTER-OFFER TO SELL automatically CANCELS this PO, unless a change order is issued by buyer accepting a counter-offer. This PO shall supersede and control over any vendor form(s) or part(s) thereof included in or attached to any bid, proposal, offer, acknowledgment, or otherwise, in the event of inconsistencies or contradictions, regardless of any statement to the contrary in such form(s) or parts thereof. **2. Safety Information.** All chemicals, equipment and materials proposed and/or used in the performance of this PO shall conform to the requirements of the Occupational Safety and Health Act of 1970. Vendor shall furnish all Material Safety Data Sheets (MSDS) for any regulated chemicals, equipment or hazardous materials at the time of delivery.
- 3. Changes.** Vendor shall furnish products and/or services strictly in accordance with the specifications and price set forth for each item. This PO shall not be modified, superseded or otherwise altered, except in writing signed by purchasing agent and accepted by vendor. Each shipment received or service performed shall comply with the terms of this PO, notwithstanding invoice terms or acts of vendor to the contrary, unless this PO has been modified, superseded or otherwise altered in accordance with this section.
- 4. Delivery.** Unless otherwise specified in the solicitation or this PO, delivery shall be FOB destination. Buyer is relying on the promised delivery date, installation, and/or service performance set forth in vendor's bid or proposal as material and basic to buyer's acceptance. If vendor fails to deliver or perform as and when promised, buyer, in its sole discretion, may cancel its order, or any part thereof, without prejudice to its other rights, return all or part of any shipment so made, and charge vendor with any loss or expense sustained as a result of such failure to deliver or perform as promised. Time is of the essence.
- 5. Intellectual Property.** Any software, research, reports, studies, data, photographs, negatives or other documents, drawings or materials (collectively "materials")delivered by vendor in performance of its obligations under this PO shall be the exclusive property of buyer. Ownership rights shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the materials. Vendor shall comply with all applicable Cyber Security Policies of the State of Colorado (the "State"), or buyer, as applicable, and all confidentiality and non-disclosure agreements, security controls, and reporting requirements.
- 6. Quality.** Buyer shall be the sole judge in determining "equals" with regard to quality, price and performance. All products delivered shall be newly manufactured and the current model, unless otherwise specified.
- 7. Warranties.** All provisions and remedies of the Colorado Uniform Commercial Code, CRS, Title 4 ("CUCC"), relating to implied and/or express warranties are incorporated herein, in addition to any warranties contained in this PO or the specifications.

- 8. Inspection and Acceptance.** Final acceptance is contingent upon completion of all applicable inspection procedures. If products or services fail to meet any inspection requirements, buyer may exercise all of its rights, including those provided in the CUCC. Buyer shall have the right to inspect services provided under this PO at all reasonable times and places. "Services" as used in this section includes services performed or tangible material produced or delivered in the performance of services. If any of the services do not conform to PO requirements, buyer may require vendor to perform the services again in conformity with PO requirements, without additional payment. When defects in the quality or quantity of service cannot be corrected by re-performance, buyer may **(a)** require vendor to take necessary action to ensure that future performance conforms to PO requirements and **(b)** equitably reduce the payment due vendor to reflect the reduced value of the services performed. These remedies do not limit the remedies otherwise available in this PO, at law, or in equity.
- 9. Cash Discount.** The cash discount period will start from the later of the date of receipt of acceptable invoice, or from date of receipt of acceptable products/services at the specified destination by an authorized buyer representative.
- 10. Taxes.** Buyer and the State are exempt from all federal excise taxes under Chapter 32 of the Internal Revenue Code [No. 84-730123K] and from all State and local government sales and use taxes [CRS, Title 39, Article 26, Parts I and II]. Such exemptions apply when materials are purchased for the benefit of State, except that in certain political subdivisions (e.g., City of Denver) vendor may be required to pay sales or use taxes even though the ultimate product or service is provided to buyer. Buyer shall not reimburse such sales or use taxes.
- 11. Payment.** Buyer shall pay vendor for all amounts due within 45 days after receipt of products or services and a correct notice of amount due. Interest on the unpaid balance shall begin to accrue on the 46th day at the rate set forth in CRS §24-30-202(24) until paid in full. Interest shall not accrue if a good faith dispute exists as to buyer's obligation to pay all or a portion of the amount due. Vendor shall invoice buyer separately for interest on delinquent amounts due, referencing the delinquent payment, number of day's interest to be paid, and applicable interest rate.
- 12. Vendor Offset. [Not Applicable to Inter-governmental POs]** Under CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: **(a)** unpaid child support debts or arrearages; **(b)** unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; **(c)** unpaid loans due to the Student Loan Division of the Department of Higher Education; **(d)** amounts required to be paid to the Unemployment Compensation Fund; and **(e)** other unpaid debts owing to the State as a result of final agency determination or judicial action.
- 13. Assignment and Successors.** Vendor shall not assign rights or delegate duties under this PO, or subcontract any part of the performance required under this PO, without the express, written consent of buyer. This PO shall inure to the benefit of and be binding upon vendor and buyer and their respective successors and assigns. Assignment of accounts receivable may be made only upon written notice furnished to buyer.
- 14. Indemnification.** If any article sold or delivered under this PO is covered by a patent, copyright, trademark, or application therefore, vendor shall indemnify and hold harmless buyer from any and all loss, liability, cost, expenses and legal fees incurred on account of any claims, legal actions or judgments arising out of manufacture, sale or use of such article in violation or infringement of rights under such patent, copyright, trademark or application. If this PO is for services, vendor shall indemnify, save, and hold harmless buyer, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related expenses, incurred as a result of any act or omission by vendor, or its employees, agents, subcontractors or assignees, arising out of or in connection with performance of services under this PO.

- 15. Independent Contractor.** Vendor shall perform its duties hereunder as an independent contractor and not as an employee. Neither vendor nor any agent or employee of vendor shall be deemed to be an agent or employee of buyer. Vendor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through buyer and buyer shall not pay for or otherwise provide such coverage for vendor or any of its agents or employees. Unemployment insurance benefits will be available to vendor and its employees and agents only if coverage is made available by vendor or a third party. Vendor shall pay when due all applicable employment, income, and local head taxes incurred pursuant to this PO. Vendor shall not have authorization, express or implied, to bind buyer to any agreement, liability or understanding, except as expressly set forth herein. Vendor shall **(a)** provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, **(b)** provide proof thereof when requested by buyer, and **(c)** be solely responsible for its acts and those of its employees and agents.
- 16. Communication.** All communication concerning administration of this PO, prepared by vendor for buyer's use, shall be furnished solely to purchasing agent.
- 17. Compliance.** Vendor shall strictly comply with all applicable federal and state laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.
- 18. Insurance.** Vendor shall obtain, and maintain, at all times during the term of this PO, insurance as specified in the solicitation, and provide proof of such coverage as requested by purchasing agent.
- 19. Termination Prior to Shipment.** If vendor has not accepted this PO in writing, buyer may cancel this PO by written or oral notice to vendor prior to shipment of goods or commencement of services.
- 20. Termination for Cause.** **(a)** If vendor refuses or fails to timely and properly perform any of its obligations under this PO with such diligence as will ensure its completion within the time specified herein, buyer may notify vendor in writing of non-performance and, if not corrected by vendor within the time specified in the notice, terminate vendor's right to proceed with the PO or such part thereof as to which there has been delay or a failure. Vendor shall continue performance of this PO to the extent not terminated and be liable for excess costs incurred by buyer in procuring similar goods or services elsewhere. Payment for completed services performed and accepted shall be at the price set forth in this PO. **(b)** Buyer may withhold amounts due to vendor as buyer deems necessary to reimburse buyer for excess costs incurred in curing, completing or procuring similar goods and services. **(c)** If after rejection, revocation, or other termination of vendor's right to proceed under the CUCC or this clause, buyer determines for any reason that vendor was not in default or the delay was excusable, the rights and obligations of buyer and vendor shall be the same as if the notice of termination had been issued pursuant to termination under §21.
- 21. Termination in Public Interest.** Buyer is entering into this PO for the purpose of carrying out the public policy of the State, as determined by its Governor, General Assembly, and Courts. If this PO ceases to further the public policy of the State, buyer, in its sole discretion, may terminate this PO in whole or in part and such termination shall not be deemed to be a breach of buyer's obligations hereunder. This section shall not apply to a termination for vendor's breach, which shall be governed by §20. Buyer shall give written notice of termination to vendor specifying the part of the PO terminated and when termination becomes effective. Upon receipt of notice of termination, vendor shall not incur further obligations except as necessary to mitigate costs of performance. For services or specially manufactured goods, buyer shall pay **(a)** reasonable settlement expenses, **(b)** the PO price or rate for supplies and services delivered and accepted, **(c)** reasonable costs of performance on unaccepted supplies and services, and **(d)** a reasonable profit for the unaccepted work. For existing goods, buyer shall pay **(e)** reasonable

settlement expenses, **(f)** the PO price for goods delivered and accepted, **(g)** reasonable costs incurred in preparation for delivery of the undelivered goods, and **(h)** a reasonable profit for the preparatory work. Buyer's termination liability under this section shall not exceed the total PO price plus a reasonable cost for settlement expenses. Vendor shall submit a termination proposal and reasonable supporting documentation, and cost and pricing data as required by CRS §24-106-101, upon request of buyer.

- 22. PO Approval.** This PO shall not be valid unless it is executed by purchasing agent. Buyer shall not be responsible or liable for products or services delivered or performed prior to proper execution hereof.
- 23. Fund Availability.** Financial obligations of buyer payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. If this PO is funded in whole or in part with federal funds, this PO is subject to and contingent upon the continuing availability of federal funds for the purposes hereof. Buyer represents that it has set aside sufficient funds to make payment for goods delivered in a single installment, in accordance with the terms of this PO.
- 24. Choice of Law.** State laws, rules and regulations shall be applied in the interpretation, execution, and enforcement of this PO. The CUCC shall govern this PO in the case of goods unless otherwise agreed in this PO. Any provision included or incorporated herein by reference which conflicts with such laws, rules, and regulations is null and void. Any provision incorporated herein by reference which purports to negate this or any other provision in this PO in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Unless otherwise specified in the solicitation or this PO, venue for any judicial or administrative action arising out of or in connection with this PO shall be in Denver, Colorado. Vendor shall exhaust administrative remedies in CRS §24-109-106, prior to commencing any judicial action against buyer.
- 25. Public Contracts for Services. [Not Applicable to offer, issuance, or sale of securities, investment advisory services, fund management services, sponsored projects, intergovernmental POs, or information technology services or products and services]**
Vendor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this PO and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this PO, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c). Vendor shall not knowingly employ or contract with an illegal alien to perform work under this PO or enter into a contract or PO with a subcontractor that fails to certify to vendor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this PO. Vendor shall **(a)** not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants during performance of this PO, **(b)** notify subcontractor and buyer within three days if vendor has actual knowledge that subcontractor is employing or contracting with an illegal alien for work under this PO, **(c)** terminate the subcontract if subcontractor does not stop employing or contracting with the illegal alien within three days of receiving notice, and **(d)** comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If vendor participates in the Department program, vendor shall deliver to the buyer a written, notarized affirmation that vendor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If vendor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., buyer may terminate this PO for breach and, if so terminated, vendor shall be liable for damages.
- 26. Public Contracts with Natural Persons.** Vendor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she **(a)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(b)** shall comply with the

provisions of CRS §24-76.5-101 et seq., and (c) has produced a form of identification required by CRS §24-76.5-103 prior to the date vendor delivers goods or begins performing services under terms of the PO.

Rule 2-3 RECEIVING REPORTS

AUTHORITY:

24-30-202, C.R.S. (State Controller Authority)

RULE:

Receiving reports, or other sufficient documentation, shall be prepared for all goods and services received, showing actual quantities, any unsatisfactory condition, and compliance with specifications, prior to processing a voucher for payment.

EXCEPTIONS TO RULE:

- .01 A receiving report need not be prepared for personal service expenditures.
- .02 When an adequate system of internal accounting and administrative controls exists to provide sufficient verification that goods or services were received, a state agency or institution of higher education may not require a certified receiving report.

Rule 2-4 PURCHASE DISCOUNTS

AUTHORITY:

24-30-202, C.R.S. (State Controller Authority)

RULE:

Payments shall be processed in a timely manner and made within the allowable discount period to ensure the state takes advantage of purchase discounts.

Rule 2-5 INTEREST PAYMENT ON DELINQUENT PAYABLES

AUTHORITY:

24-30-202(24), C.R.S. (State Controller Authority)

DEFINITIONS:

Payable - A payable is a liability incurred by the state. A liability shall arise upon receipt of supplies and services and a correct notice of the amount due. A liability shall not arise if a good faith dispute exists as to the state agency or institution of higher education's obligation to pay all or a portion of the liability.

Delinquent - A payable is delinquent if a disbursement is not made within forty-five days after a liability arises, unless the time of payment has been otherwise provided in the contract or purchase order. A payable being disputed by a vendor or state agency shall become delinquent if a disbursement is not made within forty-five days after resolution of the dispute.

RULE:

State agencies and institutions of higher education shall process invoices and other notices of liability as efficiently as possible in order to ensure payment in accordance with contractual or invoice terms, and in the absence of such terms, as soon as possible, or in accordance with statutory provisions. A delinquent payable shall be assessed interest at 1% per month as required by 24-30-202(24), C.R.S.

All written contracts and purchase orders shall provide for a reasonable time of payment considering the nature of the goods or services provided and review and approval required for payment. If no time for payment has been provided for in writing, interest on the unpaid balance shall be calculated beginning with the forty-sixth day after the liability for such payment arises under this Fiscal Rule. Interest shall be assessed at 1% per month or as stated in the contract or purchase order and, if higher, approved by the agency controller.

Payment of the interest liability incurred under this fiscal rule shall be processed on a separate voucher. The voucher shall be supported by a written claim, prepared by the state agency or institution of higher education or the vendor, referencing the delinquent payment, the number of days of interest to be paid, and the applicable interest rate. Such claims may be modified by the state agency or institution of higher education to adjust payments to include such items as additional interest due for time required to process interest payments.

Rule 2-6 INTERAGENCY PURCHASES AND PAYMENTS

AUTHORITY:

24-30-202, C.R.S. (State Controller Authority)

RULE:

A state agency or institution of higher education shall make payment for purchases of goods and services from another state agency or institution of higher education within 30 days after receipt of a valid invoice. Where possible or practical payments shall be made by an interagency document in lieu of a state warrant.

Disputes Arising from Interagency Purchases

If a dispute arises as a result of an interagency purchase, the following steps will be used to resolve the dispute:

- .01 The state agency or institution of higher education disputing the charge shall notify the state agency or institution of higher education providing the goods or services and attempt to resolve the dispute. If necessary, the chief executive officer of these agencies involved shall assist in the resolution.
- .02 If the state agencies and/or institutions of higher education involved cannot reach a satisfactory resolution, the state agency or institution of higher education disputing the charge shall, within 30 days of the date of the last meeting held to resolve the dispute, petition the State Controller to resolve the dispute.
- .03 If the State Controller is petitioned to resolve the dispute, the decision of the State Controller will be rendered within a reasonable time and be final and binding on all parties concerned.

Rule 2-7 OFFICIAL FUNCTIONS AND TRAINING FUNCTIONS

AUTHORITY:

24-30-202, C.R.S. (State Controller Authority)

DEFINITIONS:

Official Function - A meeting, conference, meal, or other function that is hosted by the chief executive officer, or representative, of a state agency or institution of higher education, attended by guests and/or state employees, and held for official state business purposes.

Training Function - A meeting, conference, or other function which is hosted by a state agency or institution of higher education, attended by customers of the state and/or state employees, and held to enhance staff knowledge or to educate customers of the state or state employees, that are affected by the state agency or institution of higher education's operations or regulations. Training functions should have a written agenda, study materials, and be led by an identified presenter.

RULE:

Official functions and training functions shall be held to achieve program objectives and shall be limited to reasonable and actual costs. The attendance of state employees at official functions shall be kept to a minimum and shall include only those individuals directly related to the purpose of the function. Expenditures shall be kept to a minimum as they have the potential of being perceived to be for personal benefit and an abuse of public funds. Expenditures incurred for official functions shall be approved by the chief executive officer or by a representative of the state agency or institution of higher education that has been delegated authority by the chief executive officer.

Rule 2-8 MISCELLANEOUS COMPENSATION AND OTHER BENEFITS (PERQUISITES)

AUTHORITY:

24-2-103, C.R.S. (Compensation for State Employees)

24-30-202 (22), C.R.S. (State Controller Authority)

DEFINITIONS:

Benefits - Any pecuniary or material advantage provided by the state to a state employee other than salary, leave, incentives, awards, retirement benefits, insurance benefits, and travel and non-travel related reimbursements. Incentive awards, salary increases, fringe benefits established pursuant to CRS 24-50-104(8) and (9) are not considered benefits under this Fiscal Rule.

Economic Rent Study - A study conducted by a state agency or institution of higher education to determine the rent to be charged for a state-owned house or dwelling. The purpose of the study is to determine the rental rate the house or dwelling would command if available on the open market.

Limitations Placed on Employees - Limitations placed on a state employee as a condition of employment may include that the employee is required to live in the state facility, that the employee is required to be available twenty-four hours a day to perform the assigned duties, or that the employee is required to live in close proximity to the state facility in order to provide protection or discourage trespassers from entering the property.

Location of Work Place - The location of the work place assigned may vary from a metropolitan area where housing is readily available to a remote area that is difficult to reach and has no housing other than state furnished housing available.

RULE:

An employee of the state shall not receive any type of benefit by virtue of their position unless such benefit is provided by state statutes or state fiscal rule. An employee shall not have the authority to grant any perquisites, nor shall any employee receive any perquisite except as provided by state statute or state fiscal rule. Monetary allowances shall not be given to employees in lieu of benefits, except as provided by statute or approved by the State Controller. Where state statutes provide allowances for maintenance and ordinary expenses incurred in the performance of duty, it is the responsibility of the chief executive officer of the state agency or institution of higher education to establish specific expenses that are covered by the allowance so that the same expenses are not also directly reimbursed.

Miscellaneous Compensation

.01 Honorariums

State officials and employees may be asked to address an audience for which they receive an honorarium. If such speaking engagements occur outside normal working hours, or their normal work load, or while on annual leave, and there is no cost to the state for travel expenses, the official or employee may retain the honorarium. However, if the engagement occurs during normal working hours, or within their normal workload, as any other duty, the honorarium is to be turned over to the state. Any travel expenses related to the engagement would then be valid expenses for reimbursement by the state.

Other Benefits (Perquisites)

.01 Clean air transit benefit for state employees:

To promote the state's mission of mitigating traffic congestion and creating clean air solutions, and to help equalize benefits for those state employees that do not receive free parking, the executive director of a state department, or the president or chancellor of an institution or campus of an institution of the Department of Higher Education (referred to as a state agency or institution of higher education for this rule) may offer a clean air transit benefit to their employees. If offered by a state agency or institution of higher education, the benefit shall be offered on an equal basis to all permanent full-time employees within the geographic area served by the mass transit provider and also, if deemed appropriate by such state agency or institution of higher education, may be offered on an equal basis to all part-time employees within the same geographic area. Further, where a state agency or institution of higher education has employees in different locations, the benefit shall be offered based upon the applicable price structure of the mass transit provider for each of those specific locations. The clean air transit benefit may be the total cost of using mass transit or a portion of the total cost.

Prior to offering the benefit, the state agency or institution of higher education shall develop an implementation plan. The plan shall contain the number of employees expected to receive the benefit, the estimated cost, if any, to be paid by the employee, and the estimated fiscal impact on the state agency or institution of higher education. Any contract between the state agency or institution of higher education and the mass transit provider shall be approved by the State Controller.

Each state agency or institution of higher education providing the clean air transit benefit for their employees shall maintain records showing the actual number of employees receiving the benefit, the actual cost, if any, paid by the employee and the cost to the state agency or institution of higher education for providing the benefit.

.02 Events sponsored by state agencies and institutions of higher education:

A reasonable discount may be offered by a state agency or institution of higher education to officials and employees to improve attendance or participation in State sponsored events.

Examples included discounts on admission to athletic games and cultural, educational, recreational, or other events.

Such discounts shall generally be offered on a first-come, first-served basis, except that a state agency or institution of higher education may reserve a specified and reasonable number of admissions to particular events to be distributed on a targeted basis for the purpose of public relations or alumni relations, or for the purpose of student or employee recruitment. The chief executive officer of the state agency or institution of higher education or a delegate shall approve in writing all plans for discounted admissions.

.03 Meals

Meals prepared at state dining facilities are primarily for the benefit of the students, patients, or inmates housed at these facilities. However, meals may be provided to state employees working at these facilities and guests visiting these facilities. When a meal is provided to state employees or guests, the amount charged for the meal shall be established to at least recover the full cost of the meal. If an employee is required to eat at a state facility, the amount charged for the meal should be 50% of the full cost of the meal as determined above.

The amount charged for the meals provided shall be approved annually by the chief executive officer of the state agency or institution of higher education. The chief executive officer, or a delegate, may establish separate meal rates for each facility or a single rate for all their facilities. Adequate documentation shall be maintained to substantiate the cost charged for the meals provided.

.04 Instructional courses and job related training

Job related and career enhancement courses may be provided to state employees at no cost or at a reduced cost as authorized by their state agency or institution of higher education. Written approval shall be obtained by the state employee from the chief executive officer, or a delegate, of the state agency or institution of higher education providing this benefit prior to enrollment. Only courses that will benefit the state and enhance the employee's performance shall be approved.

.05 State owned housing provided to state employees:

A state agency or institution of higher education may provide housing for a state employee where state-owned facilities are available and it is in the best interest of the state. The rent charged shall be based on the economic rent determined by the state agency or institution of higher education and shall take into consideration any limitations placed on the employee as a condition of employment, location of the employee's work place, and other factors deemed appropriate by the state agency or institution of higher education.

An economic rent study shall be conducted prior to the house or dwelling being offered for rent to a state employee. A new economic rent study shall be conducted on or before July 1, every three years thereafter. The rent charged shall be reviewed and if necessary, adjusted on an annual basis. The rent charged for each house or dwelling shall be approved in writing on July 1 of each year by the chief executive officer or a delegate of the state agency or institution of higher education.

State agencies and institutions of higher education shall execute a rental agreement with the state employee and make payroll deductions for the rent. If the rented unit does not have separate utility meters, the state agency or institution of higher education shall also make payroll deductions for the estimated utility costs. The state agency or institution of higher education shall

maintain adequate documentation to support the rent and utility costs assessed for each house or dwelling.

.06 Temporary housing provided to visitors and guests:

Where space is available, temporary housing may be provided to visitors and guests by a state agency or institution of higher education with the approval the chief executive officer, or a delegate. The charge for such accommodations shall be set at an amount which will at least recover all direct and indirect costs and be reasonable in comparison to the charge for similar housing, if such housing is available. The state agency or institution of higher education shall maintain adequate documentation to substantiate the cost charged for the housing provided.

.07 Uniforms and maintenance of uniforms:

Uniforms required to be worn by state employees and the necessary maintenance of these uniforms may be provided to the employee by the state agency or institution of higher education at no charge, or at a reduced charge, or through a uniform allowance.

.08 Bookstore discounts:

Discounts not to exceed 10% of retail price may be authorized by each institution for its faculty members and employees for purchases at its bookstores.

.09 Authorized Commuting

Where state-owned motor vehicles are used for taxable commuting, the employee must obtain prior written authorization signed by the chief executive officer of the state agency or institution of higher education based on review and verification of the justification in accordance with section 24-30-1113 C.R.S. and submit the commuting authorization form to Colorado state fleet management. The employee shall be imputed income for the use of the state vehicle at a rate that approximates the benefit derived from the use of the vehicle and that complies with Internal Revenue Service publications and regulations.

EXCEPTIONS TO RULE:

- .01 The governing boards of institutions of higher education, consistent with policies developed by the Commission on Higher Education and approved by the State Controller, may provide housing or a housing allowance for the chief executive officer of a state college or university as part of his/her employment contract.
- .02 Self-liquidating facilities such as faculty apartments and student housing or trailer houses used as temporary housing at remote work place stations are exempted from this fiscal rule.
- .03 The governing boards of institutions and agencies of the Department of Higher Education, with prior approval by the State Controller and the Governor or delegate, may authorize a voluntary separation incentive plan for its employees who are exempt from the State Personnel System under Article XII, Section 13(2) of the Colorado Constitution and Section 24-50-135, C.R.S. Any such plan shall offer uniform and equitable incentives to all employees similarly situated in defined categories within the institution or agency for which the plan is proposed. All proposed separation incentives in the plan must be justified as reasonable and necessary expenditures

Rule 2-9 MOVING AND RELOCATION

AUTHORITY:

DEFINITIONS:

Household Effects - Household or personal effects such as furniture, clothing, musical instruments, household appliances, foods, and other items which are usual and necessary for the maintenance of a household.

Installation - Normal hookup of appliances to existing utilities. It does not include adding wiring, plumbing or vents.

APPLICABILITY:

This fiscal rule applies only to employees in the state personnel system.

RULE:

A state agency or institution of higher education shall not reimburse or pay moving expenses for a state employee when the move is made solely for personal reasons. Moving expenses shall be authorized by the chief executive officer, or a delegate, of a state agency or institution of higher education if the move of residence is occasioned by a change in assignment, a promotion, or for another reason related to the employees' duties. This rule does not apply to new hires.

Reimbursement for Moving Expenses and Allowances

.01 Moving of household effects - commercial mover:

State payment shall be allowed for the necessary expenses incurred for the packing, insurance, transportation, and storage in transit not to exceed thirty days, unpacking, and installation at the new location of an employee's household effects.

State payment shall not be made for moving household effects in excess of ten thousand pounds net weight for those with dependents and five thousand pounds net weight for those without dependents. Any expenses, including insurance for household effects exceeding the weight limitations shall be borne by the employee being moved. Claims shall be accompanied by at least two competitive bids and state payment shall be made at the rates proposed in the lowest responsible bid. If a move is billed at an hourly rate, the carrier shall weigh the items moved and this weight shall be used to apply the above weight limitations.

.02 Moving mobile homes and house trailers:

State payment shall be allowed for charges by commercial vendors for towing of mobile homes or house trailers containing the household effects of a state employee.

Towing charges may include such additional items as labor and incidental material charges for packing, tie down of household effects, removal and reattachment of skirts, and utility costs for disconnecting and reconnecting from existing utilities. It does not include the costs of concrete pads or additional labor or supplies to add or modify connections for plumbing or electrical service. Claims shall be accompanied by at least two competitive bids and state payments shall be made at the rates proposed in the lowest responsible bid.

.03 Employee moves household effects:

A state employee may prefer to move household effects by rental trailer or truck in lieu of using a commercial mover. Two responsible bids shall be required for reimbursement of the rental trailer or truck if the cost exceeds \$1,000.

If the employee chooses to move household effects and requests reimbursement for moving expenses from the state, two responsible bids shall be obtained from a commercial mover, prior to the move. The employee shall be reimbursed one-half of the lowest responsible bid for commercial moving not to exceed \$1,500 and be reimbursed for the rental trailer or truck at the lowest responsible bid if required. This provision may also apply in certain circumstances when the employee's mobile home or house trailer cannot be used to move household effects.

Mileage allowance for one personal automobile shall be authorized and reimbursed at the statutory rate.

An employee shall receive the per diem allowance up to a maximum of thirty days for necessary expenses incurred while locating permanent residence at the new location. The employee may exclude interruptions caused by sick leave, vacation, other authorized leave of absence, or ordered travel. Reimbursement shall not exceed the travel rates authorized by the fiscal rules.

Per diem shall consist of lodging, meals, and other miscellaneous allowances as provided in these fiscal rules.

Any employee required to take another position within the state system and relocate due to the layoff process shall be allowed to claim reimbursement for moving expenses. Costs of the move shall be paid by the state agency or institution of higher education laying off the employee.

Rule 2-10 PROCUREMENT CARD

RULE:

All state agencies and institutions of higher education eligible for the State of Colorado procurement card program shall enter into an agreement with the State Procurement Card Program to participate. State agencies and institutions of higher education may not enroll in other credit or debit card program agreements for purchases covered by the procurement card program.

Personal Services

Procurement cards may be used to pay for services as well as goods. It is the responsibility of the controller at each state agency or institution of higher education using procurement cards for 1099 reportable transactions to have in place a methodology to identify and report this information.

Purchases in Excess of \$5,000

If authorized by the controller of the state agency or institution of higher education, procurement cards may be used to pay invoices in excess of \$5,000. Use of the procurement card is not a substitute for a commitment voucher or encumbrance as required by Fiscal Rule 2-2.

Preaudit Responsibility

Use of the procurement card does not eliminate the need for a preaudit, which shall be completed when the disbursement is made to the bank or when distributions are made. The agency or institution of higher education is responsible for reconciling the disbursements made to the bank with the total of validated individual charges for the state agency or institution of higher education. The dispute mechanism shall be used when charges from the bank are challenged.

Reporting Misuse

All incidents of procurement card misuse that are recurring, significant, or in excess of \$500 should be reported in writing to the State Controller at least annually. Reports shall be submitted to the state controller's office by November 1 each year. This report should include results of any investigation or follow-up including corrective measures implemented to prevent or reduce the likelihood of future occurrences.

All incidents of procurement card suspected theft or embezzlement shall be reported according to fiscal rule 1-9.

Open Charge Accounts

State agencies or institutions of higher education participating in the procurement card program shall use the state procurement card for purchases at local vendors in lieu of open or other charge accounts. The state agency or institution of higher education's procurement card administrator and the controller or chief fiscal officer must approve exceptions to this requirement in advance. Open accounts should be closed as soon as procurement cards are available to state agency or institution of higher education personnel.

CHAPTER 3

Rule 3-1 STATE CONTRACTS [Eff. 01/01/2009]

1. AUTHORITIES

Article V, Section 33, Constitution of Colorado - Disbursement of public money

Article XI, Section 1, Constitution of Colorado – Public Indebtedness.

Article XII, Section 13 (2), Constitution of Colorado - Personnel system of state – merit system

Governor's Executive Order signed April 7, 1978 (Authority to sign contracts, deeds, and leases)

Governor's Executive Order D 016 07 - Improving State Information Technology Management

State of Colorado Procurement Rules

CRS §4-1-101, et seq. (Uniform Commercial Code)

CRS §24-2-102(4) (Appointment of officers and employees)

CRS §2-2-320(2) (Legislative contracts approval)

CRS §24-17-201, et seq. (State contingency-based contracts)

CRS §24-30-202 (State Controller authority)

CRS §24-30-903(1)(d) (Telecommunications approval authority)

CRS §24-30-1104(1)(h) (Central Services approval authority)

CRS §24-30-1107 (Central Services approval authority)

CRS §24-30-1303(1)(a) and (d) (State Buildings approval authority)

CRS §24-30-1404(4) (Prohibition against contingency fees)

CRS §24-30-2001, et seq. (Utility cost-savings measures)

CRS §24-31-101(1)(c) (State Attorney General - powers and duties)

CRS §24-31-104 (Appointment of subordinate officers and employees)

CRS §24-34-101, et seq. (Department of Regulatory Agencies)

CRS §24-37.5-101, et seq. (Office of Information Technology)

CRS §24-50-135 (Exemptions from personnel system)

CRS §24-50-501, et seq. (Contracts for Personal Services)

CRS §24-75-302 (Capital construction fund)

CRS §24-101-101, et seq. (Procurement Code)

CRS §24-102-205 (Centralized contract management system)

CRS §24-103.5-101 (Monitoring of vendor performance)

CRS §24-105-102 (Performance evaluation reports)

CRS § §33-1-105 and 105.5. (Acquisition of property – Division of Wildlife)

CRS §33-10-107 (Acquisition of property – Division of Parks and Outdoor Recreation)

2. DEFINITIONS

All references to “contract” or “agreement” refer to State contracts, which are formal, legally binding documents. The terms “contract” and “agreement” are used interchangeably in the following definitions to reflect their common usage in the State and include any amendments to the contract or agreement. The following definitions include terms used in this Fiscal Rule as well as various types of contracts entered into by the State.

2.1 Advice of Employment – A document that includes an offer of employment.

2.2 Agency – An executive department of the State and offices of the Governor or any subdivision thereof.

2.3 Capital Construction – A capital construction project or controlled maintenance project funded wholly or in part by the State capital construction fund (CRS §24-75-302) or any cash resources of an Agency or Institution of Higher Education.

2.4 Central Approver – Executive directors of Agencies and Elective Officers or their respective delegates, whose prior approval is required by statute or Fiscal Rule for certain types of State contracts. Central approvers include, without limitation, the State Personnel Director, State Architect, Director of the Real Estate Programs, State Communications Coordinator, State Attorney General, Director of the Division of Central Services, and Governor’s Office of Information Technology.

2.5 Central Services Contract – An agreement between an Agency or Institution of Higher Education and another party for the acquisition of services, service equipment, and software related to services. Centralized services include, without limitation, motor pool operation, motor vehicle

maintenance, mail or messenger services, office copying, graphic design for print media, printing and binding, microfilming, or design of management forms. See CRS §24-30-1104(1)(h).

2.6 Contingency-Based Contract – A contract for services between an Agency and a vendor where:

2.6.1 All or part of the vendor's compensation is computed by multiplying a stated percentage by the measurable savings in the Agency's expenditures or costs of operation attributable to the vendor's services under the contract; and

2.6.2 The contingency-based contract is not specifically authorized by statute. See CRS §24-17-203.

Contingent fees are prohibited in professional services contracts. See CRS §24-30-1404(4).

2.7 Debt Contract – A financial obligation reported in the State's Comprehensive Annual Financial Report under standards promulgated by the Governmental Accounting Standards Board. Debt contracts include without limitation contracts for revenue bonds, tax revenue anticipation notes, lease purchases, certificates of participation, and other multi-year transactions with outside third party facilitators, issued or otherwise incurred by Agencies, Institutions of Higher Education, and blended component units.

2.8 Delegated Agency or Institution of Higher Education – An Agency or Institution of Higher Education whose controller has been granted delegated signature authority by the State Controller.

2.9 Elective Officer – A State officer elected and holding office under the laws of the State. Elective officers include the State Attorney General, Governor, Lieutenant Governor, Secretary of State, and Treasurer. For purposes of this Fiscal Rule, Elective Officer also includes the Elective Officer's second-in-command (e.g., the Governor's Chief of Staff), but does not include any other individual (e.g., executive directors of an Office of the Governor See CRS §24-2-102(4))

2.10 Employee Voluntary Separation Agreement – A contract between an Agency or Institution of Higher Education and a State employee setting forth the terms of the employee's voluntary separation from State service.

2.11 Expenditure Contract – An agreement between an Agency or Institution of Higher Education and another party resulting in an expenditure of funds, directly or indirectly, or the creation of an obligation on the part of the State. Expenditure contracts include non-financial and in-kind contracts where the State incurs an obligation.

2.12 Franchise Agreement – An agreement where an Agency or Institution of Higher Education grants to a party a concession or right to provide goods or services in a particular market or geographical area controlled by the State, such as concession stands, hotels, and other services provided in certain State parks. The Agency or Institution of Higher Education may regulate service level, quality and price, but users of the service pay the other party directly and the other party provides the goods or services and exercises control over other management decisions.

2.13 Fund Management Services – Professional consulting services regarding the management of State funds.

2.14 Goods Contract – A contract between an Agency or Institution of Higher Education and another party for the purchase of goods. The term "goods" includes commodities, supplies, and products as such terms are used in the State Procurement Code (CRS §24-101-101, et seq.), Procurement Rules (R-24-101-301), and Uniform Commercial Code (CRS §24-1-201 General Definitions).

- 2.15 Grant Contract** – An agreement between an Agency or Institution of Higher Education and another party where the Agency or Institution of Higher Education:
- 2.15.1** Receives grant funds from or through the other party to the grant contract. An Agency or Institution of Higher Education may receive grant funds from or through any contract type, including without limitation, revenue contracts, sponsored project agreements, intergovernmental contracts, and interagency agreements, depending on the nature of the grant; or
 - 2.15.2** Provides funds from State, federal, or other sources to the other party to the grant contract. An Agency or Institution of Higher Education may grant funds to the other party from or through any contract type, including without limitation, personal services contracts or capital construction contracts, depending on the nature of the grant.
- 2.16 Information Technology Contract** – A contract between an Agency or Institution of Higher Education and another party, where the other party provides information technology services or products and services. An information technology contract is a type of personal services contract. See CRS §24-37.5-102 and State Controller Policy entitled *“Information Technology Contracts”* for a comprehensive list of information technology products and services.
- 2.17 Interagency Agreement** – An agreement between two Agencies, two Institutions of Higher Education, or an Agency and Institution of Higher Education, which includes a dispute resolution process giving the State Controller final decision-making authority. An interagency agreement is a State contract, subject to the provisions and requirements of this Fiscal Rule.
- 2.18 Intergovernmental Contract** – An agreement between an Agency or Institution of Higher Education and a political subdivision of the State, another state, a political subdivision or public institution of higher education in another state, or an agency of the federal government.
- 2.19 Institution of Higher Education.** A public college, community college, or university established as a part of the State.
- 2.20 Investment Advisory Services** - Professional consulting services regarding securities and investments.
- 2.21 License** – A grant by the owner of rights in real or personal property to another of a personal privilege to use such property, without the transfer of the underlying ownership interest therein.
- 2.22 Loan Contract** – An agreement between an Agency or Institution of Higher Education and another party, where the Agency or Institution of Higher Education agrees to loan funds to such other party.
- 2.23 No-Cost/Non Cash Contract** – An agreement between an Agency or Institution of Higher Education and another party involving an exchange of resources, goods, or services, that does not result in the direct or indirect expenditure of funds.
- 2.24 Outsource Contract-Third Party Payor** – An agreement between an Agency or Institution of Higher Education and another party for personal services, where the Agency or Institution of Higher Education:
- 2.24.1** Is charged with providing the function or services that are the subject matter of the contract to members of the public;

- 2.24.2** Delegates performance of a part of the function or service to the other party, but does not dictate the third party's operations beyond providing limited input regarding the third party's performance of its obligation; and
- 2.24.3** Mandates that members of the public, and not the State, are responsible for paying the other party to perform the function or service; for example, where an applicant seeking a license or certification from the State pays the other party for providing testing services that are required as a prerequisite to the grant of such license or certification.
- 2.25 Party** – An individual or entity who is not an Agency or Institution of Higher Education. If appropriate in the context, the term “party” may also refer to multiple individuals or entities who are not Agencies or Institutions of Higher Education.
- 2.26 Personal Property Lease Agreement** – An agreement between an Agency or Institution of Higher Education, as lessee, and the owner of personal property, as lessor, where the Agency or Institution of Higher Education pays the lessor for the right to use such personal property for the term of the lease. A personal property lease may be an operating lease or a capital lease. See State Controller Policy entitled “*Lease Purchases and Capital Leases*”.
- 2.27 Personal Services Contract** – A contract between an Agency or Institution of Higher Education and another party, where the other party provides personal services for the benefit of the Agency or Institution of Higher Education or a third party. An individual or entity performing services under a personal services contract is an independent contractor and not an employee of the State.
- 2.28 Personal Services Exempted From Personal Services Review** – Personal services that are:
- 2.28.1** Exempted from the State classified personnel system, including State Attorney General subordinate officers and employees under CRS §24-31-104; professors at Institutions of Higher Education, under CRS §24-50-135, and employees of the judicial branch and the offices of the Governor and Lieutenant Governor under the State Constitution Article XII, Section 13; and
- 2.28.2** Non-recurring services lasting six months or less, where the need for such services is not expected to recur on a regular basis. Temporary services that do not meet these criteria are subject to personal services review.
- 2.29 Price Agreement** – A contract between the Department of Personnel and Administration, Division of Finance and Procurement, State Purchasing Office, and a vendor, which allows Agencies and Institutions of Higher Education to order goods or services from the vendor, pursuant to the terms of the price agreement, by issuing a purchase order, task order, or other approved order form.
- 2.30 Professional Services Contract** – A contract between an Agency or Institution of Higher Education and another party for the performance of any of the following services: architectural, engineering, land surveying, industrial hygienist, and landscape architect.
- 2.31 Real Property Lease Agreement** – An agreement between an Agency or Institution of Higher Education and another party, where the Agency or Institution of Higher Education:
- 2.31.1** As landlord, owns the real property subject to the lease and gives the other party to the Lease, as tenant, the right of possession of such property for the lease term; or
- 2.31.2** As tenant, obtains the right of possession of the real property subject to the lease from the owner of such property, as landlord, for the lease term.

- 2.32 Real Property Purchase Agreement** – An agreement for the purchase of an interest in land (fee title or lesser interests) and improvements to land, such as buildings and other structures.
- 2.33 Revenue Contract** – An agreement between an Agency or Institution of Higher Education and another party where cash and/or property are paid to the State, resulting in revenue recognition. Revenue contracts do not require the expenditure of State funds or create an obligation on the part of the State.
- 2.34 Reviewing Attorney** – An assistant attorney general, special assistant attorney general or other attorney authorized by the State Attorney General and employed by an Agency or Institution of Higher Education, who has received a written designation as a Reviewing Attorney from the State Controller. A written designation from the State Controller is personal to the Reviewing Attorney and may not be assigned or further delegated. The designation is limited to the specific responsibilities and authority set forth in the written designation, which may be terminated or modified at any time at the sole discretion of the State Controller.
- 2.35 Sale of Securities** – The offer, issuance or sale of securities by the State of Colorado or any Agency or Institution of Higher Education. Securities include certain debt contracts.
- 2.36 Settlement Agreement** – A contract between an Agency or Institution of Higher Education and another party for the purpose of ratifying agreements concerning employment or contractual disputes.
- 2.37 Sponsored Project Agreement** – An agreement between an Institution of Higher Education and another party, where the Institution of Higher Education receives or expends restricted funding for use in connection with oversight responsibilities for research and development or other specified programmatic activities sponsored by federal, state, or local governments, or private agencies or organizations.
- 2.38 State** – The State of Colorado.
- 2.39 State Contract** – An agreement between two Agencies, two Institutions of Higher Education, an Agency and an Institution of Higher Education, or an Agency and/or Institution of Higher Education and another party. State contracts, as used in this Fiscal Rule, do not include purchase orders.
- 2.40 Utility Cost-Savings Contract** – An energy performance contract, shared-savings contract, or other agreement in which utility cost savings are used to pay for services or equipment. See CRS §24-30-2001(6).

3. CATEGORIES

The following categories provide examples of different types of State contracts, but are not all inclusive.

3.1 Expenditure Contracts

- 3.1.1** Capital construction contracts;
- 3.1.2** Employee voluntary separation agreements;
- 3.1.3** Fund management services agreements;
- 3.1.4** Goods contracts;
- 3.1.5** Information technology contracts;

- 3.1.6 Investment advisory services agreements;
- 3.1.7 Outsource contracts-third party payor;
- 3.1.8 Personal property leases/licenses - State as lessee or licensee;
- 3.1.9 Personal services contracts;
- 3.1.10 Personal services review exempted contracts;
- 3.1.11 Professional services contracts;
- 3.1.12 Real property leases/ licenses – State as tenant or licensee;
- 3.1.13 Real property purchase agreements – State as buyer; and
- 3.1.14 Settlement agreements.

3.2 Revenue Contracts

- 3.2.1 Franchise agreements;
- 3.2.2 Real property leases/licenses – State as landlord or licensor; and
- 3.2.3 Real property purchase agreements – State as seller.

3.3 Other Contract Types

- 3.3.1 Debt contracts;
- 3.3.2 Grant contracts;
- 3.3.3 Interagency agreements;
- 3.3.4 Intergovernmental contracts;
- 3.3.5 Loan contracts;
- 3.3.6 No cost/non cash contracts;
- 3.3.7 Price agreements;
- 3.3.8 Sale of securities agreements; and
- 3.3.9 Sponsored project agreements.

4. RULE

Each Agency or Institution of Higher Education shall:

- 4.1 Use a State contract as the commitment voucher, as required in Fiscal Rule 2-2, “*Commitment Vouchers*”; and
- 4.2 Ensure that all constitutional, statutory, Fiscal Rule, and State Controller Policy requirements have been met prior to signing a State contract.

5. CONTENT OF STATE CONTRACTS

5.1 Expenditure Contracts, Other State Funded Contract Types, Debt Contracts, and Price

Agreements. The general provisions of subsection 5.1.1 shall apply to all contract types noted in subsection 5.1 except as limited or excluded in the specific §5 subsections covering: (a) real property purchases (State as buyer), leases (State as tenant), and licenses (State as licensee) and (b) settlement agreements and employee voluntary separation agreements. See State Controller Policy entitled “*Content-Mandatory Provisions in State Contracts.*”

5.1.1 General Provisions - The following provisions shall be included in (a) expenditure contracts, (b) grant contracts where an Agency or Institution of Higher Education is the grantor and provides funds from State, federal, or other sources to the other party, (c) intergovernmental agreements where the State provides funds to the other governmental entity, (d) debt contracts, and (e) price agreements, to-wit:

5.1.1.1 Identification of the parties;

5.1.1.2 Appropriated or non appropriated spending authority (except for Institutions of Higher Education);

5.1.1.3 Statutory authority (except for Institutions of Higher Education);

5.1.1.4 Statement of Work;

5.1.1.5 Payment terms, including maximum dollar amount;

5.1.1.6 Performance period;

5.1.1.7 General terms and conditions;

5.1.1.8 Special Provisions (see Appendix to this Fiscal Rule);

5.1.1.9 Signature page (see State Controller Policy entitled “*Signature Page Forms*” for model signature pages); and

5.1.1.10 Statement that the contract shall not be valid until it has been approved by the State Controller or delegate. Note: this statement is included in the model signature pages and the Special Provisions.

5.1.2 Personal Services Contract Provisions – In addition to the elements listed in subsection 5.1.1 above, each personal services contract over \$100,000 (other than sponsored project agreements and certain contracts related to health care) shall include all of the contract requirements of §24-103.5-101 as follows:

5.1.2.1 Performance measures and standards developed specifically for the contract by the administering Agency or Institution of Higher Education;

5.1.2.2 Accountability standards requiring regular vendor reports on achievement of the specified performance measures and standards;

5.1.2.3 Payment provisions allowing the Agency or Institution of Higher Education to withhold payment until successful completion of all or specified parts of the contract and requiring prompt payment upon successful completion;

5.1.2.4 Monitoring requirements specifying how the Agency or Institution of Higher Education and the vendor will evaluate each other's performance, including progress reports, site visits, inspections, and reviews of performance data; and

5.1.2.5 Processes for resolving disputes between the Agency or Institution of Higher Education and the vendor.

5.1.3 Real Property Purchases (State as Buyer), Leases (State as Tenant) and Licenses (State as Licensee). State contracts for the purchase, lease or license of real property shall contain the following provisions:

5.1.3.1 If an Agency or Institution of Higher Education is the buyer, tenant or licensee, the contract shall include the following Special Provisions:

5.1.3.1.1 State Controller's Approval;

5.1.3.1.2 Funds Availability; and

5.1.3.1.3 Vendor Offset.

5.1.3.2 If an Agency or Institution of Higher Education is the buyer, tenant or licensee, the contract may include the other Special Provisions, at the discretion of the Agency or Institution of Higher Education.

5.1.3.3 If an Agency or Institution of Higher Education is the tenant or licensee, the contract shall include provisions specifying cancellation rights, if the real property leased or licensed is destroyed by fire and/or becomes subject to eminent domain.

5.1.4 Capital Construction Contracts – See Fiscal Rule 4-1, *“Capital Construction Projects”*. See also approved contract forms, available on the website of the Office of the State Architect.

5.1.5 Settlement Agreements and Employee Voluntary Separation Agreements – See State Controller Policy entitled *“Settlement Agreements.”*

5.2 Content for other Contract Types

5.2.1 Interagency Agreements - All interagency agreements require approval of the State Controller, or delegate. Each interagency agreement shall include, at a minimum, the following elements:

5.2.1.1 Identification of the parties;

5.2.1.2 Spending authority, including fund, appropriation code, and encumbrance number (except for expenditures incurred by Institutions of Higher Education);

5.2.1.3 Statement of work;

5.2.1.4 Statement of consideration (if applicable);

5.2.1.5 Payment and other performance terms; and

5.2.1.6 Definition of breach and remedies, consistent with Fiscal Rule 2-6, *“Interagency Purchases and Payments”*.

5.2.2 Intergovernmental Contracts

5.2.2.1 Special Provisions - An Agency or Institution of Higher Education contracting with governmental entities outside of the State shall not agree to modify the Special Provision requiring the governance of Colorado law, but, if requested, may agree to strike the Choice of Law Special Provision, resulting in contractual silence as to governing law. Any other change to the Choice of Law Special Provision shall require the prior written approval of the Office of the State Controller and a Reviewing Attorney.

5.2.2.2 Federal Government Contracts – All intergovernmental contracts with any agency of the Federal Government shall be reviewed by the Office of the State Controller or a Reviewing Attorney. See State Controller Policy entitled “*Federal Government Contracts*.”

5.2.3 Sponsored Project Agreements – See State Controller Policy entitled “*Sponsored Projects*”.

5.3 Content for All Contract Types

5.3.1 Indemnification by the State Prohibited – Unless specifically authorized by statute, an Agency or Institution of Higher Education shall not indemnify and/or hold harmless another party (no matter how it is phrased) against any liability incurred as a result of the acts or omissions of such Agency or Institution of Higher Education. See Constitution of Colorado, Article V, §33 and Article XI, §1.

5.3.1.1 CRS §24-30-1510(3)(e) authorizes limited indemnification of an owner of property leased to an Agency or Institution of Higher Education for State purposes.

5.3.2 Limitation of Liability

5.3.2.1 Limitation of Vendor’s Liability - Bodily Injury and Property Damage. An Agency or Institution of Higher Education shall not limit the vendor’s liability for claims or damages, including consequential damages, arising out of bodily injury (including death) and damage to tangible property, if tangible risk is inherent in the nature of the contract.

5.3.2.2 Limitation of Vendor’s Liability - Other Types of Damages. An Agency or Institution of Higher Education may accept commercially reasonable limitations of liability and/or remedies provisions, or the exclusion of consequential damages, if the benefits are deemed to outweigh the risks and this determination is documented in the contract file. Such action requires approval of the State Controller or other individuals specified in a delegation letter from the State Controller, and may include a Reviewing Attorney, or an Agency procurement or contracts officer.

6. APPROVED STATE CONTRACT FORMS

All State expenditure contracts shall be in a form approved by the State Controller. The State Controller has approved the following contract forms and may approve additional forms at his or her sole discretion.

6.1 Capital Construction Contracts – See Fiscal Rule 4-1, “*Capital Construction Projects*”. See also approved contract forms available on the website of the Office of the State Architect.

6.2 Model Contracts – The State Controller has approved model contracts for personal services, information technology and interagency agreements, and may approve other model contracts in the future, at his or her sole discretion. See State Controller Policy entitled “*Model Contracts*”.

6.3 Contract Amendments – All modifications to a State contract shall be made by a formal written amendment signed by the parties to the contract and approved by the State Controller, unless an alternative modification tool has been approved by the State Controller. A contract cannot be amended or extended (revived) after the contract term has expired. A form of contract amendment and forms of alternative modification tools are set forth in State Controller Policy entitled “*Modifications of Contracts-Tools and Forms*” (“Modification Policy”).

6.4 Alternative Modification Tools and Forms – An Agency or Institution of Higher Education may use an approved alternate modification tool to modify a contract in lieu of a contract amendment only in the specific circumstances identified in the Modification Policy. An Agency or Institution of Higher Education shall obtain written approval from the Office of the State Controller prior to making a change to the form of an alternative modification tool or using an alternative modification tool in a manner not described in the Modification Policy. A contract cannot be modified or extended after the expiration of the contract term. Approved alternative modification tool forms are set forth in the Modification Policy.

6.4.1 Required Provision and Attachment. An approved modification tool may be included as a part of a State contract only if the contract contains a provision referencing the specific modification tool, in the form set forth in the Modification Policy, and the form of the specific modification tool is attached as an exhibit to the contract.

6.4.2 Caveat. Each contract modification tool was created for use in connection with specific types of contracts and scopes of services and is not universally applicable. Each modification tool shall be used only for its intended purposes, as set forth in the Modification Policy, and shall not be changed or combined with any other contract modification tool.

6.5 Real Property Lease Agreements – Lease agreements involving real property shall be in a form approved by and set forth on the website of the Office of the State Architect, except for:

6.5.1 Leases exempted by statute (see subsection 7.10 of this Fiscal Rule), and

6.5.2 Leases where the Department of Personnel and Administration is a party, which may be in any form approved by the State Controller.

6.6 Special Provisions – All State (a) expenditure contracts, (b) grant contracts where an Agency or Institution of Higher Education is the grantor and provides funds from State, federal, or other sources to the other party, (c) intergovernmental agreements where the State provides funds to the other governmental entity, (d) debt contracts, (e) price agreements, and (f) capital construction contracts shall contain the State Special Provisions. See §14 to this Fiscal Rule. No modification shall be made to a Special Provision without the prior written approval of the Office of the State Controller and, in the case of the Choice of Law Special Provision, a Reviewing Attorney, except as otherwise expressly provided in subsection 5.2.2 above.

6.7 Waived Contracts – Where an Agency or Institution of Higher Education will enter into multiple contracts containing identical provisions, except for the date, contractor and consideration amount, the Agency or Institution of Higher Education may request a written Phase 1 Waiver from the State Controller for the contract format. Once the State Controller has granted the Phase 1 waiver, the Agency or Institution of Higher Education may enter into multiple contracts using the contract format, without obtaining a separate State Controller approval for each individual contract. The Phase 1 Waiver shall not apply to a contract containing any changes other than

changes to the date, contractor, and consideration amount. See State Controller Policy entitled *"Phase I Waivers"*.

6.8 Other contract forms – Any other contract form which may be approved by the State Controller from time-to-time.

7. STATE CONTRACT APPROVALS

The chief executive officer of an Agency or Institution of Higher Education, or authorized delegate, shall sign all State contracts on behalf of the Agency or Institution of Higher Education. An Agency or Institution of Higher Education, at its discretion, may require such additional internal signatures as it deems proper. The Agency or Institution of Higher Education shall obtain all required approvals and signatures and retain documentation thereof in its files for the period specified in State Controller Policy entitled *"Records Retention for Contracts."* Unless an Agency or Institution of Higher Education is exempted by statute or has delegated approval authority, prior approval of the State contract by one or more of the Central Approvers is required as follows:

7.1 Capital Construction and Controlled Maintenance contracts require the approval of the State Architect or delegate, unless otherwise exempted by statute or waived by the State Architect. See CRS §24-30-1303(1)(d).

7.2 Central Services contracts require the approval of the Director of the Division of Central Services, Department of Personnel and Administration, or delegate, for all Agencies located within Adams, Arapahoe, and Jefferson counties and the City and County of Denver. Institutions of Higher Education are exempted from this requirement. See CRS §24-30-1104(1).

7.3 Contingency-Based contracts require the approval of the Office of State Planning and Budgeting. See CRS §24-17-204.

7.4 Debt Collection Services contracts require the approval of the State Controller or delegate. See CRS §24-30-202.4.

7.5 Financial Information contracts used by an Agency or Institution of Higher Education to record financial transactions and information, develop financial reports, or prepare financial statements require the approval of the State Controller. See CRS §24-30-202(12).

7.6 Information Technology contracts require approval by the Governor's Office of Information Technology as follows:

7.6.1 Services under an Information Technology staff augmentation price agreement – any dollar amount; and

7.6.2 All other Information Technology projects – over \$10,000.

7.6.3 The following are exempted from these requirements under CRS §24-37.5-102(5): Legislative Department, Judicial Department, Department of Law, Department of State, Department of Treasury, and State-supported Institutions of Higher Education.

7.7 Legal Services contracts require the approval of the State Attorney General or delegate. See CRS §24-31-101.

7.8 Personal Services contracts require the approval of the State Personnel Director or delegate. See CRS §24-50-501, et seq.

7.9 Real Property contracts, including leases where the Agency or Institution of Higher Education is the tenant, easements, and rights-of-way contracts, require the approval of the State Architect/Director of Real Estate Programs, Department of Personnel and Administration, or delegate, unless otherwise exempted by statute. Real properties administered by the State Board of Land Commissioners, Division of Wildlife, Division of Parks and Outdoor Recreation, and Department of Transportation, and contracts relating to such real properties, are exempted from this requirement. See CRS §24-30-1303.

7.10 Utility Cost-Savings contracts require the approval of the State Personnel Director or delegate. See CRS §24-30-2003(1)(b).

8. STATE CONTRACT LEGAL REVIEW

At the discretion of the State Controller a State contract may be subject to legal review by and approval of the Office of the State Attorney General.

8.1 Mandatory Review. Legal review shall include, without limitation, scrutiny of contract provisions to ensure that the following requirements are met:

8.1.1 Compliance with the United States and Colorado Constitutions, federal and State statutes, State regulations, and Governors' executive orders;

8.1.2 Authority of the contracting Agency or Institution of Higher Education;

8.1.3 All essential elements of a legally binding contract;

8.1.4 A statement of work or comparable provisions and business or commercial terms, which are sufficiently clear and definite, under the applicable circumstances, to be enforceable;

8.1.5 Required signatures; and

8.1.6 Compliance with State Fiscal Rules and State Controller Policies.

8.2 Discretionary Review. At the discretion of the State Controller legal review also may include:

8.2.1 Review and analysis of the significant risks and issues of a particular transaction;

8.2.2 Inquiry into the availability of specific remedies; and

8.2.3 Review of compliance with grant conditions, federal funding requirements, and required assurances, where provided by the Agency or Institution of Higher Education.

9. STATE CONTROLLER REVIEW AND APPROVAL

State Controller review and approval of all State expenditure contracts, intergovernmental agreements, and price agreements is mandatory. The State Controller's Office will, in its discretion, review other types of contracts, for example, non-expenditure contracts, if requested by an Agency or Institution of Higher Education. All State Controller reviews and approvals shall be conducted in accordance with the provisions of this §9.

9.1 Outsource Contracts - Third Party Payor. All outsource contracts shall be submitted to the State Controller or delegate for review and approval, including without limitation, any outsource contract that diverts revenues due to the State, unless specifically exempted by State statute. For example, see CRS §24-34-101.

9.2 Performance of State Controller Functions

9.2.1 Agencies-Delegated – Delegated Agencies shall be responsible for determining the level of risk for their State contracts. A Delegated Agency shall classify each of its State contracts as automatic high risk, automatic low risk, or undetermined risk. The Delegated Agency shall perform a risk assessment analysis, in accordance with State Controller Policy, to determine whether a contract classified as undetermined is high or low risk. Automatic low risk contracts and contracts classified as low risk pursuant to a risk analysis may be signed by the Agency's State Controller delegate. Automatic high risk contracts and contracts classified as high risk pursuant to a risk analysis shall be submitted to the Office of the State Controller. Only Delegated Agencies may use the risk-based approach to review and approve State contracts. See State Controller Policy entitled *"Review and Approval-Delegated Agencies."*

9.2.2 Agencies and Institutions of Higher Education - Non-Delegated – Non-delegated Agencies and non-delegated Institutions of Higher Education shall submit all State contracts to the Office of the State Controller for review and approval. See State Controller Policy entitled *"Review and Approval-Non-Delegated Agencies."*

9.2.3 Institutions of Higher Education - Delegated – State Controller delegates of Delegated Institutions of Higher Education may approve State expenditure contracts. All State contracts entered into by a Delegated Institution of Higher Education for an amount in excess of \$100,000 shall be reviewed by a Reviewing Attorney, unless the State Controller identifies a lower threshold for review in the letter granting delegated signature authority to the controller of the Institution of Higher Education. See State Controller Policy entitled *"Review and Approval-Delegated Institutions of Higher Education"*.

9.2.4 State Controller Signature Delegation – CRS §24-30-202(2) provides that only the State Controller can delegate State Controller signature authority. Such delegations are personal to the specific individual to whom authority is delegated. The delegate may not further delegate the signature authority within the Agency or Institution of Higher Education.

9.3 Process for Review, Approval, and Signature

9.3.1 Review. The State Controller or delegate shall review all expenditure contracts to determine if the:

9.3.1.1 Expenditure:

9.3.1.1.1 Is authorized by the appropriation to which it will be charged;

9.3.1.1.2 Does not exceed the unencumbered balance of the appropriation;

9.3.1.1.3 Complies with all applicable constitutional and statutory provisions, Fiscal Rules and State Controller Policies;

9.3.1.1.4 Is encumbered; and

9.3.1.2 Prices or rates are fair and reasonable and in accordance with State law and administrative rules;

9.3.1.3 Form and Content of the contract are sufficient and appropriate for the parties and subject matter under applicable State and federal laws, Fiscal Rules,

including Section 5 (Content of State Contracts) of this Fiscal Rule, and State Controller Policies; and

9.3.1.4 Risk of the contract is outweighed by the contract's benefits.

9.3.2 Approval and Signature. After review, the State Controller or delegate shall approve or disapprove the State expenditure contract. If approved, the State Controller or delegate shall evidence such approval by signing the contract.

9.4 Contracts Not Approved by State Controller

9.4.1 Not Binding. An expenditure contract is not binding on or enforceable against the State unless and until it is signed by the State Controller or delegate.

9.4.2 Null and Void. Any expenditure contract disapproved by the State Controller or delegate is null and void.

9.4.3 Personal Liability. A person incurring an obligation on behalf of the State through an expenditure contract or other State-funded contract type without the approval and signature of the State Controller or delegate shall be personally liable, jointly and severally, for the obligation. See CRS §24-30-202(3).

10. ACCOUNTING FOR STATE CONTRACTS

10.1 Encumbrances. All Agencies and Institutions of Higher Education shall encumber expenditure contracts in accordance with Fiscal Rule 2-2, "*Commitment Vouchers*", and the Fiscal Procedures Manual.

10.2 Outsource Contracts – Third Party Payor. Agencies and Institutions of Higher Education shall record all gross revenues and expenditures for each outsource contract in the State financial system and shall not net the expenditures against the revenues, unless specifically exempted by State statute.

11. MONITORING OF STATE CONTRACTS

11.1 Implementation. In accordance with CRS §24-103.5-101, all Agencies and Institutions of Higher Education shall:

11.1.1 Designate at least one person who will be responsible for contract monitoring. See CRS §24-103.5-101(3).

11.1.2 Prior to entering into a personal services contract, the person responsible for contract monitoring shall certify that the proposed performance measures and standards, data sources, and data collection methods provide a valid basis for assessing the vendor's performance. See CRS §24-103.5-101(4).

11.2 Elements. Each Agency and Institution of Higher Education shall monitor its contracts with respect to all of the following elements included in CRS §24-103.5-101(3), as well as any additional elements an Agency or Institution of Higher Education may choose to monitor:

11.2.1 Compliance with requirements, standards, and measures of the Personal Services Contract provisions in subsection 5.1.2 (Personal Services Contract Provisions) of this Fiscal Rule,

11.2.2 Completion of the contract according to the contract's performance schedule;

- 11.2.3 Satisfactory performance and completion of the contract's scope of work; and
- 11.2.4 Extent to which the vendor met or exceeded budgetary requirements of the contract.

11.3 Reporting.

- 11.3.1 **Contract Management System** – Agencies and Institutions of Higher Education shall report information specified in CRS §24-102-205(3)(a) for all personal services contracts with a total value of over \$100,000 except for contracts listed in CRS §24-102-205(2).
- 11.3.2 **Contractor Performance Evaluation Report** – Agencies and Institutions of Higher Education shall prepare a contractor performance evaluation report for each construction contract with a value of \$500,000 or more. See CRS §24-105-102.

11.4 Exclusions. Section 11 of Fiscal Rule 3-1 does not apply to the following contracts:

- 11.4.1 Any contract to which the State is a party under Medicare
- 11.4.2 Indigent Care. See CRS §25.5-3-101 et.seq.
- 11.4.3 Colorado Medical Assistance Act. See CRS §25.5 -4 to 6-101 et.seq.
- 11.4.4 Children's Basic Health Plan. See CRS §25.5-8-101 et.seq.
- 11.4.5 Sponsored Projects

11.5 Office of the State Controller Policy – See State Controller Policy entitled *"Monitoring of State Contracts"*.

12. INDEPENDENT CONTRACTOR RELATIONSHIP

Agencies and Institutions of Higher Education shall take care in maintaining the distinctions between services performed by persons who are employees of the State and services performed by independent contractors, and their employees, agents and representatives, pursuant to a personal services contract. The State's responsibilities and obligations with respect to employee/employer arrangements differ from its responsibilities and obligations with respect to independent contractors. The State may be liable to a third party for the actions of its employees, whereas independent contractors and their employees, agents and representatives are liable for their own actions. The State is responsible for social security taxes and benefits for its employees, whereas independent contractors are responsible for social security taxes and benefits of their employees. Agencies and Institutions of Higher Education shall follow guidelines issued by the Internal Revenue Service, the Colorado Division of Human Resources, Colorado statutes, and opinions of the State Attorney General in determining whether an individual is an employee or independent contractor.

13. EXCEPTIONS TO FISCAL RULE 3.1

- 13.1 **Personal Services Contracts** - This Fiscal Rule does not apply to State contracts for personal services paid through an authorized State payroll system, which are exempted from the State personnel system by the Colorado Constitution or Colorado statutes. See CRS §24-50-135. Examples of exempted contracts include advices of employment engaging the services of the following:
 - 13.1.1 Appointees by the Governor and Lieutenant Governor and their administrative staffs;
 - 13.1.2 Members of State boards or commissions;

13.1.3 Faculty and other exempted members of Institutions of Higher Education;

13.1.4 Attorneys-at-law serving as an assistant attorney generals; and

13.1.5 Employees of the Legislative and Judicial Departments of the State.

13.2 Elective Officers - An Elective Officer acting within the scope of his or her authority may elect to exempt any contract from the requirements of either or both of CRS §24-30-202 including the Fiscal Rules and Title 24 Article 101 (Procurement Code) by personally signing a contract. See CRS §24-2-102(4). If the contract signed by the Elective Officer is outside the scope of his or her authority, the Elective Officer may be personally liable for all claims arising therefrom.

14. SPECIAL PROVISIONS

These Special Provisions apply to all contracts except where noted in *italics*.

1. CONTROLLER'S APPROVAL. CRS §24-30-202(1). This contract shall not be valid until it has been approved by the Colorado State Controller or designee.

2. FUND AVAILABILITY. CRS §24-30-202(5.5). Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

3. GOVERNMENTAL IMMUNITY. No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. § 1346(b) and 2671 et seq., as applicable now or hereafter amended.

4. INDEPENDENT CONTRACTOR. Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this contract. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall **(a)** provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, **(b)** provide proof thereof when requested by the State, and **(c)** be solely responsible for its acts and those of its employees and agents.

5. COMPLIANCE WITH LAW. Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

6. CHOICE OF LAW. Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null

and void by the operation of this provision shall not invalidate the remainder of this contract, to the extent capable of execution.

7. BINDING ARBITRATION PROHIBITED. The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.

8. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00. State or other public funds payable under this contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

9. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. CRS § §24-18-201 and 24-50-507. The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

10. VENDOR OFFSET. CRS § §24-30-202 (1) and 24-30-202.4. [Not Applicable to intergovernmental agreements] Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: **(a)** unpaid child support debts or child support arrearages; **(b)** unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; **(c)** unpaid loans due to the Student Loan Division of the Department of Higher Education; **(d)** amounts required to be paid to the Unemployment Compensation Fund; and **(e)** other unpaid debts owing to the State as a result of final agency determination or judicial action.

11. PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101. [Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor **(a)** shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, **(b)** shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, **(c)** shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and **(d)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to

comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.

12. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101. Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she **(a)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(b)** shall comply with the provisions of CRS §24-76.5-101 et seq., and **(c)** has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this contract.

Revised 11-14-08

CHAPTER 4

Rule 4-1 CAPITAL CONSTRUCTION ADMINISTRATION

AUTHORITY:

24-30-1301, C.R.S. (State Buildings Division)

Title 24, Article 75 Part 3, C.R.S. (Capital Construction Fund)

Title 24, Article 91, C.R.S. (Construction)

Title 24, Article 92, C.R.S. (Construction Bidding)

38-26-106, C.R.S. (Contractor Bonds)

38-26-107, C.R.S. (Supplier Claims)

DEFINITIONS:

Capital Construction Fund - A fund created by statute for the purpose of purchasing and/or maintaining land, buildings and equipment and for constructing buildings for use by the state.

RULE:

The State Capital Construction Fund was established to provide a source for appropriations to state agencies and institutions of higher education to acquire and maintain their physical facilities. The fund has special requirements that must be followed by state agencies and institutions of higher education receiving appropriations from the fund.

Capital Construction Contracts

.01 Formal contracts shall be required when expending funds in excess of \$100,000 appropriated for emergency maintenance projects including construction services or installation of fixed equipment unless previous approval has been obtained from the Director of the State Buildings Program to use a purchase order.

Purchases of fixed equipment that do not require installation services may be purchased with a state purchase order.

A purchase order may be used for construction not exceeding \$100,000 if the Director of State Buildings Program or a delegate records written approval on the face of the purchase order.

Such approval by the Director of State Buildings Program or a delegate shall require compliance with approved building codes and signify compliance with bonding requirements in C.R.S. 38-26-106 and 24-105-201. In addition, the purchase order shall be bilateral requiring written acknowledgment of acceptance by the contractor prior to the beginning of work.

.02 Capital construction fund contracts shall follow the contract routing procedures established by the State Controller's Office.

Rule 4-2 CAPITAL CONSTRUCTION PROJECTS

AUTHORITY:

24-30-1301, C.R.S. (State Buildings)24-30-1404, C.R.S. (Contracts)Title 24, Article 75 Part 3, C.R.S. (Capital Construction Fund)Title 24, Article 91, C.R.S. (Construction)Title 24, Article 92, C.R.S. (Construction Bidding)38-26-106, C.R.S. (Contractor Bonds)38-26-107, C.R.S. (Supplier Claims)

DEFINITIONS:

Capital Construction Fund - A fund created by statute for the purpose of purchasing and/or maintaining land, buildings and equipment and for constructing buildings for use by the state.

Capital Construction Project - A construction project funded wholly or in part by funds from the state capital construction fund.

Controlled Maintenance Project - A maintenance project funded wholly or in part by funds from the state capital construction fund.

RULE:

All funds appropriated for capital construction projects shall be used for their intended purpose. A state agency or institution of higher education shall not use the capital construction fund to pay or reimburse state employees for construction management, administrative activities, direct labor performed, or any other expense outside the scope of the capital construction or controlled maintenance project.

Contracts funded by the state capital construction fund shall be executed and the funds encumbered within the time limits established by 24-30-1404, C.R.S. If a State agency or institution of higher education determines that the deadlines imposed by the statute cannot be met, the State agency or institution of higher education may request the Capital Development Committee to recommend to the State Controller that the deadline be waived. The State Controller may grant the waiver request.

Rule 4-3 CAPITAL CONSTRUCTION PROJECT RETAINAGE

AUTHORITY:

24-30-1301, C.R.S. (State Buildings)Title 24, Article 75 Part 3, C.R.S. (Capital Construction Fund)Title 24, Article 91, C.R.S. (Construction)Title 24, Article 92, C.R.S. (Construction Bidding)38-26-106, C.R.S. (Contractor Bonds)38-26-107, C.R.S. (Supplier Claims)

DEFINITIONS:

Capital Construction Fund - A fund created by statute for the purpose of purchasing and/or maintaining land, buildings and equipment and for constructing buildings for use by the state.

Capital Construction Project - A construction project, as defined in 24-30-1301, C.R.S., funded wholly or in part by funds from the state capital construction fund.

Controlled Maintenance Project - A controlled maintenance project, as defined in 24-30-1301, C.R.S., funded wholly or in part by funds from the state capital construction fund.

RULE:

A state agency or institution of higher education shall withhold retainage for all capital construction and controlled maintenance projects where the total amount of the contract exceeds the limit established by 24-91-103, C.R.S.. The retainage shall be in the form of monies withheld from the contractor or in any other form authorized by statute and acceptable to the State agency or institution of higher education.

The retainage shall be released by the state agency or institution of higher education only when the contract has been satisfactorily completed and accepted, the state agency or institution of higher education has proof of publication of "Notice of Final Settlement", in accordance with 38-26-107, C.R.S., and there are no outstanding claims against the project.

CHAPTER 5: TRAVEL

Rule 5-1 TRAVEL

1. AUTHORITIES

CRS §24-9-104(2) - Mileage Allowances

CRS §24-30-202(20.1) (Travel Advance Limits)

CRS §24-30-202(26) (State Controller's Authority)

Executive Order D 005-03 - Concerning State Employee Travel

Executive Order D 021-07 - Efficient Management of State Employee Travel Expenses

1CCR 103-1 State Travel Management Program Rules

U.S. Code, Title 26, § 162(a), 262, and 274(d) (Internal Revenue Code)

26 CFR Ch 1, §1.274-5T Substantiation Requirements (Temporary) (Treasury Regulations)

Rev Rul. 99-7, 1999-5 C.B. 4, Deductibility of Daily Transportation Expenses

IRS Publication 463 (2008) - Travel, Entertainment, Gift, and Car Expenses

2. DEFINITIONS

2.1 Agency - An executive department of the State, office of the Governor, or any subdivision thereof.

2.2 Approving Authority - An individual who has authority to approve travel for State Business and related matters.

2.3 CONUS - The 48 continental United States, including the District of Columbia.

2.4 Electronic Signature - Any identifier or authentication technique attached to or logically associated with an electronic record that is intended by the person using it to have the same force and effect as a manual signature. "Electronic signature" includes digital signatures.

- 2.5 Expenses Incurred for the Benefit of the State** - Expenses incurred that enable a state employee or state official to perform assigned duties or enable an Agency or Institution of Higher Education to carry out responsibilities required by law.
- 2.6 Foreign Travel** - Travel to any out-of-country destination not included within the definitions of In-State Travel or Out-of-State Travel.
- 2.7 In-State Travel** - Travel within the State of Colorado and to the immediate area outside the State that is a necessary part of an otherwise "in state" trip.
- 2.8 Incidental Expenses** - Fees and tips given to porters, baggage carriers, bellhops, hotel maids, and skycaps for airport check-in, and cost of personal telephone calls. Incidental Expenses do not include expenses for laundry, cleaning and pressing of clothing, and Lodging taxes.
- 2.9 Institution of Higher Education** - A public college, community college, or university established as a part of the State.
- 2.10 Lodging** - Any commercial accommodations available or offered for use for which a rental schedule has been established and payment is required.
- 2.11 Metropolitan Area** - A region including a city and the densely populated surrounding areas that are socially and economically integrated with it. See State Controller Technical Guidance entitled "Taxability of State Travel."
- 2.12 Out-of-State Travel** - Travel within CONUS, other than In-State Travel, or within Alaska or Hawaii.
- 2.13 Political Expenses** - Expenses incurred in relation to activities that are primarily designed to further the interests of a candidate, political party, or special interest group.
- 2.14 Reimbursement Request** - A request for reimbursement of travel expenses submitted by a Traveler pursuant to §9 of this Fiscal Rule.
- 2.15 State Business** - Official State business or other duties undertaken for State purposes and for the benefit of the State.
- 2.16 State Travel Management Program (STMP)** - The program provided by the State Travel Management Program Office.
- 2.17 STMP Payment Mechanisms** - The travel payment mechanisms provided through STMP, including travel cards. See 1 CCR 103-1.
- 2.18 Temporary Work Location** - A location where employment is expected to continue, and does continue, for one year or less.
- 2.19 Travel Compliance Designee** - An individual responsible for overseeing compliance and enforcement of travel rules and policies in accordance with Executive Order D 005 03.
- 2.20 Travel Advance** - The advance of funds to a Traveler for approved travel expenses by an Agency or Institution of Higher Education pursuant to § 5 of this Fiscal Rule.
- 2.21 Traveler** - An employee or State official who receives required approvals to travel on State Business.

2.22 Traveler's Regular Work Location - Generally, the primary location where the Traveler works, including the entire Metropolitan Area of the Traveler's regular work location. See State Controller Technical Guidance entitled "Taxability of State Travel" for exceptions.

2.23 Traveler's Residence - The location where the Traveler maintains his or her primary family home.

2.24 Traveling Away from Home - A Traveler is traveling away from home if: a) the Traveler's duties require him or her to be away from the Traveler's Regular Work Location substantially longer than an ordinary day's work, and b) the Traveler needs to sleep or rest to meet the demands of his or her work while away from home.

2.25 Transportation - Travel by commercial airline, railroad, bus, taxicab, State owned, leased, or personally owned automobile or airplane or any other means of conveyance.

3. RULE

3.1 Scope - Fiscal Rule 5-1 addresses Travel Advances and reimbursement of travel expenses to State employees and officials. State employees and officials shall follow this Fiscal Rule when Traveling Away from Home and for all other situations included in this Fiscal Rule.

3.2 Reimbursement - A Traveler may be reimbursed for travel expenses based on the policy of an Agency or Institution of Higher Education only if the:

3.2.1 Traveler is Traveling Away from Home, or meets the criteria in one of the special situations described in §11 of this Fiscal Rule;

3.2.2 Travel:

3.2.2.1 Is on State Business - travel charged to the State, regardless of the funding source, shall be for the benefit of the State;

3.2.2.2 Is only for the time period necessary;

3.2.2.3 Is completed using the most economical means available which will satisfactorily accomplish the State Business; and

3.2.2.4 Is approved by the Approving Authority as required by §4 of this Fiscal Rule;

3.2.3 Expenses are reasonable under the circumstances;

3.2.4 Traveler submits adequate documentation of the travel expenses to the Approving Authority;

3.2.5 Reimbursement Requests and Travel Advances are settled as required by §9 of this Fiscal Rule; and

3.2.6 Policy of the Agency or Institution of Higher Education complies with this Fiscal Rule.

3.3 Traveler's Responsibilities - A Traveler is responsible for controlling expenses at a reasonable level and ensuring that the State receives adequate value for the amounts expended. A Traveler shall identify Expenses Incurred for the Benefit of the State while Traveling Away from Home and request an advance or reimbursement for only those expenses.

3.4 Approving Authority's Responsibilities - The Approving Authority shall review the expenses claimed by a Traveler and authorize an advance or reimbursement for only those expenses incurred for State Business. The Approving Authority may require documentation, in addition to the documentation prescribed by this Fiscal Rule, deemed necessary or advisable by the Approving Authority in connection with the review and authorization of expenses.

4. TRAVEL AUTHORIZATION

All travel shall be authorized in accordance with the procedures in this §4, regardless of the sources of funding (including reimbursements by third parties).

4.1 In-State Travel - Prior written or electronic authorization by the Approving Authority for all In State Travel may be required, at the discretion of the Agency or Institution of Higher Education.

4.2 Out-of-State Travel - Prior written or electronic authorization by the chief executive officer, or delegate, of an Agency or Institution of Higher Education shall be required for all Out of State travel.

4.3 Foreign Travel - Prior written or electronic authorization by the Governor, or delegate, and the chief executive officer, or delegate, of the Agency benefiting from the Foreign Travel shall be required for all Foreign Travel, except for Foreign Travel undertaken by employees of the Department of Higher Education. Prior written authorization by the executive director of the Department of Higher Education shall be required for all Foreign Travel by employees within the Department of Higher Education, including employees of Institutions of Higher Education. The executive director of the Department of Higher Education, with the approval of the State Controller, may delegate the authority to approve Foreign Travel to the president, or a delegate, of a specific Institution of Higher Education.

4.4 Travel at No Cost to the State - Prior authorization by the Approving Authority is required for any State Business travel for which reimbursement is made directly to a State employee by a non State organization. Absent this authorization, a Traveler shall submit a Reimbursement Request to the Agency or Institution of Higher Education authorizing the travel, and the Agency or Institution of Higher Education will send an invoice to the non-State organization for the amount of reimbursement requested by the Traveler.

5. TRAVEL ADVANCE

5.1 Travel Advance Form - A Traveler shall complete a Travel Advance form to obtain an advance for approved travel expenses, which shall contain a statement as to the purpose of the travel. Each Agency and Institution of Higher Education shall develop a Travel Advance form for use by its Travelers.

5.2 Use of State Travel Cards - When possible, Travel Advances shall be withdrawn from one of the State travel cards described in §10.2 of this Fiscal Rule. A Travel Advance may be requested from the State if the Travel Advance cannot be obtained from one of the State travel cards.

5.3 Amount of Advance - The amount of the advance shall be computed using the applicable per diem rates and other allowable estimated out of pocket amounts. Under no circumstance shall a Travel Advance exceed the \$1,500 statutory limit per Traveler per trip. See CRS §24-30-202(20.1).

5.4 Approval - Travel Advances requested from the State require prior authorization from the Approving Authority and approval by the chief fiscal officer, or delegate, for the Agency or Institution of Higher Education authorizing the travel.

5.5 Settlement of Advance - Upon completion of travel, a Traveler shall settle his or her Travel Advance by following the requirements for timing, content and receipts set forth in §9 of this Fiscal Rule. Each Agency and Institution of Higher Education shall develop a Travel Advance settlement form for use by its Travelers. The Traveler shall reimburse the State to the extent that the amount of a Travel Advance received by the Traveler pursuant to §5 of this Fiscal Rule exceeds the actual expenditures for reimbursable items in §6 of this Fiscal Rule. The executive director of a department or the president of an Institution of Higher Education may authorize a standing advance for Travelers who travel on a consistent and recurring basis. The standing advance shall be limited to the maximum amount the Traveler routinely has outstanding in a 60-day reimbursement cycle. The standing advance may remain in effect as long as the Traveler travels on consistent and recurring basis, but it must be settled as soon as the Traveler ceases consistent travel.

6. TRAVELING AWAY FROM HOME

A Traveler Traveling Away from Home shall be reimbursed for the items set forth in this section, if all other requirements of §3 of this Fiscal Rule are met.

6.1 Lodging - A Traveler shall follow the travel policy of the Traveler's Agency or Institution of Higher Education regarding the use of STMP approved or designated Lodging facilities. The Traveler shall submit receipts for Lodging as documentation of the expense and shall be reimbursed for the actual cost of Lodging, provided the Traveler complies with §3.2 of this Fiscal Rule.

6.2 Meals - Under regulations issued by the Internal Revenue Service, Travelers are required to use the method chosen by the State for reimbursement of meals. The State has chosen to use the standard allowance method for meals, rather than the actual cost method. Under the standard meal allowance method, a Traveler shall claim the authorized meal per diem rate for each meal the Traveler would normally have eaten while Traveling Away from Home. If a meal is included in a conference fee or is provided with the cost of Lodging, a Traveler shall not request reimbursement for the standard meal allowance, unless the meal is determined to be inadequate by the Traveler. Under no circumstances shall a Traveler request reimbursement for more than the applicable per diem rate. Receipts for meals are not required. See §12 of this Fiscal Rule for reference to the current standard per diem rates for meals.

6.3 Meals for Days Traveler Departs and Returns - An Agency or Institution of Higher Education may use either of the following methods for an advance or reimbursement for meals during partial travel days:

6.3.1 A Traveler may claim 75% of destination city's per diem rate, including Incidental Expenses, for the day of departure, and 75% of the departing city's per diem rate, Including Incidental Expenses, on the day of return; or

6.3.2 A Traveler may claim meals based on departure and arrival time. Breakfast cannot be claimed unless departure is prior to 5:00 a.m. at the departing city. Lunch cannot be claimed unless departure is before 11 a.m. at the departing city or return is after 1:00 p.m. at the destination city. Dinner cannot be claimed, unless return is after 8:00 p.m. at the destination city. Under this method, the applicable per diem rate is based on where the meal is eaten.

6.4 Incidental Expenses - Under regulations issued by the Internal Revenue Service, Travelers are required to use the method chosen by the State for reimbursement of Incidental Expenses. The State has chosen to use the standard allowance method for Incidental Expenses, rather than the actual cost method. The two options in §6.3 are permitted under the standard allowance method. If the percentage method in §6.3.1 is used, a Traveler shall include the total Incidental Expense per diem rate for each overnight stay and 75% of such rate for partial days,. If the method under § 6.3.2 is used, the Traveler shall include the total Incidental Expense per diem rate for each

overnight stay, but shall not be reimbursed for Incidental Expenses for days that do not include an overnight stay. Under no circumstances shall a Traveler request reimbursement for more than the applicable per diem rate. Receipts for Incidental Expenses are not required. See §12 of this Fiscal Rule for reference to the current rates for Incidental Expenses.

6.5 Transportation - A Traveler shall be reimbursed only for the dollar equivalent of the most cost beneficial method of Transportation available to the Traveler that satisfactorily accomplishes the State Business. Reimbursement shall be limited to the actual cost of commercial Transportation. A Traveler requesting reimbursement shall submit receipts for all Transportation expenses except as provided in §6.10 of this Fiscal Rule.

6.6 Rental Vehicles - A Traveler shall be required to use a STMP approved or designated vehicle rental company, if available, to control travel costs and ensure that insurance coverage is adequate. Various upgrades provided at extra cost by vehicle rental companies, such as satellite radio, GPS units, etc., are not reimbursable unless necessary for State Business or safety reasons and approved by the Approving Authority. A Traveler shall submit receipts for rental vehicles as documentation of the expense and shall be reimbursed for the actual cost of rental vehicles, provided the Traveler complies with §3.2 of this Fiscal Rule.

6.7 Mileage for Personal Vehicles - A Traveler shall be allowed mileage reimbursement for each mile actually and necessarily traveled on State Business using the Traveler's personal vehicle as provided in the State Controller Policy entitled "Mileage Reimbursement." A Traveler normally shall be reimbursed at the mileage rate designated for two-wheel drive vehicles. A Traveler shall be reimbursed at the mileage rate designated for four-wheel drive vehicles only when the use of four-wheel drive is necessary because of road, terrain, or adverse weather conditions. Commuting expenses incurred while traveling between a Traveler's Residence and Traveler's Regular Work Location are non-reimbursable personal expenses. CRS §24-9-104(2) establishes the mileage rate to be used for reimbursement of State Business travel. The current mileage rates are posted on the website of the Office of the State Controller at: <http://www.colorado.gov/dpa/dfp/sco/FiscalRules/mileage.htm>.

6.8 Airfare - A Traveler shall follow the travel policy of the Traveler's Agency or Institution of Higher Education regarding the use of STMP approved or designated airlines. A Traveler shall be reimbursed for baggage fees if not included in the airfare.

6.9 Tips - A Traveler cannot claim tips as a separate item on a Reimbursement Request. Tips paid to porters, baggage carriers, bellhops, hotel maids, and skycaps for airport check-in are included in Incidental Expenses. Tips paid in conjunction with meals are included in the standard meal allowance. Tips paid in connection with taxi and shuttle expenses should be included as part of these expenses.

6.10 Other Allowable Travel Expenses - In addition to Lodging, meals, and Transportation, the actual expenses identified below, incurred as a part of approved travel, are allowable if necessary to complete State Business:

6.10.1 Commercial Transportation such as taxi and shuttle expenses, including tips. A receipt shall be required for each individual ride in a commercial vehicle costing over \$25;

6.10.2 Camping site fees paid for a commercial camp ground or a state or national park. A receipt shall be required for any fee over \$25;

6.10.3 Parking fees. A receipt shall be required for any single fee over \$25;

6.10.4 Registration fees for conferences or other meetings. A receipt shall be required for all registration fees;

6.10.5 Telephone, fax, internet access, and other similar miscellaneous business expenses paid for State Business. A receipt shall be required for any single charge over \$25;

6.10.6 Toll road charges. A receipt shall be required for charges over \$25; and

6.10.7 Traveler's checks or transaction charges for the use of the State Travel Card. A receipt shall be required if the total reimbursement claim for such checks or charges is over \$25.

6.11 Summary of Allowable Travel Expenses

Type of Travel Expense	Reimbursement	Receipt Required?
Lodging	Actual	Yes
Meals	Per Diem Rate	No
Incidental Expenses	Per Diem Rate	No
Transportation (other than airfare)	Actual	Yes if over \$25
Rental Vehicles	Actual	Yes
Mileage for Personal Vehicles	Miles x 90% x current federal mileage rate (95% for 4-wheel drive)	No
Airfare	Actual	Yes
Tips	Included in Per Diem Rate	No
Other Allowable Travel Expenses	Actual	Yes if over \$25

7. NON-ALLOWABLE TRAVEL EXPENSES

A Traveler shall not be reimbursed for the following expenses:

7.1 Alcoholic beverages;

7.2 Entertainment expenses;

7.3 Personal expenses incurred during travel that are primarily for the benefit of the Traveler and not directly related to State Business;

7.4 Political Expenses;

7.5 The cost of traffic fines and parking tickets;

7.6 Late fees for State credit cards; and

7.7 Certain insurance coverage - STMP provides travel insurance for Travelers who use one of the State credit cards listed in §10.2.1 of this Fiscal Rule. The cost of additional or other types of coverage shall not be reimbursed by the State, including without limitation, expenses paid by a Traveler for the following:

- 7.7.1** Collision damage waiver or loss damage waiver for rental vehicles, unless the vehicle is rented from a rental company not approved by STMP, to the extent permitted under §6.6 of this Fiscal Rule;
- 7.7.2** Supplemental liability insurance on rental vehicles;
- 7.7.3** Value premiums on airline tickets;
- 7.7.4** Trip cancellation insurance;
- 7.7.5** Additional liability insurance for rental vehicles;
- 7.7.6** Personal accident insurance on rental vehicles; and
- 7.7.7** Supplemental life insurance for airline or common carrier travel.

8. CERTIFICATION AND APPROVAL

8.1 Certification - Each Travel Advance request form or Reimbursement Request shall contain the following certification signed manually or electronically by the Traveler:

"I certify that the statements in the above schedule are true and correct in all respects; that payment of the amounts claimed herein has not and will not be reimbursed to me from any other source; that travel performed for which an advance or reimbursement is claimed was or will be performed by me while on State Business and that no claims are included for expenses of a personal or political nature or for any other expenses not authorized by the Fiscal Rules; and that I actually incurred or paid the operating expenses of the motor vehicle for which reimbursement is claimed on a mileage basis. Further, I hereby authorize the State to deduct from my pay any amount paid to me in excess of my authorized expenses as provided by Fiscal Rule 5-1."

8.2 Approval - If approved, the Approving Authority shall endorse the Reimbursement Request or Travel Advance request manually or by electronic signature.

9. REIMBURSEMENT REQUIREMENTS

9.1 Timing - A Reimbursement Request shall be filed within 60 days of completion of travel to allow for proper recording of expenses and to obtain reimbursement for approved travel expenses, unless:

- 9.1.1** The Traveler's Agency or Institution of Higher Education has a policy regarding the timing of submissions and aggregation of small receipts; or
- 9.1.2** The Traveler's Agency or Institution of Higher Education has a policy regarding the timing of submissions and the type of travel.

9.2 Content - Each Agency and Institution of Higher Education shall develop a Reimbursement Request form for use by its Travelers. The Reimbursement Request form shall contain all of the following:

- 9.2.1 Amount** - The amount of each separate expenditure incurred while Traveling Away from Home, such as the cost of Transportation or Lodging;

9.2.2 Time - Dates of departure for and return from Traveling Away from Home and the number of days spent on State Business while Traveling Away from Home;

9.2.3 Place - Destinations or locality of travel, described by name of city or town or other similar designation; and

9.2.4 State Purpose - Reason for travel or nature of State Business benefit derived or expected to be derived as a result of the travel.

9.3 Receipts

9.3.1 Receipts Required - Receipts are required for all expenses over \$25, except for meals, Incidental Expenses, mileage for personal vehicles, and tips, which do not require receipts regardless of dollar amount. Receipts are required for Lodging, rental vehicles and airfare, regardless of the amount. See §6.11 of this Fiscal Rule. Receipts shall be original, detailed vendor receipts. Non-specific charge card transaction slips shall not be accepted as proper documentation.

9.3.2 Waiver - The executive director of an Agency or president of an Institution of Higher Education may waive the requirement for a receipt in extenuating circumstances, upon receipt of a written certification from the Traveler, certifying that the cost was incurred and providing the reason why a receipt was not obtained or available. Further, the executive director of an Agency or president of an Institution of Higher Education may establish alternative documentation requirements for recurring travel to certain locations, e.g. Foreign Travel, or for group travel, where compliance with the receipt requirement is determined to be impractical by the executive director or president, with concurrence from the Office of the State Controller or State Controller delegate.

9.4 Application to Travel Advances - The requirements with respect to timing, content and receipts set forth in this §9 shall apply to the settlement of Travel Advances as provided in §5 of this Fiscal Rule.

9.5 Compliance - A Traveler shall comply with the reimbursement requirements in this §9 regardless of the method of payment used. See §10 of this Fiscal Rule.

10. PAYMENT OF TRAVEL EXPENSES

An Agency or Institution of Higher Education shall use one or more of the methods set forth in this §10 to pay for travel expenses or reimburse Travelers.

10.1 Electronic Reimbursement - An Agency or Institution of Higher Education shall pay a Traveler for expenses claimed on the Reimbursement Request form or the Travel Advance form by direct deposit using electronic funds transfer (EFT). State warrants shall not be used for the payment of travel reimbursement.

10.2 State Cards - Agencies and Institutions of Higher Education may pay travel expenses directly or indirectly with State credit cards.

10.2.1 Types of State Credit Cards Approved for State Travel

10.2.1.1 Individual Travel Card - The Individual Travel Card is issued in the Traveler's name. The Traveler is personally liable for the card and transactions paid for with the card are not tax exempt. If a Traveler receives an Individual Travel Card, the Traveler shall sign the cardholder agreement and comply with the requirements of the Individual Travel Card agreement.

10.2.1.2 Central Travel System Account (ghost card) - The Central Travel System Account is maintained by the State and the State is liable for the use of the Account. This Account enables an Agency or Institution of Higher Education to book airline reservations through travel agencies. Transactions paid through the Account are not tax exempt because all common carriers, such as airlines, always charge tax. All airfares shall be billed to the Central Travel System Account.

10.2.1.2 Central Travel Card (Event Card) - The Central Travel Card is issued to the State. The State is liable for the use of the card and transactions paid for with the card are tax-exempt. An Agency or Institution of Higher Education may issue a Central Travel Card to an individual employee or official for personal travel not to exceed \$5,000.

10.2.2 Procurement Card - The Procurement Card shall not be used to pay for travel expenses.

10.2.3 Use of Travel Cards - Each Agency and Institution of Higher Education shall develop its own policy regarding the appropriate use of State travel cards, which shall:

10.2.3.1 Be consistent with the allowable charges for each type of card;

10.2.3.2 Have appropriate internal controls regarding the use of the cards and administration of the program;

10.2.3.2 Establish a credit limit of not more than \$5,000 for a Central Travel Card issued to a Traveler for his or her individual travel; and

10.2.3.3 Require the use of State travel cards in accordance with STMP Rules, with exceptions to be approved by the State Controller, State Controller delegate or Travel Compliance Designee. See STMP Rules, § 20.20.04.

10.3 Travel Advance - See §5 and §9 of this Fiscal Rule.

11. SPECIAL SITUATIONS

11.1 Travel within a Single Day - If travel is completed wholly within a single day, reimbursement for lunch shall not be allowed. If, however, an employee or official leaves home prior to 5:00 a.m. on State Business that requires the employee to extend the workday, the Approving Authority may allow a meal per diem for breakfast. In addition, if an employee or official remains away from home after 8:00 p.m. on State Business that requires the employee to extend the workday, the Approving Authority may allow a meal per diem for dinner. See State Controller Technical Guidance entitled "Taxability of State Travel Reimbursement."

11.2 Travel to a Temporary Work Location - A Traveler may be reimbursed for Transportation expenses to a Temporary Work Location in accordance with the State Controller Policy entitled "Mileage Reimbursement" and the State Controller Technical Guidance entitled "Taxability of State Travel Reimbursements."

11.3 Travel to Conferences, Meetings, Training Sessions, and Other Business-related Activities - A Traveler may be reimbursed for Transportation expenses for these activities in accordance with the State Controller Policy entitled "Mileage Reimbursement" and the State Controller Technical Guidance entitled "Taxability of State Travel Reimbursements."

- 11.4 Allowances for Members of Statutory Boards or Commissions** - Board and commission members shall be paid in accordance with the statute establishing the board or commission. Board members may be reimbursed for actual and necessary expenses incurred in the performance of their duties. Actual and necessary expenditures shall be reasonable under the circumstances and board and commission members shall be made aware that public funds are the source of the reimbursement. Board and commission members also may be reimbursed for childcare services. The executive director of an Agency, or delegate, or president of an Institution of Higher Education, or delegate, shall determine the need for childcare reimbursement. Reimbursement shall not be made for services provided by a family member. Receipts shall be furnished with all Reimbursement Requests.
- 11.5 Allowances for State Job Applicants** - To obtain the best-qualified individual for a given State employment position, it may be necessary to pay interview related travel expenses for job applicants. At the discretion of the executive director of an Agency, or delegate, or president of an Institution of Higher Education, or delegate, such travel expenses, including the meal per diem rate established by the State Controller for Travelers, may be reimbursed to the applicant.
- 11.6 Allowances for Travel by the Governor of Colorado** - In the case of travel by the Governor, security, protocol, ceremonial functions, and time demands may require considerations not accorded any other State official or employee. If protocol requires that the Governor's spouse accompany the Governor, travel expenses incurred by the Governor's spouse may be reimbursed. Use of state-owned aircraft, commercial airlines or state-owned vehicles by the Governor shall depend upon time constraints and security needs. When the Governor allocates travel costs between State Business and personal or political purposes, the allocation shall take into account all the various factors involved in the travel.
- 11.7 Allowances for Travel Not Solely for State Business** - In some instances, the purpose of travel may be partially for State Business and partially for personal or political reasons. In these instances, the Traveler shall make a reasonable allocation of the expenses between State Business and personal or political purposes and the Reimbursement Request for such expenses shall contain such allocation and sufficient documentation to explain the basis for the allocation. If a State employee obtains lower rates for Lodging or Transportation because travel is extended for personal or political reasons, these lower rates shall also apply to the State Business portion of the travel.
- 11.8 Allowances for Travel Paid Directly by a Non-state Entity** - In limited instances, State officials and employees may be invited to attend a committee meeting, seminar, or conference concerning State Business where their travel expenses are paid directly or reimbursed by the sponsor of the meeting, seminar or conference. In such instances the official or employee may accept the invitation if the travel has been approved by the appropriate Approving Authority and does not violate other State statutes or constitutional provisions.
- 11.9 Allowances for Travel with Spouse, Relatives, or Friends** - The State shall not reimburse the cost of an employee's spouse or other person(s) accompanying the State employee on a business trip, unless specifically permitted in this Fiscal Rule.
- 11.10 Allowances for Travel by Leased or Privately Owned Aircraft**
- 11.10.1** An Agency or Institution of Higher Education shall not lease an aircraft without the prior written approval of the Aircraft Section of the Colorado State Patrol in the Department of Public Safety, regardless of the source of funds. Prior written approval also is required for the lease of any replacement for aircraft currently operated by an Agency or Institution of Higher Education.
- 11.10.2** An Agency or Institution of Higher Education shall not authorize the use of a privately owned aircraft without prior written approval from the Office of Risk Management.

Reimbursement for the use of a privately owned aircraft shall not be allowed unless the required prior written approval has been secured.

11.11 Allowances for Travelers Furnishing Their Own Lodging and Meals - When a Traveler furnishes his or her own Lodging and meals, an Agency or Institution of Higher Education may negotiate a special per diem rate for that period of travel. The rate negotiated shall be on a case-by-case basis and under no circumstance shall the negotiated rate exceed the normal per diem rates established by this Fiscal Rule.

12. PER DIEM RATES - MEALS AND INCIDENTAL EXPENSES

The current maximum meal and Incidental Expense per diem rates are posted on the website of the Office of the State Controller at:
[http://www.colorado.gov/dpa/dfp/sco/FiscalRules/Per_Diem_Rates\(040109\).htm](http://www.colorado.gov/dpa/dfp/sco/FiscalRules/Per_Diem_Rates(040109).htm)

These rates include the following:

- Appendix A1 - Domestic (CONUS) Per Diem Rates
- Appendix A2 - Allocation of Domestic (CONUS) Per Diem Rates
- Appendix B - Alaska, Hawaii and US possessions Per Diem Rates
- Appendix C1 - Foreign Per Diem Rates
- Appendix C2 - Allocation of Foreign Per Diem Rates
- Appendix C3 - Footnote References for Foreign Per Diem Rates

CHAPTER 6: CASH

Rule 6-1 CASH RECIEPTS AND DEPOSITS

AUTHORITY:

24-36-103, C.R.S. (Transmit Monies to State Treasurer)

DEFINITIONS:

Bank Account - An account approved by the State Controller and State Treasurer that is established by a state agency or institution of higher education in any financial institution for the purpose of conducting state business.

RULE:

A state agency or institution of higher education that receives money for any reason shall make timely deposits to the State Treasury, unless otherwise provided by statute or fiscal rule; All-money received and not deposited during the month shall be deposited on the last working day of the month. Deposits or transfers to the State Treasury from any bank account shall be made as required by the State Treasurer.

Rule 6-2 CHANGE FUNDS AND PETTY CASH FUNDS

AUTHORITY:

24-36-103(2), C.R.S. (Transmit Monies to State Treasury)

24-36-104(2.5) C.R.S. (Monies to be Deposited)

24-30-202 (20.1) C.R.S. (State Controller Authority)

DEFINITIONS:

Change Fund - A fund established at a state agency or institution of higher education that receives cash to allow for making change.

Petty Cash Fund - A fund established at a state agency or institution of higher education to allow cash payment for small, incidental expenses.

RULE:

Change funds and petty cash funds may be established based upon a written request, from the chief financial officer of a state agency or institution of higher education and approval of the State Controller, or the Controller's designee. The request for approval shall state the purpose of the fund and contain justification for the amount requested.

Change funds shall only be used for making change when cash receipts are accepted from the public, such as for fees and fines. No expenditures of any kind shall be authorized from a change fund.

Petty cash funds shall only be used for payment of incidental expenses of a nominal amount such as postage, parking or expenses not otherwise appropriately billed by invoice and paid by voucher or warrant. Petty cash expenditures shall be consistent with all applicable statutes, rules, regulations, and executive orders.

All petty cash funds and all change funds shall be recorded on the State Financial System.

Rule 6-3 IMPREST CASH ACCOUNTS AND BANK ACCOUNTS

AUTHORITY:

24-36-103(2), C.R.S. (Transmit Monies to State Treasury) 24-36-104(2.5), C.R.S. (Monies to Be Deposited) 24-75-202, C.R.S. (Imprest Cash Accounts)

DEFINITION:

Bank Account - An account that is established by a state agency or institution of higher education in any financial institution for the purpose of conducting state business.

Imprest Cash Account - A bank account that is established by a state agency or institution of higher education for the purpose of paying operating expenses.

RULE:

Bank account balances shall be limited to the minimum amount necessary to be consistent with legal requirements and operating efficiency. Written approval is required from the State Controller and State Treasurer prior to a state agency or institution of higher education establishing a bank account.

Deposits to imprest cash accounts shall only be in the form of reimbursements for expenditures, interest earnings, and other miscellaneous adjustments credited by the banking institution.

Reimbursements to imprest cash accounts shall be limited to actual expenditures. Request for reimbursements shall be made so that all disbursements are properly reported on the state financial system.

All imprest cash accounts and bank accounts shall be recorded on the state financial system.

EXCEPTIONS TO RULE:

This fiscal rule does not apply to the University of Colorado Board of Regents.

Rule 6-4 ENTERTAINMENT EXPENSE BANK ACCOUNTS

AUTHORITY:

24-75-202, C.R.S. (Imprest Cash Accounts)

DEFINITIONS:

Entertainment Expense Bank Account - An entertainment expense bank account is an account authorized by a governing board that is established at a financial institution in the name of the State of Colorado to provide for the entertainment of officials and dignitaries by a governing board, a state university, or a state college.

RULE:

The governing boards may authorize an entertainment expense bank account to be established by the governing board for their respective colleges and universities. Prior to authorizing an entertainment expense bank account, the governing board shall review and approve a written request for the account, which includes the account balance and assures that adequate internal accounting and administrative controls exist to ensure the proper use of the account.

No deposits, other than reimbursements for expenditures, shall be made to an entertainment expense bank account. Each expenditure from the account shall be for the benefit of the state, and not for personal benefit.

EXCEPTIONS TO RULE:

This policy does not apply to any state agency or institution of higher education other than institutions of higher education and their governing boards.

Rule 6-5 STATE TREASURY LOANS AND ADVANCES

AUTHORITY:

24-75-203, C.R.S. (Loans and Advances) 24-75-204, C.R.S. (Loans and Advances - Report)

DEFINITIONS:

Loans - Funds borrowed from the State Treasury by a state agency or institution of higher education to provide working capital for business operations or programs that generate their own revenue and have the capacity to repay the funds borrowed. Loans shall bear interest at a rate established by agreement or by statute. Interest shall be calculated by the State Treasurer and shall be paid as provided in the agreement.

Advances - Funds borrowed from the State Treasury by a state agency or institution of higher education to provide working capital for operations of programs, or for federal programs for which federal advances and letters of credit are not available. Advances shall be made without interest. Advances are limited to a total of twelve million dollars to a state agency or institution of higher education at any time.

RULE:

A state agency or institution of higher education shall make a written request to the State Controller for a loan or advance from the State Treasury. The request shall include the amount requested, justification for the request, and the method and time period for repayment. State agencies and institutions of higher education shall keep their working capital requirements to a minimum by following good business practices.

Loans and advances shall be made for a period no greater than twelve months. Loans and advances may be renewed for additional periods upon the state agency or institution of higher education demonstrating continuing purpose and need.

Loans and advances shall be limited to the extent that funds are available in the State Treasury that are not immediately required to be disbursed. Advances shall not exceed twelve million dollars at any given time to any state agency or institution of higher education.

Loans shall be approved by the Office of the Governor, the State Controller, and the State Treasurer. Advances shall be approved by the State Controller and the State Treasurer.

Rule 6-6 REFUNDS AND REIMBURSEMENTS

AUTHORITY:

24-30-202 (19) C.R.S. (State Controller Authority)

DEFINITIONS:

Non-augmenting Revenue Account - An account used to record a refund or reimbursement from a prior fiscal year. Such revenue accounts do not serve as funding sources for appropriated expenditures.

Refund - An amount or credit received because of an overpayment or the return of an item purchased.

Reimbursement - Repayment received for amounts remitted on behalf of another party.

RULE:

State agencies and institutions of higher education will normally use either an account receivable or a revenue account to record refunds and reimbursements. However, incidental and non-recurring refunds or reimbursements for activities that involve a routine state agency or institution of higher education function may be credited against the original account coding if the recovery occurs in the same fiscal year as the original expenditure. If such recoveries are made in a subsequent fiscal year, such as an audit recovery, they should be credited to a non-augmenting revenue account.

EXCEPTIONS TO RULE:

- .01 Capital construction funds - Refunds or reimbursements received for expenditures of capital construction fund appropriation during the life of the project shall be treated as if they were received in the same fiscal year as the original expenditure. If the recovery is made after the term of the appropriation has expired, the recovery shall be credited to a non-augmenting revenue account.

- .02 Federal funds - Refunds or reimbursements received for expenditures of federal funds, prior to the expiration of the award, shall be treated as if they were received in the same fiscal year as the original expenditure. If the recovery is made after the award has expired, the recovery shall be refunded to the federal government.
- .03 Contracts and grants - Refunds or reimbursements received for expenditures made from contracts and grants shall be handled as set forth in the terms of the contract or the conditions of the grant.

Rule 6-7 CHECKS RETURNED FOR INSUFFICIENT FUNDS

AUTHORITY:

24-30-202 (25), C.R.S. (Returned Check Penalty)

DEFINITIONS:

Insufficient Funds - Not having a sufficient balance in an account with a bank or other drawee to cover a check when it is presented for the payment.

RULE:

A state agency or institution of higher education that receives a check that is returned for insufficient funds shall assess a reasonable fee against the person who issued the check. The fee assessed shall be at least equal to the additional bank charges incurred by the state agency or institution of higher education and may include up to an additional 25% of the additional bank charges to cover the state agency or institution of higher education's administrative costs. This penalty is in addition to any other penalty provided by statute except the penalty provided by 24-35-114, C.R.S.

Rule 6-8 FEDERAL CASH MANAGEMENT

AUTHORITY:

31 CFR, Part 205 (Federal Cash Management Act)24-22-107 (6), C.R.S. (Duties of the State Treasurer)

RULE:

State agencies and institutions of higher education shall make draws of federal funds as closely as possible with the use of those funds.

By statute, the State Treasurer shall ensure compliance with applicable federal and state laws, including any liability for interest payable to the federal government for major federal programs.

CHAPTER 7: BUDGET

Rule 7-1 CASH AND CUSTODIAL FUNDS

AUTHORITY:

24-37-303, C.R.S. (Governor's Budget Authority)24-37-304, C.R.S. (Office of State Planning and Budgeting)

DEFINITIONS:

Cash Funds - Funds received by state agencies and institutions of higher education from fees charged to the public, non-governmental entities, intra-agency service funds, internal service funds, and other state agencies and institutions of higher education for goods or services provided.

Custodial Funds - Funds set aside for a specific purpose generally by agreement with a donor, trustee or by court order that are generally not available for other state purposes. Federal funds originating from the federal government are considered custodial funds for the purpose of this fiscal rule.

RULE:

Spending authority for cash or custodial funds shall be approved by both the Office of State Planning and Budgeting and the State Controller. Spending authority remaining for custodial funds at year end due to an incomplete grant or contract may be reestablished in the new fiscal year, as approved by the State Controller.

Spending authority for cash and custodial funds may arise from various sources including: the federal government, the State Constitution, the State Legislature, and court decisions. Expenditures of cash and custodial funds are contingent on the availability of a positive fund balance, current revenue, or an approved working capital loan or advance from the State Treasurer.

Any excess revenue from cash funds shall be reverted to the general fund unless otherwise provided by statute. Custodial fund revenues shall be closed to the appropriate account as provided by agreement with the grantor, trustee or by court order.

EXCEPTIONS TO RULE:

This fiscal rule does not apply to non-appropriated funds in the Department of Higher Education.

Rule 7-3 EXPIRATION AND ROLLFORWARD OF APPROPRIATIONS

AUTHORITY:

24-75-102, C.R.S. (Appropriation Expiration and Rollforward)

RULE:

Unexpended appropriations expire at the end of each fiscal year and do not carry over to a subsequent fiscal year, unless otherwise authorized by statute. Encumbrances that remain at the end of a fiscal year do not constitute an expenditure against that year's appropriation. Outstanding encumbrances that are carried over to the subsequent fiscal year and the resulting expenditure are charged against the subsequent fiscal year appropriation.

EXCEPTIONS TO RULE:

The State Controller may approve the carry over of unexpended appropriations to a subsequent fiscal year under one or more of the following:

- .01 The appropriated funds have been legally committed by purchase order or contract and there are extenuating circumstances that warrant carry over of the remaining appropriation.
- .02 The appropriation is from the capital construction fund.
- .03 The appropriated funds have been legally committed by purchase order or contract with the Division of Correctional Industries, d.b.a. Juniper Valley Products, and delivery is reasonably anticipated within 60 days of fiscal year end.

Rule 7-4 OVEREXPENDITURES AND REQUIRED REPORTING

AUTHORITY:

24-37-303, C.R.S. (Governor's Budget Authority) 24-75-109, C.R.S. (Overexpenditures)

DEFINITIONS:

Overexpenditure of Appropriated Funds - An overexpenditure of appropriated funds exists when the total expenditures, based on the accrual basis of accounting, exceed the amount statutorily appropriated, as reflected on the state financial system. An overexpenditure also exists when accrued revenue is less than the expenditures in any fiscal year and where the fund balance at fiscal year end is insufficient to cover the revenue shortfall.

Overexpenditure of Non-appropriated Funds - An overexpenditure of cash, custodial, or other funds exists when the accrued revenues in the cash funds or custodial funds are less than the actual expenditures in any fiscal year for a particular program or project, and where the residual balance for the cash, custodial, or other fund is insufficient at fiscal year end to cover the revenue shortfall.

RULE:

For appropriated funds, expenditures shall only be made for the purpose intended and statutorily appropriated by the state Legislature and shall be limited to the amount authorized and appropriated.

For non-appropriated funds, expenditures shall be limited to:

- .01 The spending authority provided by the Office of State Planning and Budgeting and the State Controller.
- .02 The amount of accrued revenue and/or fund balance.
- .03 The actual amount approved by the governing board for the institutions within the Department of Higher Education.

Required Report of Overexpenditures

When the chief executive officer becomes aware of an overexpenditure condition within the state agency or institution of higher education, a report shall be submitted within 20 working days to the Governor through the Office of State Planning and Budgeting and the State Controller.

Statutory Penalty

If any official, officer, or employee of the state knowingly causes an expenditure of funds to be made in excess of the amount authorized by the State Legislature, upon conviction, statutory fines and/or imprisonment may be imposed.

Exceptions to Rule:

The State Controller may, with the approval of the Governor, allow an overexpenditure. Prior to recommending to the Governor that the overexpenditure be approved, the State Controller shall verify that the statutory requirements allowing the overexpenditure have been met.

Overexpenditures shall only be approved between May 1 of any fiscal year and the close of that fiscal year.

For any approved overexpenditure the State Controller shall restrict an amount equal to the overexpenditure in the next fiscal year's appropriation for the state agency or institution of higher education involved. The amount shall be restricted from a corresponding item or items of appropriation.

CHAPTER 8: REPORTING

Rule 8-1 FINANCIAL STATEMENTS

AUTHORITY:

24-75-102, C.R.S. (Appropriations Expended - When - Balance)

DEFINITIONS:

Financial Statements - Comprehensive reports prepared in accordance with generally accepted accounting principles, as adopted by the Governmental Accounting Standards Board.

Financial Reports - Financial information compiled periodically to assist in management decision-making or for reasons other than financial statement purposes.

RULE:

Annual financial statements prepared by state agencies and institutions of higher education shall be submitted to and approved by the State Controller's Office as required by the State Controller. Unless otherwise provided by this fiscal rule, financial statements shall be prepared in accordance with generally accepted accounting principles.

Any state agency or institution of higher education that has individual audits of its financial statements by the Office of the State Auditor or its contractor, may provide draft financial statements to the Office of the State Auditor or its contractor to facilitate a timely and efficient audit. The draft financial statements must be submitted to the State Controller's Office at the same time. Before publication of the financial statements, the statements must be submitted to the State Controller's Office for approval. State agencies and institutions of higher education, upon request, shall also provide copies of their financial statements to other interested parties.

Financial Statements for the State of Colorado

The annual financial statements for the State of Colorado shall be prepared by the State Controller's Office in accordance with generally accepted accounting principles. These annual financial statements shall reflect all of the financial activities of State Government.

Financial Statements for State Agency or Institution of Higher Education Reporting

The state financial system generates a balance sheet and an income statement for each state agency or institution of higher education utilizing the system. These system generated financial statements are considered acceptable financial statements for the purpose of complying with this fiscal rule.

Financial statements prepared by a state agency or institution of higher education for formal third party reporting shall be prepared in accordance with generally accepted accounting principles.

Financial statements prepared by institutions of higher education may be presented at institution or governing board level.

Exhibit information required in the fiscal year-end closing instructions issued by the State Controller and any post-closing adjustments are an integral part of the financial statements and are considered part of the state agency or institution of higher education reporting requirement.

Required Reconciliation to the State Financial System

Financial statements prepared by state agencies and institutions of higher education shall be reconciled to the state financial system. A copy of this reconciliation shall be provided to the State Controller.

Should the State Financial System generate the required state agency or institution of higher education, financial statements, these system generated financial statements shall, satisfy the requirement for this reconciliation.

Financial Reports Provided to State Agencies and Institutions of Higher Education or Other Interested Parties

As required by statute or regulation, or upon written request, financial reports shall be provided to state agencies and institutions of higher education or other interested parties. These reports shall be based on financial data obtained from or reconciled to the state financial system. If the report provided contains additional financial information or if the report has been modified, a copy of the reconciliation of the report to the state financial system shall be retained by the state agency or institution of higher education.

Additional Financial Reports for State Agencies and Institutions of Higher Education

In addition to the financial statements required by this fiscal rule, state agencies and institutions of higher education are encouraged to provide additional financial reports. These reports should be tailored to meet their needs and enhance their ability to make timely and accurate decisions.

The reports prepared should be relevant, easy to understand, comparable, timely, consistent, current, accurate, and reliable. Reports may include but are not limited to such items as: comparison of budget to actual for programs or organizational units; efficiencies and economies in operations; and the results of specific programs and activities, as reflected in accomplishments, benefits, and effectiveness; and compliance with legal requirements and administrative policies.

Rule 8-2 QUARTERLY FINANCIAL REPORTING

AUTHORITY:

24-30-201, C.R.S.24-30-202 (13)(a), C.R.S.

RULE:

All state agencies and institutions of higher education shall submit quarterly financial reports as required by the State Controller. Quarterly financial reports shall be available for use by the Governor, state legislators, executive management, and their respective staffs for planning purposes and decision-making.

- .01 The state financial system shall be the system used to record the state's financial information and the system from which standard reports shall be prepared and forwarded to the State Controller in compliance with the reporting requirement of this rule.
- .02 The State Controller shall determine what is reasonable and necessary to be included in the report, the funds which are to be included, the state agencies and institutions of higher education required to submit the reports, and the date each report is due.

Each quarterly reporting period shall be regarded as an integral part of the fiscal year. Revenues shall be allocated to quarterly reporting periods in accordance with generally accepted accounting principles. Expenditures such as salaries, operating expenditures and accruals of expenditures shall be allocated to interim periods in which they are incurred or, where appropriate, allocated among quarterly periods on the basis of benefit received or time expended. Arbitrary assignment to a quarterly period shall not be allowed.

Rule 8-3 COST ALLOCATION PLANS

AUTHORITY:

CFR: Title 48, Chapter 99, Subchapter B, Part 9904: "OMB" Cost Accounting Standards Board, Cost Accounting Standards"

Federal OMB Circular A-21: "Cost Principles for Educational Institutions"

Federal OMB Circular A-87: "Cost Principles for State and Local Governments"

DEFINITIONS:

Basis of Allocation - The best suited statistic that may be used for assigning pool of costs to cost objectives in accordance with benefits derived; a traceable cause and effect relationship; or logic and reason, where neither a benefit nor cause and effect relationship is determinable.

Cash Funds - Funds received by state agencies from fees charged to the public, non-governmental entities, internal service funds, and other state agencies for goods or services provided.

Cost Objective - A project, grant, program, or other activity to which costs are being allocated.

Cost Pool - An aggregation of costs for subsequent allocation to another cost pool or a cost objective.

Costs - All expenses incurred by a project or program, either directly or indirectly. Costs include such items as labor, material, supplies, rent or building charges, operating expenses, and administrative expenses that might properly be assigned to the project or program.

Direct Cost - A cost incurred by a state agency that exclusively benefits a specific cost objective and that may be readily identified with the same specific cost objective.

Equitable Relationship - A relationship that is based on cause and effect or logic and reason.

Federal Funds - Funds received by state either directly or indirectly from the federal government.

Full Cost - The total of all direct and indirect cost associated with a specific cost objective.

Indirect Cost - A cost incurred by a state agency that does not exclusively benefit a specific cost objective and that cannot be readily identified with the same specific cost objective, and, therefore shall be allocated to cost objectives on some basis of assumed service/benefit or other equitable distribution basis.

Indirect Cost Allocation - A systematic and rational allocation of indirect cost to benefiting programs and activities that result in the calculation of an indirect cost recovery rate or the identification of the amount of indirect cost assigned to the benefiting program for cost recovery purposes and/or to establish appropriations and fees. Four types of documentation representing indirect cost allocations to cost objectives are recognized in this fiscal rule:

- a. Statewide Federal Indirect Cost Allocation Plan - The plan prepared by the State Controller's Office, using federally approved costing principles, to allocate the allowable central administrative costs of state government to state agencies for inclusion in its state agency Federal Indirect Cost Rate Proposal/Plan.
- b. Statewide Budget/Cash Indirect Cost Allocation Plan - The plan prepared by the State Controller's Office using full costing principles, to allocate the central administrative costs of state government to state for inclusion in its state agency Budget/Cash Program Indirect Cost Determination Worksheet.
- c. State agency Federal Indirect Cost Rate Proposal/Plan:
 - Proposal - A document prepared by a state agency to establish a rate used to recover indirect costs from federally funded programs or activities.
 - Plan - A document prepared by a state agency to document indirect cost allocation algorithms used for federal indirect cost recovery purposes.
- d. Documentation of an indirect cost allocation prepared separately or as a part of a fee formulation process, the allocations from which are used to establish a component of fees for state cash programs and services.

Indirect Cost Allocation Methodology - A system of principles, practices, and procedures that identify: 1) the types of services provided; 2) the cost of each service; 3) the reasonable basis of allocation for each type of service which shall produce a service/benefit based or other equitable distribution of costs; 4) the cost objective(s); and 5) the appropriate mathematical computation to make an equitable allocation of costs.

RULE

State agencies shall prepare a documented indirect cost allocation or indirect cost rate proposal/plan that assigns indirect costs to their programs, activities, and services relative to their benefits received from the activities whose costs are being allocated or on another equitable relationship. The allocated costs shall be used as the basis of recovering indirect costs from the federal government, determining fees for program services and activities, and assessing the cost effectiveness of a program or activity.

State agencies shall use a cost allocation methodology that assures that the allocations made through the methodology represents a service/benefit or other equitable relationship between the cost of the services provided and the value of the benefits received by users of the services.

State agencies shall periodically review their cost allocation methodology to ensure that the methodology represents the best allocation attainable. Allocations should be reconciled to actual expenditures to ensure all costs have been captured and allocated.

Indirect Cost Allocations Made for Federal Indirect Cost Recovery Purposes

A state agency that receives federal funds shall prepare a state agency federal indirect cost rate proposal/plan in accordance with OMB A-21 or OMB A-87 and sign an indirect cost rate or allocation methodology agreement with the federal government. The state agency's federal indirect cost rate proposal/plan shall include all costs allocated to the state agency in the statewide federal indirect cost allocation plan and other approved cost allocation plans.

A state agency that receives federal funds primarily from federal programs that do not allow indirect costs to be recovered is exempted from preparing a state agency federal indirect cost rate proposal/plan to

obtain an agreement with the federal government. However, documentation supporting this fact shall be sent to the State Controller's Office by the state agency for review.

Grants, contracts, and other agreements that do not allow for the recovery of the full cost incurred under the agreement should be closely evaluated to determine if their acceptance is cost effective and in the best interest of the State of Colorado.

A state agency that has prepared and submitted an indirect cost rate proposal or plan or a plan revision to the federal government and negotiated an indirect cost rate or allocation agreement with the federal government shall submit a copy of the agreement with the federal government to the State Controller within three weeks after a signed copy is received from the federal government.

Indirect Cost Allocations Made For Use in Establishing Fees and Appropriations:

A state agency that receives cash funds based on fees charged to users shall compute an indirect cost allocation that identifies and allocates all indirect costs to all appropriate cost objectives. Allocations to cash programs shall be used as a component in the calculation of fees that recover the full cost of cash funded programs and services. The allocations made to cash funded programs and services shall be documented. Documentation of the allocated components may take any form that is convenient for the state agency, but shall adequately document the allocations of indirect costs used in establishing the fees for cash funded programs and services and be available for review. The allocations shall include all costs allocated to the state agency in the Statewide Budget/Cash Cost Allocation Plan.

If a statewide central service agency provides services to federally funded programs and is charging a fee for the services provided, the statewide central service agency's fees charged to the federal programs shall be based upon only allowable cost for federal programs as defined in federal regulations. The statewide central service agency that charges a fee for services to federally funded programs shall include the allocation from the Statewide Federal Indirect Cost Allocation Plan, as opposed to the allocation from the Statewide Budget/Cash Cost Allocation Plan, as a component of the costs used to formulate its fees for services provided.

Accounting for Indirect Cost Recoveries

Indirect cost recoveries shall be recorded when earned in separately identifiable accounts as determined by the State Controller. All Indirect cost recoveries shall be credited to the state general fund, unless otherwise appropriated or directed by law.

Revenues from indirect cost recoveries shall not be deferred at the end of the fiscal year.

EXCEPTIONS TO RULE:

- .01 If a state agency can document that use of their state agency federal indirect cost rate or allocation, in lieu of a separate indirect cost determination for establishing fees would not result in a significant reduction in the potential costs recovered, the state agency may use the state agency Federal Indirect Cost Rate Proposal/Plan as their basis for recovering indirect costs from cash funded programs.
- .02 Direct costs are generally defined as costs that may be identified specifically with a particular final cost objective. All other costs are defined as indirect costs. However, for institutions of higher education, under OMB Circular A-21, a cost that cannot specifically be identified with a particular final cost objective (a sponsored project, an instructional activity, or other institutional activity), but may be directly assigned to such activities relatively easily with a high degree of accuracy may be allocated to federal contracts and grants as a direct cost.

- .03 If a state agency has negotiated a multiple year indirect cost recovery rate with its federal cognizant agency, based upon their state agency Federal Indirect Cost Rate Proposal, the state agency is not required to prepare or submit another state agency Federal Indirect Cost Rate Proposal to the State Controller's Office as long as the negotiated multiple year rate is in effect.

CHAPTER 9: PAYROLL

Rule 9-1 USE OF THE STATE PAYROLL SYSTEM

AUTHORITY:

24-30-201(1)(e), C.R.S.24-30-202(1); (8.5); (13), C.R.S.

DEFINITIONS:

State Payroll System - The official payroll system for the State of Colorado as designated by the State Controller.

RULE:

All state agencies and institutions of higher education shall use the state payroll system to record and maintain employee payroll information and data; and to pay employees, unless the State Controller has granted an exception.

Rule 9-2 DIRECT DEPOSIT PAYROLL FOR STATE EMPLOYEES PAID ON THE STATE PAYROLL SYSTEM

AUTHORITY:

24-30-201(1)(e), C.R.S.24-30-202(1); (8.5); (13), C.R.S.24-50-104(8)(a), C.R.S. (Payment of Salaries)

DEFINITIONS:

Direct Deposit Payroll Program - A payroll program where an employee's net pay is deposited directly to the employee's legally established checking or savings account via an electronic fund transfer system.

State Payroll System - The official payroll system for the State of Colorado as designated by the State Controller.

RULE:

State employees paid either monthly or bi-weekly on the state payroll system shall be on the direct deposit payroll program unless an exception is approved by the State Controller, or delegate.

Rule 9-3 FINAL PAY FOR A TERMINATING STATE EMPLOYEE

AUTHORITY:

24-30-201(1)(e), C.R.S.24-30-202(1); (8.5); (13), C.R.S.24-50-104(8)(a), C.R.S. (Payment of Salaries)

DEFINITIONS:

State Payroll System - The official payroll system for the State of Colorado as designated by the State Controller.

RULE:

Final pay shall be available to terminating state employees as follows:

- .01 When an employee terminates employment with the state, with or without giving notice, final payment shall be made no later than their next regular pay day.
- .02 When a state agency or institution of higher education terminates an employee, final payment shall be made within three working days of the date of termination.

Rule 9-4 OVERPAYMENTS TO STATE EMPLOYEES**AUTHORITY:**

24-30-201 C.R.S.

RULE:

Through error, a state employee may be paid more than is due. When the error is detected, provisions shall be made for the repayment of the overpayment.

If the overpayment is nominal, it shall all be deducted from the employee's next paycheck. However, in some cases the overpayment may be significant and require a repayment schedule extending over a period of time. The chief executive officer, or a delegate, of the state agency or institution of higher education shall establish a repayment schedule based on the particular facts involved in each case. The State Controller shall approve any repayment schedule extending for more than six months.

An employee's maximum liability for repayment, should an error go undetected for over a two year period, shall be limited to the total amount of the overpayment for the first two years in which the employee was overpaid.

STATE FISCAL RULE INDEX

Subject	Rule/Page
Accountability of Equipment	1-10/1
Accounting Principles and Standards	1-1/1
Accounting Systems - State agency or institution of higher education	1-6/1
Accounts Payable - Delinquent	2-5/1
Advances - State Treasury	6-5/1
Appropriations - Expiration and Roll Forward	7-3/1
Bank Accounts	6-3/1
Capitalization of Equipment	1-10/1
Cash Funds	7-1/1
Capital Construction: Administration	4-1/1

Subject	Rule/Page
Project Retainage	4-3/1
Projects	4-2/1
Change Funds	6-2/1
Checks - Returned for Insufficient Funds	6-7/1
Clean Air Transit Benefit	2-8/3
Commitment Vouchers	2-2/1
Purchase Order	2-App.A
Terms and Conditions	
Contracts:	
Approvals	3-1/5
Form and	3-1/4
Provisions	
Legal Review	3-1/7
Review and	3-1/7
Approval - State	
Controller	
Special Provisions	3-App.A
Special Provisions	3-App.B
Use of State	3-1/3
Contracts	
Cost Accounting for	4-4/1
Public Works Projects	
Cost Allocation Plans	8-3/1
Custodial Funds	7-1/1
Delegated Signature	1-7/1
Authority - State	
Controller	
Deposits - Cash	6-1/1
Embezzlement - Required	1-9/1
Reporting	
Employee	3-1/8
Employer	3-1/8
Encumbrances	2-2/1
Entertainment Expense	6-4/1
Accounts - Higher	
Education	
Events Sponsored by	2-8/4
State Agencies	
Expenditures - Propriety	2-1/1
of	
Federal Cash	6-8/1
Management	
Financial Statements	8-1/1
Financial System - State:	

Subject	Rule/Page
Access	1-3/1
Automated	1-4/1
Interfaces	
Security	1-5/1
Use of State	1-2/1
Financial System	
Honorariums	2-8/2
Housing - State Owned	2-8/5
Housing - Temporary	2-8/5
Imprest Cash Accounts	6-3/1
Independent Contractor	3-1/8
Indirect Cost Recoveries	8-3/4
Instructional Courses	2-8/4
Interagency:	
Contracts	3-1/8
Purchases	2-6/1
Payments	2-6/1
Loans - State Treasury	6-5/1
Meals - Required at Work	2-8/4
Place	
Miscellaneous	2-8/1
Compensation and Other	
Benefits	
Moving and Relocation	2-9/1
Official Functions	2-7/1
Overexpenditures	6-4/1
Payroll System - State:	
Use of State	9-1/1
Payroll System	
Direct Deposit	9-2/1
Final Pay	9-3/1
Terminating Employees	
Overpayments	9-4/1
Per Diem Meal	
Reimbursement Rates:	
CONUS	5-App.A
Alaska, Hawaii,	5-App.B
and U.S. Possessions	
Foreign Countries	5-App.C
Petty Cash Funds	6-2/1
Preaudit Responsibility:	
Accounting	1-8/1
Documents	
Financial	1-8/1
Transactions	

Subject	Rule/Page
Purchase Discounts	2-4/1
Quarterly Financial Reporting	8-2/1
Receipts	6-1/1
Receiving Reports	2-3/1
Refunds	6-6/1
Reimbursements	6-6/1
Theft - Required Reporting	1-9/1
Training Functions	2-7/1
Training - Job Related	2-8/4
Travel	5-1/1
Advances	5-1/2
Authorization	5-1/2
Non-Reimbursable Expenses	5-1/5
Reimbursable Expenses	5-1/3
Uniforms - Uniform Maintenance	2-8/5

Editor's Notes

History

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