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38 CR 2

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Introduction

The *Colorado Register* is published pursuant to C.R.S. 24-4-103(11) and is the sole official publication for state agency notices of rule-making, proposed rules, attorney general's opinions relating to such rules, and adopted rules. The register may also include other public notices including annual departmental regulatory agendas submitted by principal departments to the secretary of state.

"Rule" means the whole or any part of every agency statement of general applicability and future effect implementing, interpreting, or declaring law or policy or setting forth the procedure or practice requirements of any agency. "Rule" includes "regulation". C.R.S. 24-4-102(15). Adopted rules are effective twenty days after the publication date of this issue unless otherwise specified.

The *Colorado Register* is published by the office of the Colorado Secretary of State twice monthly on the tenth and the twenty-fifth. Notices of rule-making and adopted rules that are filed from the first through the fifteenth are published on the twenty-fifth of the same month, and those that are filed from the sixteenth through the last day of the month are published on the tenth of the following month. All filings are submitted through the secretary of state's electronic filing system.

For questions regarding the content and application of a particular rule, please contact the state agency responsible for promulgating the rule. For questions about this publication, please contact the Administrative Rules Program at rules@sos.state.co.us.

Notice of Rulemaking Hearing

Tracking number

2015-00030

Department

200 - Department of Revenue

Agency

207 - Division of Gaming - Rules promulgated by Gaming Commission

CCR number

1 CCR 207-1

Rule title

GAMING REGULATIONS

Rulemaking Hearing

Date

02/19/2015

Time

09:30 AM

Location

17301 W. Colfax Ave., Suite 135, Golden, CO 80401

Subjects and issues involved

Amendments to Rules 8, 9, 10, and 11 adding a new paytable to the game Royal Match 21, to promulgate rules for a new game of poker, and to allow the Division greater discretion in determining drop and count requirements.

Statutory authority

Sections 12-47.1-201, C.R.S., 12-47.1-203, C.R.S., 12-47.1-302, C.R.S., 12-47.1-816, C.R.S., and 12-47.1-818, C.R.S.

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Note to publisher: Proposed changes have been highlighted in yellow to make them easier to identify. The highlighting is not intended to appear in the final permanent rules.

BASIS AND PURPOSE FOR RULE 8

The purpose of Rule 8 is to establish playing rules for blackjack and procedures for conducting blackjack games in compliance with section 12-47.1-302 (2). The statutory basis for Rule 8 is found in sections 12-47.1-201, C.R.S., 12-47.1-203, C.R.S., 12-47.1-302, C.R.S., 12-47.1-816, C.R.S., and 12-47.1-818, C.R.S.

RULE 8 RULES OF BLACKJACK

47.1-834.11 The play – Royal Match 21.

Note to publisher: Add the following new pay table after existing pay tables in 47.1-834.11 (13).

PROGRESSIVE PAY TABLE 3	**PAYS**
DOUBLE ROYAL MATCH SUITED	100% OF MAJOR PROGRESSIVE METER
DOUBLE ROYAL MATCH	100% OF MINOR PROGRESSIVE METER
ROYAL MATCH	40 FOR 1
SUITED BLACKJACK	10 FOR 1
SUITED HAND	2 FOR 1

BASIS AND PURPOSE FOR RULE 9

The purpose of Rule 9 is to establish procedures for the distribution of chips to blackjack, craps and roulette tables, the removal of chips and coins from blackjack, craps and roulette tables, and to establish drop and count procedures related to blackjack, craps and roulette gaming in compliance with section 12-47.1-302(1)(q). The statutory basis for Rule 9 is found in sections 12-47.1-201, C.R.S., 12-47.1-203, C.R.S., and 12-47.1-302, C.R.S.

RULE 9 MINIMUM PROCEDURES FOR DROP, COUNT, AND DISTRIBUTION OF CHIPS AND COINS FOR BLACKJACK, CRAPS AND ROULETTE

47.1-901 Drop ~~P~~procedures.

At the end of a shift, all locked single-shift drop boxes must be removed from the blackjack, craps and roulette tables, UNLESS OTHERWISE APPROVED BY THE DIVISION OF GAMING, by the drop team members who must transport them directly to the count room or other secure area for counting. If not counted immediately, the drop boxes must be locked securely until the count takes place.

At the end of a shift, the corresponding section of all multiple-shift drop boxes must be locked before the appropriate section for the new shift is enabled. At the end of each gaming day, all locked multiple-shift drop boxes must be removed from the blackjack, craps and roulette tables, UNLESS OTHERWISE APPROVED BY THE DIVISION OF GAMING, by the drop team members who must transport them directly to the count room or other secure area for counting. If not counted immediately, the drop boxes must be locked securely until the count takes place.

BASIS AND PURPOSE FOR RULE 10

The purpose of Rule 10 is to establish playing rules for authorized types of poker and management procedures for conducting poker games in compliance with section 12-47.1-302 (2). The statutory basis for Rule 10 is found in sections 12-47.1-201, C.R.S., 12-47.1-203, C.R.S., 12-47.1-302, C.R.S., and 12-47.1-818, C.R.S.

RULE 10 RULES FOR POKER

47.1-1003 Types of poker authorized.

(49) Six Card Poker; ~~and~~

(50) High Card Flush Poker~~.~~; AND

(51) WPT Heads Up Hold'Em.

47.1-1017.57 The play – WPT Heads Up Hold'Em.

WPT HEADS UP HOLD'EM IS A PATENT-PENDING POKER VARIATION GAME, THE RIGHTS TO WHICH ARE OWNED BY GALAXY GAMING, INC., LAS VEGAS, NEVADA, AND WHICH MAY BE TRANSFERRED OR ASSIGNED. WPT HEADS UP HOLD'EM MUST BE PLAYED ACCORDING TO THE FOLLOWING RULES:

(1) WPT HEADS UP HOLD'EM MAY BE PLAYED ONLY ON TABLES DISPLAYING THE WPT HEADS UP HOLD'EM LAYOUT. A SINGLE DECK OF 52 CARDS WILL BE USED. EACH PLAYER MAY PLAY ONLY ONE HAND FOLLOWING EACH SHUFFLE OF THE DECK.

(2) BEFORE RECEIVING CARDS, EACH PLAYER MUST PLACE TWO MANDATORY WAGERS, THE ANTE WAGER AND THE ODDS WAGER IN THE DESIGNATED WAGERING AREA IN FRONT OF THE PLAYER'S POSITION. EACH PLAYER MAY ALSO PLACE TWO ADDITIONAL OPTIONAL WAGERS, THE POCKET BONUS AND THE TRIPS PLUS WAGER. THE ANTE AND ODDS WAGERS MUST BE OF AN EQUAL AMOUNT AND ALL WAGERS MUST BE WITHIN THE TABLE MINIMUM AND MAXIMUM, AS POSTED AT THE TABLE, UP TO THE $100 MAXIMUM WAGER LIMIT AS DETERMINED BY THE HOUSE AND IN ACCORDANCE WITH APPLICABLE LAW.

(3) AT THE DISCRETION OF THE RETAIL LICENSEE, PLAYERS MAY ALSO PLACE A DEALER TIP BET ON THEIR ANTE AND/OR ODDS BET BY PLACING THE DEALER TIP BET NEXT TO THEIR ANTE BET. IF SUCH TIP BETS ARE ACCEPTED, WINNING TIP BETS MUST BE PAID AT THE SAME ODDS AS THE PLAYER'S WINNING ANTE AND/OR ODDS BET. THE RETAIL LICENSEE MAY REQUIRE TIP BETS TO BE IN AN EVEN DOLLAR AMOUNT, AND MAY LIMIT THE MAXIMUM AMOUNT OF SUCH TIP BETS.

(4) IMMEDIATELY PRIOR TO EACH ROUND OF PLAY, THE DEALER SHALL SHUFFLE THE CARDS. FOLLOWING THE SHUFFLE AND CUT, THE DEALER WILL DEAL TWO CARDS (PLAYER HOLE CARDS) TO EACH PLAYER AND TO HIM/HERSELF (DEALER HOLE CARDS) ONE AT A TIME FACE DOWN STARTING WITH THE PLAYER TO HIS/HER LEFT. THESE TWO CARDS ALSO REPRESENT BOTH THE PLAYER'S AND THE DEALER'S TWO-CARD HAND. THE DEALER WILL THEN DEAL FIVE COMMUNITY BOARD CARDS, FACE DOWN, ON THE LAYOUT. PLAYERS ARE NOT ALLOWED TO EXCHANGE INFORMATION ABOUT THEIR HANDS.

(5) AN INCORRECT NUMBER OF CARDS DEALT TO A PLAYER CONSTITUTES A MISDEAL TO THAT PLAYER ONLY AND THAT PLAYER RETAINS HIS/HER ANTE, ODDS AND ANY OTHER BETS. EXPOSED CARDS DEALT TO A PLAYER DO NOT CONSTITUTE A MISDEAL. THE DEALER WILL TURN THE CARD(S) OVER AND CONTINUE TO DEAL. AN INCORRECT NUMBER OF CARDS AND/OR EXPOSED CARDS DEALT TO THE DEALER CONSTITUTES A MISDEAL FOR THE HAND, AND ALL PLAYERS RETAIN THEIR ANTE, ODDS AND ANY OTHER BETS. IF A PLAYER'S CARD FALLS FROM THE TABLE, THAT PLAYER'S HAND IS DEAD AND THE PLAYER'S WAGERS ARE VOID.

(6) Players will then examine their cards. Players will then have the option to either make a Raise wager equal to their Ante, twice their Ante, three times their Ante or to check. Players who have made a tip bet on their ante wager may also place a tip bet on their Raise wagers.

(7) The dealer will then reveal the flop by turning over the first three community cards.

(8) Players who have not made a Raise wager may now make a Raise wager equal to their Ante, twice their Ante or they may check.

(9) The dealer will then turn over the last two community cards (the turn and the river).

(10) Players who have not yet made a Raise wager now must either make a Raise wager equal to their Ante wager or fold their hand and forfeit both their Ante and Odds wagers. If a player who has folded has made the optional Pocket Bonus wager and it is a winning combination, the player will tuck his/her cards under the Pocket Bonus wager until the end of the game when the dealer pays out according to the posted pay table.

(11) After all players have acted, the dealer will then turn over the dealer cards and create the best five card poker hand from the dealer's two cards and the five community cards and will announce the dealer's hand to the players. The dealer must have at least a pair or better to qualify.

(a) The dealer, working right to left, combines each player's two cards with the five community cards to make the player's best five-card poker hand.

(b) If the dealer does not possess a qualifying hand, all remaining Ante wagers will be returned to the player by the dealer. All other wagers remain in action.

(c) If the dealer's hand qualifies with a pair or better, and the player's hand beats the dealer's hand, the Ante wager is paid even money. If the dealer's hand beats the player's hand, the Ante wager loses and is collected by the dealer. If the dealer's hand and the player's hand are equal copies, the Ante wager is a push and is returned to the player by the dealer.

(d) If the player beats the dealer with a straight or better, the Raise wager is paid even money and the Odds wager is paid according to the posted pay table.

(e) If the player beats the dealer with a three-of-a-kind or less, the Raise wager wins and is paid even money and the Odds wager is a push and is returned to the player by the dealer.

(f) If the player's hand ties or "copies" the dealer's hand, both the Raise and Odds wagers are pushes and are returned to the player by the dealer.

(g) If the player's hand is a three-of-a-kind or less and is beaten by the dealer, both the Raise and Odds wagers lose and are collected by the dealer.

(h) If the player's hand is a straight or better and is beaten by the dealer, the Raise wager loses and is collected by the dealer. The Odds bet wins and is paid according to the posted Bad Beat Bonus pay table.

(12) The Pocket Bonus and the Trips Plus wagers.

(a) Players win the Trips Plus wager if their hand contains a three-of-a-kind or better and will be paid according to the posted pay table.

(B) Players win the Pocket Bonus wager if their two hole cards contain a pair or an ace combined with a face card (Jack, Queen, King) and will be paid according to the posted pay table.

(13) The dealer will reconcile the Pocket Bonus and Trips Plus wagers at the same time he/she is reconciling the Ante, Raises and Odds wagers.

Odds Pay Table – Player Wins	
Hand	**Pay**
Royal Flush	500 to 1
Straight Flush	50 to 1
Four of a Kind	10 to 1
Full House	3 to 1
Flush	1.5 to 1
Straight	1 to 1

Odds Pay Table – Player Loses				
Hand	**Pay Table 1**	**Pay Table 2**	**Pay Table 3**	**Pay Table 4**
Straight Flush	500 to 1	500 to 1	500 to 1	500 to 1
Four of a Kind	50 to 1	50 to 1	50 to 1	25 to 1
Full House	10 to 1	10 to 1	10 to 1	6 to 1
Flush	8 to 1	6 to 1	5 to 1	5 to 1
Straight	5 to 1	5 to 1	4 to 1	4 to 1

Trips Plus Pay Table				
Hand	**Pay Table 1**	**Pay Table 2**	**Pay Table 3**	**Pay Table 4**
Royal Flush	100 to 1	100 to 1	100 to 1	100 to 1
Straight Flush	40 to 1	40 to 1	40 to 1	40 to 1
Four of a Kind	30 to 1	30 to 1	30 to 1	30 to 1
Full House	9 to 1	8 to 1	8 to 1	7 to 1
Flush	7 to 1	6 to 1	7 to 1	6 to 1
Straight	4 to 1	5 to 1	4 to 1	5 to 1
Three of a Kind	3 to 1	3 to 1	3 to 1	3 to 1

Pocket Bonus Pay Table			
Hand	**Pay Table 1**	**Pay Table 2**	**Pay Table 3**
Pair of Aces	30 to 1	25 to 1	30 to 1
Suited Ace and Face	20 to 1	20 to 1	20 to 1
Unsuited Ace and Face	10 to 1	10 to 1	10 to 1
Pair	5 to 1	5 to 1	4 to 1

BASIS AND PURPOSE FOR RULE 11

The purpose of Rule 11 is to establish procedures for the distribution of chips to poker tables, the removal of chips and coins from poker tables, and to establish drop and count procedures related to poker gaming in compliance with section 12-47.1-302(1)(q). The statutory basis for Rule 11 is found in sections 12-47.1-201, C.R.S., 12-47.1-203, C.R.S., and 12-47.1-302, C.R.S.

RULE 11 MINIMUM PROCEDURES FOR DROP, COUNT, AND DISTRIBUTION OF CHIPS AND COINS FOR POKER

47.1-1101 Drop and count procedures.

(2) At the end of a shift for all house banked poker variation games or at the end of each gaming day for all player banked poker variation games, all locked single-shift poker drop boxes and jackpot award drop boxes must be removed from the poker tables, UNLESS OTHERWISE APPROVED BY THE DIVISION OF GAMING, by the drop team members who must transport them directly to the count room or other secure area for counting. If one table is to be used on a single shift for two or more dissimilar poker variation games which offer jackpot awards, the jackpot award drop box must be removed, secured, and replaced between game changes. If not counted immediately, the drop boxes must be locked securely until the count takes place.

(3) At the end of a shift, the corresponding section of all multiple-shift drop boxes must be locked before the appropriate section for the new shift is enabled. At the end of each gaming day, all locked multiple-shift drop boxes must be removed from the poker tables, UNLESS OTHERWISE APPROVED BY THE DIVISION OF GAMING, by the drop team members who must transport them directly to the count room or other secure area for counting. If not counted immediately, the drop boxes must be locked securely until the count takes place. (47.1-1101(1)-(2) amended, temp. 4/19/96; 47.1-1101(2) amended, perm. 11/30/96)

Notice of Rulemaking Hearing

Tracking number

2015-00027

Department

300 - Department of Education

Agency

301 - Colorado State Board of Education

CCR number

1 CCR 301-8

Rule title

RULES (FOR THE) ADMINISTRATION OF THE EXCEPTIONAL CHILDREN'S EDUCATIONAL ACT

Rulemaking Hearing

Date

03/11/2015

Time

10:00 AM

Location

Colorado State Department of Education, State Board Room; 201 E. Colfax Avenue; Denver, CO 80203

Subjects and issues involved

Exceptional Children's Act Rule Revisions, including grant program; state advisory committee, criteria for identification and serving gifted children

Statutory authority

HB 14-1102

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DEPARTMENT OF EDUCATION

Colorado State Board of Education

RULES (FOR THE) ADMINISTRATION OF THE EXCEPTIONAL CHILDREN'S EDUCATIONAL ACT

1 CCR 301-8

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

2220-R-1.00 STATEMENT OF BASIS AND PURPOSE

1.00(1) The statutory authority for the enactment of these Rules and the repeal of previously existing Rules 1 CCR 301-8, Rules 2220-R-1.00 through 2220-R-10.07 (2) adopted by the State Board of Education on June 11, 1992, is found in Article 20 of Title 22, C.R.S., generally in Sections 22-20-104, 22-2-107(1)(a), 22-2-107(1)(c), 22-2-107(1)(q), and 22-20-109. The purpose of these Rules is to provide the administrative framework for services offered to students pursuant to the terms of the Exceptional Children's Educational Act (ECEA). Current Rules 1 CCR 301-8, 2220-R-11.00 through 11.07 (5) are not affected by this enactment. The Rules reflect changes in educational practices and the manner of delivery of services to students within the legal parameters of the ECEA that have occurred since the prior Rules were originally enacted in 1976. The definitions of handicapping conditions and the eligibility criteria for receiving services have been clarified. The involvement of facilities that offer special education services to students has been recognized, and the conditions for approval for reimbursement have been established. Additionally, the criteria for creating and maintaining an administrative unit are set forth as are standards for the provision of educational services to eligible students. The Rules outline the procedure to be followed in identifying, assessing and serving those children eligible for services under the ECEA. The Rules also elaborate on the various procedural safeguards available to administrative units and children and their parents pursuant to the ECEA.

1.00(2) The statutory basis for the amendments to these Rules adopted by the State Board of Education on September 11, 1997 is found in Sections 22-2-107(1)(c), 22-2-107(1)(q), 22-20-103(1.7) and (5.7), 22-20-104, 22-20-108(4.5) and (4.7), 22-20-109(4) and (5) and 22-20-114 C.R.S. The purpose of the amendments is to conform the Rules to recent legislative changes in the ECEA, specifically with regard to definitions of communication mode or language and literacy mode, development of individual educational programs, and tuition for children with disabilities in Charter Schools and Schools of Choice.

1.00(3) The statutory authority for the amendments to these Rules is found in Article 20 of Title 22, C.R.S., Sections 22-20-104, 22-2-107(1)(a), 22-2-107(1)(c), and 22-2-107(1)(q). The purpose of the amendments to Rule 1 CCR 301-8, 2220-R-3.04(1)(f) is to reflect additional statutory requirements for the development of minimum standards for Educational Interpreters for the Deaf as specified in C.R.S. 22-20-116. The amendments to Rules 1 CCR 301-8, 2220-R-2.02(9), 3.01(5)(a), 4.01(3)(c), 4.02(4)(k)(v), 5.02(4), 6.02(2), and 8.02(1)(f)(i) are the result of a review by Legislative Legal Services.

1.00(4) The statutory authority for the amendments to these Rules is found in Article 20 of Title 22, C.R.S., Sections 22-2-107(1)(a), 22-2-107(1)(c), 22-2-107(1)(q), and 22-20-104. The reasons for the amendments to these Rules are to bring the state into compliance with the Individuals with Disabilities Education Act Reauthorization of 1997, to respond to the review of the BOCES conducted by the State Auditors Office, and to make technical amendments to sections that contain incorrect citations or grammatical errors. Subsections of Section 3.01(5)(a) have been deleted because they were allowed to expire by action of the General Assembly, and under Colorado law shall not be repromulgated [C.R.S. 24-4-103(8)(d)].

1.00(5) The statutory authority for the amendments to these Rules is found in Article 20 of Title 22, C.R.S., Sections 22-2-107(1)(a), 22-2-107(1)(c), 22-2-107(1)(q), and 22-20-104. The reason for the amendments to these Rules is to bring the State into compliance with the Individuals with Disabilities Education Act final regulations issued on March 12, 1999 and to rectify an incorrect citation.

1.00(6) The statutory authority for the amendments to these Rules, adopted by the State Board of Education on May 9, 2002, is found in Article 20 of Title 22, C.R.S., Sections 22-2-107(1)(a), 22-2-107(1)(c), 22-2-107 (1)(q), and 22-20-104. The reason for the amendments to these Rules is to bring the State into compliance with the Individuals with Disabilities Education Act and to provide clarification for implementation to the field.

1.00(7) The statutory authority for the amendments to these Rules is found in the Colorado Revised Statutes, Title 22, Article 20, Sections 108 and 109. The purpose of these amendments is: (A) to address new requirements in HB04-1397 and HB04-1141 that amended the special education tuition responsibility provisions of the Exceptional Children's Educational Act, Section 22-20-109, C.R.S.; (B) to add clarification regarding special education administrative unit responsibilities for special education services; and (C) to add additional clarifying language.

1.00(8) The statutory authority for the amendments to these Rules is found in Title 22, Article 20, Sections 103, 104, 104.5, 108, 109, and 114, C.R.S. The purposes of the amendments are: (A) to address new requirements in SB06-118 and HB06-1375 that amended the special education tuition responsibility provisions and the out-of-home placement provisions of the Exceptional Children's Educational Act, Sections 22-20-103, 108 and 109, C.R.S.; (B) to address new requirements in SB06-118 that amended the gifted and talented provision of said Act, Sections 22-20-103, 104 and 104.5, C.R.S.; (C) to address new requirements in HB06-1375 regarding the special education funding provisions of said Act, Section 22-20-114, C.R.S.; (D) to add clarification regarding administrative unit responsibilities for gifted and talented programs; and (E) to add clarifying language.

1.00(9) The statutory authority for the amendments to these Rules is found in Title 22, Article 20, Sections 102, 103, 105, 104.5, 106, 107.5, 108, 112, 114, 114.5 and 118. The purposes of the amendments are:

1.00(9)(a) To conform to amendments to the Exceptional Children's Educational Act (ECEA) as set forth in SB06-118, SB07-255, HB07-1244, including alignment with the federal Individuals with Disabilities Educational Improvement Act of 2004, 20 U.S.C. Section 1400 et seq., as amended, (IDEA) and its implementing Part B and Part C Regulations at 34 CFR Parts 300 and 303, respectively, including appendices.

1.00(9)(a)(i) The IDEA Part B and Part C Regulations were issued by the United States Department of Education, Office of Special Education and Rehabilitative Services. Throughout these Rules, the applicable Part B and Part C Regulations are referred to in general (e.g., "Part B Regulations" or "Part C Child Find Regulations") or by reference to specific regulatory section numbers (e.g., 34

CFR §300.1, 34 CFR §303.1) and are incorporated herein by reference as applicable. However, these Rules do not include later amendments or editions to the IDEA, the Part B Regulations or the Part C Regulations.

1.00(9)(a)(ii) Copies of the IDEA Part B and Part C Regulations are available for public inspection, upon appointment, during regular business hours at the Office of the State Board of Education. Upon request, a copy of the Part B and/or Part C Regulations shall be provided at cost to the person or entity requesting a copy. Inquiries regarding the procedure for examining such regulations or for obtaining a copy of such regulations shall be directed to:

Director
Office of the State Board of Education
201 East Colfax Avenue, Denver, CO, 80203
(303) 866-6817

1.00(9)(a)(iii) Copies of the Part B Regulations and Part C Regulations may be examined at any State Publication Depository Library.

1.00(9)(b) To adopt new criteria for the disability category "Specific Learning Disability" ;

1.00(9)(c) To reorganize these Rules for purposes of providing enhanced clarification for implementation;

1.00(9)(d) To clarify language;

1.00(9)(e) To make technical amendments, including:

1.00(9)(e)(i) Renumbering made necessary by reorganization of these Rules;

1.00(9)(e)(ii) Correction of typographical errors such as misspellings or inaccurate legal citations; and

1.009(e)(iii) Reformatting of these Rules.

1.00(10) The statutory authority for the amendments to these Rules is found in Article 20 of Title 22, C.R.S., Sections 22-20-103(12)(b) and (13), 22-20-104.5, and Sections 22-54-103(10)(a)(IV)(B) and (10)(b)(I). The purposes of the amendments are to: address new requirements in legislation for early access to educational services for children who are less than six years of age; provide an outline of the criteria and process for making early access determinations by administrative units who choose to permit early access; and, clarify the provisions that will allow administrative units to receive state education funds for early access students.

1.00(11) The statutory authority for the amendments to these Rules is found in Title 22, Article 20, Sections 102, 103(5)(a) and 104. The purposes of these amendments are:

1.00(11)(a) Alignment with Regulations under Part B of the federal Individuals with Disabilities Educational Improvement Act of 2004, 20 U.S.C. Section 1400 et seq., as amended, (IDEA) and its implementing Part B Regulations at 34 CFR Parts 300 and include:

1.00(11)(a)(i) Amending, consistent with IDEA Part B Regulations effective October 13, 2006, the definition of "school day" ; and substituting the disability category term "speech or language impairment" for "speech language disability" ;

1.00(11)(a)(ii) Adding, consistent with IDEA Part B Regulations effective May 9, 2007, requirements regarding participation of children with disabilities in general and district-wide assessments; and

1.00(11)(a)(iii) Amending, consistent with IDEA Part B Regulations effective December 31, 2008, requirements regarding parental consent, including the definition of "consent."

1.00(11)(b) The IDEA Part B Regulations were issued by the United States Department of Education, Office of Special Education and Rehabilitative Services. Throughout these Rules, the applicable Part B Regulations are referred to in general (e.g., "Part B Regulations") or by reference to specific regulatory section numbers (e.g., 34 CFR §300.1) and are incorporated herein by reference as applicable. However, these Rules do not include later amendments or editions to the IDEA Part B Regulations.

1.00(11)(b)(i) Copies of the IDEA Part B Regulations are available for public inspection, upon appointment, during regular business hours at the office of the Exceptional Student Leadership Unit. Upon request, a copy of the Part B Regulations shall be provided at cost to the person or entity requesting a copy. Inquiries regarding the procedure for examining such regulations or for obtaining a copy of such regulations shall be directed to:

Director

Exceptional Student Leadership Unit

Colorado Department of Education

1560 Broadway, Suite 1175

Denver, CO 80202

(303) 866-6694

1.00(11)(b)(ii) Copies of the Part B Regulations may be examined at any State Publication Depository Library.

1.00(12) Beginning in 1990, the section of the Exceptional Children's Education Act pertaining to the rules for gifted education required administrative units to provide matching funds or greater than the state allocation to support local gifted student education program plans. In 2010, the question of the state board's authority to require matching funds was presented to the Attorney General's Office. The Attorney General's Office issued an informal opinion recommending that the state board's rules should be modified, removing the matching funds provision on the grounds that the statute does not provide authority to the state board to promulgate rules requiring matching funds. Pursuant to 22-20-104.5(1), 22-20-104(1)(XI)(b) and 22-2-107(1)(c), the state board has authority to promulgate rules concerning the Exceptional Children's Education Act.

1.00(13) The statutory authority for the amendments to these Rules is found in Title 22, Article 20, Sections 102, 103, 106, and 108. The purposes of these amendments are: A) to replace the definition of Administrative Unit that was inadvertently deleted through previous emergency rulemaking; B) to repeal Section 2.08(6)(b)(i) and renumber, because by operation of rule the language has expired; and C) to bring the State into compliance with recent legislation adopting a Tier 1 Due Process Hearing System (SB11-061).

1.00(14) The statutory authority for these Rules is found in Title 22, Article 20, Sections 104(1)(b) and 107(1)(c). In October 2010, the Rules regarding standards for new and reorganized administrative units, which had been in place since 1973, were revised via emergency rules repealing language in the rules pertaining to variances from approved administrative unit standards while the Department developed recommendations for revised rules establishing new administrative standards in conjunction with a task force formed for that specific purpose. The emergency rules expired in February 2011. The purpose of these Rules is to implement the recommendations of the task force and to establish permanent rules regarding standards for new and reorganized administrative units that reflect current demographic, legal and financial conditions in the State.

1.00(15) The statutory authority for the amendments to these Rules is found in Title 22, Article 20, Sections 103 and 119. The purpose of these amendments is to comply with Colorado House Bill 11-1277, which was enacted in June 2011 to align Colorado's disability categories for students with disabilities with the eligibility categories in the federal Individuals with Disabilities Education Act, 20 U.S.C. 1400 *et seq.* and 34 C.F.R. 300.8. The law requires that the new eligibility categories be implemented via adoption of new rules amending the existing eligibility categories in these Rules by December 1, 2012. HB 11-1277 also modified some of the terminology and definitions applicable to special education; these Rules have therefore been updated to reflect the new language by incorporating the language of the statute.

1.00(16) The statutory authority for the amendments to these Rules is found in Title 22, Article 2, Sections 406 and 407, which amended the law regarding facility schools; Title 22, Article 20, Section 103, which modifies the terminology and definitions relevant to facility schools and establishes the definition of " administrative unit " ; and Title 22, Article 20, Section 108. The purpose of these amendments is to update the Rules to makes them consistent with the law and Rules regarding facility schools, to clarify the definition of " administrative unit " to make it consistent with statute, to eliminate expired and outdated rules regarding special education due process hearings, and to comply with HB12-1345 which eliminated the " Preschooler with a Disability " eligibility category and charged the Department with promulgating a new eligibility category definition and criteria entitled " Child with a Developmental Delay".

(17) The statutory authority for the amendments to these Rules is found in Title 22, Article 20, Section 205 which amended the law regarding gifted education. The purpose of these amendments is to comply with Colorado House Bill 14-1102, which was enacted in August 2014 and establishes a grant program to offset costs incurred by administrative units in employing a qualified person in gifted education and conducting universal screenings as a part of identification no later than end of second grade and/or in middle school years in conjunction with the creation of each child's individual career and academic plan

1.00(17) The statutory authority for the amendments to these Rules is found in Title 22, Article 20, Sections 103 and 106, which amended the definition of "administrative unit" to include a "multi-district administrative unit." The purpose of these amendments is to incorporate the new statutory provisions relating to multi-district administrative units into the Rules. Secondly, these amendments replace the expired rules related to the definitions and procedures for providing temporary educator eligibility authorization, as authorized by Title 22, Article 60.5, Section111(5). Thirdly, amendments to these Rules includes specific procedures and criteria required by House Bill 14-1102 to implement gifted education concerning identification, data collection, advanced learning plan content and procedures, portability procedures, accountability for student achievement, program and budget, family engagement and communication, procedures used to resolve disagreements, and add to the Rules provisions for a grant program. These amendments are authorized by Title 22, Article 20, Section 203. Finally, some inaccurate section numbering has been corrected.

2220-R-2.00 DEFINITIONS USED IN THESE RULES

2.01 Act

Act, when used in 34 CFR Parts 300 and 303, means the federal Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. §1400 et seq. (IDEA) as amended.

2.02 Administrative Unit

Administrative Unit (AU) means a school district, board of cooperative services, multi-district administrative unit, or the State Charter School Institute, that is providing educational services to exceptional children and that is responsible for the local administration of these Rules. In order to qualify as an administrative unit, school districts, ~~and~~ boards of cooperative services and multi-district administrative units shall meet all minimum standards established in Section 3.01 of these Rules. All administrative units shall be approved by the Department of Education.

2.02(1) Administrative unit of residence.

Pursuant to sections 22-1-102 and 22-20-107.5, C.R.S., an administrative unit of residence (AUR) shall mean the unit in which the child resides on a day-to-day basis with the following exceptions to apply when a child has been determined to have a disability:

2.02(1)(a) If a child with a disability is living at one of the regional centers, an approved facility school, a mental health institute operated by the Department of Human Services, or if the child attends the Colorado School for the Deaf and the Blind, such child shall be deemed to reside where the parent or guardian of such child resides.

2.02(1)(b) If a child has been placed by a Colorado public agency and lives in one of the regional centers, a mental health institute, a facility, or a group home, and the administrative unit of residence cannot be determined because parental rights have been relinquished by the parents or terminated by a court, the parents are incarcerated, cannot be located, reside out of state, are deceased, or the child is legally emancipated, the child shall be considered a resident of the administrative unit in which the regional center, mental health institute, facility or group home is located

2.02(1)(c) If the child resides in a foster care home, the child shall be deemed to be a resident of the administrative unit in which the foster care home is located.

2.02(1)(d) When a child attends a school in another district under the provisions of the public schools of choice law, the child shall be considered a resident of the administrative unit in which the parent or guardian resides.

2.02(1)(e) When a child attends a Charter School in another district, the child shall be considered a resident of the administrative unit in which the parent or guardian resides.

2.02(1)(f) When a child attends a public school on-line program in another district, the child shall be considered a resident of the administrative unit in which the parent or guardian resides.

2.02(1)(g) If a child with a disability is homeless, as defined by Section 22-1-102.5, C.R.S., the provisions of Section 22-1-102(2), C.R.S., apply.

2.02(1)(h) Disputes regarding residency.

If there is a dispute as to which administrative unit constitutes the administrative unit of residence, the Commissioner of Education shall have the authority to

determine questions of residency and thus responsibility after reviewing necessary details involved in the determination of residency.

2.02(2) Administrative unit of attendance.

An administrative unit of attendance (AUA) shall mean the unit that delivers the special education program for a child. It may be different from the administrative unit of residence when:

2.02(2)(a) The administrative unit of residence does not have an adequate number of children with similar needs, and chooses to send the child to another administrative unit for his or her special education program.

2.02(2)(b) The child resides at one of the regional centers, mental health institutes, residential child care facilities, hospitals, group care facilities or homes or in a facility formerly operated by or under contract to the Department of Institutions and now transferred to the Department of Human Services, or attends the Colorado School for the Deaf and the Blind and the special education program is provided by an administrative unit other than the administrative unit of residence.

2.02(2)(c) The child attends a Charter School, School of Choice or a public school on-line program and the Special Education program is provided by a special education administrative unit other than the administrative unit of residence.

2.02(3) Multi-district Administrative Unit

Multi-district Administrative Unit means a group of two or more school districts that did not form a Board of Cooperative Services but were (a) parties to an agreement existing on January 1, 2011, to provide educational services to exceptional children and to be responsible for the local administration of these Rules, and (b) recognized by the Department as of January 1, 2011, as an administrative unit.

2.03 2.03 Assistive Technology Device

Assistive Technology Device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device.

2.04 Assistive Technology Service

2.04(1) Assistive Technology Service means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes-

2.04(1)(a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

2.04(1)(b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

2.04(1)(c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

2.04(1)(d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

2.04(1)(e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and

2.04(1)(f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child.

2.05 Board of Cooperative Services

Board of Cooperative Services means a regional educational services unit created pursuant to Article 5 of Title 22, C.R.S. and designed to provide supporting, instructional, administrative, facility, community, or any other services contracted by participating members.

2.06 Charter School

2.06(1) District Charter School means a charter school authorized by a school district pursuant to Part 1 of Article 30.5 of Title 22, C.R.S.; or

2.06(2) Institute Charter School means a charter school authorized by the State Charter School Institute pursuant to Part 5 of Article 30.5 of Title 22, C.R.S.

2.07 Child Find

Child Find means the program component of child identification that is more fully described in Section 4.02 of these Rules.

2.08 Children with Disabilities

Children with Disabilities shall mean those persons from three to twenty-one years of age who, by reason of one or more of the following conditions, are unable to receive reasonable benefit from general education. A child shall not be determined to have a disability if the determinant factor for that determination is: lack of appropriate instruction in reading or math or limited English proficiency; and if the child does not otherwise meet the eligibility criteria under this Section 2.08. A child upon reaching his/her third birthday becomes eligible for services as of that date. A child reaching the age of 21 after the commencement of the academic year has the right to complete the semester in which the 21st birthday occurs or attend until he/she graduates, whichever comes first. In such a case, the child is not entitled to extended school year services during the summer following such current academic year. If it is determined, through an appropriate evaluation, under Section 4.02(4) of these Rules, that a child has one of the following disabilities but only needs a related service (as defined in Section 2.37 of these Rules) and not special education (as defined in Sections 2.43 and 2.51 of these Rules), then the child is not a child with a disability under these Rules. For purposes of Part C of IDEA Child Find activities, *Children with Disabilities* also means persons from birth to twenty-one years of age consistent with Section 22-20-103(5)(b), C.R.S.

2.08(1) A child with an Autism Spectrum Disorder (ASD) is a child with a developmental disability significantly affecting verbal and non-verbal social communication and social interaction, generally evidenced by the age of three. Other characteristics often associated with ASD are engagement in repetitive activities and stereotyped movements, resistance to environmental changes or changes in daily routines, and unusual responses to sensory experiences.

2.08(1)(a) The Autism Spectrum Disorder prevents the child from receiving reasonable educational benefit from general education as evidenced by at least one characteristic in each of the following three areas (i.e., subsections (a)(i) through (a)(iii), below):

2.08(1)(a)(i) The child displays significant difficulties or differences or both in interacting with or understanding people and events. Examples of qualifying characteristics include, but are not limited to: significant difficulty establishing and maintaining social-emotional reciprocal relationships, including a lack of typical back and forth social conversation; and/or significant deficits in understanding and using nonverbal communication including eye contact, facial expression and gestures;

2.08(1)(a)(ii) The child displays significant difficulties or differences which extend beyond speech and language to other aspects of social communication, both receptively and expressively. Examples of qualifying characteristics include, but are not limited to: an absence of verbal language or, if verbal language is present, typical integrated use of eye contact and body language is lacking; and/or significant difficulty sharing, engaging in imaginative play and developing and maintaining friendships; and

2.08(1)(a)(iii) The child seeks consistency in environmental events to the point of exhibiting significant rigidity in routines and displays marked distress over changes in the routine, and/or has a significantly persistent preoccupation with or attachment to objects or topics.

2.08(1)(b) The following characteristics may be present in a child with ASD, but shall not be the sole basis for determining that a child is an eligible child with ASD if the child does not also meet the eligibility criteria set out in subsection (a) of this rule, above.

2.08(1)(b)(i) The child exhibits delays or regressions in motor, sensory, social or learning skills.

2.08(1)(b)(ii) The child exhibits precocious or advanced skill development, while other skills may develop at or below typical developmental rates.

2.08(1)(b)(iii) The child exhibits atypicality in thinking processes and in generalization. The child exhibits strengths in concrete thinking while difficulties are demonstrated in abstract thinking, awareness and judgment. Perseverative thinking and impaired ability to process symbolic information is present.

2.08(1)(b)(iv) The child exhibits unusual, inconsistent, repetitive or unconventional responses to sounds, sights, smells, tastes, touch or movement.

2.08(1)(b)(v) The child’s capacity to use objects in an age appropriate or functional manner is absent or delayed. The child has difficulty displaying a range of interests or imaginative activities or both.

2.08(1)(b)(vi) The child exhibits stereotypical motor movements, which include repetitive use of objects and/or vocalizations, echolalia, rocking, pacing or spinning self or objects.

2.08(2) A child with Hearing Impairment, Including Deafness shall have a deficiency in hearing sensitivity as demonstrated by an elevated threshold of auditory sensitivity to pure tones or speech where, even with the help of amplification, the child is prevented from receiving reasonable educational benefit from general education.

2.08(2)(a) A "deficiency in hearing sensitivity" shall be one of the following as measured by behavioral or electrophysiological audiological assessments:

2.08(2)(a)(i) Three frequency, pure tone average hearing loss in the speech range (500 – 4000 Hertz Hz) of at least 20 decibels Hearing Level (dBHL) in the better ear which is not reversible.

2.08(2)(a)(ii) A high frequency, pure tone average hearing loss of at least 35 dBHL in the better ear for two or more of the following frequencies: 2000, 3000, 4000 or 6000 Hz.

2.08(2)(a)(iii) A three frequency, pure tone average unilateral hearing loss in the speech range (500 – 4000Hz) of at least 35 dBHL which is not reversible.

2.08(2)(a)(iv) A transient hearing loss, meeting one of the criteria in (a)(i) – (a)(iii) above, that is exhibited for three (3) months cumulatively during a calendar year (i.e., any three months during the calendar year) and that typically is caused by non-permanent medical conditions such as otitis media or other ear problems.

2.08(2)(b) The Hearing Impairment, Including Deafness, as described above, prevents the child from receiving reasonable educational benefit from general education as evidenced by one or more of the following:

2.08(2)(b)(i) Delay in auditory skills and/or functional auditory performance including speech perception scores (in quiet or noise), which demonstrates the need for specialized instruction in auditory skill development or assistive technology use;

2.08(2)(b)(ii) Receptive and/or expressive language (spoken or signed) delay including a delay in syntax, pragmatics, semantics, or if there is a significant discrepancy between the receptive and expressive language scores and/or function which adversely impacts communication and learning;

2.08(2)(b)(iii) An impairment of speech articulation, voice and/or fluency;

2.08(2)(b)(iv) Lack of adequate academic achievement and/or sufficient progress to meet age or state-approved grade-level standards in reading, writing, and/or math;

2.08(2)(b)(v) Inconsistent performance in social and learning environments compared to typically developing peers; and/or

2.08(2)(b)(vi) Inability to demonstrate self advocacy skills or utilize specialized technology/resources to access instruction.

2.08(3) A child with a Serious Emotional Disability shall have emotional or social functioning which prevents the child from receiving reasonable educational benefit from general education.

2.08(3)(a) Serious Emotional Disability means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree:

2.08(3)(a)(i) An inability to learn which is not primarily the result of intellectual, sensory or other health factors;

2.08(3)(a)(ii) An inability to build or maintain interpersonal relationships which significantly interferes with the child's social development;

2.08(3)(a)(iii) Inappropriate types of behavior or feelings under normal circumstances;

2.08(3)(a)(iv) A general pervasive mood of unhappiness or depression; and/or

2.08(3)(a)(v) A tendency to develop physical symptoms or fears associated with personal or school problems.

2.08(3)(b) As a result of the child's Serious Emotional Disability, as described above, the child exhibits one of the following characteristics:

2.08(3)(b)(i) Impairment in academic functioning as demonstrated by an inability to receive reasonable educational benefit from general education which is not primarily the result of intellectual, sensory, or other health factors, but due to the identified serious emotional disability.

2.08(3)(b)(ii) Impairment in social/emotional functioning as demonstrated by an inability to build or maintain interpersonal relationships which significantly interferes with the child's social development. Social development involves those adaptive behaviors and social skills which enable a child to meet environmental demands and assume responsibility for his or her own welfare.

2.08(3)(c) In order to qualify as a child with a Serious Emotional Disability, all four of the following qualifiers shall be documented:

2.08(3)(c)(i) A variety of instructional and/or behavioral interventions were implemented within general education and the child remains unable to receive reasonable educational benefit from general education.

2.08(3)(c)(ii) Indicators of social/emotional dysfunction exist to a marked degree; that is, at a rate and intensity above the child's peers and outside of his or her cultural norms and the range of normal development expectations.

2.08(3)(c)(iii) Indicators of social/emotional dysfunction are pervasive, and are observable in at least two different settings within the child's environment. For children who are attending school, one of the environments shall be school.

2.08(3)(c)(iv) Indicators of social/emotional dysfunction have existed over a period of time and are not isolated incidents or transient, situational responses to stressors in the child's environment.

2.08(3)(d) The term "Serious Emotional Disability" does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disability under paragraph (3)(a) of this section 2.08.

2.08(4) A child with an Intellectual Disability shall have reduced general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which prevents the child from receiving reasonable educational benefit from general education.

2.08(4)(a) Criteria for Intellectual Disability preventing the child from receiving reasonable educational benefit from regular education shall include:

2.08(4)(a)(i) A full scale score of 2.0 or more standard deviations below the mean on individually administered measures of cognition.

2.08(4)(a)(ii) A comprehensive adaptive skills assessment based on a body of evidence that reflects the child's social, linguistic, and cultural background. The level of independent adaptive behavior is significantly below the culturally

imposed expectations of personal and social responsibility. This body of evidence shall include results from each of the following:

2.08(4)(a)(ii)(A) A full scale score of 2.0 or more standard deviations below the mean on a standard or nationally normed assessment of adaptive behavior;

2.08(4)(a)(ii)(B) Interview of parents; and

2.08(4)(a)(ii)(C) Observations of the child's adaptive behavior that must occur in more than one educational setting. A discrepancy must occur in two or more domains related to adaptive behavior in more than one educational setting.

2.08(4)(b) A deficiency in academic achievement, either as indicated by scores 2.0 or more standard deviations below the mean in formal measures of language, reading and math, or a body of evidence on informal measures when it is determined that reliable and valid assessment results are not possible due to the student's functioning level.

2.08(5) A child with Multiple Disabilities shall have two or more areas of significant impairment, one of which shall be an intellectual disability. The other areas of impairment include: Orthopedic Impairment; Visual Impairment, Including Blindness; Hearing Impairment, Including Deafness; Speech or Language Impairment; Serious Emotional Disability; Autism Spectrum Disorders; Traumatic Brain Injury; or Other Health Impaired. The combination of such impairments creates a unique condition that is evidenced through a multiplicity of severe educational needs which prevent the child from receiving reasonable educational benefit from general education.

2.08(5)(a) In order to be eligible as a child with multiple disabilities, the child must satisfy all eligibility criteria for each individual disability, as described in these Rules. Documentation for each identified eligibility category must be included.

2.08(5)(b) The Multiple Disabilities, as described in section 2.08(5) above, prevents the child from receiving reasonable educational benefit from general education such that the child exhibits two or more of the following:

2.08(5)(b)(i) Inability to comprehend and utilize instructional information.

2.08(5)(b)(ii) Inability to communicate efficiently and effectively.

2.08(5)(b)(iii) Inability to demonstrate problem solving skills when such information is presented in a traditional academic curriculum.

2.08(5)(b)(iv) Inability to generalize skills consistently.

2.08(6) A child with an Orthopedic Impairment has a severe neurological/muscular/skeletal abnormality that impedes mobility, which prevents the child from receiving reasonable educational benefit from general education.

2.08(6)(a) Orthopedic Impairment may be a result of a congenital anomaly (e.g. spina bifida, osteogenesis imperfecta, clubfoot); effects of a disease (e.g. bone tumor, muscular dystrophy, juvenile arthritis); or from other causes (e.g. cerebral palsy, amputations, trauma, and/or fractures or burns that cause contractures).

2.08(6)(b) The Orthopedic Impairment, as described above, prevents the child from receiving reasonable educational benefit from general education because the disabling

condition interferes with functions of daily living, including but not limited to, ambulation, attention, hand movements, coordination, communication, self-help skills and other activities of daily living, to such a degree that the child requires specialized instruction and related services, which may include special equipment.

2.08(7) Other Health Impaired (OHI) means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment due to a chronic or acute health problem, including but not limited to asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, leukemia, kidney disease, sickle cell anemia or Tourette syndrome. As a result of the child's Other Health Impairment, as described above, the child is prevented from receiving reasonable educational benefit from general education, as evidenced by one or more of the following:

2.08(7)(a) Limited strength as indicated by an inability to perform typical tasks at school;

2.08(7)(b) Limited vitality as indicated by an inability to sustain effort or to endure throughout an activity; and/or

2.08(7)(c) Limited alertness as indicated by an inability to manage and maintain attention, to organize or attend, to prioritize environmental stimuli, including heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment.

2.08(8) A child with a Specific Learning Disability shall have a learning disorder that prevents the child from receiving reasonable educational benefit from general education.

2.08(8)(a) Specific Learning Disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific Learning Disability does not include learning problems that are primarily the result of: visual impairment, including blindness; hearing impairment, including deafness; orthopedic impairment; intellectual disability; serious emotional disability; cultural factors; environmental or economic disadvantage; or limited English proficiency.

2.08(8)(b) A child may be determined to have a Specific Learning Disability that prevents the child from receiving reasonable educational benefit from general education if a body of evidence demonstrates the following criteria are met:

2.08(8)(b)(i) The child does not achieve adequately for the child's age or to meet state-approved grade-level standards and exhibits significant academic skill deficit(s) in one or more of the following areas when provided with learning experiences and instruction appropriate for the child's age or state-approved grade-level standards:

2.08(8)(b)(i)(A) Oral expression;

2.08(8)(b)(i)(B) Listening comprehension;

2.08(8)(b)(i)(C) Written expression;

2.08(8)(b)(i)(D) Basic reading skill;

2.08(8)(b)(i)(E) Reading fluency skills;

2.08(8)(b)(i)(F) Reading comprehension;

2.08(8)(b)(i)(G) Mathematical calculation;

2.08(8)(b)(i)(H) Mathematics problem solving; and

2.08(8)(b)(ii) The child does not make sufficient progress to meet age or state-approved grade-level standards in one or more of the areas identified in Section 2.08(8)(b)(i) when using a process based on the child's response to scientific, research-based intervention.

2.08(9) A child with a Speech or Language Impairment shall have a communicative disorder which prevents the child from receiving reasonable educational benefit from general education.

2.08(9)(a) Speech or Language Impairment may be classified under the headings of articulation, fluency, voice, functional communication or delayed language development and shall mean a dysfunction in one or more of the following:

2.08(9)(a)(i) Receptive and expressive language (oral and written) difficulties, including syntax (word order, word form, developmental level), semantics (vocabulary, concepts and word finding), and pragmatics (purposes and uses of language);

2.08(9)(a)(ii) Auditory processing, including sensation (acuity), perception (discrimination, sequencing, analysis and synthesis), association and auditory attention;

2.08(9)(a)(iii) Deficiency of structure and function of oral peripheral mechanism;

2.08(9)(a)(iv) Articulation including substitutions, omissions, distortions or additions of sound;

2.08(9)(a)(v) Voice, including deviation of respiration, phonation (pitch, intensity, quality), and/or resonance;

2.08(9)(a)(vi) Fluency, including hesitant speech, stuttering, cluttering and related disorders; and/or

2.08(9)(a)(vii) Problems in auditory perception such as discrimination and memory.

2.08(9)(b) The Speech or Language Impairment, as set out above, prevents the child from receiving reasonable educational benefit from general education and shall include one or more of the following:

2.08(9)(b)(i) Interference with oral and/or written communication in academic and social interactions in his/her primary language;

2.08(9)(b)(ii) Demonstration of undesirable or inappropriate behavior as a result of limited communication skills; and/or

2.08(9)(b)(iii) The inability to communicate without the use of assistive, augmentative/alternative communication devices or systems.

2.08(10) A child with a Traumatic Brain Injury (TBI) is a child with an acquired injury to the brain caused by an external physical force resulting in total or partial functional disability or psychosocial impairment, or both, which impairment adversely affects the child's ability to receive reasonable educational benefit from general education. A qualifying Traumatic Brain Injury is an open or closed head injury resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term "traumatic brain injury" under this rule does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

2.08(10)(a) To be eligible as a child with a Traumatic Brain Injury, there must be evidence of the following criteria:

2.08(10)(a)(i) Either medical documentation of a traumatic brain injury, or a significant history of one or more traumatic brain injuries reported by a reliable and credible source and/or corroborated by numerous reporters; and

2.08(10)(a)(ii) The child displays educational impact most probably and plausibly related to the traumatic brain injury.

2.08(10)(b) Additionally, to be eligible as a child with a Traumatic Brain Injury, the traumatic brain injury prevents the child from receiving reasonable educational benefit from general education as evidenced by one or more of the following:

2.08(10)(b)(i) A limited ability to sustain attention and/or poor memory skills, including but not limited to difficulty retaining short-term memory, long-term memory, working memory and incidental memory;

2.08(10)(b)(ii) An inefficiency in processing, including but not limited to a processing speed deficit and/or mental fatigue;

2.08(10)(b)(iii) Deficits in sensory-motor skills that affect either one, or both, visual or auditory processing, and may include gross motor and/or fine motor deficits;

2.08(10)(b)(iv) Delays in acquisition of information including new learning and visual-spatial processing;

2.08(10)(b)(v) Difficulty with language skills, including but not limited to receptive language, expressive language and social pragmatics;

2.08(10)(b)(vi) Deficits in behavior regulation, including but not limited to impulsivity, poor judgment, ineffective reasoning and mental inflexibility;

2.08(10)(b)(vii) Problems in cognitive executive functioning, including but not limited to difficulty with planning, organization and/or initiation of thinking and working skills;

2.08(10)(b)(viii) Delays in adaptive living skills, including but not limited to difficulty with activities of daily living (ADL); and/or

2.08(10)(b)(ix) Delays in academic skills, including but not limited to reading, writing, and math delays that cannot be explained by any other disability. They may also demonstrate an extremely uneven pattern in cognitive and achievement testing, work production and academic growth.

2.08(11) A child with a Visual Impairment, Including Blindness shall have a deficiency in visual acuity and/or visual field and/or visual functioning where, even with the use of lenses or corrective devices, he/she is prevented from receiving reasonable educational benefit from general education.

2.08(11)(a) A determination that a child is an eligible child with a Visual Impairment, Including Blindness shall be based upon one or more of the following:

2.08(11)(a)(i) Visual acuity of no better than 20/70 in the better eye after correction;

2.08(11)(a)(ii) Visual field restriction to 20 degrees or less; and/or

2.08(11)(a)(iii) A physical condition of visual system which cannot be medically corrected and, as such, affects visual functioning to the extent that specially designed instruction is needed. These criteria are reserved for special situations such as, but not restricted to cortical visual impairment and/or a progressive visual loss where field and/or acuity deficits alone may not meet the aforementioned criteria.

2.08(11)(b) As a result of the Visual Impairment, Including Blindness, as set out above, the child requires specialized instruction, which may include special aids, materials, and equipment, for learning, literacy, activities of daily living, social interaction, self advocacy, and, as needed, orientation and mobility.

2.08(11)(c) The term "Visual Impairment, Including Blindness" does not include children who have learning problems which are primarily the result of visual perceptual and/or visual motor difficulties.

2.08(12) A child with Deaf-blindness has concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness. A child may qualify as an eligible child with Deaf-blindness by meeting one of the following criteria:

2.08(12)(a) The child shall have a deficiency in hearing sensitivity as demonstrated by an elevated threshold of auditory sensitivity to pure tones or speech, as specified in section 2.08(2)(a) and (b); and a deficiency in visual acuity and/or visual field and/or visual functioning, as specified in section 2.08(11)(a) and (b), where, even with the help of amplification and/or use of lenses or corrective devices, he/she is prevented from receiving reasonable educational benefit from general education; or

2.08(12)(b) The child has documented hearing and/or visual impairment that, if considered individually per section 2.08(2)(a) and (b) and section 2.08(11)(a) and (b), may not meet the requirements for Hearing Impairment, Including Deafness or Visual Impairment, Including Blindness, but the combination of such losses adversely affect the student's educational performance; or

2.08(12)(c) The child has a documented medical diagnosis of a progressive medical condition that will result in concomitant hearing and visual losses.

2.08(13) A child with a Developmental Delay shall be three through eight years of age and who is experiencing developmental delays in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or

adaptive development and as a result is unable to receive reasonable educational benefit from general education and requires special education and related services.

2.08(13)(a) For children ages three through eight efforts will be made to identify a child's primary disability under one of the other Part B eligibility criteria. A child shall be determined to be eligible under the Developmental Delay category only in those situations in which a clear determination cannot be made under any other category as measured by developmentally appropriate diagnostic instruments and procedures. In order for a child to be deemed a child with a Developmental Delay, multiple sources of information must be used to determine if a child meets one or more of the following criteria:

2.08(13)(a)(i) A score in the seventh percentile or below on a valid standardized diagnostic instrument, or the technical equivalent in standard scores (77 if the mean is 100 and the standard deviation is 15) or standard deviations (1.5 standard deviations below the mean) in one or more of the following areas of development: physical development, cognitive development, communication development, social or emotional development, or adaptive development as one of the multiple sources of evaluation information;

2.08(13)(a)(ii) Empirical data showing a condition known to be associated with significant delays in development; or

2.08(13)(a)(iii) A body of evidence indicating that patterns of learning are significantly different from age expectations across settings and there is written documentation by the evaluation team which includes the parent(s).

2.08(14) An Infant / Toddler with a Disability shall be a child from birth through two years of age meeting the definition and criteria described in 2 CCR 503-1, 16.920 D.

2.09 Communication Mode or Language

Communication Mode or Language means one or more of the following systems or methods of communication applicable to children who are deaf or hard of hearing:

2.09(1) American Sign Language;

2.09(2) English-based manual or sign systems; or

2.09(3) Oral, aural, or speech-based training.

2.10 Consent

Consent means that:

2.10(1) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

2.10(2) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

2.10(3)(a) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime.

2.10(3)(b) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

2.10(3)(c) If the parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

2.11 Day; Business Day; School Day

2.11(1) *Day* means calendar day unless otherwise indicated as business day or school day.

2.11(2) *Business Day* means Monday through Friday, except for federal and state holidays (unless holidays are specifically included in the designation of business day (e.g., 34 CFR §300.148(d)(1)(ii)).

2.11(3) *School Day* has the same meaning for all children in school, including children with and without disabilities and shall mean any day, including a partial day that children are in attendance at school for instructional purposes.

2.12 Department

Department means the Department of Education, created and existing pursuant to Section 24-1-115, C.R.S.

2.13 Educational Surrogate Parent

Educational Surrogate Parent shall mean a person who meets the qualifications established in Section 6.02(8)(e)(iii) of these Rules and is assigned to represent the child in all educational decision-making processes pertaining to the identification, evaluation, educational placement of the child and the provision of a free, appropriate public education to the child whenever the parent of a child with a disability is unknown, cannot be located, is unavailable or the child is a ward of the State. The assignment of an educational surrogate parent shall be in accordance with Section 6.02(8) of these Rules.

2.14 Equipment

Equipment means that equipment used especially for the instruction or evaluation of children with disabilities.

2.15 ESEA

ESEA means the federal " Elementary and Secondary Education Act ", 20 U.S.C. § §6301-9276.

2.16 Evaluation

2.16(1) For purposes of Part B of IDEA, the term *"Evaluation"* means procedures used in accordance with Section 4.02(2) of these Rules, to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.

2.16(2) For purposes of Part C Child Find of IDEA, the term *"Evaluation"* means procedures used to determine a child's initial and continuing eligibility for Part C Child Find, including but not limited to:

2.16(2)(a) Determining the status of the child in each of the developmental areas;

2.16(2)(b) Identifying the child's unique strengths and needs;

2.16(2)(c) Identifying any early intervention services that might serve the child's needs; and

2.16(2)(d) Identifying priorities and concerns of the family and resources to which the family has access.

2.17 Excess Costs

When used in 34 CFR Part B, *Excess Costs* means those costs that are in excess of the average annual per-student expenditure in an AU or state-operated program during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that must be computed after deducting: When used in 34 CFR Part B, Excess Costs means those costs that are in excess of the average annual per-student expenditure in an AU or state-operated program during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that must be computed after deducting:

2.17(1) Amounts received:

2.18(1)(a) Under Part B of the Act;

2.18(1)(b) Under Part A of Title I of the ESEA; and

2.18(1)(c) Under Parts A and B of Title III of the ESEA and;

2.17(2) Any state or local funds expended for programs that would qualify for assistance under any of the Parts described in paragraph (1) of this Section, but excluding any amounts for capital outlay or debt service. (See Appendix A of 34 CFR Part 300 for an example of how excess costs must be calculated.)

2.17(3) This definition for "Excess Costs" is different from the term "Tuition Costs" as defined in Section 9.00 of these Rules.

2.18 Facility

Facility means a day treatment center, residential child care facility, or other facility licensed by the department of human services pursuant to section 26-6-104, C.R.S., or a hospital licensed by the department of public health and environment pursuant to section 25-1.5-103, C.R.S.

2.18(1) *Approved Facility School* means an educational program that is operated by a facility to provide educational services to students placed in the facility, including special education services to children with disabilities, and that has been placed, pursuant to section 22-2-407, C.R.S., on the list of facility schools that are approved to receive reimbursement for providing those educational services. An educational program provided by an administrative unit at a facility is not an approved facility school, but rather is an educational program of the administrative unit that does not require approval by the Department.

2.19 Free Appropriate Public Education

Free Appropriate Public Education or FAPE means special education and related services that:

2.19(1) Are provided at public expense, under public supervision and direction, and without charge;

2.19(2) Meet the standards of the Department, including the requirements of these Rules;

2.19(3) Include an appropriate preschool, elementary school, or secondary school education in the State; and

2.19(4) Are provided in conformity with an individualized education program (IEP) that meets the IEP content, development, review and revision requirements of Section 4.03 of these Rules and 34 CFR § §300.320 through 300.324.

2.20 Highly Qualified Special Education Teachers

Special education teachers in administrative units, state-operated programs and approved facility schools, who are teaching core academic subjects (i.e., English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography) must meet the highly qualified requirements established in 34 CFR §300.18.

2.21 Homeless Children

Homeless Children has the meaning given the term Homeless Children and Youths in Section 725 (42 U.S.C. 11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11431 et seq. and Section 22-1-102.5, C.R.S.

2.22 IDEA

IDEA means the federal "Individuals with Disabilities Education Improvement Act of 2004", 20 U.S.C. §1400 et seq., as amended, and its implementing regulations, 34 CFR Part 300 and also 34 CFR Part 303, as those regulations pertain to child find.

2.23 Include

Include means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

2.24 Individualized Education Program

Individualized Education Program or *IEP* means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with Section 4.03 of these Rules and 34 CFR § §300.320 through 300.324.

2.25 Individualized Education Program Team

Individualized Education Program Team or *IEP* Team means a group of individuals described in Section 4.03(5) of these Rules that is responsible for developing, reviewing, or revising an IEP for a child with a disability.

2.26 Individual Family Service Plan

Individual Family Service Plan or *IFSP* means a written statement for a child from birth through two years of age with a disability, which statement is developed, reviewed, and revised in accordance with Part C Child Find of IDEA and with rules promulgated by the Department of Human Services.

2.27 Institution of Higher Education

Institution of Higher Education -

2.27(1) Has the meaning given the term in Section 101 of the Higher Education Act of 1965, as amended, 20 U.S.C. 1021 et seq. (HEA); and

2.27(2) Also includes any community college receiving funds from the Secretary of the Interior under the tribally controlled Community College or University Assistance Act of 1978, 25 U.S.C. 1801, et seq.

2.28 Least Restrictive Environment

Consistent with 34 CFR §300.114(a)(2), *Least Restrictive Environment* means that:

2.28(1) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and

2.28(2) Special classes, separate schooling, or other removal of children with disabilities from the general educational environment occurs only if the nature or severity of the disability is such that education in general educational classes with the use of supplementary aids and services cannot be achieved satisfactorily.

2.29 Limited English Proficient

Limited English Proficient has the meaning given the term in Section 9101(25) of the ESEA.

2.30 Literacy Mode

Literacy Mode means one of the following four systems or methods of achieving literacy applicable to children who are blind:

2.30(1) Auditory Mode means any method or system of achieving literacy that depends upon the auditory senses, including the use of readers, taped materials, electronic speech, speech synthesis, or any combination of the above.

2.30(2) Braille means the system of reading and writing by means of raised points, commonly known as Standard English Braille.

2.30(3) Print Enlargement means any method or system of achieving literacy that includes optical aids to enhance apprehension of printed material, electronic enlargement or printed material, books and textual materials printed in large print, and any combination of the above.

2.30(4) Regular Print Mode means any method or system of achieving literacy that depends upon the apprehension of regular-sized printed material.

2.31 Local Educational Agency

When used in 34 CFR Part B, the term *Local Educational Agency* means an administrative unit, as defined in Section 2.02 of these Rules, or a state-operated program as defined in Section 2.49 of these Rules.

2.32 Native Language

2.32(1) *Native Language*, when used with respect to an individual who is limited English proficient, means the following:

2.32(1)(a) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in paragraph (1)(b) of this Section.

2.32(1)(b) In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment.

2.32(2) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication).

2.33 Parent

2.33(1) *Parent* means-

2.33(1)(a) A biological or adoptive parent of a child;

2.33(1)(b) A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;

2.33(1)(c) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);

2.33(1)(d) An individual acting in the place of a biological or adoptive parent (including a grandparent, step-parent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or

2.33(1)(e) An educational surrogate parent who has been assigned in accordance with Section 6.02(8) of these Rules.

2.33(2)(a) Except as provided in Section (2)(b) of this Rule 2.33, the biological or adoptive parent, when attempting to act as the parent under these Rules and when more than one party is qualified under Section (1) of this Rule 2.33 to act as a parent, must be presumed to be the parent for purposes of this Section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

2.33(2)(b) If a judicial decree or order identifies a specific person or persons under Sections (1)(a) through (d) of this Rule 2.33 to act as the "parent" of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the "parent" for purposes of this Section.

2.34 Personally Identifiable

Personally Identifiable means information that contains-

2.34(1) The name of the child, the child's parent, or other family member;

2.34(2) The address of the child;

2.34(3) A personal identifier, such as the child's social security number or student number; or

2.34(4) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

2.35 Public Agency

The term *" Public Agency "* :

2.35(1) When used in connection with out of district placements, shall have the meaning given it in Section 9.01(5) of these Rules.

2.35(2) When used in 34 CFR Part 300, shall mean an administrative unit, as defined in Section 2.02 of these Rules, and a state-operated program as defined in Section 2.49 of these Rules.

2.36 Public Placement

The term *"Public Placement"* shall have the meaning given it in Section 9.01(6) of these Rules.

2.37 Related Services

2.37(1) General.

Related Services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes audiology services; interpreting services; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; early identification and evaluation of disabilities in children; counseling services, including rehabilitation counseling; orientation and mobility services; and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services; social work services in schools; and parent counseling and training.

2.37(2) Exception.

Services that apply to children with surgically implanted devices, including cochlear implants.

2.37(2)(a) Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device.

2.37(2)(b) Nothing in Section 2.37(2)(a)-

2.37(2)(b)(i) Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in paragraph (a) of this Section) that are determined by the IEP Team to be necessary for the child to receive FAPE.

2.37(2)(b)(ii) Limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or

2.37(2)(b)(iii) Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly, as required in 34 CFR §300.113(b).

2.37(3) Individual related services terms defined.

The terms used in this definition are defined as follows:

2.37(3)(a) Audiology includes-

2.37(3)(a)(i) Identification of children with hearing loss;

2.37(3)(a)(ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

2.37(3)(a)(iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;

2.37(3)(a)(iv) Creation and administration of programs for prevention of hearing loss;

2.37(3)(a)(v) Counseling and guidance of children, parents, and teachers regarding hearing loss; and

2.37(3)(a)(vi) Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

2.37(3)(b) Counseling services means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

2.37(3)(c) Early identification and assessment of disabilities in children means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

2.37(3)(d) Interpreting services that includes-

2.37(3)(d)(i) The following, when used with respect to children who are deaf or hard of hearing: oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), c-print, and typewell; and

2.37(3)(d)(ii) Special interpreting services for children who are deaf-blind.

2.37(3)(e) Medical services means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.

2.37(3)(f) Occupational therapy-

2.37(3)(f)(i) Means services provided by a qualified occupational therapist; and

2.37(3)(f)(ii) Includes-

2.37(3)(f)(ii)(A) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;

2.37(3)(f)(ii)(B) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and

2.37(3)(f)(ii)(C) Preventing, through early intervention, initial or further impairment or loss of function.

2.37(3)(g) Orientation and mobility services-

2.37(3)(g)(i) Means services provided to blind or visually impaired children by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and

2.37(3)(g)(ii) Includes teaching children the following, as appropriate:

2.37(3)(g)(ii)(A) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);

2.37(3)(g)(ii)(B) To use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for children with no available travel vision;

2.37(3)(g)(ii)(C) To understand and use remaining vision and distance low vision aids; and

2.37(3)(g)(ii)(D) Other concepts, techniques, and tools.

2.37(3)(h) Parent counseling and training means assisting parents in understanding the special needs of their child; providing parents with information about child development; and helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.

2.37(3)(i) Physical therapy means services provided by a qualified physical therapist.

2.37(3)(j) Psychological services includes-

2.37(3)(j)(i) Administering psychological and educational tests, and other assessment procedures;

2.37(3)(j)(ii) Interpreting assessment results;

2.37(3)(j)(iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;

2.37(3)(j)(iv) Consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;

2.37(3)(j)(v) Planning and managing a program of psychological services, including psychological counseling for children and parents; and

2.37(3)(j)(vi) Assisting in developing positive behavioral intervention strategies.

2.37(3)(k) Recreation includes-

2.37(3)(k)(i) Assessment of leisure function;

2.37(3)(k)(ii) Therapeutic recreation services;

2.37(3)(k)(iii) Recreation programs in schools and community agencies; and

2.37(3)(k)(iv) Leisure education.

2.37(3)(l) Rehabilitation counseling services means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 et seq.

2.37(3)(m) School health services and school nurse services means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.

2.37(3)(n) Social work services in schools includes-

2.37(3)(n)(i) Preparing a social or developmental history on a child with a disability;

2.37(3)(n)(ii) Group and individual counseling with the child and family;

2.37(3)(n)(iii) Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;

2.37(3)(n)(iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and

2.37(3)(n)(v) Assisting in developing positive behavioral intervention strategies.

2.37(3)(o) Transportation includes-

2.37(3)(o)(i) Travel to and from school and between schools;

2.37(3)(o)(ii) Travel in and around school buildings; and

2.37(3)(o)(iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

2.38 Scientifically Based Research

Scientifically Based Research has the meaning given the term in Section 9101(37) of the ESEA.

2.39 School

2.39(1) Elementary School

When used in 34 CFR Part B, *Elementary School* means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.

2.39(2) Secondary School

When used in 34 CFR Part B, *Secondary School* means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

2.40 School District

School District means a school district organized and existing pursuant to law, but shall not include a junior college district.

2.41 Services Plan

Services Plan means a written statement that describes the special education and related services the administrative unit will provide to a parentally-placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, consistent with 34 CFR §300.132, and is developed and implemented in accordance with 34 CFR § §300.137 through 300.139.

2.42 Secretary

The term *"Secretary",* when used in 34 CFR Parts 300 and 303, means the Secretary of the United States Department of Education.

2.43 Special Education

2.43(1) General.

2.43(1)(a) *Special Education* means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including -

2.43(1)(a)(i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

2.43(1)(a)(ii) Instruction in physical education.

2.43(1)(b) Special education includes each of the following, if the services otherwise meet the requirements of paragraph (1)(a) of this Section -

2.43(1)(b)(i) Speech-language pathology services that includes -

2.43(1)(b)(i)(A) Identification of children with speech or language impairments;

2.43(1)(b)(i)(B) Diagnosis and appraisal of specific speech or language impairments;

2.43(1)(b)(i)(C) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;

2.43(1)(b)(i)(D) Provision of speech and language services for the habilitation or prevention of communicative impairments; and

2.43(1)(b)(i)(E) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

2.43(1)(b)(i)(F) Rule of construction: A child with a disability, as defined in Section 2.08 of these Rules, shall be entitled to receive speech language

pathology services as specially designed instruction if the child's IEP Team determines that the child needs speech language pathology services in order to receive a free appropriate public education.

2.43(1)(b)(ii) Travel training; and

2.43(1)(b)(iii) Vocational education.

2.43(2) Individual special education terms defined.

The terms in this definition are defined as follows:

2.43(2)(a) *At no cost* means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the general education program.

2.43(2)(b) *Physical education* means -

2.43(2)(b)(i) The development of -

2.43(2)(b)(i)(A) Physical and motor fitness;

2.43(2)(b)(i)(B) Fundamental motor skills and patterns; and

2.43(2)(b)(i)(C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and

2.43(2)(b)(ii) Includes special physical education, adapted physical education, movement education, and motor development.

2.43(2)(c) *Specially designed* instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction -

2.43(2)(c)(i) To address the unique needs of the child that result from the child's disability; and

2.43(2)(c)(ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards of the responsible administrative unit or state-operated program as established in Section 8.00 of these Rules.

2.43(2)(d) *Travel training* means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to -

2.43(2)(d)(i) Develop an awareness of the environment in which they live; and

2.43(2)(d)(ii) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

2.43(2)(e) *Vocational education* means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.

2.44 Special Education Expenditures

Special Education Expenditures are those costs which are incurred by an administrative unit, state-operated program or approved facility school for professional services associated with special education referrals and evaluations of children who may be disabled and for the provision of special education and related services as identified on individual students' Individualized Educational Programs (IEPs), and do not include costs of the regular education program. Special Education expenditures shall be supplemental to the general education program and shall be above what is provided by the administrative unit, state-operated program, or approved facility school for general education students and staff and may include:

2.44(1) Special education teachers;

2.44(2) Home-hospital teachers for students with disabilities;

2.44(3) Speech-language pathologists and speech-language pathology assistants;

2.44(4) Specialty teachers (e.g., adapted physical education teachers, music teachers, art teachers, family and consumer education teachers, and industrial/technical education teachers);

2.44(5) Special education instruction paraprofessionals;

2.44(6) Educational interpreters;

2.44(7) School nurses;

2.44(8) Occupational therapists and occupational therapy assistants;

2.44(9) Physical therapists and physical therapy assistants;

2.44(10) School psychologists;

2.44(11) School social workers;

2.44(12) Audiologists;

2.44(13) Orientation and mobility specialists;

2.44(14) Other special education professionals;

2.44(15) Special education administrators and office support;

2.44(16) Other noncertified or nonlicensed support;

2.44(17) Employee benefits for special education staff;

2.44(18) Supplies, materials, and equipment used for individual students' special education programs and services;

2.44(19) Purchased service contracts for personal services;

2.44(20) Tuition to other administrative units and approved tuition rates to approved facility schools for special education;

2.44(21) Staff travel related to special education;

2.44(22) Professional development for special education staff, or all staff, if the content of the professional development is specific to services for children with disabilities;

2.44(23) Other purchased services related to special education;

2.44(24) Dues, fees and other expenditures specific to the special education program; and

2.44(25) Parent counseling and training, as defined by the IDEA and its implementing regulations.

2.45 Special Education Services

Special Education Services or *Special Education Programs* means the services or programs provided to a child with a disability in conformity with the child's IEP or IFSP.

2.46 State Board

State Board means the State Board of Education, created and existing pursuant to Section 1 of Article IX of the State Constitution.

2.47 State Charter School Institute

State Charter School Institute means the State Charter School Institute created pursuant to Part 5 of Article 30.5 of Title 22, C.R.S.

2.48 State Educational Agency

The term *"State Educational Agency",* when used in 34 CFR Parts 300 and 303, means the Colorado Department of Education.

2.49 State-Operated Program

State-Operated Program means an approved school program supervised by the Department and operated by:

2.49(1) The Colorado School for the Deaf and the Blind;

2.49(2) The Department of Corrections; or

2.49(3) The Department of Human Services, including but not limited to the Division of Youth Corrections and the Mental Health Institutes at Fort Logan and Pueblo.

2.50 Supplementary Aids and Services

Supplementary Aids and Services means aids, services, and other supports that are provided in general education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with 34 CFR § §300.114 through 300.116.

2.51 Transition Services

2.51(1) *Transition Services* means a coordinated set of activities for a child with a disability that -

2.51(1)(a) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

2.51(1)(b) Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes -

2.51(1)(b)(i) Instruction;

2.51(1)(b)(ii) Related services;

2.51(1)(b)(iii) Community experiences;

2.51(1)(b)(iv) The development of employment and other post-school adult living objectives; and

2.51(1)(b)(v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

2.51(2) Transition services for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education.

2.52 Universal Design

The term *"Universal Design",* when used in 34 CFR Parts 300 and 303, has the meaning given the term in Section 3 of the Assistive Technology Act of 1998, as amended, 29 U.S.C. 3002.

2.53 Ward of the State

As used in 34 CFR Part B, the term *Ward of the State* means:

2.53(1) General. Subject to 2.53(2) of this Section, ward of the State means a child who, as determined by the State where the child resides, is -

2.53(1)(a) A foster child;

2.53(1)(b) A ward of the State; or

2.53(1)(c) In the custody of a public child welfare agency.

2.53(2) Exception. Ward of the State does not include a foster child who has a foster parent who meets the definition of a parent in Section 2.33 of these Rules.

2220-R-3.00 ADMINISTRATION

3.01 Standards For Administrative Units

3.01(1) A special education administrative unit shall satisfy the following standards.

3.01(1)(a) The administrative unit shall be deemed to be of sufficient size and geographic makeup if it fulfills the requirements of the IDEA, the ECEA and their implementing regulations. Administrative unit compliance with these requirements shall be measured by:

3.01(1)(a)(i) The administrative unit’s performance as determined by monitoring activities conducted by the Department including: desk audits; focused and comprehensive on-site monitoring; dispute resolution findings; and verification activities to ensure timely correction of noncompliance;

3.01(1)(a)(ii) The administrative unit's performance as determined by its annual determination issued by the Department consistent with 34 CFR § 300.604 and related indicators under Colorado's IDEA Part B State Performance Plan;

3.01(1)(a)(iii) A federal application, approved by the Department, for IDEA Part B and Preschool grant funds;

3.01(1)(a)(iv) Compliance with all federal and state reporting requirements, including fiscal and data reporting requirements;

3.01(1)(a)(v) Compliance with IDEA Part B and IDEA Preschool grant fiscal requirements, including maintenance of effort, excess costs and "supplement not supplant" requirements;

3.01(1)(a)(vi) Maintaining auditable documentation to track expenditures of state and federal special education funds, to ensure that the funds are used solely for allowable uses, as defined by federal and state law;

3.01(1)(b) Provide for sufficient instructional and related services staff to identify and evaluate children who are suspected of having a disability, and plan for and provide appropriate services for all children with disabilities as defined by ECEA Rule 2.08.

3.01(1)(c) Employment of a properly licensed and endorsed professional who will function at least half time as director of special education and who has the authority and responsibility to assure that all the duties and responsibilities of the administrative unit as specified in these Rules are carried out.

3.01(1)(d) Development and implementation of compliant special education comprehensive plan as required by IDEA and approved by the Department.

3.01(1)(e) Accurate completion and submission of all special education student, staff, cost and revenue data on or before dates established by the Department of Education.

3.01(1)(f) Governance by a board which may be a local board as follows:

3.01(1)(f)(i) In the case of a single district administrative unit, the local board of education;

3.01(1)(f)(ii) In the case of an administrative unit that is a board of cooperative services, the board of cooperative services;

3.01(1)(f)(iii) In the case of a multi-district ~~consortium~~ administrative unit, ~~approved by the Department prior to January 1, 2011,~~ governance consistent with the administrative unit's operating agreement~~a local board comprised of representatives from each of the member school districts~~; and

3.01(1)(f)(iv) In the case of the Charter School Institute, the Institute Board.

3.01(2) 3.01(2) Organization of Administrative Units

Every school district and Board of Cooperative Services that provides services to children with disabilities shall be an administrative unit or a part of an administrative unit.

3.01(2)(a) Districts that do not meet the qualifications of an administrative unit shall enter into an operating agreement to become part of an approved administrative unit that is a

board of cooperative services and shall abide by all policies and procedures contained in that unit's comprehensive plan. Multi-district administrative units shall have signed operating agreements entered into by the administrative unit with its member districts. Such operating agreements shall clearly set out the special education responsibilities of the administrative unit and each member district and shall be binding throughout the period of the operating agreement, regardless of change in governance of the member school districts, change in composition of the administrative unit, or personnel changes in a member district or the administrative unit. The operating agreement shall also address the special education fiscal arrangement between the AU and its member districts.

3.01(2)(b) The administrative unit shall provide special education services to all children with disabilities within its responsibility as defined in Section 8.00 of the Rules.

3.01(2)(c) Existing units that do not meet the qualifications and/or for the efficient administration of or provision of services stipulated in these Rules shall be subject to revocation of unit status and loss of all state and federal special education funds. Notice of such revocation shall be in writing from the Department of Education and subject to the appeal process.

3.01(3) Applications for new or reorganized Administrative Units

3.01(3)(a) Administrative units or member school districts of administrative units desiring to form new or reorganized administrative units shall submit an application to the State Director of Special Education and the AU of which the district is currently a member by September 1 of the year preceding the fiscal year in which the new administrative unit proposes to begin operation. This application will demonstrate it has the capacity to meet the standards of 3.01 and shall include:

3.01(3)(a)(i) A letter of intent that:

3.01(3)(a)(i)(A) Specifies the objectives to be sought by the change;

3.01(3)(a)(i)(B) Outlines how the proposed administrative unit will comply with the requirements of the ECEA Rules, including the operating agreement requirement for multi-district administrative units;

3.01(3)(a)(i)(C) Includes a proposed compliant comprehensive plan for the newly reorganized administrative unit(s);

3.01(3)(b) For any applicant(s) that has not met its current maintenance of effort requirement, the application must demonstrate that the current and the proposed administrative units will satisfy the maintenance of effort requirement;

3.01(3)(c) For any applicants(s) that has or creates an average cost per student with disabilities greater than or equal to the 93rd percentile or less than or equal to the 7th percentile of the state's average cost per student with disabilities, an explanation in its application of legitimate reasons for the deviations (e.g., impact of high cost students, geographic constraints, staffing costs) and/or how the proposed administrative unit will efficiently deliver special education services.

3.01(3)(d) For any applicant(s) that has not met the federal and state requirements for provision of special education services to students with disabilities, the application must demonstrate that the proposed administrative unit will have the capacity to meet those requirements.

3.01(3)(e) Either the Department or any entity impacted by an application for a new or reorganized administrative unit may requests the entity seeking the change to secure and pay for a report prepared by a Department-approved independent third party, which report shall describe the anticipated revenues and expenditures for all affected administrative units. The independent third party shall possess sufficient expertise in the following areas: accounting, special education budget development and projection, and special education fiscal requirements. The request for the third party report must be made within 30 calendar days of the day the Department notifies the applicant and affected entities that the application is complete (see Rule 3.01(4)).

3.01(4) Timelines for Review of Application for a New or Reorganized Administrative Unit

Upon receipt of an application to form a new or reorganized administrative unit, the Department shall review the application to determine whether it contains the documentation and information required by this Rule. The Department shall have 15 calendar days from the date of receipt of the application to determine whether the application is complete. The Department shall provide the applicant and affected entities with written notification of its determination by the 16th day following the receipt of the application.

3.01(4)(a) If an applicant to form a new or reorganized administrative unit fails to timely submit a complete application containing the documentation and information required by this Rule, the application shall be deemed incomplete and shall be denied.

3.01(4)(b) If an applicant to form a new or reorganized administrative unit timely submits a complete application and the Department determines that it does not require additional information or documentation, the Department shall have 60 calendar days from the day it provides the applicant with the notification required by this section in which to approve or deny the application.

3.01(4)(c) If an applicant timely submits a complete application but the Department or another entity determines it requires additional information or documentation, the Department's notification shall identify the specific information or documentation requested, including, as necessary, information from affected administrative units. The applicant shall provide the requested information or documentation to the Department by October 1. The Department shall have 60 calendar days from the day it receives the supplemental information or documentation to approve or deny the application.

3.01(5) Department of Education Approval of Application for a New or Reorganized Administrative Unit

3.01(5)(a) The Department shall approve an application for a new or reorganized administrative unit only if the application materials submitted by the applicant demonstrate by clear and convincing evidence:

3.01(5)(a)(i) That the proposed administrative unit will be able to meet all of its obligations, including maintenance of effort, under state and federal special education law; and

3.01(5)(a)(ii) That the existing or remaining administrative unit will be able to meet all of its obligations, including maintenance of effort, under state and federal special education law.

3.01(5)(b) In reviewing an application, the Department shall also consider the impact of approving additional administrative units on the efficiency and effectiveness of all existing AUs and on the Department.

3.01(5)(c) The Department shall present its decision approving or denying an application in writing to the applicant and affected entities, including its reasons for denying an application, as applicable.

3.01(5)(d) If an affected entity disagrees with the determination of the Department, the affected entity may appeal the decision to the Commissioner of the Department of Education. In hearing an appeal, the Commissioner shall only overturn a decision by the Department upon a finding that that in approving or denying the application, the Department or the applicant violated the application procedures or processes required by the ECEA, or that the Department's decision was not supported by clear and convincing evidence presented in the application. The party bringing the appeal bears all burdens of proof, presentation and persuasion to demonstrate that the decision of the Department should be overturned.

3.01(5)(d)(i) The affected entity shall submit its appeal to the Commissioner within 60 days of the entity's receipt of the Department's decision to approve or deny the application.

3.01(5)(d)(ii) The Commissioner shall consider the appeal and make a determination concerning the appeal within 60 days of the date the appeal is submitted. The Commissioner shall provide written notice of the decision on appeal to the affected entity.

3.01(5)(d)(iii) The decision of the Commissioner shall be final and shall not be subject to further review. Neither the decision of the Department nor the Commissioner's decision on an appeal shall be appealable to the State Board of Education pursuant to ECEA Rule 7.07.

3.02 3.02 Standards for Approved Facility Schools and State Operated Programs

3.02(1) Approved Facility Schools – see Rules for the Administration of the Facility Schools Act, 1 CCR 304-1.

3.02(2) State Operated Programs

3.02(2)(a) Minimum Standards for State Operated Programs.

State Operated Programs shall satisfy the following standards.

3.02(2)(a)(i) Employment of sufficient instructional and related services staff to identify and assess children who are suspected of having a disability, and plan for and provide appropriate services for all children who have been determined to have a disability.

3.02(2)(a)(ii) Each state-operated program shall employ or contract in writing, on at least a part-time basis, for a Director of Special Education who meets the qualification standards established by Section 3.04(1)(d) of these Rules.

3.02(2)(a)(iii) Development and implementation of an approved special education comprehensive plan.

3.02(2)(a)(iv) Accurate completion and submission of all special education student, staff, cost and revenue data on or before dates established by the Department of Education.

3.02(2)(a)(v) Provision of special education and related services to all children with disabilities placed in or committed to the State Operated Program.

3.03 Resource Allocation

Sufficient personnel shall be available to provide for identification, referral, evaluation, determination of disability and eligibility for special education services and development and review of IEPs, and to provide appropriate special education instructional and related services to implement all IEPs for children with disabilities.

3.03(1) Each administrative unit shall have a method or standards by which it determines the number and types of special education personnel required to meet the needs of children with disabilities. Such method or standard shall be a part of the local comprehensive plan.

3.03(2) Each administrative unit shall assure that licensed/certificated personnel qualified in a child's identified area(s) of need will have diagnostic and ongoing instructional responsibilities and contact with the child and the child's other service providers and parents.

3.04 Personnel Qualifications

All personnel providing special education services to children with disabilities shall be qualified.

3.04(1) Personnel qualifications.

3.04(1)(a) Teachers

3.04(1)(a)(i) Special education.

All special education teachers shall hold Colorado teacher's certificates or licenses with appropriate endorsements in special education. Special education teachers shall also be highly qualified, consistent with Section 2.20 of these Rules.

Each special education teacher will serve, at a minimum, a majority of special education students with the same identified area of need as that teacher's special education license or certification endorsement. The endorsement level must be appropriate for the age being taught.

3.04(1)(a)(ii) Home-hospital.

Home-hospital teachers for children with disabilities shall hold Colorado teacher's certificates or licenses.

3.04(1)(a)(iii) Specialty.

Specialty teachers in music, art, adapted physical education, home economics, industrial arts and vocational education shall possess Colorado teacher's certificates or licenses with endorsements in the area of instruction.

3.04(1)(b) Related services personnel.

All related services personnel providing services to children with disabilities shall hold Colorado special services licenses or certificates with appropriate endorsements. For those areas for which Colorado special services licenses or certificates are not available,

appropriate licenses from the state regulatory agency or professional organization registration are required.

3.04(1)(c) Special education coordinators.

Special education coordinators shall have at least a Bachelor's degree and certification and/or licensure in a relevant field. Documentation of their expertise shall be submitted to the Department of Education.

3.04(1)(d) Administrators.

Special education directors and assistant directors must possess a certificate or administrator's license with appropriate endorsement.

3.04(1)(e) Paraprofessionals.

Each administrative unit or approved facility school will determine the qualifications and competencies required for paraprofessionals. Administrative units and approved facility schools shall assure and document that they meet the requirements for supervision of non-certificated personnel as mandated under Section 22-32-110(1)(ee), C.R.S.

3.04(1)(f) Educational Interpreters

As of July 1, 2000, any person employed as an Educational Interpreter by an administrative unit or approved facility school on a full-time or part-time basis shall meet the following minimum standards, and documentation for meeting these standards must be renewed every five years:

3.04(1)(f)(i) Demonstration of a rating of 3.5 (average) or better in the four areas of the Educational Interpreter Performance Assessment (EIPA).

3.04(1)(f)(ii) Documented content knowledge in these areas: child development, language development, curriculum, teaching and tutoring methods, deafness and the educational process for deaf children.

The Colorado Department of Education will provide guidelines for the implementation of these minimum standards.

3.04(2) [Repealed]

3.04(3) Temporary Educator Eligibility Authorization (SETA)

If an administrative unit or approved facility school is unable to employ a person who is appropriately licensed and endorsed, the director of special education may employ a person who does not yet meet the licensing requirements but who is enrolled in an approved special education instructional, special services or special education director preparation program. The employing administrative unit or approved facility school may apply to the Department of Education for a temporary educator eligibility authorization. The temporary educator eligibility authorization process described herein, and authorized by Section 22-60.5-111(5) of the Colorado Revised Statutes, shall be formally referred to as Special Education Temporary Authorization ("SETA"). A SETA may be issued under the following circumstances:

3.04(3)(a) The director of special education shall certify that, after reasonable efforts to hire an acceptable, appropriately endorsed person to provide specific and essential special education services, none could be found. Documentation of the search which was made

to find an acceptable, appropriately endorsed person shall be maintained by the administrative unit or approved facility school.

3.04(3)(b) A SETA is valid for one school year and may be renewed twice, for a maximum approval cycle of three school years.

3.04(3)(c) An applicant for a SETA shall be subject to the following conditions:

3.04(3)(c)(i) Possess a Colorado teacher, special service provider or administrator credential. If the applicant does not hold an acceptable Colorado credential, the SETA will serve as the credential for the school year approval cycle.

3.04(3)(c)(ii) Upon employment, submit to the Department of Education an online SETA application which has been authorized by the employing administrative unit or approved facility school.

3.04(3)(c)(iii) For initial SETA approval, document enrollment in an approved special education bachelor's or higher degree preparation program from an accepted institution of higher education.

3.04(3)(c)(iv) For continued SETA approval for 2nd and 3rd year renewals, document continued enrollment and satisfactory progress made toward completion of the approved special education bachelor's or higher degree preparation program from an accepted institution of higher education.

3.04(3)(c)(v) Has met the minimum degree requirements necessary to practice in the area of specialization, and only needs recent credit and/or successful completion of content area examinations (PLACE or PRAXIS) to qualify for Colorado licensure in the appropriate area of special education.

3.04(3)(d) The applicant may apply for Modified SETA. Verification of enrollment in a bachelor's or higher degree preparation program is not required for these applicants, but rather, documentation of the steps the applicant is taking to fulfill the deficiency area is required.

3.04(3)(e) If extenuating circumstances prevent the applicant from meeting the initial enrollment, continued satisfactory progress, recent credit or content area examination requirements, the circumstances must be documented and maintained by the administrative unit or approved facility school. Documentation must be submitted to the Department of Education for consideration before any decision to revoke the SETA is made.

3.04(3)(f) Application for a second SETA will not be approved for the same person unless the degree preparation program referenced in the first SETA request has been completed, or both degree preparation programs are completed within the same period specified in the initial request.

3.04(3)(g) SETA is issued to the administrative unit or approved facility school for the individual for whom it is requested. If the individual changes employment from one administrative unit or approved facility school to another during the approved SETA cycle, the individual is required to contact the Department of Education SETA representative identified on the SETA application for the transfer process. Upon approval, the original SETA is transferred to the new employing administrative unit or approved facility school for the remainder of the approved SETA cycle.

3.05 3.05 Staff Development

Administrative units and approved facility schools shall provide for staff development to assure opportunities for appropriate educational services to children with disabilities.

3.05(1) Opportunities for staff development shall be provided to foster the continuing development of the awareness, skills and knowledge of each staff member.

3.05(1)(a) Opportunities for staff development shall be furnished to all staff providing direct or indirect services to children with disabilities.

3.05(1)(b) Opportunities for staff development activities shall be designed to bring about changes in knowledge, attitudes, actual performance skills and interpersonal relations of staff members.

3.05(2) Staff development shall include an evaluation component to determine its effectiveness.

3.06 Program Evaluation

Each administrative unit or approved facility school shall maintain records of results of all qualitative and quantitative evaluations of special education services rendered. Evaluations of special education services shall occur annually and within a period of five years systematically cover aspects of services to children with disabilities. Such evaluations shall review:

3.06(1) Extent to which quality special education policies and practices are in place and where improvements can occur.

3.06(2) Degree to which children with disabilities are achieving their individual goals as well as school, district, and state standards and student outcomes.

2220-R-4.00 CHILD FIND, EVALUATIONS, ELIGIBILITY DETERMINATIONS, INDIVIDUALIZED EDUCATION PROGRAMS, AND EDUCATIONAL PLACEMENTS

4.01 4.01 Parental Consent

Except for IDEA Part C Child Find, the parental consent requirements and procedures set forth in 34 CFR §300.300 shall apply in their entirety to this Section 4.00.

4.02 Child Identification Process

4.02(1) General Requirements

4.02(1)(a) Administrative Units.

Each administrative unit shall develop and implement procedures for locating, identifying and evaluating all children ages birth to 21 who may have a disability and are eligible for early intervention services under either IDEA Part C Child Find (birth through age 2); or are eligible for special education services under IDEA Part B (ages 3 to 21) even though such children are advancing from grade to grade. Such procedures shall be available throughout the year to all children including children who have not yet entered school, children who discontinue their education, children who are attending private schools, children whose parents choose home schooling, children who are wards of the State or children who are highly mobile (such as migrant or homeless children) and may be suspected of having a disability.

4.02(1)(a)(i) IDEA Part C Child Find

4.02(1)(a)(i)(A) For children ages birth through 2 years of age, each administrative unit of residence is responsible for certain child find activities under Part C of the IDEA consistent with Section 22-20-118 (2), C.R.S.

4.02(1)(a)(i)(B) Screening and evaluation activities required by Section 22-20-118 (2)(b), C.R.S., shall be consistent with Part C of the IDEA and its implementing regulations at 34 CFR Part 303.

4.02(1)(a)(ii) IDEA Part B Child Identification

Part B child identification shall include child find, special education referral, initial evaluation, and determination of disability and eligibility for special education. Child identification shall be the responsibility of the administrative unit in which the child attends public or private school or, if (s)he is not enrolled in school, it shall be the responsibility of the administrative unit in which the child resides. For children ages 3 to 21 under IDEA Part B, child identification shall be consistent with Sections 4.01 and 4.02 of these Rules.

4.02(1)(b) State-Operated Programs – Part B Child Identification.

For children for whom a state-operated program is responsible, as established in Section 8.00 of these Rules, each state-operated program shall adopt and implement procedures for locating, identifying and evaluating all children who may have a disability and be eligible for special education, even though they are advancing from grade to grade. Child identification, when used in connection with state-operated programs, includes relevant components of child find; special education referral; initial evaluation; and determination of disability and eligibility.

4.02(2) IDEA Part B Child Find.

4.02(2)(a) The IDEA Part B child find process shall:

4.02(2)(a)(i) Be a process designed to inform the public and to identify children ages 3 to 21 who may be eligible to receive special education services. Notice shall be published or announced in newspapers or other media with adequate circulation to notify parents throughout the administrative unit.

4.02(2)(a)(ii) Be designed to utilize available resources within the community.

4.02(2)(a)(iii) Involve families and provide information to the families.

4.02(2)(b) Each administrative unit and state-operated program shall have one person designated as the child find coordinator who shall be responsible for an ongoing child identification process.

4.02(2)(c) The child find process shall include specific strategies for children 3 through five years of age, children in school, and children out of school who are discontinuers or dropouts. It shall be available throughout the year and shall include the following components:

4.02(2)(c)(i) Planning and development in the areas of public awareness, community referral systems, community and building based screening, diagnostic evaluations, service coordination and staff development.

4.02(2)(c)(ii) Coordination and implementation in the areas of interagency collaboration, public awareness, referral, screening and resource coordination.

4.02(2)(c)(iii) Screening procedures for identifying from the total population of children ages 3 to 21 years those who may need more in-depth evaluation in order to determine eligibility for special education and related services.

Follow up to vision and hearing screening shall interface with the vision and hearing screenings which occur for all children in public preschool, kindergarten, grades 1, 2, 3, 5, 7 and 9 yearly in accordance with Section 22-1-116, C.R.S. Appropriate educational referrals shall be made if the child is suspected of having an educationally significant vision or hearing loss and parents shall be informed of any need for further medical evaluation.

4.02(2)(c)(iv) A systematic procedure for considering those children ages 17 to 21 who are out of school and who may have a disability.

4.02(2)(c)(v) Referral procedures to ensure that parents of children are given information about all public and private resources that can meet identified needs. This may include a process for a building level referral. The purpose of the building level process is to consider all pertinent information, the unique needs of the child and to generate alternative strategies, such as Response to Intervention (RtI), for meeting these needs in non-special education settings or to determine the need for special education referral. These procedures may include dropout prevention strategies and recruitment of special education discontinuers.

4.02(2)(c)(vi) Evaluation of the effectiveness and efficiency of child identification procedures.

4.02(3) Special Education Referral Process

A special education referral shall be clearly distinguished from a building level referral or a referral for screening both of which are regular education processes. The administrative unit or state-operated program shall establish and follow procedures for referring a child for an initial evaluation to determine whether or not the child has a disability and needs special education and related services.

4.02(3)(a) A special education referral may be initiated by either:

4.02(3)(a)(i) An administrative unit or state-operated program as a result of a building level screening and/or referral process; or

4.02(3)(a)(ii) The parent of the child.

Any other interested person who believes that a child is in need of an initial evaluation must work with the parent or the appropriate administrative unit or state-operated program.

4.02(3)(b) A parent of any child referred shall be informed of the referral and be provided with prior written notice consistent with Section 6.02(3) and 34 CFR §300.503 and a copy

of the Procedural Safeguards Notice consistent with Section 6.02(4) and 34 CFR §300.504.

4.02(3)(c) Once a written special education referral has been initiated, the initial evaluation, shall be completed within 60 calendar days from the point of initiation of the special education referral. The special education referral process is initiated when one of the following occurs:

4.02(3)(c)(i) The parent is informed of the special education referral as a result of the building level process or screening and the parent provides written consent to conduct the initial evaluation; or

4.02(3)(c)(ii) The request for an initial evaluation is received from the parent and the parent provides written consent to conduct the initial evaluation.

4.02(3)(c)(iii) Exception. The time frame described in Section 4.02(3)(c) within which to conduct an initial evaluation shall not apply to the administrative unit or state-operated program if:

4.02(3)(c)(iii)(A) The parent of a child repeatedly fails or refuses to produce the child for evaluation; or

4.02(3)(c)(iii)(B) A child enrolls in a school of another AU or state-operated program after the relevant timeframe in Section 4.02(3)(c) of these Rules has begun, and prior to a determination by the child's previous AU or state-operated program as to whether the child is child with a disability under Section 2.08 of these Rules.

4.02(3)(c)(iv) The exception in Section 4.02(3)(c)(iii) applies only if the subsequent AU or state-operated program is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent AU or state-operated program agree to a specific time when the evaluation will be completed.

4.02(3)(d) A record shall be maintained of the disposition of each special education referral.

4.02(4) Initial Evaluation Process.

An initial evaluation process for children ages three to twenty-one shall be provided for the purposes of determining whether the child is a child with a disability under Section 2.08 of these Rules and what the educational needs of the child are. The requirements and procedures for initial evaluations shall be in accordance with 34 CFR §300.301, §300.304 and §300.305 and shall ensure that the initial evaluation is sufficiently comprehensive to appropriately identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

4.02(4)(a) Parental Consent.

Prior to conducting an initial evaluation, the administrative unit or state-operated program shall comply with the parental consent requirements set forth in 34 CFR §300.300.

4.02(4)(b) Screening for instructional purposes is not an evaluation.

The screening of a student by a teacher or a specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

4.02(4)(c) Personnel shall be appropriately licensed and endorsed.

Administrative unit and state-operated program personnel evaluating children for the purpose of determining eligibility for special education services shall be appropriately licensed and endorsed. For those areas where CDE licensure and endorsement are not available, appropriate professional licensure, registration or credentials is required.

4.02(5) Reevaluations.

The requirements and procedures for conducting and completing reevaluations shall be consistent with 34 CFR §300.303 and Section 4.02(4) of these Rules. The additional procedures for identifying specific learning disability shall also be utilized consistent with Section 4.02(7) of these Rules.

4.02(6) Determination of Disability and Eligibility.

Requirements and procedures for determining disability and eligibility shall be consistent with 34 CFR §300.306. Once a special education referral has been made and the initial evaluation has been completed, a meeting shall be held to determine if the child has a disability and if the child is eligible for special education. If the child is determined to have a disability and is eligible, an IEP shall be developed for the child in accordance with Section 4.03 of these Rules. These functions may occur at the same meeting or at different meetings.

4.02(6)(a) Timeline.

4.02(6)(a)(i) A meeting to discuss the initial evaluation of the child and to determine if the child has a disability and is eligible for special education shall be held within a reasonable period of time after the initial evaluation is completed.

4.02(6)(a)(ii) Following a reevaluation, a meeting shall be held within a reasonable period of time to discuss the reevaluation of the child to determine if the child continues to be eligible for special education and/or to identify all of the child's special education and related services needs.

4.02(6)(b) Participants.

Meetings to determine if the child has a disability and is eligible for special education, whether held separately or in connection with a meeting to develop an IEP, must include:

4.02(6)(b)(i) A multidisciplinary team knowledgeable about the child and about the meaning of the evaluation data. The multidisciplinary team shall include:

4.02(6)(b)(i)(A) At least one teacher or other specialist with knowledge in the area of the child's suspected disability;

4.02(6)(b)(i)(B) As necessary, other qualified professionals, e.g., an occupational therapist; a speech language pathologist; a physical therapist; and a school psychologist; and

4.02(6)(b)(i)(C) The parent of the child.

4.02(6)(b)(ii) At the discretion of the special education director for the administrative unit of residence, the special education director or designee for the administrative unit of residence.

4.02(6)(c) Change of disability and/or eligibility.

A change of disability and/or eligibility may only be made after reevaluation conducted in accordance with Section 4.02(5) of these Rules and at a meeting in which the results of reevaluation are considered in accordance with Section 4.02(6)(a)(ii). In addition, a change involving a specific learning disability shall be made consistent with the additional procedures set forth in Section 4.02(7) of these Rules.

4.02(6)(c)(i) The evaluation described in Section 4.02(6)(c) is not required before the termination of a child's eligibility for special education due to graduation from secondary school with a regular diploma, or due to reaching age 21.

4.02(6)(c)(ii) For a child whose eligibility terminates under circumstances described in Section 4.02(6)(c)(i), the administrative unit/state-operated program must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

4.02(7) Additional procedures for identifying children with specific learning disabilities.

The definition and criteria for the *Specific Learning Disability* category are set forth in Section 2.08(6) of these Rules. The additional requirements and procedures for identifying children with specific learning disabilities shall be consistent with 34 CFR §300.307(b), §300.308, §300.309(b) - (c), §300.310 and §300.311.

4.02(7)(a) Exception: The optional documentary statement contained in 34 CFR §300.311(a)(5)(ii)(B) shall not apply.

4.02(8) Record of meeting.

If the determination of disability and eligibility occur at a separate meeting from the IEP meeting, a record of the meeting shall be maintained which must include, when applicable, a statement of the child's disability and the criteria utilized to determine eligibility as identified in Section 2.02 **of** these Rules.

4.03 Individualized Education Programs

The term "Individualized Education Program" or "IEP" means a written statement for each child with a disability that is developed, reviewed and/or revised in accordance with these Rules. Except as is otherwise set forth in this Section 4.03, the requirements regarding IEPs shall be consistent with 34 CFR §300.320 through §300.325.

4.03(1) 4.03(1) The requirements governing when IEPs must be in effect shall be consistent with 34 CFR §300.323. The topics addressed by 34 CFR §300.323 include:

4.03(1)(a) The general requirement that an IEP for each child with a disability must be in effect at the beginning of each school year;

4.03(1)(b) Options for utilizing an IEP or IFSP for children aged three through five;

4.03(1)(c) The administrative unit of residence shall participate in meetings regarding the transition planning process from infant/toddler to special education preschool services consistent with the requirements of 34 CFR §300.124;

4.03(1)(d) The initial provision of services, including timelines;

4.03(1)(d)(i) Exception: The initial IEP for a child shall be developed within 90 calendar days of the date that parental consent was obtained to conduct the initial evaluation.

4.03(1)(e) Accessibility of the child's IEP to teachers and others;

4.03(1)(f) IEPs for children who transfer public agencies within the State;

4.03(1)(g) IEPs for children who transfer from another State; and

4.03(1)(h) Transmittal of records.

4.03(2) The requirements for the development, review, and revision of the IEP shall be consistent with 34 CFR §300.324. The topics covered by 34 CFR §300.324 include:

4.03(2)(a) General factors that the IEP Team must consider;

4.03(2)(b) Special factors that the IEP Team must consider;

4.03(2)(c) Requirements with respect to the general education teacher;

4.03(2)(d) IEP changes mutually agreed to by the parent and the administrative unit or state-operated program after the annual IEP review meeting and without convening the IEP Team;

4.03(2)(e) Consolidation of IEP Team meetings;

4.03(2)(f) Amendments to the IEP;

4.03(2)(g) Review and revision of the IEP;

4.03(2)(h) Failure to meet transition objectives;

4.03(2)(i) Rule of construction;

4.03(2)(j) Children with disabilities in adult prisons;

4.03(3) Meetings to review and revise each child's IEP and to determine the child's placement shall be initiated and conducted at least once every 365 days.

4.03(4) Responsibility for IEP Meetings.

The relative responsibilities of administrative units, state-operated programs and approved facility schools for IEP development, review and revision are established in Rule 8.00.

4.03(5) Participants in meetings.

Except as is otherwise provided for in this Section 4.03(5), the IEP Team requirements contained in 34 CFR §300.321 shall apply in their entirety to meetings held for the development of an initial IEP or for the review of an IEP.

4.03(5)(a) The Director of special education or designee who is knowledgeable about the availability of resources of the administrative unit and has the authority to commit those resources shall be a required agency representative consistent with 34 CFR 300.321(a)

(4). The requirements contained in 34 CFR §300.321(e) regarding the non-attendance or excusal of certain IEP Team members shall not apply to this IEP Team member.

4.03(5)(b) If the meeting is not the responsibility of the administrative unit of residence, the special education director or designee for the administrative unit of residence may, at his/her discretion, participate in the meeting.

4.03(5)(c) If the child has been publicly placed at an approved facility school or a private school, a representative of the approved facility school or private school must attend the IEP Team meeting. If the representative is unable to attend, his or her participation must be ensured through methods consistent with 34 CFR §300.328.

4.03(6) Content of IEP/Record of Meeting.

The IEP must meet the IEP content requirements established by 34 CFR §300.320(a) and §300.320(c). In addition, the following IEP content is required:

4.03(6)(a) The written IEP for each child with a hearing disability shall include a Communication Plan as developed by the IEP team. The Plan shall include the following:

4.03(6)(a)(i) A statement identifying the child's primary communication mode as one or more of the following: Aural, Oral, Speech-based, English Based Manual or Sign System, American Sign Language. Further, there should be no denial of opportunity for instruction in a particular communication mode based on:

4.03(6)(a)(i)(A) residual hearing,

4.03(6)(a)(i)(B) the parents' inability to communicate in the child's communication mode or language, nor

4.03(6)(a)(i)(C) the child's experience with another mode of communication or language.

4.03(6)(a)(ii) A statement documenting that an explanation was given of all educational options provided by the school district and available to the child.

4.03(6)(a)(iii) A statement documenting that the IEP team, in addressing the child's needs, considered the availability of deaf/hard of hearing adult role models and a deaf/hard of hearing peer group of the child's communication mode or language.

4.03(6)(a)(iv) The communication-accessible academic instruction, school services, and extracurricular activities the student will receive must be identified.

The teachers, interpreters, and other specialists delivering the communication plan to the student must have demonstrated proficiency in, and be able to accommodate for, the child's primary communication mode or language.

4.03(6)(b) The written IEP for each child with a vision disability shall include a Learning Media Plan as developed by the IEP team based on comprehensive

assessment of the student's learning and literacy modalities by a licensed teacher endorsed in the area of visual impairment. Braille shall be the literacy medium selected unless the IEP team determines, based on the comprehensive literacy learning media assessment that instruction in Braille is not appropriate.

4.03(6)(b)(i) The plan shall include the following:

4.03(6)(b)(i)(A) a statement of how the selected learning and literacy mode or modes will be implemented as the student's primary or secondary mode for achieving literacy and why such mode or modes have been selected,

4.03(6)(b)~~(ii)~~(i)(B) a statement of how the student's instruction in the selected learning and literacy mode or modes will be integrated into educational activities.

4.03(6)(b)~~(ii)~~(i)(C) the date on which the student's instruction in the selected mode or modes shall commence, the amount of instructional time to be dedicated to each learning and literacy mode, and the service provider responsible for each area of instruction, and

4.03(6)(b)~~(iv)~~(i)(D) a statement of the level of competency in each selected learning and literacy mode or modes which the student should achieve by the end of the period covered by the IEP.

4.03(6)(b)(ii) Colorado teachers licensed and endorsed in the area of Visual Impairment must have demonstrated competency in reading and writing literary Braille per the guidelines developed by the Colorado Department of Education.

4.03(6)(c) Academic Content Standards

4.03(6)(c)(i) The IEP for a child enrolled in a school district or the State Charter School Institute shall specify:

4.03(6)(c)(i)(A) Whether the child shall achieve the content standards adopted by the district in which the child is enrolled or by the State Charter School Institute; or

4.03(6)(c)(i)(B) Whether the child shall achieve individualized standards which would indicate that the child has met the requirements of his or her IEP:

4.03(6)(c)(ii) For each child attending school in an approved facility school or state-operated program, the IEP shall specify:

4.03(6)(c)(ii)(A) Whether the child shall achieve State or local content standards; or

4.03(6)(c)(ii)(B) Whether the child shall achieve individualized standards which would indicate that the child has met the requirements of his or her IEP.

4.03(6)(d) Exception: In lieu of 34 CFR §300.320(b), the IEP content requirement for transition services shall be as follows:

4.03(6)(d)(i) Beginning with the first IEP developed when the child is age 15, but no later than the end of 9th grade, or earlier if deemed appropriate by the IEP Team, and updated annually, thereafter, the IEP must include:

4.03(6)(d)(ii) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and;

4.03(6)(d)(iii) The transition services (as defined in Section 2.51 of these Rules and including courses of study) needed to assist the child in reaching those goals.

4.03(6)(e) Beginning not later than one year before the child reaches the age of majority (i.e., age 21), the IEP must include a statement that the child has been informed of the child's rights under 6.02(9) of these Rules and 34 CFR §300.520.

4.03(6)(f) Benchmarks and Short-Term Objectives.

4.03(6)(f)(i) Consistent with 34 CFR §300.320(a)(2)(ii), for students with disabilities who take alternate assessments aligned to alternate achievement standards, the IEP shall contain a description of benchmarks or short-term objectives.

4.03(6)(f)(ii) Rule of construction: Nothing in these Rules shall be construed to prohibit an administrative unit or state-operated program from including benchmarks or short term objectives in a child's IEP.

4.03(7) Parent Participation

4.03(7)(a) The requirements for ensuring parent participation in the development of IEPs shall be consistent with 34 CFR §300.322.

4.03(7)(b) Exception: In lieu of 34 CFR §300.322(b)(2), the requirements regarding parent participation at meetings involving postsecondary goals and services for a child shall be as follows:

4.03(7)(b)(i) Beginning with the first IEP developed when the child is age 15, but no later than the end of 9 th grade, or earlier if deemed appropriate by the IEP Team, and updated annually, thereafter, the notice of meeting must:

4.03(7)(b)(i)(A) Indicate that a purpose of the meeting will be the consideration of the postsecondary goals and transition services in accordance with Section 4.03(6)(d) of these Rules;

4.03(7)(b)(i)(B) Indicate that the responsible administrative unit or state-operated program will invite the student; and

4.03(7)(b)(i)(C) Identify any other agency that will be invited to send a representative. consistent with 34 CFR §300.321(b)(3), the administrative unit or state-operated program must obtain the consent of the parent to invite such representative.

4.03(8) The requirements for parent involvement in educational placement decisions shall be consistent with 34 CFR §300.327 and §300.501(c).

4.03(8)(a) The determination of placement must be based on the child's IEP and made by the IEP Team. The terms "placement" or "educational placement" are used interchangeably and mean the provision of special education and related services and do not mean a specific place, such as a specific classroom or specific school. Decisions regarding the location in which a child's IEP will be implemented and the assignment of

special education staff responsibilities shall be made by the Director of Special Education or designee.

4.03(8)(b) Change in placement.

4.03(8)(b)(i) Nonsignificant change in program/services.

When a child's educational program is altered, such as a change in the amount of a given service, the change in program/services is a nonsignificant change in program/services.

4.03(8)(b)(i)(A) Prior written notice of such changes must be provided to the parent.

4.03(8)(b)(i)(B) Consent is not required.

4.03(8)(b)(i)(C) A non-significant change in program/services must be made by the IEP Team unless the parent and the administrative unit or state-operated program mutually agree to change the IEP after the annual IEP meeting in a school year consistent with 34 CFR §300.324(a)(4). However, reevaluation is not required.

4.03(8)(b)(ii) Significant change in placement:

4.03(8)(b)(ii)(A) A significant change in placement for educational purposes includes placement or referral to a private school or approved facility school by the administrative unit, the addition or termination of an instructional or related service or any change which would result in the following:

4.03(8)(b)(ii)(A)(I) The child having different opportunities to participate in nonacademic and extracurricular services;

4.03(8)(b)(ii)(A)(II) The new placement option is a change in the educational environment categories required for reporting data to the Secretary of the U.S. Department of Education pursuant to Section 618 of the IDEA; or

4.03(8)(b)(ii)(A)(III) The child transfers from a brick and mortar school to an on-line program or vice versa. The administrative unit for the entity sponsoring the on-line program is responsible for conducting the reevaluation and convening the IEP Team to determine whether the on-line program is an appropriate placement for the child.

4.03(8)(b)(ii)(B) A significant change in placement shall be made upon consideration of reevaluation. Such change shall be made only by an IEP Team with the addition of those persons conducting such reevaluation unless the parent and the administrative unit or state-operated program mutually agree to change the IEP after the annual IEP meeting in a school year consistent with 34 CFR §300.324(a)(4).

4.03(8)(b)(iii) A change in building or location

A change in building or location that is not a change in placement, as described in Section 4.03(8)(b), may be accomplished without convening the child's IEP Team or conducting a reevaluation. Decisions changing location or building should be made with due consideration for the impact on the child's total education program. A location or building decision that does not constitute a change in placement does not require prior written notice or an IEP Team meeting.

4.03(8)(b)(iv) Public School Choice.

When a student transfers to a new school or program, including an on-line program, under Public School Choice, the transfer requirements contained in 34 CFR §300.323(e) apply. If the transfer constitutes a significant change in placement, as described in Section 4.03(8)(b)(ii) of these Rules, the administrative unit in which the receiving school or program is located must conduct a reevaluation consistent with Section 4.03(8)(b)(ii)(B) and also convene an IEP Team to ensure that the receiving school or program is an appropriate placement for the student. When the charter contract between a charter school and its authorizer allows the charter school to provide the special education services and to conduct the IEP meeting required by this Rule, the charter school shall be responsible for the evaluation and IEP meeting. However, the administrative unit of the authorizer remains ultimately responsible for ensuring compliance with all special education requirements.

4.03(8)(c) The administrative unit or state-operated program shall consider the cost to the administrative unit or state-operated program when choosing between two or more appropriate placements.

4.03(9) Participation of the Administrative Unit of Residence

If the administrative unit of residence is not responsible for a meeting, as set forth in Section 8.00 of these Rules, the administrative unit of attendance or state-operated program shall timely notify the Special Education Director/designee for the administrative unit of residence. Such notification shall be provided at the same time and in the same manner that the parent is notified of the meeting.

4.03(10) Private Placements Made by Administrative Units and Public Agencies

Every administrative unit and every public agency, as that term is defined in Section 9.01(5) of these Rules, shall comply with the out-of-home and out-of-district placement requirements set forth in 34 CFR §300.325 and Section 9.00 of these Rules.

4.03(11) Alternative Means of Meeting Participation

Alternative means of meeting participation and carrying out administrative matters involving procedural safeguards shall be consistent with 34 CFR §300.328.

2220-R-5.00 REQUIREMENTS FOR FUNDING ELIGIBILITY

5.01 State Eligibility

The State of Colorado ("State") is eligible for assistance under Part B of the Individuals with Disabilities Education Act ("IDEA") if the State has in effect policies and procedures to ensure that the State meets the conditions of 34 CFR § §300.101 through 300.176 as follows:

5.01(1) FAPE requirements as established by:

5.01(1)(a) 34 CFR §300.101 which addresses the following topics:

5.01(1)(a)(i) General requirements for FAPE;

5.01(1)(a)(ii) FAPE for children beginning at age 3; and

5.01(1)(a)(iii) Children advancing from grade to grade.

5.01(1)(b) 34 CFR §300.102 which establishes the limitations and exceptions to FAPE requirements including:

5.01(1)(b)(i) Children who do not meet the State's age requirements for FAPE;

5.01(1)(b)(ii) Children incarcerated in adult correctional facilities;

5.01(1)(b)(iii) Children with disabilities who have graduated from high school with a regular diploma; and

5.01(1)(b)(iv) Children who are eligible under Subpart 34 CFR §300.800 through §300.818 (preschool grants for children with disabilities);

5.01(1)(c) 34 CFR §300.103 - Methods and payments;

5.01(1)(d) 34 CFR §300.104 - Residential placement;

5.01(1)(e) 34 CFR §300.105 - Assistive technology;

5.01(1)(f) 34 CFR §300.106 - Extended school year services;

5.01(1)(g) 34 CFR §300.107 - Nonacademic services;

5.01(1)(h) 34 CFR §300.108 - Physical education;

5.01(1)(i) 34 CFR §300.109 - Full educational opportunity goal;

5.01(1)(j) 34 CFR §300.110 - Program options;

5.01(1)(k) 34 CFR §300.111 - Child find;

5.01(1)(l) 34 CFR §300.112 - IEPs; and

5.01(1)(m) 34 CFR §300.113 - Routine checking of hearing aids and external components of surgically implanted medical devices.

5.01(2) Least restrictive environment (LRE) requirements as established by:

5.01(2)(a) 34 CFR §300.114 - General requirements;

5.01(2)(b) 34 CFR §300.115 - Continuum of alternative placements;

5.01(2)(c) 34 CFR §300.116 - Placements;

5.01(2)(d) 34 CFR §300.117 - Nonacademic settings;

5.01(2)(e) 34 CFR §300.118 - Children in public or private institutions;

5.01(2)(f) 34 CFR §300.119 - Technical assistance and training activities; and

5.01(2)(g) 34 CFR §300.120 - Monitoring activities.

5.01(3) Requirements for procedural safeguards as established by 34 CFR 300.121 and §300.500 through §300.536 except as is otherwise provided for in Section 6.02 of these Rules.

5.01(4) Requirements for evaluation as established by 34 CFR §300.122 and §300.300 through §300.311 except as is otherwise provided for in Section 4.03 of these Rules.

5.01(5) Requirements for safeguarding the confidentiality of personally identifiable information as established by 34 CFR §300.123 and §300.610 through §300.626 and Section 6.01 of these Rules.

5.01(6) Requirements regarding the transition of children from Part C programs to preschool programs under Part B of IDEA as established by 34 CFR §300.124.

5.01(7) Requirements regarding children with disabilities enrolled by their parents in private schools as established by 34 CFR §300.129 through §300.144.

5.01(8) Requirements regarding children with disabilities placed in or referred to private schools or approved facility schools by an administrative unit or a state-operated program as means of providing special education services as established by 34 CFR §300.145 through §300.147.

5.01(9) Requirements regarding children with disabilities enrolled by their parents in private schools when FAPE is at issue as established by 34 CFR §300.148.

5.01(10) Requirements regarding the Department's responsibilities for general supervision as established by 34 CFR §300.149 and §300.150.

5.01(11) Requirements regarding State complaint procedures as established by 34 CFR §300.151 through §300.153 and the Department's specific procedures.

5.01(12) Requirements regarding methods for ensuring services as established by 34 CFR §300.154.

5.01(13) Requirements regarding hearings related to LEA eligibility as established by 34 CFR §300.155 and Section 7.07 of these Rules.

5.01(14) Requirements regarding personnel qualifications as established by 34 CFR §300.156 and Sections 2.20 and 3.04 of these Rules.

5.01(15) Requirements regarding performance goals and indicators as established by 34 CFR §300.157.

5.01(16) Requirements regarding the supplementation of state, local and other federal funds as established by 34 CFR §300.162 through §300.164 and §300.166.

5.01(17) Requirements regarding public participation as established by 34 CFR §300.165.

5.01(18) Requirements regarding the Colorado Special Education Advisory Committee as established by 34 CFR §300.168 and §300.169.

5.01(19) Requirements regarding suspension and expulsion rates as established by 34 CFR §300.170.

5.01(20) Requirements regarding an annual description of Part B funds as established by 34 CFR §300.171.

5.01(21) Requirements regarding access to instructional materials, including the Department's adoption of the National Instructional Materials Accessibility Standard (NIMAS) as established by 34 CFR §300.172.

5.01(21)(a) The Department adopts the NIMAS, published as Appendix C to Part 300 of 34 CFR.

5.01(21)(b) The Department shall coordinate with the National Instructional Materials Access Center (NIMAC) for purposes of providing instructional materials in a timely manner to children with disabilities who may qualify to receive books and other publications in specialized formats.

5.01(21)(c) Definitions applicable to this subsection and Section 5.02(10) of these Rules:

5.01(21)(c)(i) "In a timely manner" means that all reasonable steps have been taken to provide children with disabilities instructional materials at the same time that instructional materials are provided to nondisabled peers;

5.01(21)(c)(ii) When used in 34 CFR §300.172, the term "blind persons or other persons with print disabilities" has the meaning given it in 34 CFR §300.172(e)(1)(ii);

5.01(21)(c)(iii) "National Instructional Materials Access Center" or "NIMAC" has the meaning given the term in 34 CFR §300.172(e)(1)(ii);

5.01(21)(c)(iv) "National Instructional Materials Accessibility Standard" or "NIMAS" has the meaning given the term in 34 CFR §300.172(e)(1)(iii).

5.01(22) Requirements regarding overidentification and disproportionality as established in 34 CFR §300.173.

5.01(23) Requirements, including the rule of construction, regarding the prohibition on mandatory medication as established by 34 CFR §300.174.

5.01(23)(a) Personnel of the Department, an administrative unit, a school district or a state-operated program are prohibited from requiring parents to obtain a prescription for substances identified in 34 CFR §300.174(a) as a condition of attending school, receiving an evaluation under Section 4.02 of these Rules, or receiving special education services.

5.01(24) Requirements regarding the participation of all children with disabilities in general state and district-wide assessment programs as established in 34 CFR §300.160.

5.02 Administrative Unit Eligibility

An administrative unit is eligible for assistance under Part B of the Individuals with Disabilities Education Act ("IDEA") if the administrative unit submits a plan that provides assurance to the Department that the administrative unit meets each of the conditions established by 34 CFR §300.200 through §300.213 as follows:

5.02(1) Consistency with State policies established under the relevant subsections of Section 5.01 of these Rules and 34 CFR §300.101 through §300.163, and §300.165 through §300.174 and §300.201;

5.02(2) Requirements regarding the use of amounts of Part B funds as established in 34 CFR §300.202;

5.02(3) Requirements regarding maintenance of effort as established in 34 CFR §300.203;

5.02(4) Requirements regarding exceptions to maintenance of effort established in 34 CFR §300.204;

5.02(5) Requirements regarding adjustment of local fiscal efforts in certain fiscal years as established in 34 CFR §300.205;

5.02(6) Requirements regarding schoolwide programs under Title I of the ESEA as established in 34 CFR §300.206;

5.02(7) Requirements regarding personnel development as established in 34 CFR §300.207;

5.02(8) Requirements regarding permissive use of funds as established in 34 CFR §300.208;

5.02(9) Requirements regarding the treatment of charter schools as established in 34 CFR §300.209;

5.02(10) Requirements regarding the purchase of instructional materials as established in 34 CFR §300.210;

5.02(11) Requirements regarding the provision of information to the department as established in 34 CFR §300.211;

5.02(12) Requirements regarding the accessibility of all Part B Eligibility Documents to parents and the general public as established in 34 CFR §300.212;

5.02(13) Requirements regarding records pertaining to migratory children with disabilities as established in 34 CFR §300.213;

5.02(14) Requirements regarding prior local plans as established by 34 CFR §300.220;

5.02(15) Requirements regarding administrative unit and state-operated compliance with 34 CFR § §300.200 through 300.221; and

5.02(16) Requirements regarding early intervening services.

5.03 State-Operated Program Eligibility

A state-operated program is eligible for assistance under Part B of the IDEA if the state-operated program demonstrates to the satisfaction of the Department that it meets the requirements set forth in 34 CFR §300.228.

5.04 Additional Funding and Reporting Requirements

5.04(1) In order to receive funding under Part B of the IDEA, administrative units and state-operated programs must timely provide the information required by Section 618 of the Act, 20 USC §1418.

5.04(2) In order to receive funding under the Exceptional Children's Educational Act, administrative units and state-operated programs must timely provide the information required by Section 22-20-114(4) and (6), C.R.S.

2220-R-6.00 CONFIDENTIALITY OF INFORMATION AND PROCEDURAL SAFEGUARDS - DUE PROCESS PROCEDURES FOR PARENTS AND CHILDREN

6.01 Confidentiality of Information

Procedures regarding the confidentiality of information shall be consistent with 34 CFR §300.611 through §300.626 which address the following topics:

6.01(1) 34 CFR §300.611 - Definitions;

6.01(2) 34 CFR §300.612 - Notice to parents;

6.01(3) 34 CFR §300.613 - Parent access to records;

6.01(4) 34 CFR §300.614 - Record of access;

6.01(5) 34 CFR §300.615 - Records on more than one child;

6.01(6) 34 CFR §300.616 - List of types and locations of information;

6.01(7) 34 CFR §300.617 - Fees;

6.01(8) 34 CFR §300.618 - Amendment of records at parent's request;

6.01(9) 34 CFR §300.619 - Opportunity for a hearing;

6.01(10) 34 CFR §300.620 - Result of hearing;

6.01(11) 34 CFR §300.621 - Hearing procedures;

6.01(12) 34 CFR §300.622 - Consent;

6.01(13) 34 CFR §300.623 - Safeguards;

6.01(14) 34 CFR §300.624 - Destruction of information;

6.01(15) 34 CFR §300.625 - Children's rights; and

6.01(16) 34 CFR §300.626 - Enforcement.

6.02 Procedural Safeguards and Due Process Procedures for Parents and Children

Except as otherwise provided for in this Section 6.02, each administrative unit and state-operated program shall establish, maintain, and implement procedural safeguards that meet the requirements of 34 CFR § §300.500 through 300.536. The topics addressed by such regulations include:

6.02(1) 34 CFR §300.501—Opportunity to examine records and parent participation in meetings.

6.02(2) 34 CFR §300.502—Independent educational evaluation.

6.02(3) 34 CFR §300.503—Prior written notice and content of prior written notice.

6.02(4) 34 CFR §300.504—Procedural Safeguards Notice.

6.02(5) 34 CFR §300.505—Electronic mail.

6.02(6) 34 CFR §300.506—Mediation.

6.02(7) [Repealed]

6.02(7.5) Due Process Complaints and Civil Actions

6.02(7.5)(a) General.

Except as is otherwise provided for in this Section 6.02(7.5), the requirements regarding resolution meetings and due process hearings shall be consistent with 34 CFR §300.507 through §300.515.

6.02(7.5)(a)(i) Procedures regarding the due process complaint, including the content of the due process complaint and filing requirements, shall be consistent with 34 CFR §300.507 and §300.508.

6.02(7.5)(a)(ii) Consistent with 34 CFR §300.509, a parent or the administrative unit or state-operated program may use the model due process complaint form developed by the Department, or another form or other document, so long as the form or document that is used meets the due process complaint content requirements as set forth in 34 CFR §300.508(b).

6.02(7.5)(a)(iii) Upon receipt of the first due process complaint filed by a parent in a school year, the Special Education Director of the administrative unit or state-operated program must provide the parent with a copy of the procedural safeguards notice available to parents consistent with 34 CFR §300.504.

6.02(7.5)(b) Due Process Complaint – specific filing requirements.

6.02(7.5)(b)(i) The party filing a due process complaint shall file a copy of the due process complaint with the Department at the same time that the due process complaint is filed with the opposing party to ensure that the Department timely assigns an Administrative Law Judge (ALJ) to the case.

6.02(7.5)(b)(ii) If the party filing the complaint is a parent, the party shall file the due process complaint with the Special Education Director of the affected administrative unit or state-operated program.

6.02(7.5)(b)(iii) All timelines related to the due process complaint begin on the date that the complaint is received by both the opposing party and the Department.

6.02(7.5)(b)(iv) Regardless of whether the administrative unit/state-operated program or the parent has initiated the due process complaint, when the Special Education Director of the administrative unit or state-operated program knows that a due process complaint has been filed, it is the responsibility of the Special Education Director to:

6.02(7.5)(b)(iv)(A) By telephone, immediately notify the Department of the existence of the due process complaint; and

6.02(7.5)(b)(iv)(B) By facsimile, immediately provide a complete copy of the due process complaint to the Department accompanied by a written statement documenting the date when the due process complaint was filed.

6.02(7.5)(b)(v) Under no circumstance may the party receiving a due process complaint unilaterally determine that the due process complaint is insufficient or that it fails to state a claim under federal or state special education law. A notice of insufficiency may be presented to the ALJ pursuant to 34 CFR §300.508(d).

6.02(7.5)(c) Assignment of an Administrative Law Judge.

Within two business days after the Department's receipt of a due process complaint, the Department shall notify the Office of Administrative Courts (OAC) in order to have an ALJ assigned to the complaint.

6.02(7.5)(d) Timelines applicable to resolution meetings and mediation.

6.02(7.5)(d)(i) Resolution Meeting

6.02(7.5)(d)(i)(A) Within 15 days of receiving notice of the parent's due process complaint, and prior to the commencement of a due process hearing, the administrative unit or state-operated program must convene a resolution meeting with the parent and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint that -

6.02(7.5)(d)(i)(A)(I) Includes a representative of the administrative unit or state-operated program who has decision-making authority on behalf of that agency; and

6.02(7.5)(d)(i)(A)(II) May not include an attorney of the administrative unit or state-operated program unless the parent is accompanied by an attorney.

6.02(7.5)(d)(i)(B) The purpose of the resolution meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the administrative unit or state-operated program has the opportunity to resolve the dispute that is the basis for the due process complaint.

6.02(7.5)(d)(i)(C) The resolution meeting described need not be held if -

6.02(7.5)(d)(i)(C)(I) The parent and the administrative unit or state-operated program agree in writing to waive the resolution meeting; or

6.02(7.5)(d)(i)(C)(II) The parent and the administrative unit or state-operated program agree to use the mediation process described in 34 CFR §300.506 and Section 6.02(6) of these Rules.

6.02(7.5)(d)(i)(D) The parent and the administrative unit or state-operated program determine the relevant members of the IEP Team to attend the resolution meeting.

6.02(7.5)(d)(ii) Resolution Period

6.02(7.5)(d)(ii)(A) The ALJ has no authority to extend the 30-day resolution period.

6.02(7.5)(d)(ii)(B) The parties may extend the resolution period but only under the circumstances described in Section 6.02(7.5)(d)(iii)(C).

6.02(7.5)(d)(ii)(C) If the administrative unit or state-operated program has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur.

6.02(7.5)(d)(ii)(D) Except as provided in Section 6.02(7.5)(d)(iii), below, the timeline for issuing a final due process decision begins at the expiration of the 30-day resolution period

6.02(7.5)(d)(ii)(E) Except where the parties have jointly agreed to waive the resolution process or to use mediation, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

6.02(7.5)(d)(ii)(F) If the administrative unit or state-operated program is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented (using the procedures in 34 CFR §300.322(d)(1) through (3)), the administrative unit or state-operated program may, at the conclusion of the 30-day resolution period, request that the ALJ dismiss the parent's due process complaint.

6.02(7.5)(d)(ii)(G) If the administrative unit or state-operated program fails to hold the resolution meeting within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of the ALJ to begin the due process hearing 45-day timeline.

6.02(7.5)(d)(iii) Adjustments to 30-day resolution period. The 45-day timeline for the due process hearing starts the day after one of the following events:

6.02(7.5)(d)(iii)(A) Both parties agree in writing to waive the resolution meeting;

6.02(7.5)(d)(iii)(B) After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible; or

6.02(7.5)(d)(iii)(C) When a party withdraws from mediation after the parties previously agreed, at the end of the 30-day resolution period, to continue the mediation as described below:

6.02(7.5)(d)(iii)(C)(I) The parties' agreement to continue the mediation shall be in writing and signed by each party; and

6.02(7.5)(d)(iii)(C)(II) Immediately after the parties' execution of the agreement to continue mediation, the parties shall jointly and simultaneously file the written agreement to continue mediation with the ALJ and the Department.

6.02(7.5)(e) Timelines applicable to due process hearings and convenience of hearings.

6.02(7.5)(e)(i) The Department must ensure that not later than 45 days after the expiration of the 30 day resolution period, or the adjusted time periods described in Section 6.02(7.5)(d)(iii), above -

6.02(7.5)(e)(i)(A) A final decision is reached in the hearing; and

6.02(7.5)(e)(i)(B) A copy of the decision is mailed to each of the parties.

6.02(7.5)(e)(ii) At the request of either party, the ALJ may grant specific extensions of time beyond the 45 day due process hearing period. Any such extension of time shall be accomplished in accordance with the requirements for time extensions set forth in Section 6.02(7.5)(f)(v), below.

6.02(7.5)(e)(iii) Each hearing must be conducted at a time and place that is reasonably convenient to the parents and child involved.

6.02(7.5)(f) Conduct of due process hearings

The procedures regarding the conduct of due process hearings shall be consistent with the requirements established by 34 CFR §300.511. The topics addressed in 34 CFR §300.511 include:

6.02(7.5)(f)(i) The qualifications of ALJs.

At a minimum, an ALJ must meet the qualifications established by 34 CFR §300.511(c). The Department, at its discretion, may require additional qualifications.

6.02(7.5)(f)(ii) The subject matter of due process hearings.

6.02(7.5)(f)(iii) The timeline and exceptions to the timeline for requesting a hearing.

6.02(7.5)(f)(iv) Specific procedures.

The ALJ shall:

6.02(7.5)(f)(iv)(A) Consistent with the timelines in Section 6.02(7.5)(e), above, establish the procedures and timelines to be followed during the hearing;

6.02(7.5)(f)(iv)(B) Schedule the time and place for the hearing;

6.02(7.5)(f)(iv)(C) Schedule a prehearing conference at which the issues will be identified and the specific requests of the parties determined;

6.02(7.5)(f)(iv)(D) At the request of either party, issue subpoenas to compel attendance of witnesses at the hearing;

6.02(7.5)(f)(iv)(E) Ensure that a written or electronic verbatim account of the hearing is kept; and

6.02(7.5)(f)(iv)(F) Provide to the Department a copy of any order or decision issued.

6.02(7.5)(f)(v) Extension of timelines

6.02(7.5)(f)(v)(A) The ALJ shall not have authority to extend the 45 day due process decision timeline until after the resolution period described in section 6.02(7.5)(d)(ii), above, has occurred.

6.02(7.5)(f)(v)(B) Any request by a party to extend a due process hearing decision timeline shall be made within a reasonable period of time prior to the expiration of the 45 day period or previously extended time period;

6.02(7.5)(f)(v)(C) The ALJ's decision regarding the requested extension of a due process decision timeline shall be issued on or before the date of the expiration of the existing timeline and documented in a written order; and

6.02(7.5)(f)(v)(D) The ALJ shall provide a copy of such written order to the parties and to the Department.

6.02(7.5)(f)(v)(E) Exception. In the case of an expedited due process hearing requested as a result of a disciplinary change of placement pursuant to 34 CFR § 300.532(c), the specific timelines established in Section 6.02(7.5)(i)(ii), below, shall apply.

6.02(7.5)(g) Hearing Rights

Hearing rights accorded to parties shall be consistent with 34 CFR §300.512.

6.02(7.5)(h) Hearing Decisions

6.02(7.5)(h)(i) General. Due process hearing decisions shall be consistent with the requirements established by 34 CFR §300.513. The topics addressed by 34 CFR §300.513 include:

6.02(7.5)(h)(i)(A) The decision of the ALJ on the provision of FAPE;

6.02(7.5)(h)(i)(B) Separate request for a due process hearing; and

6.02(7.5)(h)(i)(C) Transmittal of the findings and decision to the Colorado Special Education Advisory Committee and to the general public.

6.02(7.5)(h)(ii) Specific requirements for due process decisions.

6.02(7.5)(h)(ii)(A) The ALJ shall render, in writing, all findings of fact and the decision based upon the evidence.

6.02(7.5)(h)(ii)(B) The ALJ shall mail the decision by certified mail to the parties and the Department within the timelines specified by Section 6.02(7.5)(e) or, in the case of an expedited hearing, within the timelines specified by 6.02(7.5)(i)(ii).

6.02(7.5)(h)(ii)(C) The ALJ shall include within the decision notification that, any party aggrieved by the findings and decision, has the right to bring a civil action consistent with the requirements as set forth in 34 CFR §300.516.

6.02(7.5)(h)(ii)(D) Except for the caption of the case, the decision shall be written such that it does not disclose personally identifiable information of the child or the parent(s).

6.02(7.5)(h)(ii)(E) The record of the hearing shall include all findings of fact, evidence admitted during the hearing, the decision, and the recording of the hearing, if available. The record shall be forwarded to the Department within 100 days after the conclusion of all due process proceedings if no civil action is brought.

6.02(7.5)(i) Expedited Due Process Hearings

6.02(7.5)(i)(i) General.

Consistent with 34 CFR §300.532(a), the parent of a child with a disability who disagrees with any decision regarding a disciplinary placement under 34 CFR § §300.530 and 300.531, or the manifestation determination under §300.530(e), or an administrative unit or state-operated program that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing, and must have the opportunity for an expedited hearing. The requirements for expedited due process hearings, including timelines, shall be in accordance with 34 CFR §300.532.

6.02(7.5)(i)(ii) Specific Timelines

6.02(7.5)(i)(ii)(A) The Department is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The ALJ must make a determination within 10 school days after the hearing.

6.02(7.5)(i)(ii)(B) Unless the parents and administrative unit or state-operated program agree in writing to waive the resolution meeting described below, or agree to use the mediation process described in 34 CFR §300.506 -

6.02(7.5)(i)(ii)(B)(I) The resolution meeting must occur within seven days of receiving notice of the due process complaint; and

6.02(7.5)(i)(ii)(B)(II) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.

6.02(7.5)(i)(ii)(B)(III) The ALJ has no authority to extend any of the timelines set forth in this section 6.02(7.5)(i)(ii).

6.02(7.5)(i)(ii)(B)(IV) The parties may not agree to mutually extend the resolution period to resolve an expedited due process complaint.

6.02(7.5)(i)(iii) The requirements and procedures contained in this Section 6.02(7.5)(a) through 6.02(7.5)(h) shall apply to expedited due process hearings to the extent that such requirements and procedures are not in conflict with 34 CFR §300.532.

6.02(7.5)(j) Civil Action.

Any party aggrieved by the findings and decision of the administrative law judge has the right to bring a civil action consistent with the requirements set forth in 34 CFR §300.516.

6.02(7.5)(k) Attorneys' fees.

Reasonable attorneys' fees may be awarded to a prevailing party by a court of competent jurisdiction, as described in 34 CFR §300.516, and consistent with the requirements established by 34 CFR §300.517.

6.02(7.5)(l) Child's status during proceedings

The child's status during the pendency of any administrative or judicial proceeding shall be governed by the requirements established by 34 CFR §300.518 unless the due process complaint involves the disciplinary placement of the child, in which case the provisions of 34 CFR §300.533 apply.

6.02(8) 34 CFR §300.519 - Educational Surrogate Parents

6.02(8)(a) General.

The administrative unit of attendance and each state-operated program must ensure that the rights of a child are protected when -

6.02(8)(a)(i) No parent (as defined in Section 2.33 of these Rules) can be identified;

6.02(8)(a)(ii) The administrative unit of attendance or the state-operated program, after reasonable efforts, cannot locate a parent;

6.02(8)(a)(iii) The child is a ward of the State; or

6.02(8)(a)(iv) The child is a homeless child as defined in Section 22-1-102.5, C.R.S.

6.02(8)(b) Educational Surrogate Parent Registry

The Department shall maintain a registry of each child with a disability determined to be in need of an educational surrogate parent and the educational surrogate parent assigned to the child. The purpose of the registry is to track those students for whom an educational surrogate parent has been assigned through the procedures established in this Section 6.02(8).

6.02(8)(c) Duties of the administrative unit of attendance or state-operated program.

The duties of an administrative unit of attendance or a state-operated program under Section 6.02(8) include the assignment of an individual to act as an educational surrogate parent for the child. This must include a method-

6.02(8)(c)(i) For determining whether a child needs an educational surrogate parent; and

6.02(8)(c)(ii) For assigning an educational surrogate parent to the child.

6.02(8)(d) Children placed in the legal custody of the Colorado Department of Human Services.

In the case of a child who is placed in the legal custody of the Colorado Department of Human Services, the educational surrogate parent alternatively may be appointed by the court overseeing the child's case, provided that the educational surrogate parent meets the requirements in Section 6.02(8)(e)(iii).

6.02(8)(e) Criteria for selection of educational surrogate parents.

6.02(8)(e)(i) The Special Education Director of the administrative unit of attendance or state-operated program shall assign educational surrogate parents.

6.02(8)(e)(ii) After determining that a child needs an educational surrogate parent but before the educational surrogate parent is assigned, the Special Education Director must contact the Department to verify that there is no existing educational surrogate assignment for the child.

6.02(8)(e)(iii) The Special Education Director must ensure that a person selected and assigned as an educational surrogate parent -

6.02(8)(e)(iii)(A) Is not an employee of the Department, the administrative unit of residence, the administrative unit of attendance (if different from the administrative unit of residence), or state-operated program, or any other public agency that is involved in the education or care of the child;

6.02(8)(e)(iii)(B) Has no personal or professional interest that conflicts with the interest of the child whom the educational surrogate parent represents; and

6.02(8)(e)(iii)(C) Has knowledge and skills that ensure adequate representation of the child.

6.02(8)(f) Requirement for written certification

The Special Education Director shall document in writing, on a form approved by the Department of Education, each assignment of an educational surrogate parent, including a written certification that the requirements of Section 6.02(8)(e)(iii) have been met. The Special Education Director shall provide a copy of the written assignment to the Department within three (3) business days of the date of the assignment.

6.02(8)(g) Non employee requirement; compensation.

A person otherwise qualified to be an educational surrogate parent under Section 6.02(8)(e)(iii) is not an employee of the administrative unit of attendance or state-operated program solely because he or she is paid by such administrative unit or state-operated program to serve as an educational surrogate parent.

6.02(8)(h) Homeless children.

In the case of a child who is an unaccompanied homeless child, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary educational surrogate parents without regard to Section 6.02(8)(e)(iii), above, until an educational surrogate parent can be appointed that meets all of the requirements of Section 6.02(8)(e)(iii).

6.02(8)(i) Educational surrogate parent responsibilities.

The educational surrogate parent may represent the child in all matters relating to -

6.02(8)(i)(i) The identification, evaluation, and educational placement of the child; and

6.02(8)(i)(ii) The provision of FAPE to the child.

6.02(8)(j) Responsibility of the Department.

The Department must make reasonable efforts to ensure the assignment of an educational surrogate parent not more than 30 days after the responsible administrative unit or state-operated program determines that the child needs an educational surrogate parent.

6.02(8)(k) Approved Facilities Schools.

Notwithstanding Section 6.02(8)(c), above, if it is determined that a child placed in an approved facility school needs an educational surrogate parent, the child's administrative unit of residence or state-operated program is responsible for locating and assigning the educational surrogate parent. If the approved facility school is not located within the boundaries of the administrative unit of residence, the administrative unit in which the approved facility school is located shall cooperate with the administrative unit of residence in locating an educational surrogate parent for the child.

6.02(9) 34 CFR §300.520 - Transfer of parental rights at age of majority. The age of majority for educational purposes in the State of Colorado is age 21;

6.02(10) 34 CFR §300.530 through §300.537 - Student discipline procedures.

Student discipline procedures and protections for children with disabilities shall be consistent with the requirements set forth in 34 CFR §300.530 through §300.537. The topics addressed by those requirements include:

6.02(10)(a) Authority of school personnel - 34 CFR §300.530;

6.02(10)(b) Removals for not more than ten (10) consecutive school days and patterns of removal - 34 CFR §300.530(b)(1);

6.02(10)(c) Removals cumulating to more than ten (10) school days in a school year - 34 CFR §300.530(b)(2);

6.02(10)(d) Removals exceeding 10 consecutive schools days - 34 CFR §300.530(c);

6.02(10)(e) Required provision of services for students suspended or expelled for more than ten cumulative school days in a school year - 34 CFR §300.530(b)(2) and 34 CFR §300.530(d);

6.02(10)(f) Manifestation determinations - 34 CFR §300.530(e) and 34 CFR §300.530(f);

6.02(10)(g) Special circumstances - 34 CFR §300.530(g);

6.02(10)(h) Requirements regarding notification to parents - 34 CFR §300.530(h);

6.02(10)(i) Applicable definitions - 34 CFR §300.530(i);

6.02(10)(j) Determination of setting - 34 CFR §300.531;

6.02(10)(k) Appeal (including expedited due process hearings) - 34 CFR §300.532;

6.02(10)(l) Placement during appeals - 34 CFR §300.533;

6.02(10)(m) Protections for children not determined eligible for special education and related services - 34 CFR §300.534;

6.02(10)(n) Referral to and action by law enforcement and judicial authorities - 34 CFR §300.535; and

6.02(10)(o) Change of placement because of disciplinary removals - 34 CFR §300.536.

2220-R-7.00 COORDINATION BETWEEN SEA AND LEAs

7.01 Record Keeping

To meet the requirements of Sections 22-20-104(4), C.R.S., an administrative unit shall maintain a management and information system which provides for the collection, documentation, aggregation, and reporting of student, staff, revenue and expenditure data.

7.01(1) Student data.

7.01(1)(a) Administrative units should maintain an individual student data base of the following information:

7.01(1)(a)(i) Student name.

7.01(1)(a)(ii) Date of birth.

7.01(1)(a)(iii) Primary disability.

7.01(1)(a)(iv) Student's gender and ethnicity.

7.01(1)(a)(v) Primary educational setting.

7.01(1)(a)(vi) Date of the most recent meeting at which the child was determined to have a disability.

7.01(1)(a)(vii) Date of the most recent meeting at which the IEP was reviewed.

7.01(1)(a)(viii) Individual staff who are providing special education programs and services identified in the student's IEP.

7.01(1)(b) Administrative units, community centered boards, and approved facility schools should maintain individual student records that contain the following:

7.01(1)(b)(i) Information about the disposition of each referral.

7.01(1)(b)(ii) Signed permission forms for initial assessment and initial placement.

7.01(1)(b)(iii) Verification that parent(s) were advised of and understood their due process rights.

7.01(1)(b)(iv) Any written assessment reports.

7.01(1)(b)(v) Documentation that appropriate written notice was given to parent(s).

7.01(1)(b)(vi) Documentation that required participants were in attendance at meetings.

7.01(1)(b)(vii) Records of all meetings at which the child was determined to have a disability.

7.01(1)(b)(viii) A copy of all IEPs.

7.01(1)(b)(ix) Any additional information which documents that the child is eligible for special education services.

7.01(1)(c) Individually identifiable information shall be held confidential and protected in accordance with Section 6.01 of these Rules.

7.01(1)(d) Destruction of records shall be in compliance with Section 6.01(14) of these Rules and 34 CFR §300.624.

7.01(2) Staff data.

Administrative units should maintain the following data for all special education services staff:

7.01(2)(a) Name.

7.01(2)(b) Special education position assignment.

7.01(2)(c) FTE and salary attributable to special education, and source of funds supporting that salary.

7.01(2)(d) Documentation of time spent with students with disabilities for each staff member who is employed part-time in special education and part-time in regular education.

7.01(3) Revenue and expenditure data.

7.01(3)(a) Administrative units shall maintain auditable records of all special education expenditures and of the state, federal, local and other revenues which are received in support of those expenditures.

7.01(3)(b) Using the accrual basis of accounting, administrative units shall operate a budgeting and accounting procedure which records the objects of expenditure for each special education instructional and support service area.

7.01(3)(c) Community centered boards and approved facility schools shall maintain auditable records of all information used to establish tuition costs reported on forms developed by the Department of Education.

7.02 Reporting

Each administrative unit shall submit to the Department of Education annual student, staff, revenue and expenditure data according to the instructions and on forms or computer programs provided by the Department of Education. If accurate data are not submitted according to deadlines established by the Department, the disbursement of state and federal funds to that particular unit shall be delayed.

7.03 SPECIAL EDUCATION FUNDING

7.03(1) Federal funds.

7.03(1)(a) Administrative units shall obtain prior approval from the Department of Education for the use of federal funds in support of special education services.

7.03(1)(b) The approval criteria and procedures for the use of federal funds shall be governed by relevant rules and regulations promulgated pursuant to state and federal laws.

7.03(1)(c) Federally funded programs shall be considered supplementary to the basic program required by the Exceptional Children's Educational Act (ECEA).

7.03(2) ECEA funds.

Under the requirements of Section 22-20-104(4), C.R.S., an administrative unit shall use its state ECEA funds only on special education services and programs, as outlined in Section 2.44 of these Rules.

7.03(3) Payments of ECEA funds.

ECEA funds shall be distributed in accordance with Sections 22-20-114 and 22-20-114.5, C.R.S.

7.04 (Reserved)

7.05 Monitoring

Each administrative unit, State Operated Program and approved facility school shall comply with all state statutes and regulations regarding the identification and/or education of children with disabilities

7.05(1) Each administrative unit, State Operated Program or approved facility school shall be subject to ongoing monitoring by the Department of Education of its policies, procedures and practices relating to the identification and/or education of children with disabilities.

7.05(1)(a) Monitoring procedures shall include:

7.05(1)(a)(i) A determination of compliance with statutes according to the administrative unit on-site checklist developed by the Department of Education.

7.05(1)(a)(ii) An assessment of program quality based on the standards established by the Department of Education.

7.05(1)(b) Monitoring activities shall be determined by the Department of Education and shall include:

7.05(1)(b)(i) Review of the comprehensive plan of the administrative unit, state-operated program or approved facility school,

7.05(1)(b)(ii) A review of the data routinely collected by the Department of Education,

7.05(1)(b)(iii) A planned comprehensive or targeted on-site process to identify and verify compliance with and implementation of policies and procedures as well as delivery of services,

7.05(1)(b)(iv) Count audits consisting of periodic checks of student eligibility criteria through verification of documentation as found in students' files and on individual education programs.

7.05(1)(c) Follow-up to assure non-compliance issues have been rectified shall be ongoing. Follow-up of non compliance issues identified from the count audits will occur as part of the comprehensive on-site monitoring process.

7.05(2) Within 90 days from the completion of any monitoring procedure or activity, the Department of Education shall provide a written report based on the administrative unit on-site checklist, to the administrative unit, state-operated program or approved facility school which shall include findings, non-compliance items, directives for corrective action, and recommendations for improvement.

7.05(2)(a) Should the Department of Education determine that an administrative unit, state-operated program or approved facility school is in non-compliance with pertinent statutes and implementing regulations, the Department of Education shall provide such administrative unit, state-operated program or approved facility school with the legal citation of the statute or regulation it is found to have violated and the directive for corrective action or request for a corrective action plan

7.05(2)(b) Should the Department of Education determine that an administrative unit, state-operated program or approved facility school does not reasonably satisfy quality standards or guidelines established by the Department of Education, recommendations will be made

7.05(3) Within 90 days following any report of non-compliance, the administrative unit, state-operated program or approved facility school shall provide the Department of Education with a corrective action plan including timelines, or sufficient documentation that corrective actions ordered by the Department have been made, whichever is applicable.

7.05(4) Within 20 days following the receipt of the corrective action plan of the administrative unit, state-operated program or approved facility school, the Department of Education shall acknowledge receipt of such and indicate whether or not it is accepted or, if rejected, notification of the revision necessary before acceptance would be given.

7.05(5) If the administrative unit, state-operated program or approved facility school does not agree with any findings or directives for corrective action it may appeal in accordance with Section 7.07 of these Rules.

7.05(6) If the Department of Education is unable to secure voluntary compliance through the actions described above, the administrative unit, state-operated program or approved facility school shall be notified of the noncompliance and the subsequent steps to be taken by the Department of Education which may include any of the following or any other appropriate means of enforcing compliance requirements:

7.05(6)(a) disapproval or failure to approve in whole or part, the application of the administrative unit, state-operated program or approved facility school for funding;

7.05(6)(b) order, in accordance with a final state audit resolution determination, the repayment of misspent federal funds;

7.05(6)(c) withhold and/or terminate further financial assistance to the administrative unit, state-operated program or approved facility school;

7.05(6)(d) suspend payments, under an approved project, to the administrative unit, state-operated program or approved facility school.

7.05(7) Information regarding monitoring findings and resolutions shall be forwarded to the appropriate Department of Education staff for consideration in the accreditation process for a school district or the Colorado School for the Deaf and the Blind.

7.07 Appeals

7.07(1) Unless otherwise specified by these Rules, any decision of the Department relating to an administrative unit, a state-operated program or an approved facility school may be appealed by the affected entity to the state board within 60 days of the entity's receipt of the written notice from the Department.

7.07 (2) The State Board of Education will conduct a hearing and make a determination concerning the appeal within 60 days from the date of request. The decision of the State Board shall be final.

7.07(3) A written notice of denial or approval shall be prepared and delivered to the administrative unit, state-operated program or approved facility school.

2220-R-8.00 RESPONSIBILITIES OF ADMINISTRATIVE UNITS, STATE-OPERATED PROGRAMS AND APPROVED FACILITY SCHOOLS

General Responsibilities

8.01(1) Duties and responsibilities of administrative units.

An administrative unit shall carry out all applicable State and Federal statutes and regulations and shall be responsible for and provide assurances for:

8.01(1)(a) The development and adoption of a Comprehensive Plan in accordance with the applicable statutes and regulations. Such Plan shall also include a description of the following:

8.01(1)(a)(i) Financial commitments and agreements of the unit and of the participating districts for special education programs and services.

8.01(1)(a)(ii) Method or standards utilized to determine the number and types of special education personnel required to meet the needs of children with disabilities.

8.01(1)(a)(iii) Procedures for regular, periodic evaluation of programs, services and student progress.

8.01(1)(b) Resource allocation and management to assure adequate personnel, facilities, materials and equipment in accordance with the provisions of Section 3.03 of these Rules to meet the needs of children with disabilities.

8.01(1)(c) Qualified personnel in accordance with the provisions of Section 3.04 of these Rules.

8.01(1)(d) Maintenance of and access to student records in accordance with Section 7.01 of these Rules.

8.01(1)(e) Child find, referral, evaluation, planning and delivery of services in accordance with the provisions of Sections 4.00, 5.00, and 8.00 of the Rules.

8.01(1)(f) Procedures for ensuring confidentiality and required procedural safeguards in accordance with Section 6.00 of the Rules.

8.01(1)(g) Staff development in accordance with Section 3.05 of these Rules.

8.01(1)(h) Program evaluation in accordance with Section 3.06 of these Rules.

8.01(2) Duties and responsibilities of approved facility schools.

An approved facility school with an on-grounds school approved by the Facility School Board in accordance with the Rules for the Administration of the Facility Schools Act, 1 CCR 304-1, shall be responsible for:

8.01(2)(a) Development of a Comprehensive Plan in accordance with the Rules for the Administration of the Facility Schools Act, 1 CCR 304-1.

8.01(2)(b) Resource allocation and management in accordance with Section 3.03 of these Rules to assure adequate personnel, facilities, materials and equipment to meet the needs of children with disabilities.

8.01(2)(c) Qualified personnel in accordance with the provisions of Section 3.04 of these Rules.

8.01(2)(d) Maintenance and access to student records in accordance with Section 7.01 of these Rules.

8.01(2)(e) IEP planning, in collaboration with the responsible administrative unit, and the delivery of services in accordance with the provisions of Sections 4.00, 5.00 and 8.00 of these Rules.

8.01(2)(f) Procedures for ensuring confidentiality and required procedural safeguards in accordance with Section 6.00 of the Rules.

8.01(2)(g) Staff development in accordance with Section 3.05 of these Rules.

8.01(2)(h) Program evaluation in accordance with Section 3.06 of these Rules.

8.01(3) Duties and Responsibilities of state-operated programs.

A state-operated program shall carry out all applicable State and Federal statutes and regulations and shall be responsible for and provide assurances for the development and adoption of a Comprehensive Plan in accordance with the applicable statutes and regulations. Such Plan shall also include a description of the following:

8.01(3)(a) Method or standards utilized to determine the number and types of special education personnel required to meet the needs of children with disabilities.

8.01(3)(b) Resource allocation and management in accordance with Section 3.03 of these Rules to assure adequate personnel, facilities, materials and equipment to meet the needs of children with disabilities.

8.01(3)(c) Qualified personnel in accordance with the provisions of Section 3.04 of these Rules.

8.01(3)(d) Maintenance of and access to student records in accordance with Section 7.01 of these Rules.

8.01(3)(e) Child find, referral, evaluation, planning and delivery of services in accordance with the provisions of Sections 4.00 and 5.00 of these Rules.

8.01(3)(f) Procedures for ensuring confidentiality and required procedural safeguards in accordance with Section 6.00 of these Rules.

8.01(3)(g) Staff development in accordance with Section 3.05 of these Rules.

8.01(3)(h) Program evaluation in accordance with Section 3.06 of these Rules.

8.02 Specific Responsibilities for Special Education Functions and Services

8.02(1) Except as is otherwise provided for in these Rules, the administrative unit of attendance is responsible for child identification, as defined by Section 4.02 of these Rules, IEP planning, delivery of special education services, and the provision of a free appropriate public education to each child with a disability attending public school within the administrative unit, including convening and conducting required meetings related to such special education functions.

8.02(1)(a) A child with a disability attending public school is entitled to all special education services specified by the child's IEP and to a free appropriate public education.

8.02(1)(b) Consistent with 34 CFR § §300.129 through 300.144, each administrative unit is responsible for conducting child identification and serving designated parentally placed private school students with disabilities in elementary and secondary private schools located within the boundaries of the administrative unit, including developing a services plan for such designated students.

8.02(1)(c) The administrative unit of attendance is not responsible for the delivery of special education services or the provision of a free appropriate public education to a child with a disability placed in an approved facility school approved by the Facility Schools Board. It is, however, responsible for certain other special education functions identified in this Rule 8.00.

8.02(2) If a child with a disability is not enrolled in school, the administrative unit of residence is responsible for the provision of child find identification services.

8.03 Responsibility for Special Education Tuition

8.03(1) Pursuant to Section 9.03 of these Rules, the district of residence is responsible for the payment of special education tuition as that term is defined by Section 9.01(8) of these Rules.

8.03(2) The relative responsibilities of administrative units, districts of residence, approved facility schools, charter schools and on-line programs for public out-of-district placement of students, school choice placement of students, and special education tuition are established in Section 9.00 of these Rules. Each BOCES and its member districts shall jointly develop procedures and/or cooperative agreements that will ensure compliance with such Rules.

8.03(3) If the child's district of attendance is not the child's district of residence but is within the same administrative unit as the child's district of residence, the payment of tuition, if any, shall be determined by the administrative unit and the two districts involved.

8.04 Responsibility for Initial Assessment and Reevaluation

8.04(1) Responsibility for initial assessment and reevaluation shall be with the administrative unit in which the child attends school, or, if (s)he is not enrolled in school, it shall be the responsibility of the administrative unit in which the child resides. The administrative unit of attendance shall invite the Special Education Director or designee of the administrative unit of residence to participate in the process of the initial assessment or re-evaluation. State-operated programs and approved facility schools shall be excepted from this Rule as follows:

8.04(1)(a) Initial assessment and re-evaluation for children attending the Colorado School for the Deaf and the Blind or residing at the Mental Health Institutes or the Division of Youth Corrections shall be the responsibility of those agencies which shall invite the administrative unit of residence to participate.

8.04(1)(b) Initial assessment and re-evaluation for incarcerated children shall be the responsibility of the Department of Corrections.

8.04(1)(c) Re-evaluation for children at approved facility schools shall be the responsibility of the administrative unit of residence.

8.04(1)(d) When the charter contract between a charter school and its authorizer allows the charter school to provide initial evaluations and reevaluations, the charter school shall be responsible for conducting such evaluations and complying with Section 4.02 of these Rules. However, the administrative unit of the charter school remains ultimately responsible for ensuring that all such evaluations meet the requirements of Section 4.02.

8.05 Meetings During Which a Disability or Eligibility is Initially Considered

8.05(1) Meetings during which a disability or eligibility is initially considered shall be the responsibility of the administrative unit in which the child attends school or, if (s)he is not enrolled in school, it shall be the responsibility of the administrative unit in which the child resides.

8.05(1)(a) If the administrative unit in which the parent resides would be different from the administrative unit of attendance, the administrative unit of attendance shall notify the Special Education Director of the administrative unit in which the child's parent resides prior to the assessment process so that the administrative unit of residence may choose to participate in the process.

8.05(1)(b) If the administrative unit in which the parent resides disagrees with the determination of eligibility, the administrative unit of residence may elect to initiate an informal process such as negotiation or mediation or it may request the Commissioner of Education to review the process of determination. Disagreements subject to this informal dispute resolution option are limited to those involving allegations that the administrative unit of attendance failed to comply with the evaluation and eligibility determination procedures established by Section 4.02 of these Rules, including the requirement that the administrative unit of residence be invited to participate in the evaluation of the child consistent with Section 8.05(1)(a) of these Rules.

8.05(1)(c) Except for state-operated programs and approved facility schools, review meetings in which the determination of disability and eligibility is reconsidered shall be the responsibility of the administrative unit of attendance. This includes review meetings

for children with disabilities attending on-line programs within the administrative unit of attendance. For state-operated programs, review meetings in which the determination of disability and eligibility are reconsidered shall be the responsibility of the state-operated programs. For approved facility schools, review meetings in which the determination of disability and eligibility are reconsidered shall be the responsibility of the administrative unit of residence.

8.05(1)(d) When the charter contract between a charter school and its authorizer allows the charter school to provide the special education services and to conduct the eligibility determination meetings required by these Rules, the charter school shall be responsible for meeting the eligibility determination requirements in compliance with Section 4.02 of these Rules. However, the administrative unit of the charter school remains ultimately responsible for ensuring that all eligibility determinations and related meetings comply with the requirements of Section 4.02.

8.06 Meetings to Initially Develop or to Subsequently Review the Child's Individualized Educational Program (IEP)

8.06(1) If the determination is made that the child has a disability and is eligible for special education, all meetings to initially develop or to subsequently review the child's individualized educational program (IEP) shall be the responsibility of the administrative unit of attendance which shall timely invite the Special Education Director of the administrative unit of residence to participate as an IEP team member. This includes on-line programs operated within the administrative unit of attendance. Exceptions to this Rule are as follows:

8.06(1)(a) All meetings for children attending the Colorado School for the Deaf and the Blind or residing at the Mental Health Institutes and the Division of Youth Corrections shall be the responsibility of those agencies which shall invite the administrative unit of residence to participate.

8.06(1)(b) All meetings for incarcerated children at the Department of Corrections shall be the responsibility of that agency.

8.06(1)(c) Meetings to develop the initial individualized educational program (IEP) for children at approved facility schools shall be the responsibility of the administrative unit of attendance (the administrative unit in which the facility is located). Thereafter IEP review meetings and re-determination of eligibility shall be the responsibility of the administrative unit of residence.

8.06(1)(d) When the charter contract between a charter school and its authorizer allows the charter school to provide the special education services and to conduct the meetings required by these Rules, the charter school shall be responsible for meetings to initially develop and subsequently review the IEP in compliance with Section 4.03 of these Rules. However, the administrative unit of the charter school remains ultimately responsible for ensuring that IEP planning and related meetings comply with the requirements of Section 4.03.

8.07 Transfers Under Public School Choice Involving a Significant Change in Placement

8.07(1) When a child seeks to transfer to a new school or program, including an on-line program under public school choice, and the transfer constitutes a significant change in placement, as described in Section 4.03(8)(b)(ii) of these Rules:

8.07(1)(a) A reevaluation consistent with Section 4.03(8)(b)(ii)(B) must be conducted by the administrative unit in which the school or program is located, and an IEP Team convened

by such administrative unit. The purpose of the IEP Team meeting is to ensure that the receiving school or program is an appropriate placement for the student. Consistent with this Section 8.00, if the administrative unit of the receiving school or program is different from the administrative unit of residence, the Special Education Director of the administrative unit of residence shall be notified of the reevaluation and also invited to the IEP meeting.

8.07(1)(b) When the charter contract between a charter school and its authorizer allows the charter school to provide the special education services and to conduct the IEP meeting required by Section 4.03, the charter school shall be responsible for the reevaluation and the IEP meeting in compliance with this section and Section 4.03(8)(b)(ii). However, the administrative unit of the authorizer remains ultimately responsible for ensuring compliance with this section and Section 4.03(8)(b)(ii).

8.08 Responsibility for IDEA Part C Child Find

The administrative unit of residence is responsible for IDEA Part C child find consistent with Section 22-20-118, C.R.S.

2220-R-9.00 OUT OF DISTRICT PLACEMENTS

9.01 DEFINITIONS

9.01(1) **" Applicable Revenues "** means:

9.01(1)(a) The Per Pupil Operating Revenue (PPOR) or the Per Pupil Revenue (PPR), whichever is applicable, as follows:

9.01(1)(a)(i) The state average PPOR when an administrative unit of residence initiates a placement of a child with a disability into an approved facility school for its day treatment or residential program, and the approved facility school also provides the child's educational program;

9.01(1)(a)(ii) The PPOR of the district of residence when an administrative unit of residence places a child with a disability into an approved facility school for the educational program only;

9.01(1)(a)(iii) The PPR of the chartering school district when a child with a disability enrolls in and attends a charter school pursuant to Article 30.5 of Title 22, C.R.S., not including a charter school that provides an on-line program pursuant to Section 22-33-104.6, C.R.S.;

9.01(1)(a)(iv) The PPR of the accounting district, as defined under Section 22-30.5-513 (1)(a), C.R.S., when a child with a disability enrolls in and attends an institute charter school pursuant to Part 5 of Article 30.5 of Title 22, C.R.S.

9.01(1)(a)(v) The PPR of the district of attendance when a child with a disability enrolls in and attends a school in an administrative unit other than the child's administrative unit of residence pursuant to Section 22-36-101, C.R.S., and the school does not provide the child an on-line program and the school is not a charter school;

9.01(1)(a)(vi) The PPOR of the district of residence when an administrative unit of residence purchases services from another administrative unit for a specific special education program not available in the administrative unit of residence; or

9.01(1)(a)(vii) The state minimum PPR when a child with a disability enrolls in and attends a public on-line program pursuant to section 22-33-104.6, C.R.S., including an on-line program provided by a charter school.

9.01(1)(b) For three- and four-year old children with disabilities, and for five-year old children with disabilities who are not enrolled in kindergarten, 50 percent PPOR shall be considered applicable revenue.

9.01(1)(c) Monies available from federal sources.

9.01(1)(d) Monies received under ECEA.

9.01(1)(e) Monies received from other state agencies.

9.01(1)(f) Monies received from other administrative units, not including tuition.

9.01(1)(g) Monies received through grants and donations.

9.01(2) **" Charter School "** means a charter school authorized under Article 30.5 of Title 22, C.R.S. **" District Charter School "** means a charter school authorized by a school district pursuant to Part 1 of Article 30.5, C.R.S. **" Institute Charter School "** means a charter school authorized by the state Charter School Institute pursuant to Part 5 of Article 30.5, C.R.S.

9.01(3) **" Facility "** and " Approved Facility School " are defined in section 2.18 of these Rules.

9.01(4) **" On-line Program "** means an alternative on-line education program as defined in Section 22-33-104.6(2)(b), C.R.S.

9.01(5) **" Public Agency "**, for purposes of this Rule 9.00, means a public agency that is not an administrative unit and is legally authorized to place a child in a facility with an approved facility school or another out-of-home placement.

9.01(6) **" Public Placement "** means the placement of a child with a disability in a facility with an approved facility school or another out-of-home placement by a court or public agency.

9.01(7) **" Special Education Expenditures "** means the expenditures as defined in Section 2.00 of these Rules.

9.01(8) **" Tuition Costs "** shall mean the amount of expenditures for special education services over and above applicable revenues, as defined in Section 9.01(1) of these Rules, for a child with a disability who receives his or her special education services in an approved facility school, charter school, public school of choice pursuant to Section 22-36-101, C.R.S., or a public on-line program pursuant to Section 22-33-104.6, C.R.S.

9.02 OUT OF HOME PLACEMENT

9.02(1) If it becomes necessary for a court or a public agency to place a child in a public placement (e.g., placements in approved facility schools and foster care homes):

9.02(1)(a) Non-emergency placement: prior to the public placement, the court or public agency shall work cooperatively with the child's then current administrative unit of residence and the administrative unit in which the placement is to be made to ensure that appropriate special education services are available for the child. The receiving agency, institution, administrative unit, state-operated program, or approved facility school providing the services shall cooperate in the development of the IEP.

9.02(1)(b) Emergency placement: if an emergency placement for the safety of the child is required, the placing court or placing public agency may make the emergency placement without first cooperating with the child's then current administrative unit of residence or the administrative unit in which the placement is to be made.

9.02(2) In no event shall a child be placed in an approved facility school or an administrative unit that is unable to ensure the provision of special education services that are appropriate for the child.

9.03 RESPONSIBILITY FOR TUITION COSTS

9.03(1) **Criteria for School Choice Placements**

Tuition shall be owed to the charter school, district of attendance, or on-line program for a child who has a disability identified under 9.03(1)(a) and meets one of the factors set forth in 9.03(1)(b):

9.03(1)(a) Eligible Disabilities

The child has been identified as having one or more of the following disabilities, as defined by Section 2.00 of these Rules:

9.03(1)(a)(i) A Vision Impairment, Including Blindness;

9.03(1)(a)(ii) A Hearing Impairment, Including Deafness;

9.03(1)(a)(iii) Deaf-blindness;

9.03(1)(a)(iv) A Serious Emotional Disability;

9.03(1)(a)(v) Autism Spectrum Disorder;

9.03(1)(a)(vi) A Traumatic Brain Injury;

9.03(1)(a)(vii) Multiple Disabilities; or

9.03(1)(a)(viii) Intellectual Disability.

9.03(1)(b) Indicators of Intensity and Duration of Services

9.03(1)(b)(i) For schools or programs serving a broad range of children with and without disabilities, tuition shall be owed only for those children with disabilities identified in Section 9.03(1)(a) whose program intensity and duration of services differ significantly from the intensity and duration of services provided by the school or program to children with disabilities not included in Section 9.03(1)(a).

9.03(1)(b)(ii) For schools or programs designed primarily to serve children with disabilities which provide an intensity and duration of services that differ significantly from other programs in the administrative unit of attendance, tuition shall be owed for all students listed in Section 9.03(1)(a).

9.03(2) **Type of Tuition Placements**

9.03(2)(a) Placement in Approved Facility Schools

9.03(2)(a)(i) When a child with a disability is placed, by a public agency, into an approved facility school, the district of residence is responsible for paying the educational costs over and above applicable revenues, also known as tuition costs. The administrative unit of residence shall count the child for the December 1 Special Education Count. The tuition costs shall be determined by the Department of Education for each approved facility school in accordance with Section 9.06(1) of these Rules. Such tuition costs shall be the maximum amount the district of residence shall be obligated to pay for the special education program. The district of residence may pay a higher tuition cost than the cost established and approved by the Department of Education for children in need of specialized services, if these services were included in a child's IEP but were not included in the approved tuition cost. The district of residence is not responsible for paying tuition costs for extended school year services for a child unless the child's IEP specifies the need for extended school year services. The Department of Education does not set the amount of tuition costs the administrative unit of attendance may charge the district of residence for children in group homes served by the administrative unit of attendance.

9.03(2)(a)(ii) Any court of record, the Department of Human Services, or any other public agency authorized by law to place a child with a disability in a facility with an approved facility school shall notify in writing the child's administrative unit of residence, the administrative unit in which the approved facility school is located and the Department of the placement within fifteen calendar days after the placement. If a court or public agency makes a public placement but fails to provide the required written notice, such court or public agency shall be responsible for the tuition costs for the child until such time as the required notification is made. If the child's administrative unit of residence does not provide written notice of disapproval of the child's placement in an approved facility school by a court or public agency within fifteen calendar days after the required notification, the placement shall be deemed appropriate. A decision to disapprove a placement must be based solely on the unavailability of appropriate educational services. If the placement is disapproved, the administrative unit of residence must assure that the child receives a free appropriate public education until an appropriate placement can be determined in accordance with Sections 5.04(1) and (2) of these Rules.

9.03(2)(a)(ii)(A) If an administrative unit of residence initiates a placement of a child with a disability into an approved facility school for its day treatment or residential program, and the approved facility school also provides the child's educational program, the administrative unit of residence shall count the child on its December 1 Special Education Count. The approved facility school shall count the student on the October 1 Count, bill the department for the state average per pupil operating revenue, and the administrative unit of residence shall pay the approved facility school all remaining day treatment or residential costs, as well as any additional educational costs agreed to by the parties.

9.03(2)(a)(ii)(B) If an administrative unit of residence places a child with a disability into an approved facility school for the educational program only, the district of residence must count the child on the October 1 Count as being in a private school placement, and the administrative unit of residence shall count the child on its December 1 Special Education Count as being in a private school placement. The approved facility school shall not bill the Department for the state average PPOR for the child. Instead the approved facility school shall bill the administrative unit of residence for the total cost of the child's educational program, as

agreed to by the approved facility school and the administrative unit of residence.

9.03(2)(b) Placement in Charter Schools

When a child with a disability enrolls in and attends a charter school pursuant to Article 30.5 of Title 22, C.R.S., including a charter school that provides an on-line program pursuant to Section 22-33-104.6, C.R.S., the district of residence shall be responsible for paying to the charter school or the chartering authority, whichever is providing the special education services, the tuition costs incurred in educating the child. The chartering authority shall count the child for the October 1 Count, and the administrative unit of attendance shall count the child for the December 1 Special Education Count. The amount of the tuition costs shall be determined pursuant to Section 9.06(2) of these Rules. A written approval for the placement is not required from the administrative unit of residence or from the district of residence. Nothing in this subsection shall be construed to apply to the charter contract entered into between a charter school and its chartering authority or to allow a charter school to seek tuition costs from its chartering authority. The tuition responsibility shall be reflected in a contract among the charter school, the administrative unit of residence and the district of residence, if it is not an administrative unit, in a form approved by the chartering authority, and consistent with Section 9.05(1) of these Rules. Under the circumstances described in this subsection, the provisions of Section 22-20-108(8), C.R.S. shall not apply.

9.03(2)(b)(i) Tuition shall be owed to the charter school for those children based on the criteria set forth in Section 9.03(1) of these Rules.

9.03(2)(b)(ii) The provisions in Section 9.03(2)(b) also apply when:

9.03(2)(b)(ii)(A) A child is already enrolled in the charter school and is subsequently identified as a child with a disability in connection with the child find process; or

9.03(2)(b)(ii)(B) A charter school, which has not been billing for tuition costs for an enrolled child with a disability, decides to initiate a tuition contract.

9.03(2)(b)(iii) The provisions in Section 9.03(2)(b) apply only if the charter school complies with the Rules herein governing tuition costs. Likewise, if the charter school does not intend to seek tuition costs, the charter school is not required to comply with Sections 9.03(2)(b), 9.05(1), 9.06(2) and 9.07(2) of the Rules. Section 9.04(2) of these Rules applies regardless of whether the charter school intends to bill the district of residence for tuition costs. This subsection in no way relieves the charter school or the administrative unit of attendance, depending on the charter contract, from the obligation to provide a free appropriate public education to the children with disabilities attending the charter school.

9.03(2)(c) Placement in Traditional Schools of Choice

When a child with a disability enrolls in and attends a school in an administrative unit other than the child's administrative unit of residence pursuant to the provisions of Section 22-36-101, C.R.S., and the school does not provide the child an on-line program pursuant to Section 22-33-104.6, C.R.S., and the school is not a charter school pursuant to Article 30.5 of Title 22, C.R.S., the district of residence shall be responsible for paying the tuition costs for educating the child to the district of attendance. The district where the child attends shall count the child for the October 1 Count, and the administrative unit of attendance shall count the child for the December 1 Special Education Count. The

administrative unit of attendance, the district of attendance, if it is not an administrative unit, the administrative unit of residence, and the district of residence, if it is not an administrative unit, must negotiate a contract which does not need to be approved by the Department of Education. No written approval for the placement is required from the administrative unit of residence and/or the district of residence. The administrative unit of attendance shall provide notice in accordance with Section 9.04(1) of these Rules.

9.03(2)(c)(i) Tuition shall be owed to the district of attendance for those children based on the criteria set forth in Section 9.03(1) of these Rules.

9.03(2)(c)(ii) The provisions in Section 9.03(2)(c) of these Rules also apply when:

9.03(2)(c)(ii)(A) A child is already enrolled in the district of attendance under public schools of choice and is subsequently identified as a child with a disability in connection with the child find process; or

9.03(2)(c)(ii)(B) A district of attendance, which has not been billing for tuition costs for an enrolled child with a disability, decides to initiate a tuition contract.

9.03(2)(c)(iii) The provisions in Section 9.03(2)(c) of these Rules apply only if the district of attendance complies with the Rules herein governing tuition costs. Likewise, if the district of attendance does not intend to seek tuition costs, neither it nor the administrative unit of attendance is required to comply with Sections 9.03(2)(c), 9.06(3) and 9.07(1) of these Rules. Section 9.04(1) of these Rules applies regardless of whether the district of attendance intends to bill for tuition costs. This subsection in no way relieves the administrative unit of attendance from the obligation to provide a free appropriate public education to the children with disabilities attending school in the administrative unit under public schools of choice.

9.03(2)(d) Placement in On-line Programs

When a child with a disability enrolls in and attends a public on-line program pursuant to Section 22-33-104.6, C.R.S., that is not provided by a charter school, the district of residence shall be responsible for paying to the provider of the on-line program the tuition costs incurred in educating the child. The district where the child attends school shall count the child for the October 1 Count, and the administrative unit of attendance shall count the child for the December 1 Special Education Count. The tuition responsibility shall be reflected in a contract among the administrative unit of attendance, the district of attendance, if it is not an administrative unit, the administrative unit of residence and the district of residence, if it is not an administrative unit, in accordance with Section 9.04(3) of these Rules, and in a form approved by the Department of Education. A written approval for the placement is not required from the administrative unit of residence or from the district of residence. The on-line provider shall provide notice in accordance with these Rules when a child with a disability applies to enroll in the on-line program. The amount of the tuition costs shall be determined pursuant to Section 9.06(4) of these Rules. Under the circumstances described in this subsection, the provisions of Section 22-20-108(8), C.R.S. shall not apply.

9.03(2)(d)(i) Tuition shall be owed to the on-line program for those children based on the criteria set forth in Section 9.03(1) of these Rules.

9.03(2)(d)(ii) The provisions in Section 9.03(2)(d) of these Rules also apply when:

9.03(2)(d)(ii)(A) A child is already enrolled in the on-line program and is subsequently identified as a child with a disability in connection with the child find process; or

9.03(2)(d)(ii)(B) An on-line program, which has not been billing for tuition costs for a child with a disability enrolled in its program, decides to initiate a tuition contract.

9.03(2)(d)(iii) The provisions in Section 9.03(2)(d) of these Rules apply only if the on-line program complies with the Rules herein governing tuition costs. Likewise, if the on-line program does not intend to seek tuition costs, Sections 9.03(2)(d), 9.05(2), 9.06(4) and 9.07(3) of these Rules do not apply. Section 9.04(3) of these Rules applies regardless of whether the on-line program intends to bill for tuition costs. This subsection in no way relieves the administrative unit of attendance for the on-line program from the obligation to provide a free appropriate public education to the children with disabilities attending the on-line program.

9.03(2)(d)(iv) The provisions in Section 9.03(2)(d), 9.04(3), 9.05(2), 9.06(4) and 9.07(3) of these Rules do not apply to any on-line program that is providing services that are supplemental to the curriculum of a school district.

9.03(2)(e) Placement by Administrative Units

An administrative unit may purchase services from one or more administrative units where an appropriate special education program exists. The district of residence shall count the child for the October 1 Count, and the administrative unit of residence shall count the child for the December 1 Special Education Count. The two administrative units must negotiate a contract, including the cost of the program, which does not need to be approved by the Department of Education.

9.04 SCHOOLS OF CHOICE NOTIFICATION REQUIREMENTS

9.04(1) Notice - Public Schools Of Choice That Are Not Charter Schools Or On-line Programs

The district of attendance shall provide written notice to the district of residence when a child applies to enroll or is enrolled in one of its schools and the principal of the school knows that the child is a child with a disability. The specific requirements for the written notice are set forth below:

9.04(1)(a) Applies to Enroll

"Applies to enroll" means that the district of attendance has offered a space to the child and the parent(s) has accepted the offer.

9.04(1)(b) Content of Notice

The written notice by the district of attendance shall identify the child by name; date of birth; state assigned student identifier (SASID), if available; date of the enrollment application; anticipated date of admission; and that the child has been identified as a child with a disability.

9.04(1)(c) Manner

The notice shall be in writing, shall be signed by the school principal and shall be sent to the superintendent of the district of residence, if the district of residence is not an

administrative unit, and to the special education directors of the administrative units of attendance and residence. The manner in which the written notice is provided must maintain the confidentiality of the child's personal information in accordance with the policy of the administrative unit of attendance.

9.04(1)(d) Timing

The notice shall be sent within 15 calendar days after the occurrence of the following two events:

9.04(1)(d)(i) The child has applied to enroll, as that term is defined in this section, or is enrolled in the district of attendance; and

9.04(1)(d)(ii) Upon exercising timely and due diligence, the school principal knows that the child is a child with a disability.

9.04(1)(e) Change in District of Residence

If there is a change in the child's district of residence, the same notification and timelines set forth in this Section 9.04(1) must be followed. In addition, the district of attendance must notify the special education director of the former administrative unit of residence, the superintendent of the former district of residence, if it is not an administrative unit, and the special education director of the administrative unit of attendance that the child has moved and the date that the move occurred, thereby removing from the former district of residence the tuition cost responsibility for that child as of the date of the change in residency.

9.04(2) **Notice - Charter Schools**

The charter school shall provide written notice to the district of residence when a child applies to enroll or is enrolled in the charter school and the charter school's administrator knows that the child is a child with a disability. The specific requirements for the written notice are set forth below:

9.04(2)(a) Applies to Enroll

"Applies to enroll" shall mean that the charter school has offered a space to the child and the parent(s) has accepted the offer.

9.04(2)(b) Content of Notice

The written notice by the charter school shall identify the child by name; date of birth; state assigned student identifier (SASID), if available; date of the enrollment application; anticipated date of admission; and that the child has been identified as a child with a disability.

9.04(2)(c) Manner

The notice shall be in writing, shall be signed by the charter school administrator and shall be sent to the superintendent of the district of residence, if the district of residence is not an administrative unit, and to the directors of special education for both the administrative units of residence and attendance. The manner in which the written notice is provided must maintain the confidentiality of the child's personal information in accordance with the policy of the administrative unit of attendance.

9.04(2)(d) Timing

The notice shall be sent within 15 calendar days after the occurrence of the following two events:

9.04(2)(d)(i) The child has applied to enroll, as defined in this section, or is enrolled in the charter school; and

9.04(2)(d)(ii) Upon exercising timely and due diligence, the charter school administrator knows that the child is a child with a disability.

9.04(2)(e) Change in District of Residence

If there is a change in the child's district of residence, the same notification and timelines set forth in this Section 9.04(2) must be followed. In addition, the charter school must notify the special education director of the former administrative unit of residence, the superintendent of the former district of residence, if it is not an administrative unit, and the special education director for the administrative unit of attendance that the child has moved and the date that the move occurred, thereby removing from the former district of residence the tuition cost responsibility for that child as of the date of the change in residency.

9.04(3) **NOTICE - Public On-line Programs Under section 22-33-104.6, C.R.S.**

The on-line program shall provide written notice to the district of residence when a child applies to enroll or is enrolled in the on-line program and the on-line program's director knows that the child is a child with a disability. The specific requirements for the written notice are set forth below:

9.04(3)(a) Applies to Enroll

"Applies to enroll" shall mean that the on-line program has offered a space to the child and the parent(s) has accepted the offer.

9.04(3)(b) Content of Notice

The written notice by the on-line program director shall identify the child by name; date of birth; state assigned student identifier (SASID), if available; the date of the enrollment application; the anticipated date of admission; and that the child has been identified as a child with a disability.

9.04(3)(c) Manner

The notice shall be signed by the director of the on-line program and shall be sent to the superintendent of the district of residence, if the district of residence is not the administrative unit of residence, and to the directors of special education for the administrative units of attendance and residence. The manner in which the written notice is provided must maintain the confidentiality of the child's personal information in accordance with the policy of the administrative unit of attendance.

9.04(3)(d) Timing

The notice shall be sent within 15 calendar days after the occurrence of the following two events:

9.04(3)(d)(i) The child has applied to enroll or is enrolled in the on-line program, as defined in this Section; and

9.04(3)(d)(ii) Upon exercising timely and due diligence, the on-line program director knows that the child is a child with a disability.

9.04(3)(e) Change in District of Residence

If there is a change in the child's district of residence the same notification and timelines set forth in this Section 9.04(3) must be followed. In addition, the on-line program must notify the special education director of the former administrative unit of residence, the superintendent of the former district of residence, if it is not an administrative unit, and the special education director for the administrative unit of attendance that the child has moved and the date that the move occurred, thereby removing from the former district of residence the tuition cost responsibility for that child as of the date of the change in residency.

9.05 CONTRACT FOR TUITION RESPONSIBILITY

9.05(1) **Charter School**

9.05(1)(a) Contract Elements

The charter school, the administrative unit of residence and the district of residence, if it is not an administrative unit, shall establish the tuition responsibility of the district of residence for each child with a disability through a written contract in a form approved by the chartering authority. The provisions of this section apply only if the charter school intends to seek tuition costs. Likewise, if the charter school does not intend to seek tuition costs, the charter school is not required to comply with this section. The written contract must contain, at a minimum, the following elements:

9.05(1)(a)(i) The name of the district of residence;

9.05(1)(a)(ii) The name of the administrative unit of residence, if different from the district of residence;

9.05(1)(a)(iii) The name of the charter school;

9.05(1)(a)(iv) The name of the chartering authority;

9.05(1)(a)(v) The name of the administrative unit of attendance, if different from the chartering authority;

9.05(1)(a)(vi) The name of the child;

9.05(1)(a)(vii) The child's date of birth;

9.05(1)(a)(viii) The child's address;

9.05(1)(a)(ix) The child's primary disability;

9.05(1)(a)(x) Whether the child will be attending full-time or part-time;

9.05(1)(a)(xi) The charter school's tuition cost rate as approved by the state board, or, if the tuition cost rate has not been approved as of the date that the contract has been signed, a statement that the state board approved rate will be charged;

9.05(1)(a)(xii) The number of school days (student contact days) covered by the contract;

9.05(1)(a)(xiii) The schedule for billing and payment, which should be on a monthly basis;

9.05(1)(a)(xiv) A statement that the charter school will notify the directors of special education for the administrative units of residence and attendance, as well as the superintendent of the district of residence, if the district is not an administrative unit, within 15 calendar days of the date of the child's withdrawal from the charter school or when the child is otherwise no longer attending the charter school. If the charter school is an on-line program, this section shall not apply. Instead, Section 9.05(2)(a)(xiii) shall apply.

9.05(1)(a)(xv) A statement that the charter school will not bill the district of residence for more than 5 consecutive days of unexcused absences or for more than 10 cumulative days of unexcused absences during the school year;

9.05(1)(a)(xvi) A statement that the charter school or the administrative unit of attendance, whichever is responsible according to the charter contract, will timely notify the director of special education for the administrative unit residence when the child's IEP team is being convened to review the child's IEP or to consider a change in placement for the child. The meeting notification shall be provided at the same time that notice is sent to the parent(s);

9.05(1)(a)(xvii) A statement that the tuition cost responsibility commences on the date that services under an existing IEP commence, unless the child's IEP team determines that the charter school is not an appropriate placement for the child or that the child is no longer a child with a disability as defined by these Rules. Nothing herein shall be construed to modify current educational placement requirements under Section 6.03(14) of these Rules; and

9.05(1)(a)(xviii) Signature lines for the individuals who are legally authorized to sign the contract on behalf of the charter school, the administrative unit of residence, and the district of residence if it is not an administrative unit.

9.05(1)(b) Additional Contract Elements for Children Enrolled in Charter School On-line Programs

If the charter school sponsors an on-line program, the costs of direct speech language instruction and related services will not be included in the charter school's tuition cost rate. Instead, the cost of those services may be added to the total tuition cost amount. When a child's IEP specifies speech/language instruction and/or related services, the contract between the charter school, the administrative unit of residence and the district of residence, if it is not an administrative unit, must contain the following additional elements:

9.05(1)(b)(i) A statement that the child's IEP specifies speech/language instruction and/or related services and a description of the nature and duration of such services;

9.05(1)(b)(ii) A statement identifying which entity (i.e., the charter school, the chartering school authority, the administrative unit of attendance, if different from the chartering authority, the administrative unit of residence or a third party) will deliver such services;

9.05(1)(b)(iii) If the parties agree that the administrative unit of residence will deliver the speech-language instruction and/or related services, a statement describing the responsibilities of the parties if it is determined that the administrative unit of residence is failing or has failed to provide appropriate services as specified by the child's IEP;

9.05(1)(b)(iv) If the parties agree that the administrative unit of attendance will deliver the speech-language instruction and/or related services, a statement describing the responsibilities of the parties if it is determined that the administrative unit of attendance is failing or has failed to provide appropriate services as specified by the child's IEP;

9.05(1)(b)(v) A statement describing whether the costs of providing the speech-language instruction and/or related services will be an add-on to the tuition cost rate approved by the State Board that will be billed and an identification of what those costs will be;

9.05(1)(b)(vi) If the speech-language instruction and/or a related service are to be provided by the charter school or a third party contractor with the charter school that is not the administrative unit of residence, the contract shall contain a statement that the district of residence will be responsible for only the cost of providing the service in the amount of time specified on the child's IEP. If such services are to be provided by the charter school or a third party contractor of the charter school, the contract shall contain a statement describing the responsibilities of the parties if it is determined that the charter school or its third party contractor is failing or has failed to provide appropriate services as specified by the child's IEP; and

9.05(1)(b)(vii) If speech-language instruction and/or related services associated with child find are being claimed, then such services must be included in the charter school's tuition cost rate.

9.05(1)(c) Change in District of Residence

If there is a change in the child's district of residence the charter school must notify the new district of residence in accordance with Section 9.04(2) of these Rules. The charter school must also enter into a tuition contract with the new district of residence in accordance with Section 9.05(1) of these Rules, thereby removing from the former district of residence the tuition cost responsibility for that child as of the date of the change in residency.

9.05(1)(d) Extended School Year Services

If the child's IEP specifies that the child is to receive extended school year services, a separate contract for those services must be entered into between the charter school, the administrative unit of residence, and the district of residence, if it is not an administrative unit.

9.05(1)(e) Contract Timelines

9.05(1)(e)(i) The charter school shall send the proposed tuition contract to the special education director of the administrative unit of residence, and to the district to residence, if it is not an administrative unit, within 15 calendar days following the date it is determined that the charter school is an appropriate placement for the child.

9.05(1)(e)(ii) The district of residence shall provide written acknowledgement of the receipt of the proposed tuition contract within 15 calendar days of its receipt of the contract. The district of residence shall have 30 additional calendar days to negotiate, execute and return the contract. In the event that the contract is not executed and returned within 45 calendar days of the district of residence's receipt of the proposed contract, the tuition responsibility shall be as stated in Section 22-20-109(5), C.R.S., even though a contract has not been executed.

9.05(2) **On-line Programs (Excluding Charter School On-line Programs)**

9.05(2)(a) Contract elements

The administrative unit of attendance, the district of attendance, if it is not an administrative unit, the administrative unit of residence, and the district of residence, if it is not an administrative unit, shall establish the tuition responsibility of the district of residence for each child with a disability through a written contract in a form approved by the Department of Education. The provisions of this section shall apply only if the on-line program intends to seek tuition costs. Likewise, if the on-line program does not intend to seek tuition costs, the administrative unit of attendance and the district of attendance, if it is not an administrative unit, is not required to comply with this section. The written contract must contain, at a minimum, the following elements:

9.05(2)(a)(i) The name of the district of residence;

9.05(2)(a)(ii) The name of the administrative unit of residence, if different from the district of residence;

9.05(2)(a)(iii) The name of the on-line program;

9.05(2)(a)(iv) The name of the sponsoring district(s) and/or the board of cooperative services;

9.05(2)(a)(v) The name of the child;

9.05(2)(a)(vi) The child's date of birth;

9.05(2)(a)(vii) The child's address;

9.05(2)(a)(viii) The child's primary disability;

9.05(2)(a)(ix) Whether the child will be attending full-time or part-time;

9.05(2)(a)(x) The on-line program's tuition cost rate as approved by the state board or, if the tuition cost rate has not been approved as of the date that the contract has been signed, a statement that the State Board approved rate will be charged;

9.05(2)(a)(xi) The number of school days (student contact days) covered by the contract;

9.05(2)(a)(xii) The schedule for billing and payment, which should be on a monthly basis;

9.05(2)(a)(xiii) A statement that when a child with a disability withdraws from the on-line program, or is otherwise not attending the on-line program, the on-line program shall provide notice to the special education directors of the administrative units of residence and attendance, and to the superintendent of the district of residence if the district is not an administrative unit. This contract element shall not be interpreted to relieve the on-line program of its obligations regarding truancy pursuant to Section 22-33-107, C.R.S. Notice pursuant to this rule for unexcused nonattendance shall be provided upon the earliest occurrence of the following:

9.05(2)(a)(xiii)(A) The child is absent for 10 consecutive school days from the on-line program's regular education program; or

9.05(2)(a)(xiii)(B) The child is absent for 3 consecutive sessions of scheduled direct special education services, or the parent is absent for 3 consecutive sessions of consultative special education services; or

9.05(2)(a)(xiii)(C) The child is absent for scheduled direct special education services during 10 cumulative school days or the parent is absent for consultative special education services for 10 cumulative school days.

9.05(2)(a)(xiv) A statement that the on-line program will not bill the district of residence for unexcused absences in excess of the earliest occurrence of the circumstances defined above in Section 9.05(2)(a)(xiii);

9.05(2)(a)(xv) A statement that the on-line program will timely notify the special education director of the administrative unit of residence when the child's IEP team is being convened to review the child's IEP or to consider a change in placement for the child. The meeting notification shall be provided at the same time that notice is sent to the parent(s);

9.05(2)(a)(xvi) A statement that the tuition cost responsibility commences on the date that services under an existing IEP commences, unless the child's IEP team determines that the on-line program is not an appropriate placement for the child or that the child is no longer a child with a disability as defined by these Rules. Nothing herein shall be construed to modify current educational placement requirements under Section 6.03(14)(a) of these Rules; and

9.05(2)(a)(xvii) Signature lines for the individuals who have legal authority to sign the contract on behalf of the administrative unit of attendance, the district of attendance if it is not an administrative unit, the administrative unit of residence, and the district of residence if it is not an administrative unit.

9.05(2)(b) Transfer of Special Education Revenues

If the administrative unit of attendance and the district of attendance, if it is not an administrative unit, on behalf of the on-line program, contracts with the administrative unit of residence for all special education and related services, then all state and federal special education funds shall be forwarded to the administrative unit of residence for those services.

9.05(2)(c) Additional Contract Elements for Contracts Involving Speech-language Instruction and/or Related Services.

The costs of direct speech-language instruction and related services shall not be included in the on-line program's tuition cost rate. Instead, the cost of those services may be added to the total tuition cost amount. When a child's IEP specifies speech-language instruction and/or related services, the tuition contract must contain the following additional elements:

9.05(2)(c)(i) A statement that the child's IEP specifies speech-language instruction and/or related services, and a description of the nature and duration of such services as specified by the IEP;

9.05(2)(c)(ii) A statement identifying which entity (i.e., the administrative unit of attendance, the administrative unit of residence or a third party) will deliver such services;

9.05(2)(c)(iii) If the parties agree that the administrative unit of residence will deliver the speech-language instruction and/or related services, a statement describing the responsibilities of the parties should it be determined that the administrative unit of residence is failing, or has failed, to provide appropriate services as specified by the child's IEP;

9.05(2)(c)(iv) If the parties agree that the administrative unit of attendance will deliver the speech-language instruction and/or related services and the district of residence will pay the tuition costs for such services, a statement describing the responsibilities of the parties should it be determined that the administrative unit of attendance is failing, or has failed, to provide appropriate services as specified by the child's IEP;

9.05(2)(c)(v) If the on-line program is providing the speech-language instruction and/or related services, a statement describing whether the costs of providing the speech-language instruction and/or related service will be an add-on to the tuition cost rate approved by the State Board and an identification of what those costs will be;

9.05(2)(c)(vi) If the speech-language instruction and/or a related service are to be provided by the on-line program through a third party contractor that is not the administrative unit of residence, the contract shall contain a statement that the district of residence will be responsible for only the cost of providing the services for the amount of time specified on the child's IEP. If such services are to be provided by the on-line program or a third party contractor of the on-line program, the contract shall contain a statement describing the responsibilities of the parties if it is determined that the service provider is failing, or has failed, to provide appropriate services as specified by the child's IEP, and

9.05(2)(c)(vii) If speech-language instruction and/or related services associated with child find are being claimed, then such instruction and/or related services must be included in the on-line program's tuition cost rate.

9.05(2)(d) Change in District of Residence

If there is a change in the child's district of residence the on-line program must notify the new district of residence in accordance with Section 9.04(3) of these Rules. The on-line program must also enter into a tuition contract with the new district of residence in

accordance with Section 9.05(2) of these Rules, thereby removing from the former district of residence the tuition cost responsibility for that child as of the date of the change in residency.

9.05(2)(e) Extended School Year Services

If the child's IEP specifies that the child is to receive extended school year services, a separate contract for those services must be entered into between the administrative unit of attendance, the district of attendance, if it is not an administrative unit, the administrative unit of residence, and the district of residence, if it is not an administrative unit.

9.05(2)(f) Contract Timelines

9.05(2)(f)(i) The district of attendance shall send the proposed tuition contract to the district of residence within 15 calendar days following the date that the child's IEP team determines that the on-line program is an appropriate placement for the child.

9.05(2)(f)(ii) The district of residence shall provide written acknowledgement of the receipt of the proposed tuition contract within 15 calendar days of its receipt of the contract. The district of residence shall have 30 additional calendar days to negotiate, execute and return the contract. In the event that the contract is not executed and returned within 45 calendar days of the district of residence's receipt of the proposed contract, the tuition responsibility shall be as stated in Section 22-20-109(6), C.R.S., even though a contract has not been executed.

9.06 DOCUMENTATION OF TUITION COSTS

9.06(1) **Approved Facility Schools**

9.06(1)(a) Annually, approved facility schools must submit to the Department of Education an itemized documentation of the proposed amount of tuition costs charged to an administrative unit of residence for special education services provided to a child with disabilities who is determined to be the responsibility of the administrative unit of residence.

9.06(1)(b) The documentation must be submitted on forms developed by the Department of Education, and must include the following:

9.06(1)(b)(i) Special education expenditures defined in Section 2.00 of these Rules;

9.06(1)(b)(ii) The number of days in the school year during which the approved facility school offers the program; and

9.06(1)(b)(iii) A separate set of proposed costs for services that differ from those offered during the regular academic year.

9.06(1)(c) Tuition costs shall be determined after deducting applicable revenues, as defined in Section 9.01(1) of these Rules.

9.06(1)(d) A percentage of the per pupil operating revenue, to be determined annually by the Department of Education, shall be applied as revenue toward indirect costs of the special education program, such as utilities, maintenance, administrative support services, regular education, and other items that may be determined by the Department.

9.06(1)(e) In no instance shall the total revenues received by the approved facility school for Department of Education approved costs for special education services exceed 100 percent of the total expenditures for the provision of those special education services. Based on this information, the Department will recommend to the State Board of Education tuition rates for approved facility school. Costs for additional services required by an individual child, and documented on an IEP may be negotiated with the administrative unit of residence.

9.06(2) **Charter Schools, Excluding Charter Schools That Are On-line Programs**

The provisions of this section apply only if the charter school intends to seek tuition costs. Likewise, if the charter school does not intend to seek tuition costs, the charter school is not required to comply with this section.

9.06(2)(a) Annually, charter schools, excluding charter schools that are also on-line programs, must submit to the Department an itemized documentation of the proposed amount of tuition costs to be charged to a district of residence for special education services provided to a child with disabilities who is enrolled in the charter school. If appropriate, multiple rates may be set for different programs within the charter school. The special education director of the administrative unit of attendance shall certify that the information contained in the documentation is accurate and that the criteria set forth in 9.03(1) are met.

9.06(2)(b) The documentation must be submitted on forms developed by the Department and in accordance with timelines established by the Department. The documentation must include the following:

9.06(2)(b)(i) Special education expenditures defined in Section 2.00 of these Rules;

9.06(2)(b)(ii) The number of days in the school year during which the charter school offers the program;

9.06(2)(b)(iii) Expenditures for the regular education program, administration, personnel costs, business services, and occupancy; and

9.06(2)(b)(iv) The average number of children enrolled in the charter school, and the number of those children with disabilities.

9.06(2)(c) For the purpose of establishing a tuition rate, student/staff ratios in a particular program shall be approved by the chartering authority, and shall be reasonably consistent with the ratios of the chartering authority, for serving students with comparable disabilities.

9.06(2)(d) The type of supplies and equipment that may be included in the documented special education costs shall be unique for children with disabilities. The Department shall limit the amount for supplies and equipment to be included in the rate to no more than 1.1 times the average cost per child with disabilities for supplies and equipment for administrative units in the most recent year for which data are available.

9.06(2)(e) Tuition costs shall be determined after deducting applicable revenues, as defined in Section 9.01(1) of these Rules.

9.06(2)(f) If the charter school accepts a child for which it has not received PPR funding, the PPR amount must still be included as an applicable revenue for purposes of establishing tuition costs.

9.06(2)(g) If the charter school provides an extended school year program for children with disabilities, a separate tuition rate form must be submitted for the program.

9.06(2)(h) In no case shall the total revenues received by the charter school for Department approved costs for special education services exceed 100 percent of the total expenditures for the provision of those special education services.

9.06(2)(i) In no case shall regular education and other education costs exceed the per pupil revenue received by the charter school.

9.06(2)(j) A percentage of the per pupil revenue, as documented on the rate setting form for each charter school, shall be applied as revenue toward the special education costs submitted on the rate setting form by the charter school.

9.06(2)(k) Based on this information, the Department will recommend to the State Board of Education for approval, tuition rates for charter schools.

9.06(2)(l) Costs for additional services, supplies or equipment required by an individual child, and documented on an IEP, shall be negotiated with the administrative unit of residence and the district of residence, if it is not an administrative unit, and shall not be included in the tuition rate submitted for approval.

9.06(3) **School Districts**

Special Education tuition costs involving two school districts should be negotiated between the administrative unit of attendance, the district of attendance, if it is not an administrative unit, the administrative unit of residence and the district of residence, if it is not an administrative unit, and do not need to be submitted to the Department of Education for approval. This includes costs for children with disabilities who are attending school outside their district of residence under the Public Schools of Choice law. In establishing the tuition cost, all applicable revenues as defined in Section 9.01(1) of these Rules shall be deducted.

9.06(4) **On-line Programs, Including Charter Schools That Are On-line Programs**

The provisions of this section apply only if the on-line program intends to seek tuition costs. Likewise, if the on-line program does not intend to seek tuition costs, it is not required to comply with this section.

9.06(4)(a) Annually, on-line programs must submit to the Department of Education an itemized documentation of the proposed amount of tuition costs to be charged to a district of residence for special education services provided to children with disabilities who are enrolled in the on-line program. The special education director of the administrative unit of attendance shall certify that the information contained in the documentation is accurate and that the criteria set forth in 9.03(1) are met.

9.06(4)(b) The documentation must be submitted on forms developed by the Department and in accordance with timelines established by the Department. The documentation must include the following:

9.06(4)(b)(i) Special education expenditures defined in Section 2.00 of these Rules;

9.06(4)(b)(ii) The number of days in the school year during which the on-line program offers the program;

9.06(4)(b)(iii) Expenditures for the regular education program, administration, personnel costs, occupancy, and business services; and

9.06(4)(b)(iv) The average number of children enrolled in the on-line program, and the number of those children with disabilities.

9.06(4)(c) For the purpose of establishing a tuition rate, student/staff ratios in a particular program shall be approved by the administrative unit of attendance, and shall be reasonably consistent with that unit's ratios for serving students with comparable disabilities.

9.06(4)(d) The type of supplies and equipment that may be included in the documented special education costs shall be unique for children with disabilities. The Department shall limit the amount for supplies and equipment to be included in the rate to no more than 1.1 times the average cost per child with disabilities for supplies and equipment for administrative units in the most recent year for which data are available.

9.06(4)(e) Tuition costs shall be determined after deducting applicable revenues, as defined in Section 9.01(1) of these Rules.

9.06(4)(f) If the on-line program accepts a child for which it has not received the state minimum PPR funding, the state minimum PPR must still be included as an applicable revenue for purposes of establishing tuition costs.

9.06(4)(g) If the on-line program provides an extended school year program for children with disabilities, a separate tuition rate form must be submitted for the program.

9.06(4)(h) In no case shall the total revenues received by the on-line program for Department of Education approved costs for special education services exceed 100 percent of the total expenditures for the provision of those special education services.

9.06(4)(i) In no case shall regular education and other education costs exceed the per pupil revenue received by the on-line program.

9.06(4)(j) A percentage of the per pupil revenue, as documented on the rate setting form for each on-line program, shall be applied as revenue toward the special education costs submitted on the rate setting form by the program.

9.06(4)(k) Based on this information, the Department will recommend to the State Board of Education for approval, tuition rates for on-line programs.

9.06(4)(l) Costs for additional services, supplies or equipment required by an individual child, and documented on an IEP, shall be negotiated with the administrative unit of residence, and the district of residence, if it is not an administrative unit, and shall not be included in the tuition rate submitted for approval.

9.07 PROCEDURES FOR RESOLVING DISAGREEMENTS

The following procedures shall be available for resolving disputes involving tuition charges:

9.07(1) **school Districts**

9.07(1)(a) If a district of attendance determines that the district of residence has not paid the tuition costs incurred in educating a child with a disability as required in Section 22-

20-109(4), C.R.S., the district of attendance may seek a determination from the State Board in accordance with the following provisions:

9.07(1)(a)(i) If a district of attendance determines that the district of residence has not forwarded to the district of attendance the amount due to it in accordance with the terms of the tuition contract and these rules, the district of attendance may seek a determination from the State Board regarding whether the district of residence improperly withheld any portion of the amount due to it. A district of attendance that chooses to request a determination of issues shall submit the request within the next fiscal year following the fiscal year in which the district of residence may have improperly withheld funding; except that, if the tuition contract requires the district of attendance to complete any requirements prior to seeking a determination from the State Board, the district of attendance shall submit the request no later than the end of the next fiscal year following the fiscal year in which the district of attendance completes said requirements.

9.07(1)(a)(ii) Upon receipt from a district of attendance of a request for a determination of whether the district of residence has improperly withheld any portion of the amount due to it, the State Board Shall direct the Department of Education to review the terms of the tuition contract and the relevant information of the district of attendance and the district of residence, and make a recommendation to the State Board regarding whether the district of residence improperly withheld any portion of the amount due to it. The Department shall request from the district of residence and the district of attendance all information as soon as possible following the request, but in no event later than thirty days after completion of the annual financial audit. The Department shall forward its recommendation to the State Board within sixty days after receiving all of the requested information from the districts of attendance and residence.

9.07(1)(a)(iii) At the next State Board meeting following receipt of the recommendation of the Department, the State Board shall issue its decision regarding whether the district of residence improperly withheld any portion of the amount due to the district of attendance. If the State Board finds that the district of residence improperly withheld any portion of the amount due to the district of attendance, the district of residence shall pay to the district of attendance, within thirty days after issuance of the decision, the amount improperly withheld.

9.07(1)(a)(iv) If the district of residence fails within the thirty-day period to pay the full amount that was improperly withheld, the district of attendance may notify the department. The department shall withhold from the state equalization payment of the district of residence the unpaid portion of the amount improperly withheld by the district of residence and pay the unpaid portion directly to the district of attendance.

9.07(1)(a)(v) Third Party Facilitation

The parties may utilize third party facilitation as a dispute resolution process for resolving tuition charge disputes including disputes arising out of the contract itself and disputes arising during the formation of a proposed contract. Third party facilitation must be voluntary. The parties agreeing to third party facilitation are responsible for paying its costs.

9.07(1)(b) The dispute resolution procedure established in Section 9.07(1)(a) of these Rules may also be utilized by the district of residence if it determines that it has been paying a tuition charge for a child who withdrew from the district of attendance, or who otherwise

has not been attending the district of attendance, or if the child's residency, as defined in Section 22-20-107.5, C.R.S., has changed.

9.07(2) **Charter Schools**

9.07(2)(a) If a charter school determines that the district of residence has not paid the tuition costs incurred in educating a child with a disability as required in Section 22-20-109(5), C.R.S., the charter school may seek a determination from the State Board in accordance with the following provisions:

9.07(2)(a)(i) If a charter school determines that the district of residence has not forwarded to the charter school the amount due to the charter school in accordance with the terms of the tuition contract and these Rules, the charter school may seek a determination from the State Board regarding whether the district of residence improperly withheld any portion of the amount due to the charter school. A charter school that chooses to request a determination of issues shall submit the request within the next fiscal year following the fiscal year in which the district of residence may have improperly withheld funding; except that, if the tuition contract requires the charter school to complete any requirements prior to seeking a determination from the State Board, the charter school shall submit the request no later than the end of the next fiscal year following the fiscal year in which the charter school completes said requirements.

9.07(2)(a)(ii) Upon receipt from a charter school of a request for a determination of whether the district of residence has improperly withheld any portion of the amount due to the charter school, the State Board shall direct the Department to review the terms of the tuition contract and the relevant information of the charter school and the district of residence, and make a recommendation to the State Board regarding whether the district of residence improperly withheld any portion of the amount due to the charter school. The Department shall request from the district of residence and the charter school all information as soon as possible following the request, but in no event later than thirty days after completion of the annual financial audit. The Department shall forward its recommendation to the State Board within sixty days after receiving all of the requested information from the district of residence and the charter school.

9.07(2)(a)(iii) At the next State Board meeting following receipt of the recommendation of the Department of Education, the State Board shall issue its decision regarding whether the district of residence improperly withheld any portion of the amount due to the charter school. If the State Board finds that the district of residence improperly withheld any portion of the amount due to the charter school, the district of residence shall pay to the charter school, within thirty days after issuance of the decision, the amount improperly withheld. In addition, the district of residence shall pay the costs incurred by the Department in reviewing the necessary information to make its recommendation. If the State Board finds that the district of residence did not improperly withhold any portion of the amount due to the charter school, the charter school shall pay the costs incurred by the Department in reviewing the necessary information to make its recommendation.

9.07(2)(a)(iv) If the district of residence fails within the thirty-day period to pay the full amount that was improperly withheld, the charter school may notify the Department. The Department shall withhold from the state equalization payment of the district of residence the unpaid portion of the amount improperly withheld by the district of residence and pay the unpaid portion directly to the charter school.

9.07(2)(a)(v) If the State Board finds that the district did not improperly withhold any portion of the amount due to the charter school, the charter school shall pay the costs incurred by the Department in reviewing the necessary information to make its recommendation.

9.07(2)(a)(vi) Third Party Facilitation

The parties may utilize third party facilitation as a dispute resolution process for resolving tuition cost disputes including disputes arising out of the contract itself and disputes arising during the formation of a proposed contract. Third party facilitation must be voluntary. The parties agreeing to third party facilitation are responsible for paying its costs.

9.07(2)(b) The dispute resolution procedure established in Section 9.07(2)(a) of these Rules may also be utilized by the district of residence if it determines that it has been paying tuition costs for a child who withdrew from the charter school, or who otherwise has not been attending the charter school, or if the child's residency, as defined in Section 22-20-107.5, C.R.S., has changed.

9.07(3) **On-line Programs**

9.07(3)(a) If an on-line program determines that the district of residence has not paid the tuition charge for excess cost incurred in educating a child with a disability, as required in Section 22-20-109(6), C.R.S., the district of attendance, on behalf of the on-line program, may seek a determination from the State Board in accordance with the following provisions:

9.07(3)(a)(i) If the district of attendance determines that the district of residence has not forwarded to the on-line program the amount due to the on-line program in accordance with the terms of the tuition contract and the provisions of these Rules, the district of attendance may seek a determination from the State Board regarding whether the district of residence improperly withheld any portion of the amount due to the on-line program. A district of attendance that chooses to request a determination of the issues shall submit the request within the next fiscal year following the fiscal year in which the district of residence may have improperly withheld funding; except that, if the tuition contract requires the on-line program and/or the district of attendance to complete any requirements prior to seeking a determination from the department, the district of attendance shall submit the request no later than the end of the next fiscal year following the fiscal year in which the on-line program and/or the district of attendance completes said requirements.

9.07(3)(a)(ii) Upon receipt from a district of attendance of a request for a determination of whether the district of residence improperly withheld any portion of the amount due to the on-line program, the State Board shall direct the Department to review the terms of the tuition contract and other relevant information of the on-line program, and the Department shall make a recommendation to the State Board regarding whether the district of residence improperly withheld any portion of the amount due to the on-line program. The Department shall request from the district of residence, the district of attendance and the on-line program, all information as soon as possible following the request, but in no event later than thirty days after completion of the annual financial audit. The Department shall forward its recommendation to the State Board within sixty days after receiving all of the requested information from the district of residence, the district of attendance and the on-line program.

9.07(3)(a)(iii) At the next State Board meeting following receipt of the recommendation of the Department, the State Board shall issue its decision regarding whether the district of residence improperly withheld any portion of the amount due to the on-line program. If the State Board finds that the district of residence improperly withheld any portion of the amount due to the on-line program, the district of residence shall pay to the on-line program, within thirty days after issuance of the decision, the amount improperly withheld.

9.07(3)(a)(iv) If the district of residence fails within the thirty-day period to pay the full amount that was improperly withheld, the on-line program may notify the Department. The Department shall withhold from the state equalization payment of the district of residence the unpaid portion of the amount improperly withheld by the district of residence and pay the unpaid portion directly to the on-line program.

9.07(3)(a)(v) Third Party Facilitation

The parties may utilize third party facilitation as a dispute resolution process for resolving tuition charge disputes including disputes arising out of the contract itself and disputes arising during the formation of a proposed contract. Third party facilitation must be voluntary. The parties agreeing to third party facilitation are responsible for paying its costs.

9.07(3)(b) The dispute resolution procedure established in Section 9.07(3)(a) of these Rules may also be utilized by the district of residence if it determines that it has been paying a tuition charge for a child who withdrew from the on-line program, or who otherwise has not been attending the on-line program, or if the child's residency, as defined in Section 22-20-107.5, C.R.S., has changed.

2220-R-10.00 (reserved)

2220-R-11.00 (reserved)

2220-R-12.00 GIFTED ~~AND TALENTED~~ STUDENT PROGRAMMING

Administrative units shall implement gifted education student programs providing programming options and services for gifted children for at least the number of days calendared for the school year by each school district.

12.01 Definitions.

12.01(1) **"Administrative Unit"** or "AU" means a school district, a board of cooperative services, or the state Charter School Institute that: oversees and/or provides educational services to exceptional children; is responsible for the local administration of Article 20 of Title 22, C.R.S.; and meets the criteria established in Section 3.01 of these Rules (see Rule 2.02 of these Rules).

12.01(2) **"Advanced Learning Plan"** ~~OR~~ or "ALP" means a written record of a gifted ~~and talented~~ student's strengths, academic and affective learning goals and the resulting programming utilized with each gifted child and considered in educational planning and decision making.

12.01(3) **"Affective Development"** means social and emotional programming intended to:

12.01(3)(a) assist gifted ~~and talented~~ students in understanding themselves as gifted learners, and the implications of their abilities, talents, and potential for accomplishment (intrapersonal skills); and

12.01(3)(b) assist gifted ~~and talented~~ students in developing and/or refining interpersonal skills.

12.01(4) **"Annual Plan"** means an administrative unit's comprehensive educational plan and annual proposed budget form that the administrative unit submits to the Department pursuant to State Board rules.

12.01~~(4)~~(5) **"Aptitude"** means abilities or behaviors that can be monitored, evaluated, or observed to determine potential or a level of performance in problem solving, reasoning, and other cognitive functions (e.g., memory, synthesis, creativity, speed in problem solving). Aptitude or general ability assessments predict potential in an area of giftedness and/or academic school success.

12.01~~(5)~~(6) **"Aptitude Test"** means an ability test to determine potential or level of performance in problem solving, reasoning and other cognitive functions. Aptitude or ability tests predict potential in an area of giftedness and/or future academic school success.

12.01~~(6)~~(7) **"Articulation",** for purposes of this Rule 12.00, means the communication that occurs as students move or transition through the school system, grade by grade and school level to school level.

12.01(8) **"Assessment"** means methods, tools, and data collected as a body of evidence for use in the following gifted education processes:

12.01(8)(a) Identification and programming;

12.01(8)(b) Monitoring the gifted child's performance and outcomes; and

12.01(8)(c) Program evaluation.

12.01~~(7)~~(9) " **Board of Cooperative Services"** means a regional educational services unit created pursuant to Article 5 of Title 22, C.R.S., and designed to provide supporting, instructional, administrative, facility, community, or any other services contracted by participating members.

12.01(10) **"Competence"** means documented performance, achievement, or test scores on standardized or locally normed test results. Screening procedures consider competence in the context of a defined range of student performance, as described herein, for purposes of recognizing gifted potential or identifying a talent pool for developing giftedness.

12.01~~(8)~~(11) **"Commensurate Growth"** means the academic and affective progress that can be measured and should be expected of a gifted student given the student's level of achievement, learning needs, and abilities matched with the appropriate instructional level."

12.01~~(9)~~(12) **"Early Access"** means early entrance to kindergarten at age 4 or early entrance to first grade at age 5 for highly advanced gifted children ~~under the age of six.~~who are placed in a grade level above other same aged peers based upon the following conditions:

12.01(12)(a) the student is formally identified as gifted as specified in 12.01(16); and

12.01(12)(b) the student meets requirements for accelerated placement as determined in an auditable body of evidence (e.g., achievement, ability, social-emotional factors, school learning skills, developmental characteristics, and family and school support).

12.01~~(10)~~(13) **"Early Childhood Special Educational Services"** means those instructional strategies, curriculum, affective and programming options that nurture and develop exceptional abilities or

potential for gifted students, including but not limited to an early entrance strategy or advanced level pre-school interventions.

~~12.01(11) **"Early Entrance"** means a gifted student is placed in a grade level above other same aged peers based upon the following conditions:~~

~~12.01(11)(a) the student is formally identified as gifted as specified in 12.01(12); and~~

~~12.01(11)(b) the student meets requirements for accelerated placement as determined in an auditable body of evidence (e.g., achievement, ability, social-emotional factors, school learning skills, developmental characteristics, and family and school support).~~

12.01(14) **"Engagement"** means the collaboration of families, schools, and communities as active partners in improving learner, classroom, school, district, and state outcomes.

12.01(15) **"Evaluation"** means evaluation procedures, methods, and tools used to initially identify gifted child, assess and monitor the child's progress, and evaluate the child and the gifted program. Evaluation includes, but need not be limited to:

12.01(15)(a) Identifying the child's unique strengths, interests, and needs;

12.01(15)(b) Monitoring the child's academic achievement and growth and affective goals;

12.01(15)(c) Identifying the priorities and concerns of the child's family and resources to which the family and the child's school have access; and

12.01(15)(d) Determining program strengths and areas for program improvement.

12.01~~(12)~~(16) **"Gifted ~~and Talented~~ Children"** means those persons between the ages of four and twenty-one whose aptitude or competence in abilities, talents, and potential for accomplishment in one or more domains are so exceptional or developmentally advanced that they require special provisions to meet their educational programming needs. Gifted ~~and talented~~ children are hereafter referred to as gifted students. Children under five who are gifted may also be provided with early childhood special educational services. Gifted students include gifted students with disabilities (i.e. twice exceptional) and students with exceptional abilities or potential from all socio-economic~~, and~~ ethnic, and cultural populations. Gifted students are capable of high performance, exceptional production, or exceptional learning behavior by virtue of any or a combination of these areas of giftedness:

12.01~~(12)~~(16)(a) General or Specific Intellectual Ability.

12.01~~(12)~~(16)(a)(i) Definition

Intellectual ability is exceptional capability or potential recognized through cognitive processes (e.g., memory, reasoning, rate of learning, spatial reasoning, ability to find and solve problems, ability to manipulate abstract ideas and make connections, etc.).

12.01~~(12)~~(16)(a)(ii) Criteria

Intellectual ability is demonstrated by advanced level on performance assessments or ninety-fifth percentile and above on standardized cognitive tests.

12.01~~(12)~~(16)(b) Specific Academic Aptitude

12.01~~(12)~~(16)(b)(i) Definition

Specific academic aptitude is exceptional capability or potential in an academic content area(s) (e.g., a strong knowledge base or the ability to ask insightful, pertinent questions within the discipline, etc.).

12.01~~(12)~~(16)(b)(ii) Criteria

Specific academic aptitude is demonstrated by advanced level on performance assessments or ninety-fifth percentile and above on standardized achievement tests.

12.01~~(12)~~(16)(c) Creative or Productive Thinking

12.01~~(12)~~(16)(c)(i) Definition

Creative or productive thinking is exceptional capability or potential in mental processes (e.g., critical thinking, creative problem solving, humor, independent/original thinking, and/or products, etc.).

12.01~~(12)~~(16)(c)(ii) Criteria

Creative or productive thinking is demonstrated by advanced level on performance assessments or ninety-fifth percentile and above on standardized tests of creative/critical skills or creativity/critical thinking.

12.01~~(12)~~(16)(d) Leadership Abilities.

12.01~~(12)~~(16)(d)(i) Definition

Leadership is the exceptional capability or potential to influence and empower people (e.g., social perceptiveness, visionary ability, communication skills, problem solving, inter and intra-personal skills and a sense of responsibility, etc.).

12.01~~(12)~~(16)(d)(ii) Criteria

Leadership is demonstrated by advanced level on performance assessments or ninety-fifth percentile and above on standardized leadership tests.

12.01~~(12)~~(16)(e) Visual Arts, Performing Arts, Musical, Dance, or Psychomotor Abilities.

12.01~~(12)~~(16)(e)(i) Definition

Visual arts, performing arts, musical, dance or psychomotor abilities are exceptional capabilities or potential in talent areas (e.g., art, drama, music, dance, body awareness, coordination and physical skills, etc.).

12.01~~(12)~~(16)(e)(ii) Criteria

Visual arts, performing arts, musical, dance or psychomotor abilities are demonstrated by advanced level on performance talent-assessments or ninety-fifth percentile and above on standardized talent-tests.

12.01(17) "**Gifted Education Services**" or "**Gifted Education Programs**" means the services, delivery model and programs provided to gifted students pursuant to these Rules. "Gifted

education services" and Gifted education programs" include, but need not be limited to, strategies, programming options, and interventions reflecting evidence-based practices, such as acceleration, concurrent enrollment, differentiated instruction, and affective guidance.

12.01(18) **"Good Faith Effort"** means the administrative unit exercised reasonable effort to seek qualified personnel in gifted education or staff willing to work towards an endorsement or degree in gifted education with the intent to hire and retain that qualified person to administer the administrative unit's gifted program and implement the program plan.

12.01~~(13)~~(19) **"Highly Advanced Gifted Child"** means a gifted child whose body of evidence demonstrates a profile of exceptional ability or potential compared to same-age gifted children. To meet the needs of highly advanced development, early access to educational services may be considered as a special provision. For purposes of early access into kindergarten or first grade, the highly advanced gifted child exhibits exceptional ability and potential for accomplishment in cognitive process and academic areas.

12.01~~(14)~~(20) **"Parent"** for purposes of this Rule 12 means the natural or adoptive parent, or legal guardian, unless the gifted student is also a child with a disability in which case parent shall be defined consistent with federal special education law.

12.01~~(15)~~(21) **"Performance Assessment"** means systematic observation of a student's performance, examples of products, tasks, or behaviors based upon established criteria, scoring rubric or rating scale ~~norms.~~for juried performance.

12.01(22) "**Portability"** means that a student's state-approved identification in one or more categories of giftedness transfers to any district in the state. Gifted programming must continue according to the receiving district's programming options. Portability of identification is a part of the student's permanent record and advanced learning plan.

12.01~~(16)~~(23) **"Pre-Collegiate"** means a variety of programs to help students plan~~, apply and pay~~ for college, identify scholarship opportunities, and provide assistance with the application process for selected post-secondary options. Programs may be offered through middle and high schools, colleges and universities or community organizations and businesses.

12.01~~(17)~~(24) **"Pre-Advanced Placement"** means a variety of programs and strategies that prepare students to take advanced placement courses beginning in the early grades, through middle school and high school. "Advanced Placement" means college-level courses and/or exams offered and certified through the College Board.

12.01(25) **"Program Elements"** means components of a comprehensive program plan, which include, but need not be limited to, definition, communication, identification, programming, personnel, accountability, reporting, record keeping, and resolution of disagreements.

12.01(26) **"Program Plan"** means a comprehensive and complete narrative of program elements, including, but need not be limited to:

12.01(26)(a) Procedures and criteria the administrative unit will use for identification;

12.01(26)(b) Programming options for each category of giftedness that the administrative unit will implement in the gifted program; and

12.01(26)(c) Actions and tools for the academic achievement of gifted children, and for evaluating the gifted program, which actions and tools are aligned with state accountability and program evaluations.

12.01~~(18)~~(27) **“Qualified Personnel”** or **“Qualified Person”** means a licensed, content endorsed ~~teacher~~educator who also has an endorsement or higher degree in gifted education; or who is working toward an endorsement or higher degree in gifted education.

12.01~~(19)~~(28) **“Screening”** means an assessment method that uses a tool(s) to determine if the resulting data provides evidence of exceptional potential in an area of giftedness. Screening tools may be qualitative or quantitative in nature, standardized and/or normative. Screening data are one component in a body of evidence for making identification and instructional decisions.

12.01~~(20)~~(29) **“Special Educational Services”** or **“Special Educational Programs”** means the services or programs provided to exceptional children including children with disabilities and gifted students.

12.01~~(21)~~(30) **“Special Provisions”** means the programming options, strategies and services necessary to implement the gifted student’s ALP.

12.01~~(22)~~(31) **“Twice Exceptional”** means a student who is:

12.01~~(22)~~(31)(a) Identified as a gifted student pursuant to Section 12.01(9) of these Rules; and

12.01~~(22)~~(31)(b)(1) Identified as a child with a disability pursuant to Section 4.02 of these Rules; or

12.01~~(22)~~(31)(b)(2) A qualified individual pursuant to Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. §794.

12.01(32) **“Universal Screening”**, for purposes of Section 22-20-202, C.R.S., means the systematic assessment of all students within a grade level of an administrative unit or district for identifying students with exceptional ability or potential, especially students from traditionally underrepresented populations; and/or screening in conjunction with creation of each student’s individual career and academic plan (ICAP).

12.02 Administrative Unit Gifted Education Program Plan.

12.02(1) Annual Plan

Administrative units shall submit to the Department an annual plan that is a gifted education UIP addendum. In multi-district AUs or BOCES, member districts submit the UIP addendum. Multi-district AUs and BOCES submit a summary for improving gifted student performance that includes annual assurances and a proposed budget for the forthcoming fiscal year. The annual plan shall be filed integrated with a district’s accountability UIP timelines, or no later than April 15. The UIP gifted education addendum, as the annual plan, shall include an action plan to meet designated targets. An AU shall submit an annual plan before receiving AU gifted education funds. Exception to this annual plan is for small rural districts that function on a bi-annual unified improvement plan submission. (C.R.S. 22-11-303(4)(b))

12.02(2) **Comprehensive Plan**

~~In order to be eligible for funding under these Rules, an AU~~Administrative Units shall submit to the Department a comprehensive gifted education program plan ~~(program plan) for educating gifted students to the Department on an annual basis~~on a multiple-year cycle as declared by the Department, such cycle to be no longer than 5 years. The program plan shall be implemented by all constituent schools and districts of the administrative unit. The ~~F~~filing of the program plan shall ~~constitute application for funding~~include a proposed program plan budget. Plans shall be filed by

April ~~30~~15 of the fiscal year prior to the funding year. The Department will review all program plans for completeness. An administrative unit's program plan shall be deemed complete if it addresses all elements specified in Section 12.02~~(1)~~(2)(a) through 12.02~~(1)(f)~~(2)(l) of these Rules.

~~12.02(1) Elements of the program plan.~~

A program plan for the education of gifted students submitted to the Department for funding purposes and program description shall contain the following elements:

12.02~~(1)~~(2)(a) ~~**Communication Outreach.**~~**Procedures for Parent, Family, and Student Engagement and Communication**

~~The program plan shall describe how the AU will communicate to parents and educators about available gifted programming options within the AU and how those options may be accessed.~~

12.02(2)(a)(i) The program plan shall describe how the administrative unit implements parent, family, and student engagement and communication with regard to gifted education programs that include, but are not limited to: how parents are informed about access to identification procedures; ways to educate parents and families about giftedness or parenting gifted students; information about involvement and progress reporting; what programming options are available to match student strengths and challenges; information about concurrent enrollment; how to be involved in college and career planning; primary languages in the AU, and ways parents and families may participate in the school community.

12.02(2)(a)(ii) In multi-district AUs and BOCES, methods of engagement and communication may vary based upon individual district procedures, but each district must have a plan for parent, family, and student communication and engagement.

12.02~~(1)~~(2)(b) **Definition of "gifted ~~and talented~~ student" .**

The program plan shall include a written definition that is the same as or substantially similar to the definition of "gifted ~~and talented~~ student" specified in section 12.01~~(12)~~(16) of these Rules. This definition shall serve as the basis for the implementation of all other program plan elements described below.

12.02~~(1)~~(2)(c) **Identification ~~procedure~~procedures.**

The program plan shall describe the assessment process used by the AU for identifying students who meet the definition specified in section 12.01~~(12)~~(16) and for identifying the educational needs of gifted students. The assessment process shall recognize a student's exceptional abilities or potential, interests, and needs in order to guide student instruction and individualized planning and programming. In traditionally under-represented student groups and visual/music/performing arts student groups or talent pools, identification may require the collection of student information over time, using additional data points from a response to intervention approach, or additional assessment. The ~~assessment process~~identification procedures shall include, but need not be limited to:

12.02~~(1)~~(2)(c)(i) A method(s) to ensure equal and equitable access for all students. The program plan shall describe the efforts that the AU will make to identify gifted students from all populations, including preschool (if applicable)

through twelfth grade students, minority students, economically diverse students, culturally diverse students, students with limited English proficiency and children with disabilities;

12.02~~(1)~~(2)(c)(ii) ~~_____~~ ~~_____~~Referral procedures that seek referrals from a variety of sources, and screening procedures used for conducting identification assessment. Every administrative unit is strongly encouraged to include universal screening in identification procedures;

12.02(2)(c)(iii) A time line of no more than 30 school days after a referral to determine whether a student will continue with formal identification assessment, or will receive talent pool designation;

12.02(2)(c)(iv) Implementation of assessments that align with the purpose of identifying exceptionality in the categories of giftedness, and in traditionally underrepresented populations. The administrative unit shall choose local assessment tools from the Department's chart of common and varied assessment tools used in identification;

12.02~~(1)~~(2)(c)~~(iii)~~(v) ~~_____~~ Collection of data for a body of evidence that includes, but is not limited to: assessment results from ~~Multiple~~multiple sources and multiple types of data ~~in a body of evidence~~ (i.e. qualitative and quantitative data about achievement, cognitive ability, performance, parent and teacher input, motivation and observations of gifted characteristics/behaviors)~~;~~. The body of evidence contains data to identify the strength area defined in the definition of gifted children and determine appropriate programming services. These same categories are used in data collection and for developing the ALP;

~~12.02(1)(c)(iv) Criteria for determining exceptional ability or potential;~~

12.02~~(1)~~(2)(c)(vi) A review team ~~procedure; and~~ that includes at least one person trained or endorsed in gifted identification and programming;

12.02(2)(c)(vii) A review team procedure for determining identification or a talent pool designation from a body of evidence and for developing individualized ALPs for identified students. When only cognitive ability assessment data meets criteria in a body of evidence, the review team may determine that the student is identified with general or specific intellectual ability. This identification meets the condition of portability;

12.02(2)(c)(viii) A determination letter for parents and school files describing the decision of the review team, and area(s) of giftedness if the student is found to have exceptional abilities; and

12.02~~(1)~~(2)(c)~~(vi)~~(ix) ~~_____~~ A communication procedure by which parents are made aware of the identification assessment process for their student, understand the results of the ~~gifted~~ determination, and engage in the development and review of the student's ALP.

12.02(2)(d) **Criteria for determining exceptional ability (giftedness) or talent pool**

12.02(2)(d)(i) For each category of giftedness defined in 12.01(16), criteria for exceptional ability means: 95 percentile or above on a standardized nationally normed test or observation tool, or a rating on a performance assessment that indicates exceptionality/distinguished compared to age mates.

12.02(2)(d)(ii) Not meeting criteria on a single assessment tool shall not prevent further data collection or consideration for identification, if other indicators suggest exceptional potential as observed in a body of evidence.

12.02(2)(d)(iii) Criteria for screening assessments is a score range less than the 95 percentile ranking or results on observation/performance assessment tools as determined by the administrative unit to determine referrals, further data collection and observation, and/or formation of student talent pools.

12.02(2)(e) **Identification Portability**

Identification portability shall be based upon AU implementation of statewide identification procedures required in Section 12.02(2)(c) and use of criteria set for exceptionality in Section 12.02(2)(d) and determination of a student's identification in one or more of the categories of giftedness as described in the state definition of gifted children in Section 12.01(16). Administrative units shall implement procedures for statewide portability of identification that include, but may not be limited to:

12.02(2)(e)(i) A requirement that the sending school/district transfer the body of evidence for identification and the ALP with student records when the student moves from one district to another;

12.02(2)(e)(ii) Review of the transferred student's ALP within 45 school days of start date to determine programming options and services that serve the identified area(s) according to the district and community resources of the receiving district;

12.02(2)(e)(iii) If the receiving district finds the body of evidence to be incomplete, the receiving district shall consult with, as practical, the former district, parents, and student and re-evaluate the identification determination; and

12.02(2)(e)(iv) Communication to parents within 60 school days of start date about how the new district will meet the needs outlined in the student's.

12.02(2)(f) **Advanced Learning Plan Content:**

The administrative unit shall develop an ALP for every gifted student according to the student's determined area(s) of giftedness, interests, and instructional and affective needs. The ALP shall be considered in educational planning toward post-secondary readiness outcomes and decision-making concerning subsequent programming for that student and be used in the articulation/transition process, preschool (if applicable) through grade 12. At the high school level ALPs may blend with the student's individualized career and academic plan (ICAP) if all content of the ALP are inclusive in the ICAP which includes achievement and affective goals. The ALP content shall include, but not be limited to:

12.02(2)(f)(i) A student profile described in a body of evidence - This profile shall be subject to the AU's student records confidentiality guidelines and available to parents, students, and staff who need to know. The local AU determines periodic updates of the student profile, especially in terms of interests, and/or demonstration of previously unidentified strengths;

12.02(2)(f)(ii) A working-document section of the ALP– This portion of the ALP records annual measurable, attainable achievement and affective goals and progress. Achievement goals are standards-based statements in strength area(s). Additional achievement goals may be needed to address documented

achievement gaps or career interest. Affective goals reflect development of personal, social, communication, leadership, and/or cultural competency;

12.02(2)(f)(iii) Description or delineation of supplemental curriculum, activities, specific programs or coursework, specific strategies, and/or extended or expanded learning opportunities available in the administrative unit that match a student's strength area(s) and support the goals;

12.02(2)(f)(iv) Progress reports that align with the administrative unit's or member district's schedule for parent-reporting and/or conferences about student progress – Adjustments to goals and programming options may occur during any progress reporting period; and

12.02(2)(f)(v) Personnel involved in ALP development, and in progress report meetings or conferences, including, but not limited to classroom teacher(s), student, parents, gifted education staff or staff with training in gifted education identification and programming, and support staff as appropriate.

12.02(2)(g) **ALP Procedures and Responsibilities**

The administrative unit shall have procedures for developing ALPs that include, but need not be limited to:

12.02(2)(g)(i) Notification of ALP development and times in the school year when parents, teachers and the student talk about student academic and affective goal progress;

12.02(2)(g)(ii) Personnel assigned with the responsibility for development and monitoring. At minimum the student's parents and classroom teachers should be familiar with and support ALP goals, and/or write ALP measurable goals according to local procedures. Gifted education resource personnel may assist in the writing of goals, but may not be the sole custodian of the ALP. Goals are written and aligned with classroom tiered instruction and expanded learning opportunities for supplemental or intensive programming;

12.02(2)(g)(iii) A method to develop student awareness and active participation in the ALP process;

12.02(2)(g)(iv) A process for management of ALPs within the cumulative file system including a procedure for transferring ALPs between grade levels, school levels, and districts. It is highly encouraged that ALPs are written by those working with the gifted student and that the ALP is an ongoing plan for coursework, tiered instruction, and increasing performance in the student's area of strength. ALP goals should be written or reviewed for current relevancy to teachers and students at the beginning of the school year;

12.02(2)(g)(v) An ALP progress reporting time line – The review of progress integrates with ongoing conference or reporting periods of the district. Progress reporting or conferencing shall be more than once a year. It is highly encouraged that ALPs be student-led at the secondary level; and

12.02(2)(g)(vi) A system to show evidence of parent involvement in ALP development and in the review of progress – Evidence may include, but is not limited to: signature, electronic signature or checkbox of involvement, parental involvement goal, checklist, or other assurance supporting the student's growth.

12.02~~(1)(d)~~(2)(h) **Programming.**

12.02(2)(h)(i) The program plan shall describe the programming components, options, and strategies that will be implemented by the administrative unit and schools to appropriately address the educational needs of gifted students. Programming shall match the academic strengths and interests of the gifted student. Other educational or affective needs shall be addressed according to the individual student's profile. ~~The program plan~~ Programming components, options, and strategies shall include, but need not be limited to:

12.02~~(1)(d)(i)~~(2)(h)(i)(A) Alignment of the gifted student's assessment data and ALP goals to programming options in the areas of giftedness;

12.02~~(1)(d)(ii)~~(2)(h)(i)(B) Structures or type of delivery by which gifted students are served at the different school levels (e.g., the general classroom, resource location, small instructional group, and/or pullout for direct and extended instruction aligned to strength area);

12.02(~~1)(d)(iii)~~(2)(h)(i)(C) Support in differentiated instruction and methods (e.g., acceleration, cluster grouping and higher order thinking skills);

12.02~~(1)(d)(iv)~~(2)(h)(i)(D) Affective and guidance support systems (e.g., social skills training, early college and career planning);

12.02~~(1)(d)(v)~~(2)(h)(i)(E) Diverse content options provided for gifted students in their areas of strength (e.g., mentorship, ~~s~~Socratic seminars, advanced math, honors courses);

12.02~~(1)(d)(vi)~~(2)(h)(i)(F) The means by which articulation for preschool (if applicable) through grade 12 is planned and implemented;

12.02~~(1)(d)(vii)~~(2)(h)(i)(G) Pre-collegiate and/or pre-advanced placement support;

12.02~~(1)(d)(viii)~~(2)(h)(i)(H) ALP development and ~~annual~~ reviews conducted through the collaborative efforts of the teacher(s), other school personnel (as needed), parents and the student (as appropriate); and

12.02~~(1)(d)(ix)~~(2)(h)(i)(I) Post secondary options available to gifted students.

12.02(2)(h)(i)(J) Concurrent enrollment opportunities, if indicated by a gifted child's or individual career and academic plan. To be considered in an ALP, the AU shall consider the student's need for appropriate concurrent enrollment, available options, funding, and requirement for administrative approval.

12.02(2)(h)(ii) Students identified with exceptional ability require provisions to develop the areas of strength over time. When underachievement and/or motivational issues are observed behaviors in a gifted student, the AU or school team shall provide problem solving and tiered interventions in collaboration with family and the student.

12.02~~(1)(e)~~(2)(i) **Evaluation and Accountability Procedures.**

The ~~administrative unit~~ comprehensive program plan shall describe the AU's procedures for evaluation and accountability including, but not limited to:

12.02~~(1)(e)~~(2)(i)(i) ~~Methods~~Unified improvement plan addendum methods by which gifted student ~~achievement~~ performance is monitored and measured for continual learning progress and how such methods align with the state accreditation process (e.g., annual UIP gifted education addendum, multi-district/BOCES summary, intervention progress monitoring data sources, advanced learning plan goals, and performance, district, and/or state assessment data)~~;~~. These methods include UIP elements such as annual gifted student performance target(s) and an action plan to meet the target(s) and a timeline to report on progress toward targets;

12.02~~(1)(e)~~(2)(i)(ii) Methods by which student affective growth is monitored and measured for continual development (e.g., rubrics for personal journals and anecdotal data, student surveys, demonstration of self-advocacy, and student career and/or college plans);

12.02~~(1)(e)~~(2)(i)(iii) Methods for ensuring that gifted student performance (achievement and growth) and reporting are consistent with state accreditation and accountability requirements (i.e., disaggregation of state assessment data for gifted students, identification of discrepancies in the data, goal setting and demonstration of achievement and growth); and

12.02~~(1)(e)~~(2)(i)(iv) Methods for self-evaluation of the gifted program including a schedule for periodic feedback and review (e.g., review of gifted policy, goals, identification process, programming components, personnel, budget and reporting practices, and the impact of gifted programming on student achievement and progress); and

12.02~~(1)(e)~~(2)(i)(v) Methods by which parents, educators, and other required persons are informed about the methods described in 12.02~~(1)(e)~~(2)(i)(i-iv) above.

12.02~~(1)(f)~~(2)(j) **Personnel.**

12.02~~(1)(f)~~(2)(j)(i) The program plan shall describe the personnel who provide instruction, counseling, coordination and other programming for gifted students. Personnel shall be knowledgeable in the characteristics, differentiated instructional methods and competencies in the special education of gifted students. Qualified personnel with endorsement or an advanced degree in gifted education are preferred in specific programs and classrooms consisting of mainly gifted students. Beginning with the 2010-2011 school year, every administrative unit shall employ or contract with a person who is responsible for:

12.02~~(1)(f)~~(2)(j)(i)(A) Management of the program plan; and

12.02~~(1)(f)~~(2)(j)(i)(B) Professional development activities, the purposes of which are:

12.02~~(1)(f)~~(2)(j)(i)(B)(I) To improve and enhance the skills, knowledge and expertise of teachers and other personnel who provide instruction and other supportive services to gifted students; and

12.02~~(1)(f)~~(2)(j)(i)(B)(II) To increase, to the extent practicable, the number of qualified personnel providing instruction to gifted students.

12.02(2)(j)(ii) The administrative unit shall make good faith effort to hire and retain at least one qualified person to administer and monitor the implementation the AU's gifted program.

12.02(2)(j)(iii) Administrative units should consider employing sufficient personnel for ALP writing and monitoring, and differentiated instruction for gifted students.

12.02~~(1)(f)(ii)~~(2)(j)(iv) Administrative units ~~are highly encouraged to~~ should collaborate with universities and colleges for the development of qualified personnel.

12.02~~(1)(f)(iii)~~(2)(j)(v) Personnel responsible for the instruction and learning of gifted students in core academic areas must meet the requirements under federal law for highly qualified teachers.

12.02~~(1)(f)(iv)~~(2)(j)(vi) Paraprofessionals may serve in supportive roles, but may not be the sole instructional provider, nor may such paraprofessionals be funded using state gifted education funds.

12.02~~(1)(f)(v)~~(2)(j)(vii) The program plan shall also indicate the content of and means by which the administrative unit supports the acquisition and/or improvement of the knowledge and competencies of personnel through appropriate professional development relating to the instruction, programming and counseling for gifted students. (e.g., induction and inservice programs, job-embedded training and coaching, gifted education workshops or institutes and college coursework). Key topics should include, but need not be limited to, gifted characteristics and myths, differentiated instruction, affective needs, counseling, content instructional options and advanced curricular strategies (e.g., higher order thinking strategies).

12.02~~(1)(g)~~(2)(k) **Budget.**

12.02(2)(k)(i) The ~~program plan shall propose~~administrative unit shall include in the annual plan a budget for gifted education which reflects the collaborative efforts of the administrative unit and cost of implementing the ~~programming,~~program elements and the student goals ~~and objectives~~ stated in the annual comprehensive program plan. The budget shall detail the funding committed by the administrative unit and funding requested from the Department. Funding committed by the Administrative Unit shall be an amount determined by the AU to contribute towards the AU's gifted student education ~~elements~~ program described in the AU's program plan. Funds requested from the Department may be used for:

12.02~~(1)(g)(i)~~(2)(k)(i)(A) salaries for appropriately ~~certified,~~licensed and endorsed~~, or licensed~~ personnel primarily serving ~~primarily~~ gifted students (e.g., gifted education directors, coordinators, resource teachers, counselors and teachers of gifted classrooms);

12.02~~(1)(g)(ii)~~(2)(k)(i)(B) professional development and training relating to gifted education;

12.02~~(1)(g)(iii)~~(2)(k)(i)(C) ~~activities associated with gifted~~ programming options and school counseling or affective guidance specific to gifted students and their ALPs ~~advanced learning plans~~;

12.02~~(1)(g)(iv)~~(2)(k)(i)(D) ~~supplies and~~ materials used in instructional programming for gifted education; and

12.02~~(1)(g)(v)~~(2)(k)(i)(E) administrative costs (classified or grant fiscal staff), technology, and equipment necessary for the education of gifted students up to ten percent for any one of these limited expenditures, and, not to collectively exceed twenty ~~five~~ percent of the total amount requested from the Department.

12.02(2)(k)(ii) Administrative units may contract with other administrative units to establish and maintain gifted student programs (e.g., art, music, online coursework, and counseling) for the education of gifted children, sharing costs of student programing in accordance with terms of a contract. An administrative unit with less than six children who require a particular program may purchase services from one or more administrative units that provide the appropriate gifted education program for individual or groups of gifted students. Gifted education personnel in these administrative units shall collaborate on the content and monitoring of such contracts.

12.02~~(1)(H)~~(2)(l) **Early Access.**

If early access is permitted in the AU, an AU shall include in its program plan provisions to identify and serve highly advanced gifted children pursuant to Section 12.08 of these Rules. Constituent schools or districts within the AU shall abide by the requirements established in the program plan.

12.03 Reports.

~~Any AU receiving funding~~Administrative units ~~under the provision of Section 12.00~~ shall submit to the Department ~~by September 30 a~~an end-of-year report for the prior fiscal year, including:

12.03(1) a detailed report of financial income and expenditures;

12.03(2) the number of formally identified gifted students served through gifted student programming reported by:

12.03(2)(a) each grade level, preschool (if applicable) through grade 12;

12.03(2)(b) gender and ethnicity;

12.03(2)(c) free and reduced lunch;

12.03(2)(d) area(s) of giftedness;

12.03(2)~~(c)~~(e) twice exceptionality; and

12.03(2)~~(d)~~(f) gifted preschoolers served through early entrance per local policies and procedures, if applicable;

~~12.03(3) the number of non-identified students served through gifted student programming;~~

12.03~~(4)~~(3) the percent of students in the AU who have been identified as gifted and talented through a formal identification procedure;

12.03~~(5)~~(4) ~~the number of qualified personnel;~~qualified personnel by school level, district resource personnel and central administration;

12.03~~(6)~~(5) the types of programming strategies utilized most commonly at each school level to address the needs of gifted students reported by:

12.03~~(6)~~(5)(a) programming options for each area of giftedness as specified in 12.01~~(12)~~(16) of these Rules;

12.03~~(6)~~(5)(b) methods of articulation through the grades; and

12.03~~(6)~~(5)(c) methods and tools used in accountability to monitor gifted student achievement and commensurate growth related to the implementation of the programming components; and

12.03~~(7)~~(6) administrative units and their member districts, if any, shall comply with the requirements of accreditation, pursuant to Article 11 of Title 22, C.R.S., with regard to gifted student achievement, identification of disparities in the data, instructional goals, growth and reporting.

12.04 Audits.

All programs receiving funding under the provisions of the Exceptional Children's Educational Act are subject to monitoring by the Department as is more fully described in Section 12.07 of these Rules.

12.05 Record Keeping.

~~Any administrative unit receiving funding will~~Administrative units shall have the following record keeping and reporting responsibilities:

12.05(1) **Financial Records.**

Financial records shall be kept in accordance with generally accepted principles of governmental accounting. Recommended accounting principles are listed in the Financial Policies and Procedures Handbook.

12.05(2) **Inventory.**

An inventory shall be maintained of all equipment for which funding was received. These records shall be maintained throughout the useful life of the equipment.

12.05(3) **Student Education Records**

The ALP documents shall be part of the student's cumulative education record. ~~The ALP shall record programming options, and strategies utilized with individual students and shall be part of the student's record. The ALP shall be considered in educational planning and decision-making concerning subsequent programming for that student and be used in the articulation process, preschool (if applicable) through grade 12. Gifted student records shall describe the body of evidence that identifies strengths, interests and needs, and the ongoing programming and student achievement results.~~

12.05(4) **Confidentiality of Student Education Records**

Individually identifiable records of students referred, assessed, evaluated, and/or served through programming for gifted and talented students in any administrative unit shall be held to be confidential and protected in accordance with applicable federal and state laws and regulations.

12.05(5) **Maintenance and Destruction of Student Education Records**

Gifted student education records and ALPs shall be maintained, retained and destroyed consistent with the ongoing system of student record keeping established in the administrative unit, including its member districts or the Charter School Institute for student records, preschool (if applicable) through grade 12.

12.06 ~~Dispute Resolution~~Procedures for Disagreements

The program plan shall describe ~~a dispute resolution process to be used~~procedures for resolving disagreements with parents/guardians, or students in regard to identification, programming, and ALPs. ~~about the identification and programming for gifted students.~~ The ~~dispute resolution process~~ procedures for resolving disagreements shall~~, at a minimum,~~ include, but need not be limited to: a method for the aggrieved individual to express issues and concerns; a means to discuss disagreements in a timely manner with personnel designated by the district with authority to resolve the disagreement. The procedures shall afford the aggrieved individual notice of the decision giving rise to the dispute and an opportunity to be heard before the decision is implemented. The procedures must be posted for ease of access by stakeholders.

12.07 Monitoring

12.07(1) Each administrative unit shall comply with all applicable state and federal laws and regulations regarding the program plan, identification and special educational services for gifted students.

12.07(2) Each administrative unit shall be subject to ongoing monitoring by the Department concerning implementation of the program plan.

12.07(3) Monitoring procedures shall include:

12.07(3)(a) A determination of compliance with all applicable state and federal laws and regulations, and

12.07(3)(b) An assessment of program quality based on the standards established by the Department of Education.

12.07(4) Monitoring activities shall include:

12.07(4)(a) A review of the annual and comprehensive program plans;

12.07(4)(b) A review of the annual enrollment and student performance reports;

12.07(4)(c) A planned comprehensive on-site ~~process~~ procedure integrated with the continuous improvement and ~~monitoring~~ gifted education review process in the Department of Education; and

12.07(4)(d) Follow-up activities including the provision of technical assistance in areas of non-compliance and verification that areas of non-compliance have been corrected.

12.08 Early Access

12.08(1) 12.08(1) **General Provisions**

12.08(1)(a) Early access shall be provided by the AU to identify and serve highly advanced gifted children who are:

12.08(1)(a)(i) Four years of age and for whom early access to kindergarten is deemed appropriate by the AU; and

12.08(1)(a)(ii) Five years of age and for whom early access to first grade is deemed appropriate by the AU.

12.08(1)(b) If the AU permits early access, early access provisions shall be included in its early childhood and gifted instructional programs, and the AU shall expand access to kindergarten through grade one for students deemed appropriate for early access.

12.08(1)(c) Early access shall not be an acceleration pattern recommended for the majority of age 4 or age 5 gifted children who will benefit from preschool gifted programming that responds to the strength area. The purpose of early access is to identify and serve the few highly advanced gifted children who require comprehensive academic acceleration.

12.08(1)(d) When an AU permits early access, its program plan shall describe the elements of an early access process and how those elements, criteria and components will be implemented. Determinations made by the AU shall be made after consideration of criteria required by Section 12.08(2)(d) of these Rules.

12.08(1)(e) In 2008, an AU may submit an early access addendum to its program plan by September 10, 2008. Thereafter, AUs shall submit an addendum for early access by January 1 preceding the initial school year in which early access will be permitted, thus early access assessment may occur after the addendum is approved by the Department.

12.08(2) **Elements of an Early Access Process**

An early access process shall include the following elements:

12.08(2)(a) **Communication**

The AU shall communicate with parents, educators and community members as specified in Section 12.02(1)(a) of these Rules. Early access communication is:

12.08(2)(a)(i) Information about the criteria and process for identifying a highly advanced gifted child for whom early access is deemed appropriate, time frames, portfolio referral, deadlines, specific tests and threshold scores used to make final determinations concerning such a student;

12.08(2)(a)(ii) Professional development of educators, or other means to increase the understanding of a highly advanced gifted child and the educational needs of such a student;

12.08(2)(a)(iii) A method for collaborative efforts among preschool, general and gifted education personnel and parents; and

12.08(2)(a)(iv) An advanced learning plan for the highly advanced gifted child determined appropriate for early access.

12.08(2)(b) **Optional Fee Condition**

12.08(2)(b)(i) The AU may charge parents a reasonable fee for assessment and other procedures performed for the purpose of identifying a highly advanced gifted child and making determinations for early access. The AU shall describe the fee related to the implementation of the referral, testing and/or decision making processes.

12.08(2)(b)(ii) No charge shall be assessed if the child who is the subject of such assessments is eligible for a reduced-cost meal or free meal pursuant to the federal "National School Lunch Act", 42 U.S.C. §1751,et seq.

12.08(2)(b)(iii) When evaluating the need for fees, the AU will:

12.08(2)(b)(iii)(A) Integrate the costs of assessment and decision making into the ongoing general instructional and assessment practices conducted by early childhood and gifted education personnel to the maximum extent possible;

12.08(2)(b)(iii)(B) Take into account the economic circumstances of the community and applicant's family; and

12.08(2)(b)(iii)(C) Consider test results within three months of application from outside licensed professionals paid by the parent.

12.08(2)(c) **Funding and Reporting**

Administrative units that permit early access shall receive funding from the state education fund created in Article IX, Section 17(4) of the Colorado Constitution. To receive funding the AU shall abide by the Rules in this Section 12.08, and:

12.08(2)(c)(i) Support integration of early access in early childhood and gifted programming;

12.08(2)(c)(ii) Report age four gifted children provided early access using date of birth, grade level placement and gifted student designations on the October Enrollment Count and the End-of-Year Report; and

12.08(2)(c)(iii) Report age five gifted children provided early access using date of birth, grade level placement and gifted student designations on the October Enrollment Count and the End-of-Year Report.

12.08(2)(d) **Criteria for Early Access**

The AU shall evaluate a child referred by the parent for early access using the following criteria. The evaluation will lead to a student profile of strengths, performance, readiness, needs and interests, and a determination of appropriate placement. All criteria must be considered in making the determination – test scores alone do not meet the standards of a determination.

12.08(2)(d)(i) Aptitude

12.08(2)(d)(i)(A) Aptitude supporting early access is indicated by a highly advanced level of performance compared to age-peers on cognitive abilities rating scales or 97th percentile and above on standardized cognitive ability tests. Every child with a score above 97th percentile may not benefit from early access to kindergarten or first grade.

12.08(2)(d)(i)(B) The AU shall describe the method(s) and the developmentally appropriate tools for assessment that will be used to determine potential in general cognitive abilities and school success (e.g., individualized ability test, such as the Wechsler Preschool and Primary Scale of Intelligence or Woodcock Johnson Cognitive Ability Scale, or Kaufman Brief Intelligence Test).

12.08(2)(d)(ii) Achievement

12.08(2)(d)(ii)(A) Achievement supporting early access is indicated by a highly advanced level of performance compared to age-peers on achievement rating scales, performance assessment, or 97th percentile and above on standardized achievement tests. Typically, early access children function two or more years above their age peers.

12.08(2)(d)(ii)(B) The AU shall describe the method(s) and tools for assessment that will be used to determine knowledge and skills in reading, writing and mathematics (e.g., curriculum-based assessment, above-level testing, and individualized achievement tests, such as the test of early math ability/reading ability, Woodcock Johnson III Tests of achievement, or Iowa Tests of basic skills).

12.08(2)(d)(iii) Performance

12.08(2)(d)(iii)(A) Performance supporting early access is indicated by work samples and informal teacher and/or parent data indicating demonstrated ability above age peers.

12.08(2)(d)(iii)(B) The AU shall describe the method(s) and tools for assessment that will be used to determine actual demonstration of the student's work (e.g., work samples, independent reading, advanced vocabulary, observational data).

12.08(2)(d)(iv) Readiness, Social Behavior and Motivation

12.08(2)(d)(iv)(A) Readiness, social behavior and motivation for early access are determined by the child's ability to demonstrate the indicators deemed necessary for kindergarten or first grade by the district's standards or national standards (e.g., district readiness checklist, normed-checklists and rating scales, such as the California Preschool Competency Scale or the Preschool/Kindergarten Behavioral and Social Scale or Bracken School Readiness).

12.08(2)(d)(iv)(B) The AU shall describe the method(s) and tools for evaluation that will be used to determine a child's readiness for kindergarten or first grade, social maturity, and eagerness to learn.

12.08(2)(d)(v) Support Systems

12.08(2)(d)(v)(A) The AU shall define and implement a support system to assist in a child's success in and transition through early access by evidence of:

12.08(2)(d)(v)(A)(I) A letter of determination of the early access decision signed by the parent, gifted education staff, early

childhood staff, the receiving teacher and building administrator indicating recognition and support of the child's placement (determination letters will be placed in the child's cumulative file);

12.08(2)(d)(v)(A)(II) A transition goal in the child's advanced learning plan for the first year of early access;

12.08(2)(d)(v)(A)(III) Methods of communication with the student about school success; and

12.08(2)(d)(v)(A)(IV) Methods for parent-teacher communication.

12.08(2)(d)(v)(B) The AU will describe how parents, teachers, school administrators and the learning environment will contribute to a positive support system.

12.08(2)(e) **Process for Early Access**

The AU shall establish a collaborative process among parents, preschool, general and gifted educators and school administration for evaluating early access referrals. The process implemented shall include the following components:

12.08(2)(e)(i) Timelines

12.08(2)(e)(i)(A) Applications for early access are due by April 1 for the next school year. Each AU shall declare when it will begin accepting applications.

12.08(2)(e)(i)(B) Determinations shall be made within 60 calendar days of the AU receiving the child's portfolio submitted by the child's parent in accordance with Section 12.08(2)(e)(iii)(A) of these Rules.

12.08(2)(e)(i)(C) For referrals received after April 1, the AU may, at its discretion, consider the child's information, provided the determination is made by September 1 or by the start of the upcoming school year, whichever is earlier.

12.08(2)(e)(i)(D) A student shall be age 4 by ~~the district's start date~~October 1 for kindergarten; and, age 5 by ~~the district's start date~~October 1 for first grade.

12.08(2)(e)(ii)-(iv) 12.08(2)(e)(ii) Personnel

The AU shall identify personnel at the AU, district, and/or school level who will be involved in the early access process based on the following list. Designated personnel may serve in multiple capacities during the early access process.

12.08(2)(e)(ii)(A) A person designated to collect portfolio referrals;

12.08(2)(e)(ii)(B) Educators designated to collect data used in a body of evidence including the test examiner(s), early childhood teacher(s), a gifted education resource person, and others as identified by the AU (e.g., a performance assessment team, principal);

12.08(2)(e)(ii)(C) A determination team consisting of an AU level or school level gifted education resource person, a teacher in early childhood, and others as identified by the AU (e.g., principal, psychologist, counselor, parent);

12.08(2)(e)(ii)(D) A support team during transition including the receiving teacher and school administrator, parents, and gifted education/early childhood personnel; and

12.08(2)(e)(ii)(E) Other persons helpful in collecting data or making determinations, including the person who assisted in developing the screening portfolio.

12.08(2)(e)(iii) Evaluation

The AU shall describe the implementation steps for early access evaluation. The steps shall include, but not be limited to:

12.08(2)(e)(iii)(A) Screening Portfolio

Parents are responsible for collecting the information required for an early access portfolio application, and for submitting the portfolio to the appropriate AU personnel. The AU must describe the requirements for an application portfolio that shall include:

12.08(2)(e)(iii)(A)(I) Applicant contact information;

12.08(2)(e)(iii)(A)(II) A screening tool completed, individually, by the parent and the child's current teacher; or, if the child is not in school, by the parent and another adult who knows the child from other early childhood experiences (developmentally appropriate screening tools are district-developed tools and/or standardized tools, like the Gifted Rating Scales for Preschool and Kindergarten or the Kingore Observation Scale); and

12.08(2)(e)(iii)(A)(III) Information about the performance of the child that provides evidence of a need for early access evaluation (e.g., work samples, data from the child's current teacher or an adult from early childhood experiences, or indicators of early access readiness factors).

12.08(2)(e)(iii)(B) Referral

The AU shall designate the gifted education director/coordinator, principal, or other qualified person, to accept the referral portfolio provided by the parent, and make an initial decision as to whether early access assessment should continue.

12.08(2)(e)(iii)(C) Testing and a Body of Evidence

The AU shall conduct the necessary tests and collect student information, including test results accepted pursuant to Section 12.08(2)(b)(iii)(C) of these Rules, regarding the criteria and factors for early access outlined in Section 12.08(2)(d) of these Rules. The body of evidence is complete if data regarding all criteria, and other

considerations deemed necessary by the AU, are compiled for data analysis and decision making.

12.08(2)(e)(iii)(D) Decision Making

12.08(2)(e)(iii)(D)(I) Early access decisions will be a consensus process within the determination team that analyzes multiple criteria from a body of evidence resulting in a student profile of strengths, needs and interests of the child. Test scores alone will not determine early access. If the team cannot reach consensus, the building principal or the gifted education director/coordinator shall make the final decision in accordance with the AU's early access program plan.

12.08(2)(e)(iii)(D)(II) A determination letter will be signed by members of the determination team and the parent; and, forwarded for signature of the receiving teacher and principal if they are not on the determination team. Parents may accept or decline the offer of early access. When a child is deemed appropriate for early access, an advanced learning plan (ALP) shall be developed according to the AU's procedures, but no later than the end of the first month after the start of school. The ALP shall include academic and transition goals.

12.08(2)(e)(iii)(D)(III) If the determination team finds the child gifted, but does not find that the child meets the criteria for early access, the team will provide the child's school with the child's assessment portfolio for serving the area of exceptionality in the child's public preschool or public kindergarten program.

12.08(2)(e)(iii)(D)(IV) If the student transfers during the first year of an early access placement the new AU shall maintain the placement.

12.08(2)(e)(iv) Monitoring of Student Performance

The student's teacher shall monitor student performance at least every five weeks during the student's first year of early access. The monitoring process shall be based on the advanced learning plan and performance reports shared with the parents and child.

12.08(2)(e)(v) ~~Dispute Resolution~~Procedures for Disagreements

~~A dispute resolution process~~Procedures for disagreements for early access shall be in accordance with Section 12.06 of these Rules.

12.09 Gifted Education Grants

12.09(1) **Screening Grants.** An Administrative Unit may apply to the Department for a grant for the universal screenings it conducts. An Administrative Unit may conduct a universal screening of enrolled students no later than end of second grade; and/or a second universal screening in conjunction with the creation of each child's individual career and academic plan by end of eighth grade year.

12.09(1)(a) The amount of each grant request must be based on the number of students who participate in the screening and the per pupil cost of the screening.

12.09(2) **Grants to offset the costs incurred in employing qualified personnel.** An Administrative Unit that hires a qualified person to administer the Administrative Unit's gifted programs and implement the Administrative Unit's program plan may apply to the Department for a grant to offset the costs incurred in employing the qualified person up to .5 FTE.

12.09(2)(a) The amount of each grant request must be equal to the costs incurred by the applying Administrative Unit in employing the qualified person up to .5 FTE.

12.09(3) **Grant Distribution.** Grants are dependent upon the annual appropriation provided to the Department in any given year and shall be distributed to applicants in accordance with 22-20-205, C. R. S.

12.09(3)(a) If funds are sufficient to fully fund all requests received by the Department, the Department shall distribute awards to each AU applicant.

12.09(3)(b) If funds are insufficient to fully fund all the requests received by the Department, the Department shall distribute funds in the order in which the Department received the applications by date of receipt over the course of three days. If funds are sufficient to fully fund each request received on the first date of receipt, the Department shall distribute awards to each AU application received on that date. If funds are insufficient to fund each request received on day-one of receipt, then funds will be proportionally distributed to each day-one applicant on a pro-rata basis. If grant funds remain after day-one distributions, then funds for day-two applicants and day-three applicants would be distributed in the same manner, until all funds are expended.

12.09(3)(c) If grant funds are not fully expended in a given fiscal year, the Department shall distribute the monies appropriated in the same manner that it distributes AU annual allocations.

12.09(4) **Application Window.** During the first year of implementation, 2014-15 school year, applications will be due to the Department during a three-day application window no later than December 15 as specified in the grant application. Beginning on April 15-17, 2015, and each year thereafter, subject to available appropriations, Gifted Education Grant applications will be due during an April 15-17 application window for funding available July 1 of the subsequent fiscal year.

12.09(5) **Application Procedures.** The Department will develop an application, pursuant to the Department's grant process and pursuant to the requirements and timelines found in 22-20-205, C.R.S. Each grant application may include a request for one, or more, of the allowable uses: one qualified personnel (up to .5 FTE), as the term is defined by 22-20-202(7), C. R. S. and universal screenings in K-2 and/or middle school years.

12.09(5)(a) Each universal screening grant request shall at a minimum specify the name of the screening tool, the number of students who will participate in the universal screening, and the per pupil cost of the screening;

12.09(5)(b) Each qualified personnel grant request shall at a minimum specify the cost to employ a qualified person and a letter or certified document that verifies the qualified person has an endorsement or higher degree in gifted education, or is working toward attaining an endorsement or higher degree in gifted education.

12.09(6) **Duration of Grant Awards.** Each grant shall have a term of one year. Funds must be utilized within the fiscal year (July-June) of the distribution of grant funds.

12.09(7) **Reporting.** In any fiscal year in which the General Assembly makes an appropriation to the Department for the purposes of the grant program, each Administrative Unit that receives a grant shall report the following Information to the Department each year during the term of the Grant:

12.09(7)(a) The number of and grade of students who participated in the universal screening, the per pupil cost of the screening, evidence of payment for the screening tool, and the name of tool(s) used; and/or

12.09(7)(b) The number of qualified personnel hired using grant moneys, and the type of endorsement/degree held by the qualified person or documentation that the qualified person is working toward the attaining an endorsement or higher degree in gifted education.

12.10 Advisory Committee

Administrative units are highly encouraged to establish and maintain a local advisory committee for gifted education.

Notice of Rulemaking Hearing

Tracking number

2015-00028

Department

300 - Department of Education

Agency

301 - Colorado State Board of Education

CCR number

1 CCR 301-25

Rule title

COLORADO MINIMUM STANDARDS GOVERNING SCHOOL TRANSPORTATION VEHICLES

Rulemaking Hearing

Date

03/11/2015

Time

02:00 PM

Location

Colorado Department of Education, State Board Room; 201 E. Colfax Ave., Denver, CO 80203

Subjects and issues involved

Upgrade rules for Colorado minimum standards governing school transportation vehicles

Statutory authority

22-51-108 and 42-4-1903, (1), (2), (3), CRS

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DEPARTMENT OF EDUCATION

Colorado State Board of Education

COLORADO MINIMUM STANDARDS GOVERNING SCHOOL TRANSPORTATION VEHICLES

1 CCR 301-25

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

~~**GENERAL**~~

~~**2251-R-1.00 Statement of Basis and Purpose.**~~

~~The statutory authority for the Amendments to the Colorado Minimum Standards Governing School Transportation Vehicles (hereinafter "these rules"), adopted by the State Board of Education on May 10, 2007, is found in sections 22-51-108 and 42-4-1903 (1) (2) (3), C.R.S.~~

~~The purpose of these amendments is to upgrade the rules for Colorado minimum standards governing school transportation vehicles. The amendments will improve the safety of the students riding the school bus and the mechanical efficiency of the school bus. They are designed to meet or exceed changing needs of operation, the national recommended minimum standards, new federal safety and emission standards and utilize state-of-the-art industry advances.~~

~~**2251-R-2.00 References**~~

~~FMVSS~~

~~Federal Motor Vehicle Safety Standards~~

~~49 C.F.R. Part 571, Current Revision~~

~~National Highway Traffic Safety Administration~~

~~U.S. Department of Transportation~~

~~SAE~~

~~Society of Automotive Engineers, Inc.~~

~~Standards, Current Revision~~

~~UL~~

~~Underwriters Laboratories, Inc.~~

~~Standard 299-82, Current Revision~~

~~FED. SPEC.~~

~~Federal Specification TT-C-520b~~

Current Revision

General Services Administration

Specification and Consumer Information

NCST-

National School Transportation Specifications And Procedures Revision 2005

Recommendations Of The Fourteenth National Congress On School Transportation

The Missouri Safety Center, Warrensburg, Missouri

NBS-

National Bureau of Standards

Voluntary Product Standard 1-83, Current Revision

Office of Standards Reference Materials

SAHS-

Standard Alphabets for Highway Signs - Series B

Federal Highway Administration, Current Revision

U.S. Government Printing Office

NFPA-

National Fire Protection Association

Volume 2, National Fire Codes, Current Revision

2251-R-3.00 Responsibility of Suppliers.

3.01 School transportation vehicle dealers, distributors, and manufacturers each have a responsibility to comply with these rules after the effective date of these rules, September 1, 2007.

3.02 Dealers, distributors, or manufacturers which supply school transportation vehicles for use in the State of Colorado which do not meet the specifications herein stated shall be notified of noncompliance and a general notice will be sent to all school districts and school transportation operations within the State of Colorado advising that equipment supplied by such dealer, distributor, or manufacturer is not in compliance with these rules, September 1, 2007.

3.02 (a) If a dealer, distributor, or manufacturer has been notified of non-compliance in accordance with subsection 3.02 and replaces or modifies the equipment to meet these rules, September 1, 2007, a notification of compliance will be issued from the Colorado Department of Education within 30 days after proof of compliance.

2251-R-4.00 Effective Date of Specification.

4.01 School transportation vehicles manufactured on or after the effective date of these rules, September 1, 2007, for the purpose of transporting Colorado students shall meet or exceed these minimum standards contained herein.

4.02 School transportation vehicles transporting Colorado students may continue in use.

4.03 Only those buses that were manufactured, within the previous 20 years, may be purchased, leased, contracted, or otherwise obtained for the purpose of transporting Colorado students. These buses must met Colorado minimum standards that were in effect at the time of manufacture.

4.04 Only those small vehicles manufactured after September 1, 1994, may be purchased, leased, contracted, or otherwise obtained for the purpose of transporting Colorado students.

2251-R-5.00 School Transportation Vehicle Definitions.

5.01 School Transportation Vehicle means every motor vehicle which is owned by a public or governmental agency and operated for the transportation of students to or from school or school related events or which is privately owned and operated for compensation provided that such transportation service is sponsored and approved by the local board of education or school governing agency.

5.01 (a) This does not include informal or intermittent arrangements, such as sharing of actual gasoline expense or participation in a car pool.

5.01 (b) Vehicles that carry students as part of their operation as a common carrier under the jurisdiction of us department of transportation or public utilities commission are not included within the definition of school transportation vehicle.

5.02 A School Bus shall be a motor vehicle with motive power, built to FMVSS and the school bus standards contained herein, designed for carrying students on either routes or activity trips.

5.02 (a) **TYPE A** --Type "A" school bus is a conversion or body constructed upon a van-type compact truck or a front-section vehicle chassis, designed for carrying passengers with driver side door and GVWR of 21,000 pounds or less.

5.02 (b) **TYPE B** --Type "B" school bus is a conversion or body constructed and installed upon a van or front-section vehicle chassis, or stripped chassis, with a gross vehicle weight rating of more than 10,000 pounds, designed for carrying passengers. Part of the engine is beneath and/or behind the windshield and beside the driver's seat. The entrance door is behind the front wheels.

5.02 (c) **TYPE C** --Type "C" school bus is a body installed upon a flat back cowl chassis with a gross vehicle weight rating of more than 10,000 pounds, designed for carrying passengers. All of the engine is in front of the windshield and the entrance door is behind the front wheels.

5.02 (d) **TYPE D** --Type "D" school bus is a body installed upon a chassis, with the engine mounted in the front or rear, with a gross vehicle weight rating of more than 10,000 pounds, designed for carrying passengers. The engine may be behind the windshield and beside the driver's seat; it may be at the rear of the bus, behind the rear wheels. The entrance door is ahead of the front wheels.

5.03 Small Vehicle shall be a motor vehicle with motive power, which does not meet the requirements of a Type A, B, C, or D school bus. These vehicles shall not transport more than the manufacturer's designated capacity. A small vehicle shall meet or exceed section 59.06 of these rules. These vehicles may be used to carry students on route or activity trips.

The preceding definition is not intended to include private motor vehicles used exclusively to carry members of the owner's household.

5.03 (a) Small vehicles shall bear name of school district/service provider plainly visible to each side.

5.04 Multifunction bus shall be a motor vehicle with motive power, built to federal multifunctional school activity bus standards, designed for carrying students. These buses may be used to carry students on activity trips. Multifunction buses of 15 or less capacity may also be used on route.

5.04 (a) Multifunction buses shall also meet the standards contained herein with the exception of:

16.00 Color: chassis

54.00 Color: body

63.01 Lettering "SCHOOL BUS"

63.06 Lettering "STOP ON FLASHING RED"

67.07 Alternately flashing warning signal lamps

77.00 Stop signal arm

2251-R-6.00 Testing and Certification.

6.01 Chassis manufacturers shall provide annual certification to the Colorado Department of Education that their product(s) meet these rules and all applicable FMVSS standards.

6.02 School bus body manufacturers shall provide annual certification to the Colorado Department of Education that their product(s) meet or exceed these rules and all applicable FMVSS in effect at the time of manufacture. Body manufacturers shall record and report to CDE the test results called for in Section 55 - Construction, of these rules. All school bus bodies shall meet applicable FMVSS and compliance with these standards shall be certified by the body manufacturer by the attachment of a plate or decal.

6.03 It will be the district's/service provider's responsibility to ascertain whether all school buses purchased, leased, or under contract to the district meet all specifications of these rules. This verification should be obtained at the time of delivery, in addition to the statement of compliance in the purchase bid, contract for or lease agreement.

6.04 When selling a school bus, it is the district's responsibility to eliminate the district's name from the sides of the bus.

6.05 Used school bus dealers shall register with the Colorado department of education certifying that only school transportation vehicles meeting or exceeding Colorado standards will be sold. There shall be no fee to register.

6.06 All school transportation vehicles must meet and continue to meet applicable FMVSS.

2251-R-7.00 Chassis and Body Delivery Requirements.

7.01 The chassis and body manufacturer shall provide the following materials and information for direct delivery to the customer upon request:

7.01 (a) Line set tickets for each individual unit.

7.01 (b) A copy of the pre-delivery service performed and verified by a checkout form for each individual unit.

7.01 (c) Warranty book and statement of warranty for each individual unit.

7.01 (d) Service manual for each individual unit or identical units.

7.01 (e) Parts manual for each individual unit or identical units.

2251-R-8.00 (rule number reserved)

2251-R-9.00 (rule number reserved)

2251-R-10.00 (rule number reserved)

2251-R-11.00 (rule number reserved)

THE BUS CHASSIS

2251-R-12.00 Air Cleaner.

12.01 The engine intake air cleaner shall be furnished and properly installed by the chassis manufacturer to meet engine specifications.

2251-R-13.00 Axles.

13.01 The front axle and rear differential, including suspension assemblies, shall have a gross axle weight rating at ground, at least equal to that portion of the load as would be imposed by the chassis manufacturer's maximum gross vehicle weight rating.

13.02 Rear axle shall be single-speed.

2251-R-14.00 Brakes.

14.01 All braking systems shall comply with FMVSS.

14.01 (a) The braking system capacity shall be comenserate with the braking requirements of the GVWR.

14.02 Vehicles with a maximum designed capacity of greater than 54 shall be equipped with full compressed air brake systems.

14.03 Air brakes: The following standards apply to air brake systems:

14.03 (a) Compressors: On buses using full compressed air brakes for service, emergency, and parking brakes, the compressor shall be a standard production model with a minimum 12 cubic foot per minute displacement.

14.03 (b) Three reservoirs or chambers (wet, primary, secondary) with a total capacity, which is equal to or greater than 12 times the total volume of all brake actuators at full travel.

14.03 (c) Moisture ejection valve: An automatic heated, moisture ejection valve or air drying system shall be properly installed. This is made to automatically eject moisture, sludge, and/or foreign matter and maintain clean, dry air lines.

14.03 (d) Control requirements: Control valve of the parking brake system shall be designed and constructed to conform with the following:

14.03 (d)(1) The parking brake control valve shall be visible to the driver and shall be mounted on the dash panel within 15 inches to the right of the steering column.

14.04 Anti-lock brake system shall control all four wheel positions individually.

2251-R-15.00 Bumper, Front.

15.01 Front bumper on all Type A, B and C school buses shall be furnished by the chassis manufacturer.

15.02 Front bumper of Type D school buses shall be furnished by the body manufacturer.

15.03 Front bumper shall be at least 3/16 inch thick of pressed steel channel, one piece construction or optional 3-piece breakaway construction and a minimum of eight inches wide (high) except Type A buses.

15.04 Front bumper shall be of extended design to offer maximum protection of fender lines without permitting snagging or hooking.

15.05 Front bumper shall be attached to the frame and extend forward of grille, head lamps, fender, or hood sections to provide maximum protection.

15.06 The bumper shall be of sufficient strength to ensure that the front of the bus may be lifted by means of a bumper type jack without permanent deformation of the bumper. Type A buses may use standard construction bumper.

2251-R-16.00 Color: Chassis.

16.01 Frame and bumper shall be painted black.

16.02 Cowl and fenders shall be painted National School Bus Yellow as defined in NCST.

2251-R-17.00 Cooling System.

17.01 Permanent ethylene-glycol base or environmentally safe equivalent anti-freeze shall be provided by chassis manufacturer to protect the cooling system to -30 degrees Fahrenheit (F) when tested at normal engine temperature and shall not be diluted by body company.

17.02 Cooling system shall be equipped with a coolant recovery system.

17.03 Cooling system shall be equipped with a visual fluid level indicator.

2251-R-18.00 Drive Shaft.

18.01 Each drive shaft or section thereof shall be equipped with adequate metal guard or guards to prevent whipping through floor or dropping to ground if broken.

2251-R-19.00 Electrical System.

19.01 The electrical system (including battery(ies) and alternator) shall be commensurate with all electrical needs of the bus, including accessories.

19.02 Battery and all cable required to complete circuits without splicing, even when drawer is extended for battery servicing, shall be provided by the chassis manufacturer and mounted for delivery to body plant.

2251-R-20.00 Exhaust System.

20.01 Exhaust pipe, muffler, and tail pipe shall not pass through the passenger portion of the bus body.

20.02 exhaust system must meet federal standards.

20.03 Tailpipe shall not exit the right side of the bus body.

20.04 Exhaust system shall be insulated from fuel tank and fuel tank connections by securely attached metal shield at any point where it is 12 inches or less from the fuel tank or fuel tank connections, except diesel fuel.

20.05 There shall be a switch inaccessible to the driver to manually start the diesel particulate filter regeneration process.

2251-R-21.00 Fenders, Front.

21.01 Total spread of outer edges of front fenders measured at fender line shall exceed total spread of front tires when front wheels are in straight ahead position.

21.02 Front fenders shall be braced and free from any body attachment.

2251-R-22.00 Frame.

22.01 Frame shall be designed to correspond with or exceed standard practice performance criteria for truck of same general load specifications used for severe service.

22.02 No holes shall be permitted in the chassis rails except those drilled at the chassis plant or authorized by the chassis manufacturer.

22.03 Welding to frame side rails which is necessary by design to strengthen, modify or alter basic vehicle configuration shall be performed and guaranteed by the body or chassis manufacturer making the modification.

2251-R-23.00 Fuel System

23.01 All fuel tank specifications shall conform to FMVSS 301.

23.02 Fuel tank shall be filled and vented entirely outside the passenger compartment.

23.03 Fuel filter with replaceable element shall be installed between fuel tank and engine.

23.04 Engine supply line shall not be mounted below fuel tank.

2251-R-24.00 Heating System.

24.01 Engine design shall provide inlet and outlet holes in accessible locations for attachment of bus heating system water lines. Heater outlets shall be of sufficient size to accommodate circulation of all coolant with no reduction of coolant lines.

2251-R-25.00 Horn.

25.01 Bus shall be equipped with horn(s) of standard make, each horn capable of producing complex sound in band of audio frequencies from 250 to 2000 cycles per second and having total sound level of 110 decibels as rated by horn manufacturer.

2251-R-26.00 Instruments and Instrument Panel.

26.01 Chassis shall be equipped with the following non-glare instruments and gauges. Lights in lieu of gauges are not acceptable.

26.01 (a) Standard speedometer with seven digit odometer,

26.01 (b) Voltmeter with a graduated scale to 16 volts.

26.01 (c) Oil pressure gauge.

26.01 (d) Water temperature gauge.

26.01 (e) Fuel gauge.

26.01 (f) Upper-beam headlamp indicator.

26.01 (g) Tachometer. The tachometer is not required for Type A and B school buses.

26.01 (h) Left and right turn-signal indicator.

26.01 (i) Chassis with air brake systems shall be equipped with a visible gauge and audible low-pressure indicator to warn driver if air pressure in brake system falls below 60 PSI.

26.01 (j) Chassis with air brake systems shall have a labeled visual indicator of park brake application visible to driver.

26.01 (k) Chassis with a hydraulic assist-brake system shall be equipped with warning signals, readily audible and visible to the driver, that will provide continuous warning in the event of a loss of fluid flow from primary source or loss of electric source powering the back-up system.

26.02 All instruments shall be easily readable by driver and accessible for maintenance.

2251-R-27.00 Lamps and Signals.

27.01 All lamps and their installation shall conform to current standards and recommended practices of applicable SAE and FMVSS standards.

2251-R-28.00 Openings.

28.01 All openings made by chassis manufacturer in floorboard and fire-wall shall be sealed by the chassis manufacturer to prevent gases from entering driver's compartment. Boot for the accelerator pedal, gear shift, and parking brake, when required, shall be supplied by the chassis manufacturer.

2251-R-29.00 Power or Gradeability.

29.01 The gross vehicle weight of any school bus shall not exceed 165 pounds per certified net horsepower of the engine at manufacturer's recommended maximum revolutions per minute (RPM).

2251-R-30.00 Retarder (optional)

30.01 Retarder manufacturers shall certify that their product system shall maintain the speed of the bus loaded to maximum GVW at 20 miles per hour on a 7 percent grade for 3.5 miles.

30.02 School buses equipped with electro-magnetic retarder(s) shall have increased electrical system capacity commensurate with the needs of the retarder system.

30.03 Pilot light(s) shall indicate when retarder is in operation.

2251-R-31.00 Steering Gear Assembly.

31.01 All school bus chassis in all passenger capacities shall be equipped with heavy-duty, truck-type integral power steering. Power steering components shall be compatible with the GVW rating for each capacity as shown in chassis manufacturer's literature.

31.02 No changes shall be made in steering apparatus that are not approved and guaranteed by chassis manufacturer.

31.03 There shall be a clearance of at least two inches between steering wheel and any other surface or control.

31.04 Chassis manufacturers shall provide and cover steering wheel column with a temporary plastic covering or equivalent, in order to provide protection from precipitation from time of manufacture until body is mounted.

2251-R-32.00 Suspension System.

32.01 Capacity of suspension assemblies shall be commensurate with chassis manufacturer's gross vehicle weight rating.

2251-R-33.00 Tires and Rims.

33.01 Minimum tire and rim sizes shall be in accordance with FMVSS 120.

33.02 Dual rear tires shall be provided on Type B, C, and D school buses.

33.03 All wheels shall be one piece disc type. Split or multi-piece rims are not acceptable.

2251-R-34.00 Tow Hooks Front.

34.01 Two heavy duty tow hooks or two eyes on Type C and D buses shall be furnished and factory installed, except on Type A and B buses. Hooks shall not extend beyond the front bumper on any school bus.

2251-R-35.00 Undercoating.

35.01 Chassis manufacturer shall coat undersides of steel or metallic front fenders with rust-proofing compound for which compound manufacturer has issued notarized certification of compliance to chassis builder that compound meets or exceeds all performance and qualitative requirements of Fed. Spec. using modified test.

2251-R-36.00 Wiring.

36.01 All wiring shall conform to current applicable recommended practices of SAE.

36.02 All wiring shall use a standard color, number, or function coding and each chassis shall have available at no cost to the district/service provider. a wiring diagram that coincides with the wiring of the chassis. Type A bus chassis may be exempt from this requirement.

36.03 Chassis manufacturer shall install an accessible terminal strip or plug on the body side of the cowl, or at an accessible location in the engine compartment of vehicles designed without a cowl, that shall contain the following terminals for the body connections. Factory terminal strip from chassis manufacturer on Type A bus will be acceptable.

36.03 (a) main 100 amp body circuit

36.03 (b) tail lamps

36.03 (c) right turn signal

36.03 (d) left turn signal

36.03 (e) stop lamps

36.03 (f) back up lamps

36.03 (g) instrument panel lights

2251-R-37.00 (rule number reserved)

2251-R-38.00 (rule number reserved)

2251-R-39.00 (rule number reserved)

2251-R-40.00 (rule number reserved)

2251-R-41.00 (rule number reserved)

2251-R-42.00 (rule number reserved)

2251-R-43.00 (rule number reserved)

2251-R-44.00 (rule number reserved)

2251-R-45.00 (rule number reserved)

2251-R-46.00 (rule number reserved)

2251-R-47.00 (rule number reserved)

2251-R-48.00 (rule number reserved)

2251-R-49.00 (rule number reserved)

THE BUS BODY

2251-R-50.00 Aisle.

50.01 Minimum aisle clearance between seats shall be 12 inches at seat level and 15 inches at top of seats. This includes the aisles to all emergency doors.

50.02 The aisle to any side emergency exit door shall be unobstructed at all times by any type of barrier, seat, wheelchair or tiedown, unless a flip seat is installed and occupied. A flip seat in the unoccupied (up) position shall not obstruct the 12 inch minimum aisle to any side emergency exit door. The track of a track seating system shall be exempt from this requirement.

50.03 On forward control (front engine) Type D buses, the aisle passage area shall not be less than 12 inches, measured from floor level up, between engine cover and any other object. Hold down fastening devices used on engine cover shall be designed to prevent hooking or catching on shoes or clothing.

2251-R-51.00 Battery.

51.01 Body manufacturer shall provide, a drawer-type pull out tray to facilitate servicing or removal of battery(ies). The battery(ies) shall be enclosed by a vented compartment constructed of mill-applied zinc steel provided with drain ports, hold down carrier mounted so as to avoid blocking filler ports and latching device to prevent accidental opening. Under-coating shall be provided and applied to battery box. Battery tray is to be equipped with a safety device to keep tray from sliding completely out to prevent battery from being dropped.

2251-R-52.00 Bumper, Rear.

52.01 Rear bumper shall be of pressed steel channel or equivalent material, at least 3/16-inch thick, and shall be a minimum of 8 inches wide (high) on Type A buses, and shall be a minimum of 9 1/2" wide (high) on Type B, C, and D buses.

52.02 Rear bumper shall be wrapped around back corners of bus and extend forward at least 12 inches from rear-most point of body at floor line.

52.03 Bumper shall be fastened to chassis frame side rails in such a manner as to develop full strength of bumper section from rear or side impact. Bracing materials shall have an impact ratio comparable to that of bumper material and shall be fastened at the ends and radii of the bumper, attached to the side of the frame only and not to body at any point.

52.04 Rear bumper shall extend beyond rear-most part of body surface at least one inch, measured at floor lines.

52.05 No spaces, projections, or cut-outs that will permit a hand hold or foot hold shall be permitted.

52.06 Front ends of the bumper shall be enclosed by end caps or other protective metal or shall have the ends rounded or tucked in and shall be free from sharp edges or projections likely to cause injury or snagging.

52.07 A gasket, rubber or equivalent, shall be installed to close opening between the top of the rear bumper and body metal.

52.08 The bumper shall be of sufficient strength to permit being pushed by another vehicle of similar size. The bumper shall be of sufficient strength to ensure that the front of the bus may be lifted by means of a bumper type jack without permanent deformation of the bumper. Type a buses may use standard construction bumper.

2251-R-53.00 Capacity.

53.01 Capacities and seat spacing shall conform to and be in full compliance with applicable FMVSS.

2251-R-54.00 Color.

54.01 All exterior metal shall be painted National School Bus Yellow (NSBY) as specified in NCST with the exception of those areas listed below:

54.01 (a) Lettering and numbering (black, white, or yellow for bumper area)

54.01 (b) Bumpers (black)

54.01 (c) Rubrails may be black or yellow at purchaser option

54.01 (d) Background area for warning light system. (black)

54.01 (e) The roof of the bus may be painted white not to extend below the drip rails on the sides of the body.

54.01 (f) Student window frames, posts and service door frame may be black.

54.02 Retro-Reflective material shall be installed on the bus. Material shall be of reflective NSBY conforming to the requirements of FMVSS 571.131, Table 1. Retro-Reflective materials and markings shall include the following:

54.02 (a) Rear of bus body: strips of at least 1.75 inch Retro-Reflective NSBY material shall be applied horizontally above the rear windows and above the rear bumper extending from the rear emergency exit perimeter marking outward to the left and right rear corners of the bus with vertical strips applied at the corners connecting these horizontal strips.

54.02 (b) "School Bus" signs: Shall be marked with Retro-Reflective NSBY material comprising background for lettering of the front and/or rear "school bus" signs.

54.02 (c) Sides of bus body: Shall be marked with Retro-Reflective NSBY material at least 1.75 inches in width, extending the length of the bus body and located (vertically) as close as practicable to the floor line.

2251-R-55.00 Construction.

55.01 All metal surfaces that will be painted shall be (in addition to above requirements) chemically cleaned, etched, zinc-phosphate-coated and zinc-chromate or epoxy primed or conditioned by equivalent process. In providing for these requirements, particular attention shall be given to lapped surfaces, welded connections of structural members, cut edges, punched or drilled hole areas in sheet metal, closed or box sections, unvented or undrained areas and surfaces subject to abrasion during vehicle operation.

55.02 The floor shall be at least 14 gauge mill applied zinc-coated steel sheet and shall be on one plane. There shall be a main floor cross member of at least 10 gauge steel or equivalent placed at each side post extending the full width of the floor plate and permanently attached. There shall be a minimum of two intermediate floor cross members of at least 16 gauge steel equally between the main floor cross members and permanently attached.

55.02(a) Type a buses may use other metal or material with strength and corrosion resistance at least equivalent to all-steel construction as certified by the bus body manufacturer.

55.03 In addition to complying with the test procedures described in FMVSS 220, the body manufacturers shall record and report the downward vertical movement of the force at 0, 25, 50, 75, and 100% of the maximum force (both loading and unloading). The expected force deflection curve is illustrated schematically in Figure 1a. Low load nonlinearities may indicate joint conformation; high load nonlinearities may indicate yielding instructural members.

55.03 (a) A second load cycle shall be performed following the procedure given in the first paragraph. The expected force-deflection curve is illustrated schematically in Figure 1b. Any hysteresis following the initial shakedown will be revealed by this second cycle.

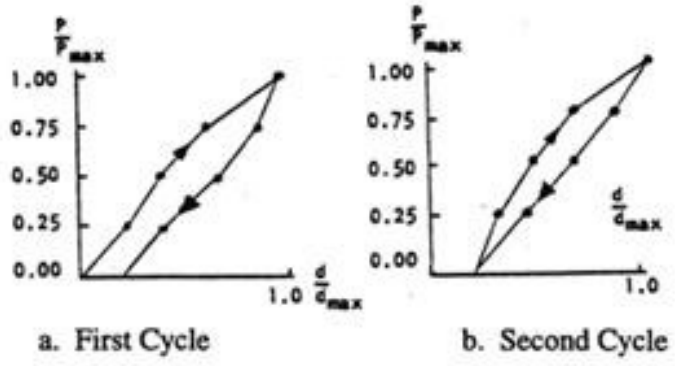


Figure 1. Static Load Test Load-Deflection Curves

55.04 A diagonal (racking) load test shall be performed on Type A, B, C, D school buses to assure adequate shear stiffness and strength of the bus body. Details of the test are provided below.

A two cycle loading sequence shall be conducted following the procedure described in Section 55.04.

55.04 (a) Requirements: When a force equal to 1-1/2 times the GVW is applied to the edge of the roof of the vehicle's body structure through a force application plate as specified in (b), Test Procedures:

55.04 (a)(1) The diagonal movement of the force at any point on the application plate shall not exceed 5 1/8 inches; and

55.04 (a)(2) Each emergency exit of the vehicle provided in accordance with FMVSS 217 shall be capable of operation as specified in that standard during the full application of the force and after release of the force.

55.04 (b) Test Procedures: Each vehicle shall be capable of meeting the requirements of (1) and (2) when tested in accordance with the procedures set forth below.

~~55.04 (b)(1) The vehicle shall be supported on a rigid surface along the lower edge of the frame or along the body sills in the absence of a frame.~~

~~55.04 (b)(2) The load shall be applied through a force application plate that is flat and rigid. The dimensions of the plate shall be chosen to assure that the plate edges never make contact with the vehicle skin during testing. A typical width is 18 inches, and a typical length is 20 inches less that the length of the vehicle's roof measured along its longitudinal centerline.~~

~~55.04 (b)(3) Place the force application plate in contact with the edge of the vehicle roof. Orient the plate so that its flat, rigid surface is perpendicular to a diagonal line connecting the most distant points on an interior cross section of the vehicle. The rear edge of the plate shall be positioned approximately 20 inches from the rear edge of the vehicle roof. A temporary stand may be used to support the plate until a force is applied.~~

~~55.04 (b)(4) Apply an evenly distributed force in a diagonally downward direction through the force application plate at any rate not more than 0.5 inch per second, until a force of 500 pounds has been applied.~~

~~55.04 (b)(5) Apply additional force in a diagonally downward direction through the force application plate at a rate of not more than 0.5 inch per second until the force specified in (a) has been applied, and maintain this application of force.~~

~~55.04 (b)(6) Measure the diagonal movement of any point on the force application plate which occurred during the application of force in accordance with (5) and open the emergency exits as specified in (a)(2).~~

~~55.04 (b)(7) Release all diagonal force applied through the force application plate and operate the emergency exits as specified in (a)(2).~~

~~55.04 (c) Test Conditions: The following conditions apply to the requirements specified in (3).~~

~~55.04 (c)(1) Temperature: The ambient temperature is any level between 32 degrees F and 90 degrees F.~~

~~55.04 (c)(2) Windows and Doors: Vehicle windows, doors, and emergency exits are in the fully-closed position, and latched but not locked.~~

~~55.04 (d) An alternative method of testing for the racking load test shall be as follows:~~

~~The racking load shall be applied along a line connecting the most distant points on a transverse cross section of the bus interior. It produces a shear distortion of the cross section as shown in figure 2.~~

~~A representative method of loading which employs a hydraulic jack to load a two-frame test assembly is illustrated in figure 2.~~

~~The maximum jack load for the two-frame assembly is determined by the following formula:~~

~~J = 2P J - maximum jack load for two-frame test assembly~~

~~P = load/frame~~

~~where P = DVW divided by N~~

~~DVW - dynamic vehicle weight~~

~~N - total number of bus body frames~~

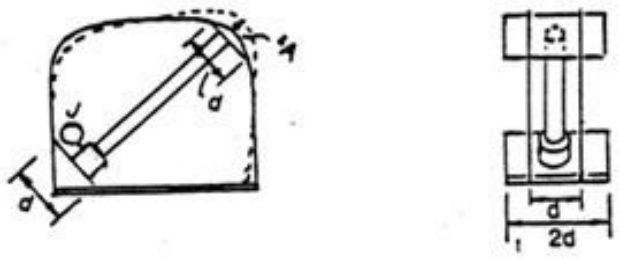
~~and DVW = DF x GVW~~

~~DF - dynamic factor, not less than 1.5~~

~~GVW - gross vehicle weight~~

~~Thus, for a DF = 1.5, a GVW = 22,000 pounds-force (lbf) and N= 11, the dynamic vehicle weight is DVW = 33,000 lbf, the load/frame is P = 3000 lbf and the maximum jack load is J = 6000 lbf.~~

~~When a complete bus body is rack-loaded, the total load DVW must be distributed uniformly along the bus body. This may be accomplished by mounting a series of hydraulic jacks along the length of the bus interior. Seats may be removed to facilitate jack mounting. The rack load will be considered to be uniformly distributed when the variation in the hydraulic jack readings is less than 10 percent. A maximum load the sum of all jack readings shall equal DVW.~~



Transverse Cross Section Side View

Figure 2. Arrangement of Hydraulic Jack for Rack-Loading of Two-Frame Assembly

~~The test may be performed on a complete bus body or on a representative section composed of at least two complete frames (body posts plus roof bows) and floor. Standard seats may be installed in the test section in a manner identical to that of the full bus body. Fabrication procedures for the test assembly shall be identical to those used in normal bus body production.~~

~~A two-cycle loading sequence shall be conducted, with intermediate and final load and deflection readings recorded according to the procedure described.~~

~~The maximum deflection in line with the jack (A, maximum) shall not exceed 4 inches.~~

~~Manufacturers shall specify which testing method was used and submit appropriate certification information as called for in 6.02.~~

55.05 Subfloor shall be either 5 ply nominal 5/8 inches thick plywood, or a material of equal or greater strength and insulation R value and it will equal or exceed properties of exterior-type softwood plywood C-D grade, as specified in NBS Product Standard 1-83. Type A buses shall have nominal 1/2 inch thick plywood or equivalent material equal to or exceeding properties listed above.

55.06 Ceiling Panels: If the ceiling is so constructed to contain lap joints, the forward panel shall be lapped by the rear panel and the exposed edges shall be beamed, hemmed, or flanged or otherwise treated to eliminate sharp edges.

55.07 All body components shall be designed and constructed so as to avoid the entrapment of moisture and dust.

55.08 All openings between chassis and passenger-carrying compartment made for any reason by body manufacturer must be sealed.

2251-R-56.00 Defrosters.

56.01 A defroster system shall be installed of sufficient capacity to keep windshield area, left frontside window to rear of driver's vision, and service door glass area free of condensation or ice.

56.02 Adjustable 6 inch auxiliary fans may be installed to complement the defroster system used by the manufacturer. Such fans shall be controlled individually by two-speed switches located on control panel. Fan blades shall be covered with a protective cage.

The fans shall be located so as to not interfere with the driver’s horizontal line of sight vision.

56.03 The defrosting system shall conform to SAE Standards.

2251-R-57.00 Doors.

57.01 Service door shall be power or manually operated, under control of the driver, and so designed to afford easy release and to prevent accidental opening. When manual lever is used, no parts shall come together so as to shear or crush fingers.

57.02 Manual door controls shall not require more than 25 pounds of force to operate at any point throughout the range of operation as tested on a 10% grade both uphill and downhill. Power door controls shall be located within easy access of driver.

57.03 Service door shall be located on right side of bus opposite driver and within drivers direct view.

57.04 Power operated doors shall be equipped with a separate manual emergency release, readily accessible in the door area above or to the side of the service door or on dash, so that the door may be opened in the case of emergency. The release shall be plainly labeled with instruction for use.

57.05 There shall be a head bumper pad installed on the inside at the top of the entrance door. This pad shall be approximately 3 inches wide (high), at least 1 inch thick, and extend across the entire top of the entrance door opening.

2251-R-58.00 Emergency Exits.

58.01 All emergency exits shall conform to FMVSS 217.

58.02 Emergency door:

58.02 (a) Emergency door(s) shall be equipped with a 3-point latch mechanism.. Emergency door latch shall be equipped with suitable electric plunger-type switch connected with buzzer located in driver's compartment. Switch shall be enclosed in metal case and wires leading from switch shall be concealed in bus body. Switch shall be so installed that plunger contacts farthest edge of slide bar in such manner that any movement of slide bar will immediately close circuit on switch and activate buzzer.

58.02 (b) Ignition interlock for the vandal locks shall conform to FMVSS.

58.02 (c) Exterior door handle shall be of permanent hitch-proof design and mounted with enough clearance to permit opening without touching door surface and may be equipped with a lock that will not prevent opening from inside.

58.02 (d) All emergency door openings shall be completely weather stripped. There shall be no obstruction higher than 1/4 inch across the bottom of any emergency door opening.

58.02 (e) Operation instructions for opening of door shall be lettered or decaled on the inside of the emergency door.

58.02 (f) Emergency door shall bear words either **"EMERGENCY EXIT"** or **"EMERGENCY DOOR"** both inside and outside clearly visible in letters at least 2 inches high. Words shall be placed directly above the door or on the upper portion of the door.

58.02 (g) On all buses except rear engine transit school buses (Type D), and buses with a raised rear storage compartment, an emergency door shall be located in the rear of the bus body and centered with respect to the body. Door shall have a minimum horizontal opening of 24 inches and minimum vertical opening of 48 inches measured from floor level. Rear emergency door shall be hinged on right side and shall open outward.

58.02 (h) Rear emergency door shall contain upper and lower glass panels that comply with FMVSS 205. Glass in emergency door shall provide maximum area of visibility for safe operation of bus.

58.02 (i) There shall be a head bumper pad installed over the emergency door on the inside of the bus body. This pad shall be approximately 3 inches wide (high), at least 1 inch thick, and extend across the entire top of the emergency door opening. Padding shall be of the same materials as the padding used over the service door.

58.02 (j) Side emergency door: If engine or storage compartment is so located as to make it impossible to place door in center of rear end, the emergency door shall be located in the rear half of the left side of the bus body. The door shall not be located to reduce size of opening by wheel well. The door shall be hinged on the front side.

58.03 Rear emergency window: If engine or storage compartment is so located as to require a side emergency door, an emergency window shall be installed in the rear of the bus.

58.03 (a) The emergency window glass shall meet FMVSS 205. Glass shall be tempered unless specified laminated by the purchaser.

58.03 (b) The rear emergency window shall be hinged from top and provided with a hold open control to insure against accidental closing during an emergency.

58.03 (c) Emergency window in rear shall be equipped with latch on the inside and with a handle of hitch proof design that will permit opening from the outside.

~~58.04 All designated emergency windows shall bear words **"EMERGENCY EXIT"** in letters at least 2 inches high both inside and outside the window. Lettering shall be placed so as to be clearly visible both inside the bus and outside directly above, below, or on the window.~~

~~58.04 (a) All designated emergency windows, when not fully latched, shall activate a signal audible to the driver.~~

~~58.04 (b) Emergency side windows shall be hinged at the front side.~~

~~58.05 The number of emergency exits a school bus shall be equipped with is shown in the following table. All other factors not listed in this section concerning the emergency exits shall be according to FMVSS 217. A district may choose to have more emergency exits installed.~~

~~Additional emergency doors may be installed in place of emergency windows according to FMVSS 217.~~

EMERGENCY EXITS TABLE

BUS CAPACITY	ROOF HATCH	LEFT SIDE EMERGENCY WINDOW	RIGHT SIDE EMERGENCY WINDOW
1-46	1	0	0
46-70	2	1	1
71-above	2	2	2

~~2251-R-59.00 Emergency Equipment.~~

~~59.01 The bus shall be equipped with at least one pressurized 5-pound dry-chemical fire extinguisher of a type approved by UL, with a total rating of not less than 2A10BC. The operating mechanism shall be sealed with a type of seal that will not interfere with use of the fire extinguisher.~~

~~59.01 (a) Fire extinguisher shall be mounted in the extinguisher manufacturer's bracket (automotive type) and located in the driver's compartment in full view of and readily accessible to the driver. A pressure gauge shall be so mounted on the extinguisher as to be easily read without removing the extinguisher from its mounted position.~~

~~59.02 First Aid Kit: The bus shall carry a first aid kit which shall either be mounted securely in full view or the location plainly indicated by appropriate markings, in the drivers compartment. Additional kits may be installed. The kit(s) shall be mounted in such a manner that they can be removed, if necessary.~~

~~59.02 (a) The kit shall be sealed. The seal verifies the integrity of the contents without opening the kit. The seal shall be designed to allow easy access to the kits contents.~~

Contents of the 24 unit First Aid Kit:

Item	Unit(s)
Adhesive Tape	1
1" adhesive bandage	2
2" bandage compress	1
3" bandage compress	1
4" bandage compress	1
3" x 3" plain gauze pads	1
Gauze roller bandage 2" wide	2
Plain absorbent gauze - 1/2 square yard	4
Plain absorbent gauze - 24" x 72"	3
Triangular bandages	4
Scissors, tweezers	1
Space rescue blanket	1
Non-latex disposable gloves, pair.	1
CPR mask or mouth to mouth airway	1

Moisture and dustproof kit of sufficient capacity to store the required items.

~~59.03 Emergency Reflectors (Section 42-4-230, C.R.S.): All buses shall carry three (3) emergency triangle reflectors in compliance with FMVSS 125, contained in a securely mounted case easily accessible to the driver.~~

~~59.04 Body fluid cleanup kit: Each school bus shall have a removable body fluid clean-up kit accessible to the driver.~~

Contents of the Basic Body Fluid Clean-up Kit:

Item	Unit(s)
Antiseptic towelette	1
Disinfectant towelette	1
Absorbing powder (capable of ½ gallon absorption)	1
Non-latex disposable gloves, pair	1
Disposable wiper towels	2
Disposable scoop bag with closure mechanism and scraper	1

Moisture and dustproof container of sufficient capacity to store the required items.

~~59.05 Small vehicles shall carry the following emergency equipment:~~

~~59.05 (a) Three (3) emergency triangle reflectors in a securely mounted case.~~

~~59.05 (b) One 24 unit first aid kit meeting the same list as the school bus.~~

~~59.05 (c) One securely mounted 2 1/2 pound dry chemical fire extinguisher of a type approved by UL, with a minimum rating of 1A10BC.~~

~~**2251-R-60.00 Floor Coverings.**~~

~~60.01 Floor in underseat area, including tops of wheel housings, driver's compartment, and toeboard shall be covered with fire-resistant rubber floor covering or equivalent having a minimum overall thickness of .125 inch.~~

~~60.02 Floor covering in aisle shall be aisle-type fire-resistant rubber or equivalent, non-skid, wear-resistant, and ribbed. Minimum overall thickness shall be .1875 inch measured from tops of ribs.~~

~~60.03 Floor covering must be permanently bonded to floor and must not crack when subjected to sudden changes in temperature. Bonding or adhesive material shall be waterproof and shall be of type recommended by manufacturer of floor-covering material. All seams must be sealed with waterproof sealer.~~

~~60.04 Cove molding shall be used along the side walls and rear corners and all floor seam separations shall be properly bonded or secured.~~

~~60.05 The entrance step treads, including the edge at floor level, shall be of the same quality as the aisle material. Step treads shall have an integral white nosing of 1-1/2 inch or more or use diagonal stripes. Treads shall be permanently bonded to the metal steps and sealed to prevent water from getting underneath the step tread.~~

~~60.06 A sealed and insulated plate shall be provided to access fuel tank sending unit. This plate shall not be installed under flooring material. Type A buses are exempt.~~

~~2251-R-61.00 Fuel Fill Cap Cover.~~

~~61.01 The fuel fill cap opening in the body skirt shall be equipped with a hinged cover held closed by a spring or other conveniently operated device. Type A buses are exempt.~~

~~2251-R-62.00 Heating System.~~

~~62.01 All school buses shall be equipped with two or more hot water heaters capable of delivering water to the system at a rate of six gallons per minute using an ambient temperature of 0 degree F to +10 degrees F and maintaining passenger compartment temperature of 50 degrees F. One of the heaters shall be located in the rear half of the bus on or behind the rear wheel axle line.~~

~~62.01(a) Lift equipped buses may place the rear heater under the last row of seats.~~

~~62.02 Buses shall be equipped with front heater(s) and integrated defroster system of capacity to provide heat for the front part of the bus (including driver' compartment) and to keep windshield area, service door glass, driver's left glass area, and stepwell clear of moisture, ice and snow.~~

~~62.04 Multi-speed switches shall operate all heater fans independently.~~

~~62.05 Heater cores and fans shall be completely encased but designed to permit servicing heater assembly by removing all or part of case.~~

~~62.06 Heater hose installation in the engine compartment shall include two shut-off valves able to shut off coolant completely when necessary.~~

~~62.06 (a) One mounted between the water pump outlet and heater hose connection.~~

~~62.06 (b) One mounted between the motor block and the return heater hose connection.~~

~~62.06 (c) Heater hoses shall be adequately supported to guard against excessive wear due to vibration. Hoses shall not rub against the chassis, body or other edges.~~

~~62.07 The body manufacturer shall add the required amount of permanent ethylene glycol base or environmentally safe equivalent anti-freeze after heaters have been connected to protect cooling system of bus to -30 degrees F tested at normal engine temperature.~~

62.08 There shall be a heater water flow regulating valve installed for convenient operation by the driver.

2251-R-63.00 Identification.

63.01 Body shall bear words **"SCHOOL BUS"** in black letters at least 8 inches high on both front and rear of body. Lettering shall be placed as high as possible without impairment of its visibility. Lettering shall conform to SAHS.

63.02 School buses shall bear name of school district/service provider on each side in black, standard unshaded letters, 5 inches in height. If there is insufficient space due to the length of the name of the school district, terms such as community, consolidated, and district may be abbreviated.

63.03 The manufacturer's rated pupil seating capacity shall be printed to the left of the entrance door on the lower skirt in 2 inch characters. The word capacity may be abbreviated. (Example: Cap. 48)

63.04 The numbering of individual buses for identification purposes is permissible.

63.05 Lettering and numerals shall be painted or may be pressure sensitive marking of similar performance quality.

63.06 **"STOP"** shall be printed on the rear of the bus in letters at least 8 inches high. **"ON FLASHING RED"** shall be printed below **"STOP,"** in letters at least 5 inches high. Letters shall be placed in area(s) visible to the approaching motorist.

63.07 The school district logo may be placed above the side window dripline or along the side of the bus but shall not interfere with any required lettering.

63.08 Only signs and lettering specifically permitted by state law or regulation, and any marking necessary for safety and identification, shall appear on the outside of the bus.

63.08 (a) Advertising, approved by the local school board, may appear only on the side(s) of the bus in the following areas:

63.08 (a)(1) The location and securement of the advertising shall have prior CDE approval.

63.08 (a)(2) The signs shall not extend from the body so as to allow a handhold or present a danger to pedestrians.

63.08 (a)(3) The signs shall not interfere with the operation of any door, window, required lettering, lamps, reflectors or other device.

63.08 (a)(4) The signs shall not be placed on side emergency door(s).

63.09 Battery compartment shall be labeled with the word "Battery".

63.10 Identification of fuel type shall be located adjacent to the fuel filler opening.

2251-R-64.00 Inside Height.

64.01 Inside body height shall be 72 inches or more, measured metal to metal at any point on longitudinal center line from front vertical bow to rear vertical bow. Type A school buses shall have 62 inches or more inside height, measured metal to metal.

2251-R-65.00 Insulation.

65.01 Bus body shall be fully insulated in the roof including roof bows and all body panels. Insulation 1 inch minimum thickness shall be of fiber-glass or equal and shall be fire resistant.

2251-R-66.00 Interior.

66.01 Interior of bus shall be free of all projections likely to cause injury.

2251-R-67.00 Lamps and Signals.

67.01 All lamps, signals, reflectors and their installation shall conform to standards and recommendations of SAE and meet FMVSS. There shall be no lettering, symbols or arrows, except manufacturer's markings, on any lens.

67.02 Tail and stop (brake) lamps:

67.02 (a) Bus shall be equipped with four combination red stop/tail lamps. Two combination stop lamps shall have a lens diameter of at least 7 inches or 38.48 square inches, and shall have light intensity at least equal to Class A, Type I turn-signal units as established by SAE. Two combination tail lamps shall have a lens diameter of at least 4 inches.

67.02 (b) If the bus is equipped with a retarder, the four stop lamps shall be illuminated when the retarder is activated.

67.03 License plate lamp: Bus shall be equipped with rear license plate illuminator. This lamp may be combined with one of the tail lamps.

67.04 Interior lamps: Interior lamps shall be provided which adequately illuminate aisle. A separate lamp shall be provided in stepwell.

67.05 Back-up lamps: Back-up lamps of minimum diameter 7 inch or 38.48 square inches, or 4 inch led shall be provided.

67.06 Turn signal lamps:

67.06 (a) The bus shall be equipped with two amber turn signals in front and two amber turn signals in the rear. Both front and rear signals shall be at least 7 inches or a total of 38.48 square inches in diameter and meet the specifications of SAE. type a buses may be equipped with chassis manufacturer's front turn signal lamps.

67.06 (b) The four-way hazard switch shall activate the turn signal lamps only. This operation shall be independent of any other light system.

67.06 (c) On buses over 30 feet, a minimum of one additional turn signal shall be mounted on each side below window, behind the service door axis plane.

67.07 School bus alternately flashing warning signal lamps:

Definition: School bus alternately flashing warning signal lamps mounted at the same horizontal level, intended to identify vehicle as school bus and to inform other users of highway that such vehicle is stopped or about to stop on roadway to take on or discharge school children.

67.07 (a) All school buses shall be equipped with four red warning signal lamps designed to conform to SAE standards, and four amber warning signal lamps designed to conform to FMVSS.

67.07 (b) Right and left lamps shall flash alternately. Each lamp shall flash not less than 60 nor more than 120 flashes per minute.

67.07 (c) Flashing warning lamps are to have a signal area of not less than 7 inch (38.48 square inches) diameter per lens. The lamps shall give a distinct warning illumination of entire lens area when lighted for a distance of 500 feet when the bus is in bright sunlight.

67.07 (d) The amber flashing warning signal lamps shall be energized manually by a switch mounted on the driver control panel. The red flashing warning signal lamps shall be energized as set forth by FMVSS. The lamp units and switch systems shall also comply with the above standard. The flashing warning signal lamp system shall be a sequential mode type.

67.07 (e) The flashing warning signal lamp system shall have two pilot or indicator lights; one shall show amber light when the amber signal lamps are flashing and the other shall show red light when the red signal lamps are flashing.

67.07 (f) The vision of the front signal lamps to the front and rear signal lamps to the rear shall be unobstructed by any part of the vehicle.

67.07 (g) The area around the lens of each alternately flashing signal lamp shall be black.

67.07 (h) Visors shall be provided and securely mounted above the dual-lamp flashing warning signals to adequately shade and protect the dual-lamp assemblies from sunlight above but not to obstruct the rear and side effectiveness of the warning lamps. Led warning signal lamps are exempt.

67.08 Type D rear engine buses shall have 2 hazard lamps each visible to the rear when the engine door is open. These lamps shall be wired to be illuminated when the main hazard lamp circuit is energized.

67.09 A white flashing strobe light meeting SAE standards may be installed on the roof of a school bus. Amber lens may be used upon approval of local traffic regulatory authority. Light shall have a single clear lens emitting light 360 degrees around its vertical axis and may not extend above the roof more than 8 inches. A manual switch and a pilot light must be included to indicate when light is in operation. Lamp must not be capable of activating emergency traffic control light switches.

2251-R-68.00 Mirrors.

68.01 Interior mirror: Interior mirror shall be either laminated glass or glass bonded to a backing that retains the glass in the event of breakage. Mirror shall have rounded corners and protected edges. Type A bus shall have a minimum of 6" x 16" mirror and Type B, C, and D buses shall have a minimum of a 6" x 30" mirror.

68.02 Exterior mirrors: Each school bus shall be equipped with a system of exterior mirrors including crossover mirrors in compliance with FMVSS 111. This system of mirrors shall be rigidly braced so as to reduce vibration.

2251-R-69.00 Mounting, Body, and Chassis.

69.01 Chassis frame shall support rear body cross member. Bus body shall be attached to chassis frame at each main floor sill, except where chassis components interfere, in such manner as to prevent shifting or separation of the body from the chassis under severe operating conditions.

69.02 Insulation material shall be placed at all contact points between body and chassis frame on all buses, and shall be so attached to the chassis frame or body that it will not move under severe operating conditions.

69.03 Body front shall be attached and sealed to the chassis cowl to prevent entry of moisture and gases.

2251-R-70.00 Overall Length.

70.01 Overall length of school buses shall not exceed 40 feet (Section 42-4-504 C.R.S.).

2251-R-71.00 Overall Width.

71.01 Overall width of the school bus shall not exceed 8 feet, except under the provisions of Section 42-4-502 (5)(a) C.R.S.

2251-R-72.00 Rub Rails.

72.01 There shall be one rub rail located on each side of bus approximately at seat level which shall extend from rear side of entrance door completely around bus body (except for emergency and/or access door) to point of curvature near outside cowl on left side.

72.02 There shall be one rub rail located approximately at floor line which shall cover same longitudinal areas as upper rub rail, except at wheel housing, and shall extend at least to radii of right and left rear corners.

72.03 There shall be one rub rail located on each side of bus at the bottom of the side skirts, or a side skirt stiffener of equivalent strength.

72.04 Rub rails shall be attached at each body post and all other upright structural members.

72.05 Rub rails shall be 4 inches or more in width, shall be of 16-gauge steel, or suitable material of equivalent strength and shall be constructed in corrugated or ribbed fashion and shall be self-draining.

72.06 Rub rails shall be applied outside body panels. Pressed-in or snap-on rub rails do not satisfy this requirement.

2251-R-73.00 Seat Belt for Driver.

73.01 A type 2 lap belt/shoulder harness seat belt shall be provided for the driver. The assembly shall be equipped with an emergency locking retractor (ELR) for the continuous belt system. The lap portion of the belt shall be guided or anchored where practical to prevent the driver from sliding sideways under it.

73.02 Adjustability of the mounting point for the driver seat belt pillar loop shall be provided to accommodate all heights and weights of bus drivers without interference with the driver's face or neck.

73.03 Each bus shall be equipped with a durable webbing cutter having a full width handgrip and a protected blade. The cutter shall be mounted in a location accessible to the seated driver.

2251-R-74.00 Seats/Restraining Barriers.

~~74.01 All seating and restraining barrier design and construction must meet the provisions of FMVSS 222. Type A school buses shall be equipped with restraining barriers conforming to FMVSS 222.~~

~~74.02 Lap belt ready seat frames shall be reinforced to meet FMVSS 210.~~

~~74.03 All seats shall be forward facing and shall be securely fastened to that part of the school bus body that supports them.~~

~~74.04 No bus shall be equipped with jump seats or portable seats.~~

~~74.05 Forward-most pupil seat on right side of bus shall be located so as not to interfere with driver's vision, not farther forward than barrier behind driver or rear of driver's seat when adjusted to its rear-most position.~~

~~74.06 Seat material shall comply with FMVSS 302.~~

~~74.07 Passenger seat cushion retention system shall be employed to prevent passenger seat cushions from disengaging from seat frames or flipping forward in event of accident. Each seat cushion retention system shall be capable of withstanding vertical static load equal to minimum of 5 times weight of cushion.~~

~~74.08 Use of a flip seat at any side emergency door location in conformance with FMVSS 222, including required aisle width to side door, is acceptable. Any flip seat shall be free of sharp projections on the underside of the seat bottom. The underside of the flip-up seat bottoms shall be padded or contoured to reduce the possibility of snagged clothing or injury during use. Flip seats shall be constructed to prevent passenger limbs from becoming entrapped between the seat back and the seat cushion when in the upright position. The seat cushion shall be designed to rise to a vertical position automatically when not occupied.~~

~~74.09 If track seating is installed, the manufacturer shall supply minimum and maximum seat spacing dimensions for the bus that comply with FMVSS 222. This information shall be on a label affixed to the bus.~~

~~2251-R-75.00 Steps.~~

~~75.01 First step at service door shall be not less than 10 inches (12 inch for Type D) and not more than 14 inches (16 inches for Type D) from ground, based on standard chassis specifications.~~

~~75.02 Step risers shall not exceed a height of 10 inches. When plywood is used on the top step, the riser height may be increased by the thickness of the wood.~~

~~75.03 An assist grab rails not less than 20 inches in length designed to provide maximum loading assistance shall be provided in an unobstructed location inside doorway.~~

~~75.04 Surface of steps shall be of non-skid material.~~

~~2251-R-76.00 (reserved)~~

~~2251-R-77.00 Stop Signal Arm.~~

~~77.01 The stop signal arm shall meet FMVSS 131.~~

~~77.02 The stop signal arm shall be reflectorized in accordance with FMVSS 131.~~

77.03 Rubber spacers shall be installed on either the side of the bus or the stop arm so as to prevent sign from making abrasive contact with the side of the bus.

77.04 Wind guard shall be provided to keep sign in retracted position.

2251-R-78.00 Storage Compartment.

78.01 A metal container of adequate strength and capacity for the storage of tire chains, tow chains, and such tools as may be necessary for minor emergency repairs while bus is en route may be provided. Such storage container may be located either inside or outside the passenger compartment, but, if inside, it shall be secured and it shall have cover other than seat cushion that shall be securely fastened to it in such a manner as to prevent the contents from spilling in case the bus overturns.

2251-R-79.00 Sun Visor.

79.01 An interior, adjustable, sun visor shall be installed not less than 6 inches wide and 30 inches long. Type A school buses shall have a sun visor according to manufacturer's standard.

2251-R-80.00 Tail Pipe.

80.01 The tail pipe may be flush with but shall not extend more than one inch beyond the perimeter of the body for side exit or the bumper for rear exit.

80.02 Tailpipe shall not exit beneath any fuel filler location or beneath any emergency door or lift door.

2251-R-81.00 Tow Hooks Rear.

81.01 The school bus shall be equipped with two heavy-duty tow hooks or eyes fastened securely to the rear of the frame and shall not protrude beyond outer edge of the bumper.

2251-R-82.00 Undercoating.

82.01 Entire underside of bus body, including floor sections, cross members, and below floor line side panels, shall be coated with rust-proofing compound for which compound manufacturer has issued notarized certification of compliance to bus body manufacturer that compound meets or exceeds all performance requirements of Fed. Spec.

2251-R-83.00 Ventilation.

83.01 Buses, in excess of 20 feet in length, shall be equipped with a multi-speed powered exhaust roof ventilator or powered vent fan in roof hatch, mounted in the rear half of the bus.

2251-R-84.00 Wheel Housings.

84.01 Wheel house openings shall be of full-open type.

84.02 Wheel housings shall be designed to support seat and passenger loads and shall be attached to floor sheets in such manner as to prevent any dust, water, or fumes from entering the body.

84.03 Inside height of wheel housings above floor line shall not exceed 12 inches.

84.04 Wheel housings shall provide clearance for installation and use of tire chains on single and dual power wheels.

84.05 The wheel housing opening shall allow for easy tire removal and service.

84.06 No part of a raised wheel housing shall extend into the emergency door opening.

2251-R-85.00 Windshield and Windows.

85.01 All glass in windshield, windows, and doors shall be of approved safety glass, and of a quality to prevent distortion of view in any direction as specified in FMVSS.

85.02 Each full side window shall provide unobstructed emergency opening at least 9 inches high and 22 inches wide, obtained by lowering of window. If full drop windows are used, they shall be blocked so that when, in a down position, the opening between the window header and top of glass is not more than 12 inches.

2251-R-86.00 Windshield Washers.

86.01 The bus shall be equipped with windshield washers that shall conform to FMVSS and body manufacturer's recommendations.

86.02 For Type C and D buses, the system reservoir capacity shall be a minimum of one gallon.

2251-R-87.00 Windshield Wipers.

87.01 A windshield wiping system, two-speed or more, shall be provided.

87.02 The wipers shall be operated by one or more air or electric motors. If one motor is used, the wipers shall work in tandem to give full sweep of windshield.

87.03 All wiper controls shall be located within easy reach of the driver and designed, when in stop position, to move blades from the driver's direct view.

2251-R-88.00 Wiring.

88.01 All wiring shall conform to current standards of SAE.

88.02 Circuits:

88.02 (a) Wiring shall be arranged in at least nine regular circuits, as follows:

88.02 (a)(1) Head, tail, stop, and instrument panel lamps,

88.02 (a)(2) Clearance lamps,

88.02 (a)(3) Dome and step-well lamps,

88.02 (a)(4) Starter motor,

88.02 (a)(5) Ignition and emergency door signal,

88.02 (a)(6) Turn signal lamps,

88.02 (a)(7) Alternately flashing warning signal lamps,

88.02 (a)(8) Horn,

88.02 (a)(9) Heaters and defrosters.

88.02 (b) Any of above combination circuits may be subdivided into additional independent circuits.

88.02 (c) All other electrical functions (such as electric-type windshield wipers) shall be provided with independent and properly protected circuits.

88.02 (d) Each body circuit shall be color or number coded and a diagram of circuits shall be attached to the body in a readily accessible location. Number coding is permitted only if the number is a permanent part of the insulation and is repeated at intervals of not more than 6 inches.

88.03 Each circuit shall have adequate circuit protection.

88.04 All wires shall be installed within body. They shall be insulated so as to protect them from external damage and minimize dangers from short circuits. Whenever wires pass through body member, additional protection in form of appropriate type of insert shall be provided.

88.05 Wires not enclosed within body shall be enclosed in a protective jacket and fastened securely at intervals of not more than 18 inches. All joints shall be soldered or joined by equal effective connectors. The protective jackets shall be assembled to provide maximum protection against moisture and dust.

2251-R-89.00 (rule number reserved)

SPECIALLY EQUIPPED BUSES

2251-R-90.00 Introduction.

90.01 This section applies to school buses and multifunction buses.

Equipping buses to accommodate students with disabilities is dependent upon the needs of the passengers. Buses may be fitted with various equipment to accommodate those needs. Buses so equipped are not to be considered a separate class of school bus, but simply a regular school bus equipped for special accommodations. Transportation considerations and needs of a student entitled to transportation as a related service should be addressed in the student's individual education program (IEP).

The specifications in this section are intended to be supplementary to specifications in the chassis and body sections. In general, specially equipped buses shall meet all the requirements of the preceding sections plus those listed in this section. It is recognized by the entire industry that the field of special transportation is characterized by varied needs for individual cases and by a rapidly emerging technology for meeting those needs. A flexible, "common-sense" approach to the adoption and enforcement of specifications for these vehicles, therefore, is prudent.

2251-R-91.00 Aisles.

91.01 All buses equipped with a power lift or ramp shall provide a minimum 30 inch aisle leading from any wheelchair to at least one emergency door and to the lift area.

2251-R-92.00 Definition.

92.01 A specially equipped bus is any bus designed, equipped, or modified to accommodate students with special transportation needs.

2251-R-93.00 General Requirements.

93.01 Buses equipped for transporting students with special transportation needs shall comply with FMVSS.

93.02 In the instance where a regular service entrance cannot be accessed, the bus shall be equipped with a power lift, unless a ramp is needed for unusual circumstances related to passenger needs.

2251-R-94.00 Identification.

94.01 Buses with power lifts or ramps shall display the International Symbol of Accessibility on all four sides of the bus. The symbols shall be a minimum of 6 inches and not exceed 12 inches. Such emblems shall be white on blue background.

2251-R-95.00 Lift Equipped Entrance.

95.01 There shall be adequate illumination for normal operation of the lift, to include the lift and adjacent area, both when deployed at the vehicle floor level and at ground level.

95.02 A drip molding shall be installed above the opening to effectively divert water from entrance.

95.03 Door posts and headers from entrance shall be reinforced sufficiently to provide support and strength equivalent to the areas of the side of the bus not used for lift equipped entrance.

95.04 A single door or double doors may be used for the lift equipped entrance.

95.04 (a) A single door shall be hinged to the forward side of the entrance, unless doing so would obstruct the service entrance. If, due to the above condition, the door is hinged to the rearward side doorway, the door shall utilize a safety mechanism which will prevent the door from swinging open should the primary door latch fail.

95.04 (b) If double doors are used, the system shall be designed to prevent the door(s) from being blown open by the wind resistance created by the forward motion of the bus, and/or incorporate a safety mechanism to provide secondary protection should the primary latching mechanism(s) fail.

95.05 All doors shall have positive fastening devices to hold doors in the open position.

95.06 All doors shall be weather sealed.

95.07 The forward-mounted door shall have at least three-point fastening devices.

95.08 Door materials, panels and structural strength shall be equivalent to the service and emergency doors. Color, rub rail extensions, lettering and other exterior features shall match adjacent sections of the body.

95.09 Each door shall have windows set in rubber that are visually similar in size and location to adjacent non-door windows. Glazing shall be of same type and tinting (if applicable) as standard fixed glass in other body locations.

95.10 Door(s) shall be equipped with a device that will actuate and maintain an audible or flashing signal located in the driver's compartment when door(s) is not securely closed and ignition is in "on" position.

95.11 A switch shall be installed so that the lifting mechanism will not operate when the lift platform door(s) is closed.

95.12 Lift equipped entrance doors shall be equipped with padding at the top edge of the door opening. Padding shall be at least 3 inches wide and 1 inch thick and extend the full width of the door opening.

2251-R-96.00 Power Lift.

96.01 General: Vehicle lifts and installation shall comply with the requirements set forth in FMVSS 403, *PLATFORM LIFT SYSTEMS FOR MOTOR VEHICLES,* and FMVSS 404, *PLATFORM LIFT INSTALLATION IN MOTOR VEHICLES.*

96.02 Design load: The design load of the lift shall be 800 pounds at a minimum. Working parts, such as cables, pulleys and shafts, which can be expected to wear, and upon which the lift depends for support of the load, shall have a safety factor of at least six, based on the ultimate strength of the material. Non-working parts, such as platform, frame and attachment hardware, that would not be expected to wear, shall have a safety factor of at least three, based on the ultimate strength of the material.

96.03 Lift capacity: The lifting mechanism and platform shall be capable of operating effectively with a wheelchair and occupant mass of 800 pounds at a minimum.

96.04 In addition, controls, emergency operations, platforms, platform barriers, handrails, etc shall comply with FMVSS 403.

96.05 Documentation: The following information shall be provided with each vehicle equipped with a lift:

93.05 (a) A phone number where information may be obtained about installation, repairs and parts. (Detailed written instructions and a parts list shall be available upon request.)

96.06 Training materials: The lift manufacturer shall make training materials available to insure proper use and maintenance of the lift. These may include instructional videos, classroom curriculum, system test results or other related materials.

2251-R-97.00 Ramps.

97.01 If a ramp is used, it shall be of sufficient strength and rigidity to support wheel chair (electric or other), occupant, and attendant. It shall be equipped with protective flange on each longitudinal side to keep wheelchair on ramp.

97.02 Floor of ramp shall be covered with non-skid material.

97.03 Ramp shall be of weight, equipped with handle or handles, to permit one person to put ramp in place and to return it to storage place.

97.04 A ramp device may be used in lieu of a mechanical lift if the ramp meets all the requirements of the Americans with Disabilities Act (ADA) as found in 36 CFR § 1192.23, *VEHICLE RAMP* .

97.05 A ramp device that does not meet the specifications of ADA, but does meet the specifications of 94.01 through 94.04 of this section may be installed and used, only when a power lift system is not adequate to load and unload students.

97.06 ramps used for emergency evacuation purposes may be installed in raised floor buses by manufacturers.

2251-R-98.00 Restraining Devices.

98.01 Lap belt ready seat frames shall be reinforced to meet FMVSS. All child restraint systems, child restraint anchorage systems, seat belt assemblies and seat belt assembly anchorages shall meet FMVSS.

2251-R-99.00 Seating Arrangements.

99.01 To accommodate special devices for passenger requirements, flexibility is permitted in seat spacing, not to exceed FMVSS.

2251-R-101.00 Securement And Restraint System For Wheelchairs And Wheelchair Seated Occupants

For purposes of understanding the various aspects and components of this section, the term *securement and tiedown* and the phrases *securement system or tiedown system* are used exclusively in reference to the devices that anchor the wheelchair to the vehicle. The term *restraint* and the phrase *restraint system* are used exclusively in reference to the equipment that is intended to limit the movement of the wheelchair occupant in a crash or sudden maneuver. The term *wheelchair tiedown and occupant restraint system (WTORS)* is used to refer to the total system that secures the wheelchair and restrains the wheelchair occupant.

101.01 A wheelchair tiedown and occupant restraint system installed in specially equipped buses shall be designed, installed, and operated for use with forward-facing wheelchair-seated passengers and shall comply with all applicable requirements of FMVSS 222, *School Bus Passenger Seating and Crash Protection.*

101.02 WTORS, including the anchorage track, floor plates, pockets or other anchorages, shall be provided by the same manufacturer or shall be certified to be compatible by manufacturers of all equipment/systems used.

101.03 Wheelchair securement positions shall be located such that wheelchairs and their occupants do not block access to the lift door.

101.04 The WTORS, including the storage device, shall meet the flammability standards established in FMVSS 302.

101.05 The following information shall be provided with each bus equipped with a securement and restraint system:

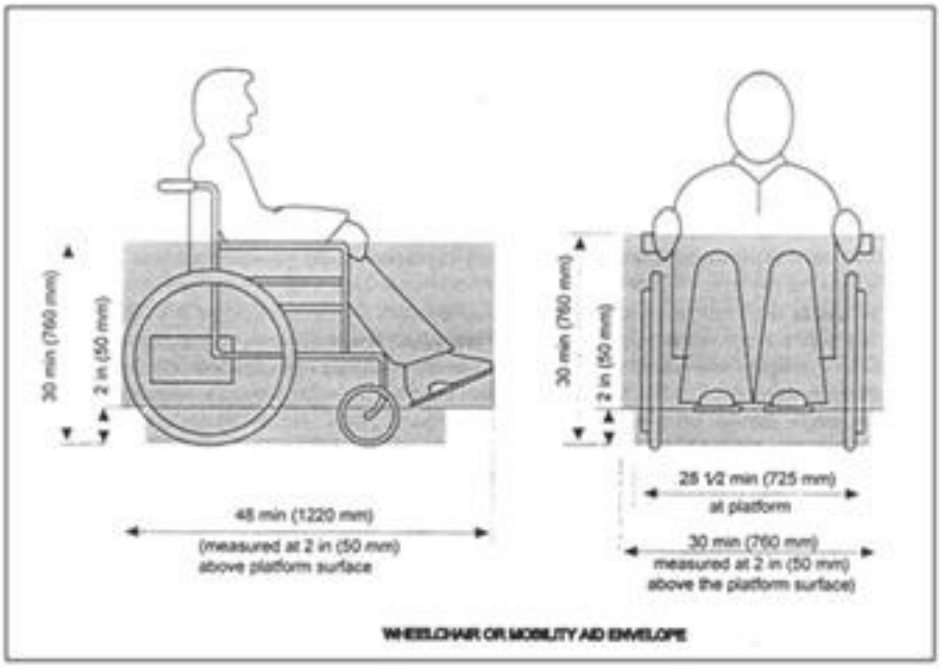
101.05 (a) phone number where information can be obtained about installation, repair and parts. (detailed written instructions and a parts list shall be available upon request.)

101.05 (b) Detailed instructions regarding use, including a diagram showing the proper placement of the wheelchair/mobility aids and positioning of securement devices and occupant restraints, including correct belt angles.

101.06 The WTORS manufacturer shall make training materials available to ensure the proper use and maintenance of the WTORS. These may include instructional videos, classroom curriculum, system test results or other related materials.

101.07 Wheelchair securement/tiedowns shall comply with FMVSS 222.

~~101.08 Each wheelchair position in a specially equipped bus shall have a minimum clear floor area of 30 inches laterally by 48 inches longitudinally. Additional floor area may be required for some wheelchairs. Consultation between the user and the manufacturer is recommended to ensure that adequate area is provided.~~



WHEELCHAIR OR MOBILITY AID ENVELOPE

~~101.09 If longitudinal track systems are used, four rows of tracking must be installed.~~

~~2251-R-102.00 Service Entrance~~

~~102.01 On power lift equipped vehicles, steps shall be the full width of the step well, excluding the thickness of the doors in the open position.~~

~~102.02 Suitable hand rails shall be provided on both sides of entrance area to assist passengers during ingress and egress. this device shall allow for easy grasping or holding and shall have no openings or pinch points that might entangle clothing, accessories or limbs.~~

~~2251-R-103.00 Support Equipment and Accessories.~~

~~103.01 Each bus shall be equipped with a durable webbing cutter having a full width handgrip and a protected blade. The cutter shall be mounted in a location accessible to the seated driver.~~

~~Editor's Notes~~

~~History~~

~~Entire rule eff. 07/01/2007.~~

GENERAL

2251-R-1.00 Statement of Basis and Purpose.

The statutory authority for the Colorado Minimum Standards Governing School Transportation Vehicles (hereinafter referred to as "these rules" or “Minimum Standards”), adopted by the State Board of Education on (*insert effective date*), is found in sections 22-51-108 and 42-4-1904, C.R.S.

The purpose of these rules is to provide reasonable and adequate standards of safety for school transportation vehicles that promote the welfare of the students and afford reasonable protection to the public. The purpose of the amendments approved on (*insert effective date*) is to update the minimum standards to align with recent federal standard and reflect current industry practices, to streamline and consolidate rules and eliminate rules which are redundant of and potentially contradictory to federal standards, and to reduce regulatory burdens for school districts.

The Commissioner, or designee, may provide an exemption to these Minimum Standards to the extent the Commissioner finds an exemption to be appropriate.

2251-R-2.00 References.

FMVSS-

Federal Motor Vehicle Safety Standards

49 C.F.R. Part 571, Current Revision

National Highway Traffic Safety Administration

U.S. Department of Transportation

2251-R-3.00 Responsibility of Suppliers.

3.01 Dealers, distributors and manufacturers of school buses and multifunction buses each have a responsibility to comply with the Minimum Standards after the effective date of these rules, (*insert effective date*).

3.02 Dealers, distributors or manufacturers which supply school buses and multifunction buses for use in the State of Colorado which do not meet the specifications herein stated shall be notified of noncompliance and a general notice will be sent to all school districts and school transportation operations within the State of Colorado advising that equipment supplied by such dealer, distributor, or manufacturer is not in compliance with the Minimum Standards, (*insert effective date*).

3.02(a) If a dealer, distributor, or manufacturer has been notified of non-compliance in accordance with subsection 3.02 of these rules and replaces or modifies the equipment to meet the Minimum Standards, (*insert effective date*), a notification of compliance will be issued from the Colorado Department of Education (CDE) within 30 days after proof of compliance.

2251-R-4.00 Effective Date.

4.01 Except as indicated in 4.01(a), school transportation vehicles manufactured, per the date listed on the certification plate, on or after the effective date of the Minimum Standards, (*insert effective date*), for the purpose of transporting Colorado students shall meet or exceed the Minimum Standards.

4.01(a) Under federal law (49 USC 30112(a)), a new over-the-road motor coach (motor coach) bus may not be sold for the purpose of transporting school-age students to and from school or to school related events unless it meets all FMVSS requirements for school buses. Upon passage of a local board of education resolution, a school district may purchase a used over-the-road motor coach (motor coach) bus and/or attain a short-term rental of a motor coach bus from a contract carrier for the transportation of students to school related events. Such resolution shall specify that consideration was given to the standards of safety to promote the welfare of students, including recommendations of national transportation organizations. In no event shall a motor coach bus be used for the transportation of students to and from school or school to school. A board resolution is not necessary for transporting students on common carriers.

4.02 School transportation vehicles transporting Colorado students may continue in use.

4.03 Only school transportation vehicles that were manufactured, per the date listed on the certification plate, within the previous 20 years, may be purchased, leased, contracted, or otherwise obtained for the purpose of transporting Colorado students. These vehicles must meet Colorado minimum standards that were in effect at the time of manufacture.

2251-R-5.00 School Transportation Vehicle Definitions.

5.01 School Transportation Vehicle means every motor vehicle which is owned by a public or governmental agency and operated for the transportation of students to and from school, from school to school, or to school related events or which is privately owned and operated for compensation provided that such transportation service is sponsored and approved by the local board of education or school governing agency.

5.01(a) This does not include informal or intermittent arrangements, such as sharing of actual gasoline expense or participation in a car pool.

5.01(b) Exemption: Vehicles that carry students as part of their operation as a common carrier under the jurisdiction of United States Department of Transportation or Public Utilities Commission are not included within the definition of school transportation vehicle.

5.02 A School Bus shall be a motor vehicle, built to FMVSS and school bus standards contained herein, designed for transporting students on either to and from school, from school to school, or to school related events.

5.02(a) **TYPE A** --Type "A" school bus is a conversion or body constructed utilizing a cutaway front-section vehicle with a left side driver's door and a gross vehicle weight rating (GVWR) of 21,500 pounds or less.

5.02(b) **TYPE B** --Type "B" school bus is a body constructed and installed upon a stripped chassis. Part of the engine is beneath and/or behind the windshield and beside the driver's seat. The entrance door is behind the front wheels.

5.02(c) **TYPE C** --Type "C" school bus is constructed utilizing a chassis with a hood and fender assembly. This includes the cutaway truck chassis, including cab, with or without a left side driver door, and with a GVWR greater than 21,500 pounds. The entrance door is behind the front wheels.

5.02(d) **TYPE D** --Type "D" school bus is constructed utilizing a stripped chassis, the engine may be behind the windshield and beside the driver's seat; it may be at the rear of the bus, behind the rear wheels. The entrance door is ahead of the front wheels.

5.03 Small Vehicle shall be a motor vehicle, which does not meet the requirements of a Type A, B, C or D school bus, designed for general purpose use. A small vehicle shall meet or exceed section 20.05 of these rules. These vehicles may be used to carry students to and from school, from school to school, or to school related events.

5.03(a) Small vehicles shall bear name of school district/service provider plainly visible on each side.

5.04 Multifunction bus shall be a motor vehicle, built to federal multifunctional school activity bus standards, designed for transporting students.

5.04(a) Multifunction buses shall also meet the standards contained in the Minimum Standards with the exception of:

5.04(a)(1) Color, as required by section 15.00 of these rules

5.04(a)(2) Lettering “SCHOOL BUS”, as required by section 26.01 of these rules

5.04(a)(3) Lettering “STOP ON FLASHING RED” as required by section 26.06 of these rules

5.04(a)(4) Alternately flashing warning signal lamps, as required by section 29.07 of these rules

5.04(a)(5) Stop signal arm, as required by section 38.00 of these rules

5.04(a)(6) Retro-reflective material color, as required by section 15.02 of these rules.

2251-R-6.00 Testing and Certification.

6.01 School bus manufacturers shall provide annual certification to the Colorado Department of Education that their product(s) meet or exceed the Minimum Standards and all applicable FMVSS in effect at the time of manufacture. School bus manufacturers shall record and report to CDE the test results as required by Section 16 - Construction. All school bus bodies that meet applicable FMVSS and are in compliance with the Minimum Standards shall be certified by the school bus manufacturer by the attachment of a plate or decal.

6.02 It will be the district's/service provider’s responsibility to ascertain whether all school buses purchased, leased, or under contract to the district meet all specifications of the Minimum Standards. This verification should be obtained at the time of delivery, in addition to the statement of compliance in the purchase bid, contract for or lease agreement.

6.03 When selling a school transportation vehicle, it is the district's responsibility to eliminate the district's full name from the vehicle.

6.04 Used school bus dealers shall register with the Colorado Department of Education, School Transportation Unit, certifying that only school transportation vehicles meeting or exceeding Colorado standards will be sold. There shall be no fee to register.

6.05 All school transportation vehicles must meet and continue to meet all applicable FMVSS in effect on the date of manufacture, per the date listed on the certification plate.

2251-R-7.00 Bus Delivery Requirements.

7.01 The bus manufacturer shall provide the following materials and information for direct delivery to the customer upon request:

7.01(a) Line set tickets for each individual unit including chassis and body,

7.01(b) A copy of the pre-delivery service performed and verified by a checkout form for each individual unit,

7.01(c) Warranty book and statement of warranty for each individual unit,

7.01(d) Service manual (hard copy or electronic copy) for each individual unit or identical units for all major components of the bus (e.g., body, chassis, transmission, etc.), and

7.01(e) Parts manual (hard copy or electronic copy) for each individual unit or identical units for all major components of the bus (e.g., body, chassis, transmission, etc.).

BUS BODY AND CHASSIS

2251-R-8.00 Aisle

8.01 Minimum aisle clearance between seats and to all emergency doors shall be 12 inches at seat level.

8.02 On forward control (front engine) Type D buses, the aisle passage area shall not be less than 12 inches, measured from floor level up, between engine cover and any other object. Hold down fastening devices used on engine cover shall be designed to prevent hooking or catching on shoes or clothing.

2251-R-9.00 Axles.

9.01 Rear axle shall be single-speed.

2251-R-10.00 Battery

10.01 On Type B, C and D, a drawer-type pull out tray shall be provided to facilitate servicing or removal of battery(ies) not used for the motive propulsion of the bus. The battery(ies) shall be enclosed by a vented compartment, provided with drain ports, a hold down carrier mounted so as to avoid blocking filler ports and a latching device to prevent accidental opening. Under-coating shall be provided and applied to battery box. Battery tray is to be equipped with a safety device to keep tray from sliding completely out.

10.02 On Type A buses equipped with more than one battery, all batteries should be positioned in one location.

10.03 Batteries should be equipped with sufficient battery cable to allow the drawer-type pull out tray to fully extend.

2251-R-11.00 Brakes.

11.01 Type C and D buses shall be equipped with full compressed air brake systems. Both air drum brake and air disc break applications are acceptable.

11.02 Air brakes:

11.02(a) Compressors: On buses using full compressed air brakes for service, emergency, and parking brakes, the compressor shall be a standard production model with a minimum 12 cubic foot per minute displacement.

11.02(b) Moisture ejection valve: An automatic heated, moisture ejection valve or air drying system shall be properly installed. This is made to automatically eject moisture, sludge, and/or foreign matter and maintain clean, dry air lines.

11.02(c) Control requirements: Control valve of the parking brake system shall be designed and constructed to conform with the following:

11.02(c)(1) The parking brake control valve shall be visible to the driver and shall be mounted on the dash panel within 15 inches to the right of the steering column.

2251-R-12.00 Bumpers.

12.01 Front bumper shall:

12.01(a) Be at least 3/16 inch thick of pressed steel channel, one piece construction with minimum of eight inch width (high), except Type A buses under 14,500 GWVR.

12.01(b) Be of extended design to offer maximum protection of fender lines without permitting snagging or hooking.

12.01(c) Be attached to the frame and extend forward of grille, head lamps, fender or hood sections to provide maximum protection.

12.01(c) Be of sufficient strength to ensure that the front of the bus may be lifted by means of a bumper type jack without permanent deformation of the bumper.

12.02 Rear bumper shall:

12.02(a) Be of pressed steel channel or equivalent material, at least 3/16-inch thick, and shall be a minimum of 8 inches wide (high) on Type A buses, and shall be a minimum of 9 ½ inches wide (high) on Type B, C and D buses.

12.02(b) Be wrapped around back corners of bus and extend forward at least 12 inches from rear-most point of body at floor line.

12.02(c) Be fastened to chassis frame side rails in such a manner as to develop full strength of bumper section from rear or side impact. Bracing materials shall have an impact ratio comparable to that of bumper material and shall be fastened at the ends and radii of the bumper, attached to the side of the frame only, and not to body at any point.

12.02(d) Extend beyond rear-most part of body surface at least one inch, measured at floor lines.

12.02(e) Not allow any spaces, projections, or cut-outs that will permit a hand hold or foot hold.

12.02(f) Have the front ends enclosed by end caps or other protective metal or have the ends rounded or tucked in, and shall be free from sharp edges or projections likely to cause injury or snagging.

12.02(g) Have a gasket, rubber or equivalent, installed to close opening between the top of the rear bumper and body metal.

12.02(h) Be of sufficient strength to permit being pushed by another vehicle of similar size. The bumper shall be of sufficient strength to ensure that the rear of the bus may be lifted by means of a bumper type jack without permanent deformation of the bumper.

2251-R-13.00 Color.

13.01 All exterior metal shall be painted National School Bus Yellow (NSBY) with the exception of:

13.01(a) Lettering and numbering shall be black, white, or yellow for bumper area.

13.01(b) Bumpers and frame shall be black

13.01(c) Rub rails may be black or yellow at purchaser option

13.01(d) Background area for alternating flashing warning lamps shall be black

13.01(e) The roof of the bus may be painted white, not to extend below the drip rails on the sides of the body.

13.01(f) Student window frames, posts and service door frame may be black.

13.02 Retro-Reflective material shall be installed on the bus conforming to the requirements of FMVSS 131.

13.02(a) Rear of bus body: strips of between 1 and 2 inch Retro-Reflective NSBY material shall be applied horizontally above the rear windows and above the rear bumper, extending from the rear emergency exit perimeter marking outward to the left and right rear corners of the bus, with vertical strips applied at the corners connecting the horizontal strips.

13.02(b) "School Bus" signs: Shall be marked with Retro-Reflective NSBY material comprising background for lettering of the front and/or rear "school bus" signs.

13.02(c) Sides of bus body: Shall be marked with Retro-Reflective NSBY material at least 1 ¾ inches in width, extending the length of the bus body and located (vertically) as close as practicable to the floor line.

2251-R-14.00 Construction.

14.01 All metal surfaces that will be painted shall be (in addition to above requirements) chemically cleaned, etched, zinc-phosphate-coated and zinc-chromate or epoxy primed or conditioned by equivalent process. Particular attention shall be given to lapped surfaces, welded connections of structural members, cut edges, punched or drilled hole areas in sheet metal, closed or box sections, unvented or undrained areas and surfaces subject to abrasion during vehicle operation.

14.02 The floor shall be at least 14 gauge mill applied zinc-coated steel sheet and shall be on one plane. There shall be a main floor cross member of at least 10 gauge steel or equivalent extending the full width of the floor plate and permanently attached. There shall be a minimum of two intermediate floor cross members of at least 16 gauge steel equally between the main floor cross members and permanently attached.

14.02(a) Type A buses 14,500 GVWR or less may use other metal or material with strength and corrosion resistance at least equivalent to all-steel construction as certified by the bus body manufacturer.

14.03 Subfloor shall be either 5 ply nominal 5/8 inches thick plywood, or a material of equal or greater strength and insulation R value and it will equal or exceed properties of exterior-type softwood plywood C-D grade, as specified in National Bureau of Standards (NBS) Product Standard 1-83. Type A buses, 14,500 GVWR or less, shall have nominal ½ inch thick plywood or equivalent material equal to or exceeding properties listed above.

14.04 Ceiling Panels: If the ceiling is constructed to contain lap joints, the forward panel shall be lapped by the rear panel and the exposed edges shall be beaded, hemmed, or flanged or otherwise treated to eliminate sharp edges.

14.05 All body components shall be designed and constructed so as to avoid the entrapment of moisture and dust.

14.06 All openings between chassis and passenger-carrying compartment made for any reason must be sealed.

14.07 The bus body shall meet the test standards of the Kentucky Pole test.

14.08 In addition to complying with FMVSS 220 test procedures, the body manufacturers shall record and report the downward vertical movement of the force at 0, 25, 50, 75, and 100% of the maximum force (both loading and unloading). The expected force deflection curve is illustrated schematically in Figure 1a. Low load nonlinearities may indicate joint conformation; high load nonlinearities may indicate yielding structural members.

14.08(a) A second load cycle shall be performed following the procedure given in the first paragraph. The expected force-deflection curve is illustrated schematically in Figure 1b. Any hysteresis following the initial shakedown will be revealed by this second cycle.

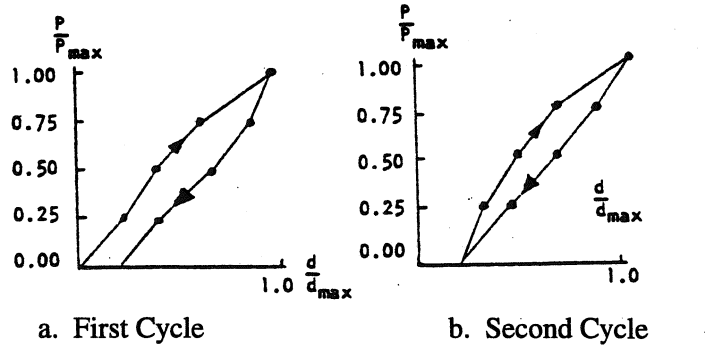


Figure 1. Static Load Test Load-Deflection Curves

14.09 A diagonal (racking) load test shall be performed on Type A, B, C D school buses to assure adequate shear stiffness and strength of the bus body. Details of the test are provided below.

A two cycle loading sequence shall be conducted following the procedure described in Section 14.08.

14.09(a) Requirements: When a force equal to 1 ½ times the GVW is applied to the edge of the roof of the vehicle's body structure through a force application plate as specified in (b), Test Procedures:

14.09(a)(1) The diagonal movement of the force at any point on the application plate shall not exceed 5 1/8 inches; and

14.09(a)(2) Each emergency exit of the vehicle provided in accordance with FMVSS 217 shall be capable of operation as specified in that standard during the full application of the force and after release of the force.

14.09(b) Test Procedures: Each vehicle shall be capable of meeting the requirements of (1) and (2) when tested in accordance with the procedures set forth below.

14.09(b)(1) The vehicle shall be supported on a rigid surface along the lower edge of the frame or along the body sills in the absence of a frame.

14.09(b)(2) The load shall be applied through a force application plate that is flat and rigid. The dimensions of the plate shall be chosen to assure that the plate edges never make contact with the vehicle skin during testing. A typical width is 18 inches. A typical length is 20 inches less than the length of the vehicle's roof measured along its longitudinal centerline.

14.09(b)(3) Place the force application plate in contact with the edge of the vehicle roof. Orient the plate so that its flat, rigid surface is perpendicular to a diagonal line connecting the most distant points on an interior cross section of the vehicle. The rear edge of the plate shall be positioned approximately 20 inches from the rear edge of the vehicle roof. A temporary stand may be used to support the plate until a force is applied.

14.09(b)(4) Apply an evenly distributed force in a diagonally downward direction through the force application plate at any rate not more than 0.5 inch per second, until a force of 500 pounds has been applied.

14.09(b)(5) Apply additional force in a diagonally downward direction through the force application plate at a rate of not more than 0.5 inch per second until the force specified in (a) has been applied and maintain this application of force.

14.09(b)(6) Measure the diagonal movement of any point on the force application plate which occurred during the application of force in accordance with (5) and open the emergency exits as specified in (a)(2).

14.09(b)(7) Release all diagonal force applied through the force application plate and operate the emergency exits as specified in 14.09(a)(2).

14.09(c) Test Conditions: The following conditions apply to the requirements specified in (3).

14.09(c)(1) Temperature: The ambient temperature is any level between 32 degrees Fahrenheit and 90 degrees Fahrenheit.

14.09(c)(2) Windows and Doors: Vehicle windows, doors and emergency exits are in the fully-closed position and latched but not locked.

14.09(d) An alternative method of testing for the racking load test shall be as follows:

14.09(d)(1) The racking load shall be applied along a line connecting the most distant points on a transverse cross section of the bus interior. It produces a shear distortion of the cross section as shown in figure 2.

A representative method of loading which employs a hydraulic jack to load a two-frame test assembly is illustrated in figure 2.

The maximum jack load for the two-frame assembly is determined by the following formula:

J = 2P J - maximum jack load for two-frame test assembly

P = load/frame

where P = DVW divided by N

DVW - dynamic vehicle weight

N - total number of bus body frames

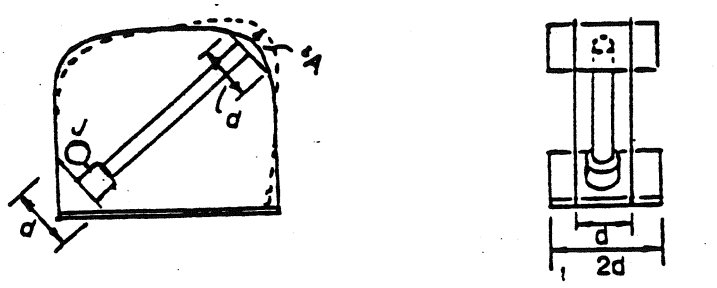
and DVW = DF x GVW

DF - dynamic factor, not less than 1.5

GVW - gross vehicle weight

Thus, for a DF = 1.5, a GVW = 22,000 pounds-force (lbf), and N= 11, the dynamic vehicle weight is DVW = 33,000 lbf, the load/frame is P = 3000 lbf and the maximum jack load is J = 6000 lbf.

14.09(d)(2) When a complete bus body is rack-loaded, the total load DVW must be distributed uniformly along the bus body. One method is to mount a series of hydraulic jacks along the length of the bus interior. Seats may be removed to facilitate jack mounting. The rack load will be considered to be uniformly distributed when the variation in the hydraulic jack readings is less than 10 percent. A maximum load for DVW shall be the sum of all jack readings.



Transverse Cross Section Side View

Figure 2. Arrangement of Hydraulic Jack for Rack-Loading of Two-Frame Assembly

14.09(d)(2)(A) The test may be performed on a complete bus body or on a representative section composed of at least two complete frames (body posts plus roof bows) and floor. Standard seats may be installed in the test section in a manner identical to that of the full bus body. Fabrication procedures for the test assembly shall be identical to normal bus body production.

14.09(d)(2)(B) A two-cycle loading sequence shall be conducted, with intermediate and final load and deflection readings recorded according to the procedure described.

14.09(d)(2)(C) The maximum deflection in line with the jack (A, maximum) shall not exceed 4 inches.

14.09(d)(3) Manufacturers shall specify which testing method was used and submit appropriate certification information as called for in 6.02.

2251-R-15.00 Cooling System.

15.01 Permanent ethylene-glycol base or environmentally safe equivalent anti-freeze shall be provided to protect the cooling system to -30 degrees Fahrenheit when tested at normal engine temperature.

15.02 Cooling system shall be equipped with a visual fluid level indicator.

2251-R-16.00 Defrosters.

16.01 A defroster system shall be installed of sufficient capacity to keep windshield area, left front side window to rear of driver's vision, and service door glass area free of condensation or ice.

16.02 Adjustable 6 inch auxiliary fans may be installed to complement the defroster system used by the manufacturer. Such fans shall be controlled individually by two-speed switches located on control panel. Fan blades shall be covered with a protective cage.

16.02(a) The fans shall be located so as to not interfere with the driver's horizontal line of sight vision.

2251-R-17.00 Doors.

17.01 Service door shall be power or manually operated, under control of the driver, and so designed to afford easy release and prevent accidental opening. When manual lever is used, no parts shall come together so as to shear or crush fingers.

17.02 Manual door controls shall not require more than 25 pounds of force to operate at any point throughout the range of operation as tested on a 10% grade both uphill and downhill. Power door controls shall be located within easy access of driver.

17.03 Service door shall be located on right side of bus opposite driver and within driver's direct view.

17.04 Power operated doors shall be equipped with a separate manual emergency release, readily accessible in the door area, either above the service door, to the side of the service door or on the dash, so that the door may be opened in event of an emergency. The release shall be plainly labeled with instruction for use.

17.05 There shall be a head bumper pad installed on the inside at the top of the entrance door. The pad shall be approximately 3 inches wide (high), at least 1 inch thick, and extend across the entire top of the entrance door opening.

2251-R-18.00 Drive Shaft.

18.01 Each drive shaft or section thereof shall be equipped with adequate metal guard(s) to prevent whipping through floor or dropping to ground, if broken.

2251-R-19.00 Emergency Exits.

19.01 All emergency exits shall conform to FMVSS 217.

19.02 The minimum number of emergency exits is shown in the following table. A district may choose to have more emergency exits installed. Emergency doors may be installed in place of emergency windows.

EMERGENCY EXITS TABLE

BUS CAPACITY	ROOF HATCH	LEFT SIDE EMERGENCY WINDOW	RIGHT SIDE EMERGENCY WINDOW
1 – 45	1	0	0
46 – 70	2	1	1
71 - above	2	2	2

19.03 Emergency door:

19.03(a) Emergency door(s) shall be equipped with a 3-point latch mechanism. The inside door handle shall be designed with a guard for protection against accidental release.

19.03(b) Exterior door handle shall be of permanent hitch-proof design and mounted with enough clearance to permit opening without touching door surface.

19.03(c) All emergency door openings shall be completely weather stripped. No obstruction shall be higher than 1/4 inch across the bottom of any emergency door opening.

19.03(d) A head bumper pad shall be installed over the emergency door on the inside of the bus body. The pad shall be approximately 3 inches wide (high), at least 1 inch thick, and extend across the entire top of the emergency door opening. Padding shall be of the same materials as the padding used over the service door.

2251-R-20.00 Emergency Equipment.

20.01 The bus shall be equipped with at least one pressurized, 5-pound, dry-chemical fire extinguisher, with a total rating of not less than 2A10BC. The operating mechanism shall be sealed with a type of seal that will not interfere with use of the fire extinguisher.

20.01(a) Fire extinguisher shall be securely mounted in an extinguisher bracket (automotive type) and located in full view of and readily accessible to the driver. A pressure gauge shall be so mounted on the extinguisher as to be easily read without removing the extinguisher from its mounted position.

20.02 First Aid Kit: The bus shall carry one first aid kit which shall be securely mounted in full view of the driver or with the location plainly indicated by appropriate markings. Additional kits may be installed. The kit(s) shall be mounted for easy removal.

20.02(a) The kit shall be sealed. The seal verifies the integrity of the contents without opening the kit. The seal shall be designed to allow easy access to the kit's contents.

Contents of the 24 unit First Aid Kit:

Item	Unit(s)
Adhesive Tape	1
1 inch adhesive bandage	2
2 inch bandage compress	1
3 inch bandage compress	1
4 inch bandage compress	1
3 inch x 3 inch plain gauze pads	1
Gauze roller bandage 2 inch wide	2
Plain absorbent gauze – ½ square yard	4
Plain absorbent gauze – 24 inch x 72 inch	3
Triangular bandages	4
Scissors, tweezers	1
Space rescue blanket	1
Non-latex disposable gloves, pair.	1
CPR mask or mouth to mouth airway	1

Moisture and dustproof kit of sufficient capacity to store the required items.

20.03 Emergency Reflectors: All buses shall carry three (3) emergency triangle reflectors in compliance with Section 42-4-230, C.R.S. and with FMVSS 125, contained in a securely mounted case easily accessible to the driver or in a location plainly indicated by appropriate markings.

20.04 Body fluid cleanup kit: Each school bus shall have one removable body fluid clean-up kit accessible to the driver.

Contents of the Basic Body Fluid Clean-up Kit:

Item	Unit(s)
Antiseptic towelette	1
Disinfectant towelette	1
Absorbing powder (capable of ½ gallon absorption)	1
Non-latex disposable gloves, pair	1
Disposable wiper towels	2

Disposable scoop bag with closure mechanism and scraper

Moisture and dustproof container of sufficient capacity to store the required items.

20.05 Each bus shall be equipped with one durable webbing cutter having a full width handgrip and a protected blade. The cutter shall be mounted in a location accessible to the seated driver.

20.06 Small vehicles shall carry the following emergency equipment:

20.06(a) Three (3) emergency triangle reflectors in a securely mounted case,

20.06(b) One 24 unit first aid kit as found in 20.04 ,

20.06(c) One securely mounted, 2 ½ pound, dry chemical fire extinguisher with a minimum rating of 1A10BC,

20.06(d) One durable webbing cutter having a full width handgrip and a protected blade. The cutter shall be mounted in a location accessible to the seated driver.

20.06(e) One basic body fluid clean-up kit as found in 20.04,

20.07 Emergency equipment shall be securely mounted. Emergency equipment shall be clearly visible or in a location plainly indicated by appropriate markings.

2251-R-21.00 Exhaust System.

21.01 Tailpipe shall not exit the right side of the bus body.

21.02 Exhaust system shall be insulated in a manner to prevent any damage to any fuel system component.

21.03 There shall be a switch to manually start the diesel particulate filter regeneration process.

21.04 The tailpipe shall be flush with but not extend more than one inch beyond the perimeter of the body for side exit or the bumper for rear exit except when not needed by an electric powered bus.

21.05 Tailpipe shall not exit beneath any fuel filler location or beneath any emergency door or lift door.

2251-R-22.00 Floor Coverings.

22.01 Floor in under seat area, including tops of wheel housings, driver's compartment, and toe board shall be covered with fire-resistant rubber floor covering or equivalent having a minimum overall thickness of .125 inch.

22.02 Floor covering in aisle shall be aisle-type, fire-resistant rubber or equivalent, non-skid, wear resistant, and ribbed. Minimum overall thickness shall be .1875 inch measured from tops of ribs.

22.03 Floor covering shall be permanently bonded to floor and must not crack when subjected to sudden changes in temperature. Bonding or adhesive material shall be waterproof and shall be of type recommended by manufacturer of floor-covering material. All seams must be sealed with waterproof sealer.

22.04 Cove molding shall be used along the side walls and rear corners. All floor seam separations shall be properly bonded or secured.

22.05 The entrance step treads, including the edge at floor level, shall be of the same quality as the aisle material. Step treads shall have an integral white or yellow nosing of 1 ½ inch or more or use diagonal stripes. Treads shall be permanently bonded to the metal steps and sealed to prevent water from getting underneath the step tread.

22.06 A sealed and insulated plate shall be provided when required to access fuel tank sending unit. The plate shall not be installed under flooring material. Type A buses 14,500 GVWR and under are exempt.

2251-R-23.00 Frame.

23.01 No holes shall be permitted in the chassis rails except when drilled at the manufacturing plant or authorized by the manufacturer.

23.02 Welding to frame side rails necessary by design to strengthen, modify or alter basic vehicle configuration shall be authorized and documented by the manufacturer.

2251-R-24.00 Fuel System.

24.01 All fuel tank specifications shall conform to FMVSS 301, FMVSS 303, FMVSS 305, National Fire Protection Association code 52, and/or National Fire Protection Association code 58, as applicable.

24.02 Engine supply line shall not be mounted below fuel tank.

24.03 The fuel fill cap opening in the body skirt shall be equipped with a hinged cover held closed by a spring or other conveniently operated device except when not needed by an electric powered bus. Type A buses under 14,500 GVWR are exempt.

2251-R- 25.00 Heating System.

25.01 All school buses shall be equipped with two or more hot water heaters capable of delivering water to the system at a rate of six gallons per minute using an ambient temperature of 0 degree Fahrenheit to +10 degrees Fahrenheit and maintaining passenger compartment temperature of 50 degrees Fahrenheit. One of the heaters shall be located in the rear half of the bus on or behind the rear wheel axle line.

25.01(a) Lift equipped buses may place the rear heater under the last row of seats or wall mount. The front heater may be wall mounted.

25.02 Buses shall be equipped with front heater(s) and integrated defroster system of capacity to provide heat for the front part of the bus (including driver's compartment) and to keep windshield area, service door glass, driver's left glass area and step well clear of moisture, ice and snow.

25.03 Heater cores and fans shall be completely encased but designed to permit servicing heater assembly by removing all or part of the case.

25.04 Heater hose installation in the engine compartment shall include two shut-off valves shutting off coolant completely when necessary.

25.04(a) One shut-off valve mounted between the water pump outlet and heater hose connection.

25.04(b) One shut-off valve mounted between the motor block and the return heater hose connection.

25.04(c) Heater hoses shall be adequately supported to guard against excessive wear due to vibration. Hoses shall not rub against the chassis, body or other edges.

25.05 The body manufacturer shall add the required amount of permanent ethylene glycol base or environmentally safe equivalent anti-freeze after heaters have been connected to protect cooling system of bus to -30 degrees Fahrenheit tested at normal engine temperature.

25.06 A heater water flow regulating valve shall be installed for convenient operation by the driver.

2251-R-26.00 Identification.

26.01 Body shall bear words **"SCHOOL BUS"** in black letters at least 8 inches high on both front and rear of body. Lettering shall be placed without impairment of its visibility. Lettering shall have a retro-reflective NSBY material background (see 15.02B)

26.02 School buses shall bear name of school district/service provider on each side of the bus. The lettering must be black, standard, unshaded letters, 5 inches in height. If there is insufficient space due to the length of the name of the school district, terms such as community, consolidated, and district may be abbreviated.

26.03 The vehicle passenger seating capacity shall be printed to the left of the entrance door on the lower skirt in 2 inch characters. The word “capacity” may be abbreviated. (Example: Cap. 48)

26.04 The numbering of individual buses for identification purposes is permissible.

26.05 Lettering and numerals shall be painted or may be pressure sensitive marking of similar performance quality.

26.06 **"STOP"** shall be printed on the rear of the bus in letters at least 8 inches high. “**ON FLASHING RED"** shall be printed below “**STOP,"** in letters at least 4 ½ inches high. An LED message panel giving safety messages to alert motorists may be used instead of the above lettering. These letters shall be placed in area(s) visible to the approaching motorist.

26.07 The school district logo may be placed above the side window drip line or along the side of the bus, but shall not interfere with any required lettering.

26.08 Only signs and lettering specifically permitted by state law or regulation, and any marking necessary for safety and identification, shall appear on the outside of the bus.

26.08(a) Advertising, approved by the local school board, may appear only on the side(s) of the bus in the following areas:

26.08(a)(1) The location and securement of the advertising shall have prior written CDE approval.

26.08(a)(2) The signs shall not extend from the body so as to allow a handhold or present a danger to pedestrians.

26.08(a)(3) The signs shall not interfere with the operation of any door, window, required lettering, lamps, reflectors or other device.

26.08(a)(4) The signs shall not be placed on side emergency door(s).

26.08(a)(5) Advertising signs shall not interfere with retro-reflective tape on the side of the bus.

26.09 The exterior of the Battery compartment shall be labeled with the word "Battery".

26.10 Identification of fuel type shall be located outside and adjacent to the fuel filler opening.

2251-R-27.00 Insulation.

27.01 Bus body shall be fully insulated in the roof including roof bows and all body panels. Insulation 1 inch minimum thickness shall be fiber-glass or equivalent and fire resistant.

2251-R-28.00 Interior.

28.01 Inside body height shall be 72 inches or more, measured metal to metal at any point on longitudinal center line from front vertical bow to rear vertical bow. Type A school buses of 14,500 GVWR or less shall have 62 inches or more inside height, measured metal to metal. Neither measurement shall include air conditioning units.

28.02 Interior of bus shall be free of all projections likely to cause injury.

2251-R-29.00 Lamps and Signals.

29.01 No lettering, symbols or arrows, except manufacturer's markings, shall be on any lens.

29.02 Tail and stop (brake) lamps:

29.02(a) Bus shall be equipped with four combination red stop/tail lamps. Two combination stop lamps shall have a lens diameter of at least 7 inches or 38.48 square inches. Two combination tail lamps shall have a lens diameter of at least 4 inches or 12 ½ square inches.

29.02(b) If the bus is equipped with a retarder, the four stop lamps shall be illuminated when the retarder is activated.

29.03 Interior lamps: Interior lamps shall be provided which adequately illuminate aisle. A separate lamp shall be provided in step well.

29.04 Back-up lamps: Back-up lamps of minimum diameter 7 inch or 38.48 square inches, or 4 inch LED shall be provided.

29.05 Turn signal lamps:

29.05(a) The bus shall be equipped with two amber turn signals in front and two amber turn signals in the rear. Rear turn signals shall be at least 7 inches or a total of 38.48 square inches in diameter.

29.05(b) Type D buses will still be required to be equipped with two amber turn signals in front with a minimum diameter of 7 inches or 38.48 square inches.

29.05(c) On buses over 30 feet, a minimum of one additional turn signal shall be mounted on each side below window and behind the service door axis plane.

29.06 School bus alternately flashing warning signal lamps:

Definition: School bus alternately flashing warning signal lamps mounted at the same horizontal level intended to identify vehicle as school bus and to inform other users of highway that such vehicle is stopped or about to stop on roadway to take on or discharge school children.

29.06(a) The amber flashing warning signal lamps shall be energized manually by a switch mounted on the driver control panel. The flashing warning signal lamp system shall be a sequential mode type.

29.06 (b) The flashing warning signal lamp system shall have two pilot or indicator lights; one shall show amber light when the amber signal lamps are flashing and the other shall show red light when the red signal lamps are flashing.

29.06 (c) The areas around the lens of each alternately flashing signal lamp shall be black.

29.06 (d) Visors shall be provided and securely mounted above the dual-lamp flashing warning signals to adequately shade and protect the dual-lamp assemblies from sunlight above but not to obstruct the rear and side effectiveness of the warning lamps. LED warning signal lamps are not required to use visors.

29.07 Type D rear engine buses shall have two hazard lamps each visible to the rear when the engine door is open. The lamps shall be wired to be illuminated when the main hazard lamp circuit is energized.

29.08 A white flashing strobe light may be installed on the roof of a school bus. Amber lens may be used upon approval of local traffic regulatory authority. Light shall have a single clear lens emitting light 360 degrees around its vertical axis and may not extend above the roof more than 8 inches. A manual switch and a pilot light must be included to indicate when light is in operation. Lamp must not be capable of activating emergency traffic control light switches.

2251-R-30.00 Mirrors.

30.00 Exterior mirrors shall meet FMVSS 111.

2251-R-31.00 Mounting, Body, and Chassis.

31.01 Insulation material shall be placed at all attachment points between body and chassis frame on all buses, and shall be so attached to the chassis frame or body to prevent movement under severe operating conditions.

31.02 Body front shall be attached and sealed to the chassis cowl to prevent entry of moisture and gases.

2251-R-32.00 Overall Size.

32.01 Overall length of school buses shall not exceed 40 feet pursuant to Section 42-4-504 C.R.S.

32.02 Overall width of the school bus shall not exceed 8 feet, except under the provisions of Section 42-4-502 (5)(a) C.R.S.

2251-R-33.00 Retarder (optional, see Section 42-4-1901, C.R.S.)

33.01 Retarder manufacturers shall certify that their product system shall maintain the speed of the bus loaded to maximum GVW at 19.0 miles per hour on a 7 percent grade for 3.6 miles.

33.02 School buses equipped with electro-magnetic retarder(s) shall have increased electrical system capacity commensurate with the needs of the retarder system.

33.03 Indicator light(s) shall indicate when retarder is in operation.

2251-R-34.00 Rub Rails.

34.01 There shall be one rub rail located on each side of bus at approximately seat level which shall extend from rear side of entrance door completely around bus body (except for emergency and/or access door) to point of curvature near outside cowl on left side.

34.02 There shall be one rub rail located at approximately floor line which shall cover same longitudinal areas as upper rub rail, except at wheel housing, and shall extend at least to radii of right and left rear corners.

34.03 There shall be one rub rail located on each side of bus at the bottom of the side skirts, or a side skirt stiffener of equivalent strength.

34.04 Rub rails shall be attached at each body post and all other upright structural members.

34.05 Rub rails shall be 4 inches or more in width, 16-gauge steel, or equivalent strength, constructed in corrugated or ribbed fashion and shall be self-draining.

34.06 Rub rails shall be applied to the outside of the body panels. Pressed-in or snap-on rub rails do not satisfy this requirement.

2251-R-35.00 Seats/Restraining Barriers.

35.01 Type A school buses shall be equipped with restraining barriers conforming to FMVSS 222.

35.02 No bus shall be equipped with jump seats or portable seats.

35.03 Forward-most pupil seat on right side of bus shall be located not to interfere with driver's vision. The seat shall not be farther forward than the barrier behind driver or rear of driver's seat when adjusted to its rear-most position.

35.04 Use of a flip seat at any side emergency door location in conformance with FMVSS 222, including required aisle width to side door, is acceptable. Any flip seat shall be free of sharp projections on the underside of the seat bottom. The underside of the flip-up seat bottoms shall be padded or contoured to reduce the possibility of snagged clothing or injury during use. Flip seats shall be constructed to prevent passenger limbs from becoming entrapped between the seat back and the seat cushion when in the upright position. The seat cushion shall be designed to rise to a vertical position automatically when not occupied.

35.05 School bus student seats and seat spacing shall meet FMVSS 222.

35.06 School bus seat materials shall meet FMVSS 302.

2251-R-36.00 Steering Gear Assembly.

36.01 All school bus chassis, in all passenger capacities shall be equipped with heavy-duty, truck-type integral power steering. Power steering components shall be compatible with the GVW rating.

36.02 No changes shall be made in steering apparatus that are not authorized in writing by manufacturer.

36.03 There shall be a clearance of at least 2 inches between steering wheel and any other surface or control.

2251-R-37.00 Steps.

37.01 First service door step shall be not less than 10 inches from the ground (12 inch for Type D) and not more than 14 inches from the ground (16 inches for Type D).

37.02 Step risers shall not exceed a height of 10 inches. When plywood is used on the top step, the riser height may be increased by the thickness of the wood.

37.03 An assist hand rail not less than 20 inches in length designed to provide maximum loading assistance, shall be provided in an unobstructed location inside doorway.

37.04 Surface of steps shall be of non-skid material.

2251-R-38.00 Stop Signal Arm.

38.01 The stop signal arm shall meet FMVSS 131.

38.02 Rubber spacers shall be installed on either the side of the bus or the stop arm so as to prevent sign from making abrasive contact with the side of the bus.

38.03 Wind guard shall be provided to keep sign in retracted position.

2251-R-39.00 Storage Compartment.

39.01 A metal container of adequate strength and capacity for the storage of tire chains, tow chains, and such tools as may be necessary for minor emergency repairs while bus is in route may be provided. The storage container may be located either inside or outside the passenger compartment. If inside, the storage compartment shall be securely fastened to prevent the contents from spilling and shall have a latched or secured cover other than a seat cushion.

2251-R-40.00 Sun Visor.

40.01 An interior, adjustable, sun visor shall be installed not less than 6 inches wide and 30 inches long. Type A school buses 14,500 GVWR or less shall have a sun visor according to manufacturer's standard size.

2251-R-41.00 Tires and Rims.

41.01 Minimum tire and rim sizes shall be in accordance with FMVSS 120.

41.02 Dual rear tires shall be provided on Type B, C and D school buses.

41.03 All wheels shall be one-piece disc type. Split or multi-piece rims are not acceptable.

2251-R-42.00 Tow Hooks.

42.01 Two front heavy duty tow hooks or two eyes shall be furnished and factory installed, except on Type A and B buses. Hooks shall not extend beyond the front bumper on any school bus.

42.02 Two rear heavy-duty tow hooks or eyes shall be fastened securely to the rear of the frame and shall not protrude beyond outer edge of the bumper.

2251-R-43.00 Undercoating.

43.01 The entire underside of the bus body, including floor sections, cross members, and below floor line side panels, shall be coated with rust-proofing material meeting or exceeding performance requirements of Society of Automotic Engineers, Inc. (SAE) J1945.

43.02 The undercoating material shall be applied with suitable airless or conventional spray equipment as per manufacturer recommended film thickness and shall show no evidence of voids in the cured film.

43.03 The undercoating material shall not cover any exhaust components of the chassis.

2251-R-44.00 Ventilation.

44.01 Buses in excess of 20 feet in length shall be equipped with a multi-speed powered exhaust roof ventilator or powered vent fan in roof hatch, mounted in the rear half of the bus.

2251-R-45.00 Windshield Wipers and Washers.

45.01 The wipers shall be operated by one or more air or electric motors. If one motor is used, the wipers shall work in tandem to give full sweep of windshield.

45.02 All wiper controls shall be located within easy reach of the driver and designed to move blades from the driver's direct view when in stop position.

45.03 For Type A over 14,500 GVWR, C and D buses, the system reservoir capacity shall be a minimum of one gallon.

2251-R-46.00 Wiring.

46.01 Wiring

46.01(a) An appropriate identifying diagram (color plus a name or number code) for all chassis electrical circuits shall be provided to the body manufacter for distribution to the end user.

46.01(b) A body wiring diagram, sized to be easily read, shall be furnished with each bus body or affixed to an area convenient to the electrical accessory control panel.

46.01(c) Each wire passing through metal openings shall be protected by a grommet.

SPECIALLY EQUIPPED BUSES

2251-R-47.00 Specially Equipped Buses.

47.01 Equipping buses to accommodate students with disabilities is dependent upon the needs of the passengers. Buses equipped with equipment to accommodate the student needs are not to be considered a separate class of school bus, but a regular school bus equipped for special accommodations. It is recognized by the entire industry that the field of special transportation is characterized by varied needs for individual cases and by a rapidly emerging technology. A flexible, “common-sense” approach to the adoption and enforcement of specifications is prudent.

47.02 Buses equipped for transporting students with special transportation needs shall comply with applicable FMVSS.

47.02(a) Buses with power lifts shall comply with FMVSS 403, *Platform Lift Systems for Motor Vehicles,* and FMVSS 404, *Platform Lift Installation in Motor Vehicles*

47.02(b) A ramp device may be used in lieu of a mechanical lift if the ramp meets all the requirements of the Americans with Disabilities Act (ADA) as found in 36 CFR § 1192.23, *Vehicle Ramp*.

47.02(c) Buses with power lifts or ramps shall display the international symbol of accessibility on all four sides of the bus. The symbols shall be a minimum of 6 inches and not exceed 12 inches. Such emblems shall be white on blue background.

47.02(d) The term *wheelchair tiedown and occupant restraint system (WTORS)* is used to refer to the total system that secures the wheelchair and restrains the wheelchair occupant. A wheelchair tiedown and occupant restraint system installed in specially equipped buses shall be designed, installed, and operated for use with forward-facing wheelchair-seated passengers and shall comply with all applicable requirements of FMVSS 222, *School Bus Passenger Seating and Crash Protection and* FMVSS 302 *Flammability of Interior Materials*.

Editor's Notes
History

Entire rule eff. (*insert effective date*)

Notice of Rulemaking Hearing

Tracking number

2015-00060

Department

400 - Department of Natural Resources

Agency

404 - Oil and Gas Conservation Commission

CCR number

2 CCR 404-1

Rule title

PRACTICE AND PROCEDURE

Rulemaking Hearing

Date

03/02/2015

Time

09:00 AM

Location

1120 Lincoln Street, Suite 801, Denver, CO 80203

Subjects and issues involved

On March 14, 2014, the Commission published a report titled Lessons Learned in the Front Range Flood of September 2013. This report recommended several changes to Commission regulations as a result of the September 2013 Front Range Flood. During the September 15, 2014, Commission hearing, the Commission directed Commission Staff to hold a rulemaking to address the recommendations in this report. This Front Range Flood Lessons Learned rulemaking will consider those recommendations.

Statutory authority

§§ 34-60-105 and 34-60-106(2)(a), C.R.S.

Contact information

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Title

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Appendix A

Proposed Rule for Floodplains

Updated 1/15/2015

600 SERIES - SERIES SAFETY REGULATIONS

603. STATEWIDE LOCATION REQUIREMENTS FOR OIL AND GAS FACILITIES, DRILLING, AND WELL SERVICING OPERATIONS

603.g. **Statewide equipment anchoring requirements**. All equipment at drilling and production sites in geological hazards ~~and floodplain~~ areas shall be anchored to the extent necessary to resist flotation, collapse, lateral movement, or subsidence.

603.h. **Statewide Floodplain Requirements.** When operating within a defined Floodplain:

(1) Operators must maintain a current inventory of all existing Wells, Tanks, and separation equipment in a defined Floodplain and provide this inventory to the Director and the relevant LGD annually by April 1st.

(2) Tanks, including partially buried tanks, and separation equipment must be ground anchored. Anchors must be engineered to support the tank and to resist flotation, collapse, lateral movement, or subsidence.

(3) Containment berms around all Tanks must be constructed of steel rings or equivalent.

(4) New Oil and Gas Locations permitted after EFFECTIVE DATE must have secondary containment areas for Tanks constructed with a synthetic or geosynthetic liner that is mechanically connected to the steel ring or equivalent.

(5) New Wells permitted after EFFECTIVE DATE must be equipped with remote shut in capabilities prior to commencing production. Existing Wells must be assessed for technical or economic feasibility of retrofitting remote shut in capabilities and where retrofitting is feasible it must be installed by EFFECTIVE DATE. Remote shut in capabilities include, at a minimum, the ability to shut-in the well from outside the relevant Floodplain.

(6) Production Pits containing E&P waste shall not be allowed within a defined Floodplain without prior Director approval via a Rule 502.b variance.

(7) Operators must perform a site specific analysis to determine if additional floodplain best management practices are needed for new Oil and Gas Locations and implement as appropriate.

100 SERIES - DEFINITIONS

FLOODPLAIN shall mean any area of land that a Colorado County or Federal Agency has officially declared to be in a 100 year floodplain.

BEFORE THE OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO

IN THE MATTER OF CHANGES TO THE RULES OF PRACTICE AND PROCEDURE OF THE OIL & GAS CONSERVATION COMMISSION OF THE STATE OF COLORADO	))))	CAUSE NO. 1R DOCKET NO. 150300178

NOTICE OF RULEMAKING HEARING

TO ALL INTERESTED PARTIES AND TO WHOM IT MAY CONCERN:

The Oil and Gas Conservation Commission of the State of Colorado ("Commission"), on its own motion, will consider additions and amendments to Rule 100 Series (including, but not limited to, the addition of a new definition for "Floodplain") and Rule 603 (including, but not limited to, amendments to 603.g and the addition of a new subpart 603.h), of the Commission's Rules of Practice and Procedure, 2 C.C.R. 404-1 ("Rules"). Draft proposed new and amended rules are attached as **Appendix A**.

On March 14, 2014, the Commission published a report titled "Lessons Learned in the Front Range Flood of September 2013". This report recommended several changes to Commission regulations as a result of the September 2013 Front Range Flood. During the September 15, 2014, Commission hearing, the Commission directed Commission Staff to hold a rulemaking to address the recommendations in this report. This "Front Range Flood Lessons Learned" rulemaking will consider those recommendations.

The Commission has the authority to conduct this rulemaking pursuant to §§ 34-60-105 and 34-60-106(2)(a), C.R.S.

NOTICE IS HEREBY GIVEN that the Commission has scheduled the above entitled matter for a rulemaking hearing commencing on:

Date:	Monday, March 2, 2015 Tuesday, March 3, 2015
Time:	9:00 a.m.
Place:	Colorado Oil and Gas Conservation Commission 1120 Lincoln Street, Suite 801 Denver, CO 80203

Party Status. If a party, a person or an organization wants to participate in this rulemaking they may do so without the need to request formal party status.

Public Participation. The Commission encourages the public to participate in the rulemaking by commenting on the proposed rules in advance of or during the rulemaking hearing. Any person may submit written comments in advance of the hearing pursuant to the procedures described below. In addition, any person may participate in the stakeholder process and offer oral testimony during the public comment period at the hearing. The Commission may place a time limit on public comments during the hearing depending on the number of people who wish to comment. Speakers are asked to be concise, and avoid repeating comments made by others or reading previously submitted written comments.

Persons or groups who know in advance they would like to address the Commission during the rulemaking hearing should notify the Commission via email to ***DNR_COGCC.Rulemaking@state.co.us*** by **February 6, 2015.** An estimate of the time needed for comments must be included with the notice. Persons who sign up in advance will be given priority both in the order and length of comments during the rulemaking hearing. Groups with common interests are encouraged to consolidate their comments through a single spokesperson.

Stakeholder Meetings. The Commission will convene at least one stakeholder meeting prior to the rulemaking hearing, at which any person may comment on the proposed rules. A stakeholder meeting is tentatively scheduled for the afternoon of **January 28, 2015**. A second stakeholder meeting and/or prehearing conference is tentatively scheduled for **February 17, 2015,** should one be necessary. Final details regarding time, date, and place of the stakeholder meeting(s) and/or prehearing conference will be posted on the Commission's internet homepage, ***http://cogcc.state.co.us***.

Prehearing Statements and Comments. Prehearing statements, comments, and response documents are limited to 5 single spaced pages, excluding exhibits. Prehearing statements should summarize pertinent factual and legal issues and the submitting party's position on each issue. Copies of all potential exhibits to be introduced and a list of all potential witnesses, including name, occupation, address, and telephone number for each, must be attached to the statement.

The deadline for prehearing statements or comments is **February 6, 2015**. Responses to prehearing statements or comments are due **February 13, 2015.**

Filing and service. All written comments or prehearing statements must be served via first class mail on the Commission in hard copy and electronic copy as follows: 1) hard copies for the Commission - the original and 2 copies delivered to Jeremy Ferrin, Enforcement Officer, Docket No. 150300178, Oil and Gas Conservation Commission, 1120 Lincoln Street, Suite 801, Denver, Colorado, 80203; and 2) an electronic copy emailed, preferably in portable document format (*pdf*), to

DNR_COGCC.Rulemaking@state.co.us for posting to the Commission website.

The Commission may modify or amend the rules described or proposed herein, and make conforming modifications to other rules, as it determines reasonably necessary through the course of the stakeholder process, comment period, and rulemaking hearing.

In accordance with the Americans with Disabilities Act, if any person requires special accommodations as a result of a disability for this hearing, please contact Margaret Humecki at (303) 894-2100 ext. 5139, prior to the hearing and arrangements will be made.

Copies of the current and proposed Rules are available on the Commission's internet homepage at ***http://cogcc.state.co.us*** or available upon request at the Commission.

OIL AND GAS CONSERVATION COMMISSION OF THE STATE OF COLORADO

By _____
Jill Dorancy, Acting Secretary

Dated: January 15, 2015

Notice of Rulemaking Hearing

Tracking number

2015-00034

Department

700 - Department of Regulatory Agencies

Agency

702 - Division of Insurance

CCR number

3 CCR 702-4 Series 4-2

Rule title

LIFE, ACCIDENT AND HEALTH, Series 4-2

Rulemaking Hearing

Date

02/17/2015

Time

11:00 AM

Location

1560 Broadway, Ste 850, Denver CO 80202

Subjects and issues involved

4-2-50 Concerning Pediatric Dental Coverage Requirements

Statutory authority

10-1-109, C.R.S., and 10-16-103.4(7).

Contact information

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DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-4

LIFE, ACCIDENT AND HEALTH

Proposed Amended ~~New~~ Regulation 4-2-50

CONCERNING PEDIATRIC DENTAL COVERAGE REQUIREMENTS

Section 1 Authority

This regulation is promulgated under the authority of §§ 10-1-109, C.R.S., and ~~HB 14-1053~~ 10-16-103.4(7).

Section 2 Scope and Purpose

The purpose of this regulation is to establish a requirement that carriers cannot sell a health benefit plan in the individual or small group market inside or outside the Exchange that does not contain pediatric dental essential health benefit (EHB) coverage without obtaining reasonable assurance that such coverage has been purchased.

Section 3 Applicability

This regulation shall apply to all insurance carriers who offer individual and small group health benefit plans, and/or stand alone dental plans, issued or renewed on or after ~~January 1~~ April 15, 2015, in the state of Colorado.

Section 4 Definitions

A. "Carrier" shall have the same meaning as found at § 10-16-102(8), C.R.S.

B. "Clear and conspicuous" means, for the purposes of this regulation, and with respect to a disclosure that the disclosure is reasonably understandable and designed to call attention to the nature and significance of the information it contains. A disclosure is considered designed to call attention to the nature and significance of the information in it if the carrier:

1. Uses a typeface and type size that are easy to read;

2. Provides wide margins and ample line spacing;

3. Uses boldface, italics, underscoring, or capitals for key words and phrases; and

4. In a form that combines the disclosure with other information, uses a plain-language heading to call attention to the disclosure portion of the document, and uses a type size that is greater than the type size predominantly used in the rest of the document.

C. "Essential health benefits" and "EHB" shall have the same meaning as found at § 10-16-102(22), C.R.S.

D. "Exchange" shall have the same meaning as found at § 10-16-102(26), C.R.S.

E. "Health benefit plan" shall have the same meaning as found at § 10-16-102(32), C.R.S.

F. "Patient Protection and Affordable Care Act" and "ACA" mean, for the purposes of this regulation, the Patient Protection and Affordable Care Act, Pub. L. 111-148 and the Health Care and Education Reconciliation Act of 2010, Pub. L. 111-152.

Section 5 Rules

A. Pediatric dental coverage is one of the ten (10) essential health benefits (EHB) that must be covered by health benefit plans subject to the requirements of the ACA.

B. Obtaining pediatric dental coverage.

1. Carriers selling individual and small group health benefit plans must ensure that consumers purchasing their health plans obtain pediatric dental EHB coverage.

2. Carriers shall give consumers notice~~, in accordance with Section 6 of this regulation,~~ if the plan they have selected for purchase does not include the required pediatric dental EHB coverage.

3. Carriers shall provide a clear and conspicuous notice to consumers on their websites or with all pediatric dental plan marketing materials describing how out-of-pocket maximums for stand-alone pediatric dental plans are treated differently than out-of-pocket maximums for dental plans that are provided with, or contained within, a health benefit plan. This notice shall also be provided to consumers as a separate document that is included with the dental plan policy documents given to policyholders.

4. Carriers must be reasonably assured that the required pediatric dental EHB coverage has been purchased through one of the following methods:

a. The purchase of a health benefit plan which contains the required pediatric dental EHB coverage;

b. The purchase of a health benefit plan which provides the required pediatric dental EHB coverage through a contractual arrangement with a dental carrier; or

c. The purchase of a stand-alone dental plan that provides the required pediatric dental EHB coverage.

C. In order for a carrier to sell an individual or small group health benefit plan that does not include coverage of the pediatric dental EHB, the carrier must be reasonably assured that a consumer has or will purchase such coverage. Reasonable assurance may be obtained by one or more of the following:

1. Obtaining a certification from the consumer that they have purchased pediatric dental EHB coverage;

2. Obtaining proof of purchase from the consumer who is a childless adult that they possess low-cost/no-cost child-only pediatric dental EHB coverage; or

3. Obtaining an attestation as supplied on the individual application that the consumer has or will purchase pediatric dental EHB coverage.

D. Supplying only the notice as required in Section 6 of this regulation does not constitute reasonable assurance.

Section 6 Notices for No-Adult-Benefit Pediatric Dental Plans

A. Carriers must provide notice to consumers purchasing pediatric-only dental EHB coverage, whether in a standalone dental policy or as part of a health benefit plan, that such coverage does not provide any dental benefits to individuals age nineteen (19) or older.

B. The required notice shall be prominently displayed on the first page of the policy form and shall be contained in all marketing materials for that policy.

C. The required notice shall consist of the following language:

"This policy does not provide any dental benefits to individuals age nineteen (19) or older. This policy is being offered so the purchaser will have pediatric dental coverage as required by the Affordable Care Act. If you want adult dental benefits, you will need to buy a plan that has adult dental benefits. This plan will not pay for any adult dental care, so you will have to pay the full price of any care you receive."

Section 7 Severability

If any provisions of this regulation or the application thereof to any person or circumstances are for any reason held to be invalid, the remainder of the regulation shall not be affected in any way.

Section 8 Enforcement

Noncompliance with this regulation may result in the imposition of any of the sanctions made available in the Colorado statutes pertaining to the business of insurance, or other laws, which include the imposition of civil penalties, issuance of cease and desist orders, and/or suspensions or revocation of license, subject to the requirements of due process.

Section 9 Effective Date

This regulation is effective ~~July 15, 2014~~ April 30, 2015.

Section 10 History

Regulation effective July 15, 2014.
Amended regulation effective April 30, 2015.

Notice of Rulemaking Hearing

Tracking number

2015-00052

Department

700 - Department of Regulatory Agencies

Agency

725 - Division of Real Estate

CCR number

4 CCR 725-7

Rule title

COMMUNITY ASSOCIATION MANAGERS

Rulemaking Hearing

Date

03/04/2015

Time

10:00 AM

Location

Ralph L. Carr Colorado Judicial Center, 2 East 14th Avenue, Room 1B, Denver, CO 80203

Subjects and issues involved

A RULES LICENSE QUALIFICATIONS, APPLICATIONS AND EXAMINATIONS

Statutory authority

Part 10 of Title 12, Article 61, Colorado Revised Statutes, as amended.

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DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
COMMUNITY ASSOCIATION MANAGERS
4 CCR 725-7

NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
March 4, 2015

A RULES – LICENSE QUALIFICATIONS, APPLICATIONS AND EXAMINATIONS

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado and to all persons who have requested to be advised of the intention of the Director of the Division of Real Estate ("Director") to promulgate rules, or to amend, repeal or repeal and re-enact the present rules related to community association managers.

STATEMENT OF BASIS

The statutory basis for the rules titled Rules Regarding Community Association Managers is Part 10 of Title 12, Article 61, Colorado Revised Statutes, as amended.

STATEMENT OF PURPOSE

The purpose of this rule is to effectuate the legislative directive to promulgate necessary and appropriate rules in conformity with the state statutes of the Community Association Managers Practice Act.

SPECIFIC PURPOSE OF THIS RULEMAKING

The specific purpose of this rule is to promulgate rules with respect to the requirements for licensure and ensures that community association managers are familiar with current regulations.

Proposed New, Amended and Repealed Rules

[Deleted material shown ~~struck through~~, new material shown ALL CAPS. Rules, or portions of rules, which are unaffected are reproduced. Readers are advised to obtain a copy of the complete rules of the Board at www.dora.state.co.us/real-estate/.

A RULES – LICENSE QUALIFICATIONS, APPLICATIONS AND EXAMINATIONS

A-1) DEFINITIONS.

THE FOLLOWING DEFINITIONS ARE APPLICABLE TO ALL RULES IN THESE DIRECTOR RULES:

1) THE "ACT" OR THE "COMMUNITY ASSOCIATION MANAGERS PRACTICE ACT" MEANS §§ 12-61-1001, ET SEQ., C.R.S.

2) "COMMUNITY ASSOCIATION MANAGER" OR "CAM MANAGER" OR "MANAGER" HAS THE MEANING SET FORTH IN § 12-61-1001(4).

3) "LICENSEE" MEANS ANY PERSON OR ENTITY LICENSED AS A COMMUNITY ASSOCIATION MANAGER PURSUANT TO THE ACT.

4) "COMMUNITY ASSOCIATION MANAGEMENT COMPANY" OR "CAM COMPANY" MEANS ANY ENTITY, INCLUDING BUT NOT LIMITED TO A FIRM, PARTNERSHIP, LIMITED LIABILITY COMPANY, ASSOCIATION, OR CORPORATION, THAT MEETS THE DEFINITION OF A

COMMUNITY ASSOCIATION MANAGER IN § 12-61-1001(4), C.R.S., OR APPLIES TO THE DIVISION TO BECOME A COMMUNITY ASSOCIATION MANAGER.

5) "DESIGNATED MANAGER" MEANS AN INDIVIDUAL WHO IS DESIGNATED TO BE A QUALIFIED ACTIVE MANAGER FOR A COMMUNITY ASSOCIATION MANAGEMENT COMPANY, QUALIFIED TO ACT AS A COMMUNITY ASSOCIATION MANAGER, AND WHO IS RESPONSIBLE FOR MANAGEMENT AND SUPERVISION OF THE LICENSED ACTIONS OF THE COMPANY AND ALL PERSONS EMPLOYED BY, OR ACTING AT ANY TIME ON BEHALF OF, THE COMPANY AND WHO IS PERSONALLY RESPONSIBLE FOR THE HANDLING OF ANY AND ALL COMMON INTEREST COMMUNITY FUNDS RECEIVED OR DISBURSED BY THE COMPANY PURSUANT TO § 12-61-1003(6)(B) AND (7).

6) "APPLICANT" MEANS ANY PERSON OR ENTITY APPLYING FOR LICENSURE AS A COMMUNITY ASSOCIATION MANAGER UNDER THE ACT.

7) "LICENSE" MEANS ANY LICENSE ISSUED BY THE DIRECTOR OR THE DIVISION PURSUANT TO THE ACT.

8) "DIRECTOR RULES" MEANS ANY AND ALL RULES ISSUED BY THE DIRECTOR PURSUANT TO THE ACT, INCLUDING BUT NOT LIMITED TO COMMUNITY ASSOCIATION MANAGER RULES A, B, C, D, E, F, G, AND H.

A-2) REQUIREMENTS THAT MUST PRECEDE EXAMINATION AND APPLICATION.

AN APPLICANT MUST HOLD ONE OR MORE OF THE CREDENTIALS SET FORTH IN § 12-61-1003(5)(A)(I)(A), (B), (C), OR (D), OR § 12-61-1003(5)(D), C.R.S., AND PROVIDE PROOF OF COMPLETION IN A MANNER PRESCRIBED BY THE DIRECTOR PRIOR TO APPLYING FOR A CAM MANAGER LICENSE.

A-3) QUALIFYING EDUCATION CREDENTIAL REQUIREMENTS.

AN APPLICANT MUST HOLD A CREDENTIAL PURSUANT TO § 12-61-1003(5)(A)(I)(A), (B), (C), OR (D), OR § 12-61-1003(5)(D), C.R.S. OR COMPLETE 24 HOURS OF CLASSROOM INSTRUCTION, OR EQUIVALENT DISTANCE LEARNING HOURS, AND MUST SUCCESSFULLY COMPLETE THE FOLLOWING COURSES OF STUDY APPROVED BY THE DIRECTOR:

1) A MINIMUM OF 8 HOURS OF COLORADO COMMON INTEREST OWNERSHIP ACT, COLORADO REVISED NONPROFIT ACT AND OTHER APPLICABLE PROVISIONS OF COLORADO LAW;

2) A MINIMUM OF 7 HOURS OF FINANCIAL, RISK AND FACILITIES MANAGEMENT;

3) A MINIMUM OF 5 HOURS OF GOVERNANCE AND LEGAL DOCUMENTS OF AN ASSOCIATION; AND

4) A MINIMUM OF 4 HOURS OF ETHICS, BID REQUESTS AND CONTRACT PROVISIONS.

A-4) EXAMINATIONS ONLY GIVEN TO THOSE QUALIFIED.

ONLY AN APPLICANT HOLDING A QUALIFIED EDUCATION CREDENTIAL AS PRESCRIBED IN RULE A-3 MAY SIT FOR THE CAM MANAGER LICENSING EXAMINATION. HOWEVER, ONE INSTRUCTOR FROM EACH APPROVED EDUCATIONAL PROVIDER OFFERING A RECOGNIZED CREDENTIAL PURSUANT TO § 12-61-1003(5)(A)(I)(A),(B),(C), OR (D), C.R.S., MAY SIT FOR THE EXAMINATION ONE TIME DURING ANY 12 MONTH PERIOD.

A-5) COMMUNITY ASSOCIATION MANAGER LICENSE EXAMINATION EXPIRATION AND APPLICATION REQUIREMENTS.

THE CAM MANAGER LICENSE EXAMINATION IS MADE UP OF TWO PARTS, A GENERAL PORTION AND A STATE PORTION. IF AN APPLICANT FAILS ONE OR BOTH PARTS OF THE EXAMINATION, THE APPLICANT MAY RETAKE THE FAILED PORTION(S). A PASSING SCORE FOR EITHER PART OF THE EXAMINATION IS VALID FOR ONE YEAR ONLY. AN APPLICATION RECEIVED BY THE DIVISION MUST BE ACCOMPANIED BY THE STATUTORY FEE, PROOF OF COMPLETION OF THE REQUIRED CREDENTIAL AND PROOF OF SUCCESSFUL COMPLETION OF BOTH PORTION(S) OF THE EXAMINATION WITHIN THE YEAR PRIOR TO THE APPLICATION BEING RECEIVED BY THE DIVISION. NO EXAMINATION SCORE FOR EITHER PORTION OF THE EXAMINATION WILL BE CONSIDERED VALID AFTER ONE YEAR.

A-6) EXAMINATION RESULTS CERTIFIED ONLY IF LICENSED.

THE DIRECTOR WILL NOT CERTIFY ANY INFORMATION CONCERNING THE RESULTS OF ANY EXAMINATION AS IT PERTAINS TO ANY PERSON WHO HAS TAKEN THE EXAMINATION UNLESS SUCH PERSON IS OR HAS BEEN LICENSED AS A COLORADO CAM MANAGER.

A-7) LICENSE PROCESSING TIME FRAMES.

PROVIDED THAT AN APPLICANT HAS SUBMITTED A COMPLETE AND SATISFACTORY APPLICATION IN COMPLIANCE WITH §§ 12-61-1002, -1003, C.R.S., AND THE DIRECTOR RULES, THE DIRECTOR WILL ISSUE A LICENSE WITHIN 10 BUSINESS DAYS AFTER RECEIPT BY THE DIRECTOR OF SATISFACTORY RESULTS FROM THE FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK. IF THE APPLICATION OR RECORD CHECK IS NOT COMPLETE OR SATISFACTORY, THE APPLICANT WILL BE NOTIFIED THAT THEIR LICENSE APPLICATION HAS BEEN DEFERRED PENDING RECEIPT OF REQUIRED COMPLIANCE ITEM(S). THE APPLICATION FOR A CAM MANAGER LICENSE THAT HAS BEEN APPROVED BY THE DIRECTOR SUBJECT TO THE RECEIPT OF CERTAIN COMPLIANCE ITEMS WILL BE ISSUED ON AN INACTIVE STATUS UNTIL ALL COMPLIANCE ITEMS HAVE BEEN RECEIVED BY THE DIRECTOR. NO ACTIVITIES REQUIRING A LICENSE MAY BE PERFORMED WHILE THE LICENSE IS ON INACTIVE STATUS.

A-8) APPLICANTS WHO HAVE HELD A COMMUNITY ASSOCIATION MANAGER LICENSE IN ANOTHER JURISDICTION.

IN LIEU OF THE QUALIFYING EDUCATION CREDENTIAL REQUIREMENTS FOUND IN RULE A-3, AN APPLICANT WHO HAS HELD A COMMUNITY ASSOCIATION MANAGER LICENSE IN ANOTHER JURISDICTION, AS SET FORTH IN § 12-61-1003(5)(D), C.R.S., MAY SUBMIT A “CERTIFICATION OF LICENSING HISTORY” ISSUED BY EACH JURISDICTION WHERE THE APPLICANT IS CURRENTLY OR WAS PREVIOUSLY LICENSED AS A COMMUNITY ASSOCIATION MANAGER. THE LICENSE HISTORY MUST BE SUBMITTED PRIOR TO SITTING FOR THE EXAMINATION, ALONG WITH A COMPLETE AND SATISFACTORY APPLICATION IN ACCORDANCE WITH THE DIRECTOR RULES. THE DIRECTOR WILL ISSUE A LICENSE WITHIN 10 BUSINESS DAYS AFTER RECEIPT BY THE DIRECTOR OF SATISFACTORY RESULTS FROM THE FINGERPRINT-BASED CRIMINAL HISTORY

RECORD CHECK, AND A DETERMINATION BY THE DIRECTOR THAT THE APPLICANT HAS ESTABLISHED THEY POSSESS THE CREDENTIALS AND QUALIFICATIONS SUBSTANTIVELY EQUIVALENT TO THE REQUIREMENTS FOR COLORADO LICENSURE. WITHIN 30 CALENDAR DAYS AFTER ISSUANCE OF THE CAM MANAGER LICENSE, THE APPLICANT MUST COMPLETE SUCCESSFULLY, AND PROVIDE THE DIRECTOR PROOF OF SUCCESSFUL COMPLETION, OF THE STATE PORTION OF THE EXAMINATION. FAILURE TO PROVIDE THE DIRECTOR WITH PROOF OF SUCCESSFUL COMPLETION OF THE STATE PORTION OF THE EXAMINATION IN THE PRESCRIBED TIMEFRAME WILL RESULT IN THE LICENSE BEING PLACED ON INACTIVE STATUS AND NO ACTIVITIES REQUIRING A LICENSE MAY BE PERFORMED.

A-9) APPLICANT WITH PREVIOUS SUSPENSION OR REVOCATION OF A COMMUNITY ASSOCIATION MANAGER LICENSE OR CERTIFICATION.

PURSUANT TO § 12-61-1003(3)(B), C.R.S., AN APPLICANT WHO HAS HELD A COMMUNITY ASSOCIATION MANAGER LICENSE OR CERTIFICATION THAT HAS BEEN SUSPENDED OR REVOKED IN COLORADO OR IN ANY OTHER JURISDICTION THAT REGULATES COMMUNITY ASSOCIATION MANAGERS WITHIN THE LAST 10 YEARS, WITH AT LEAST 2 YEARS HAVING ELAPSED SINCE THE DATE OF THAT SUSPENSION OR REVOCATION, MUST FILE PRIOR TO OR WITH THEIR APPLICATION FOR LICENSING THE FOLLOWING INFORMATION AND DOCUMENTS:

1) A WRITTEN AND SIGNED PERSONAL EXPLANATION AND DETAILED ACCOUNT OF THE FACTS AND CIRCUMSTANCES SURROUNDING EACH SUSPENSION OR REVOCATION;

2) THE COMPLETED COMMUNITY ASSOCIATION MANAGER APPLICATION ADDENDUM FORM FOUND ON THE DIVISION'S WEBSITE;

3) RESULTS OF ANY HEARING(S), AND COPIES OF THE OFFICIAL REPORTS OF THE SUSPENSION AND REVOCATION FROM THE JURISDICTION WHERE ANY SUCH SUSPENSION OR REVOCATION TOOK PLACE;

4) IF THE APPLICANT IS TO BE EMPLOYED UNDER A DESIGNATED MANAGER LICENSEE, THEN THAT DESIGNATED MANAGER MUST SUBMIT A LETTER STATING THAT HE OR SHE IS AWARE OF THE SPECIFIC SUSPENSION(S) OR REVOCATION(S) AND HAS AGREED TO EMPLOY THE APPLICANT; AND

5) ANY OTHER DOCUMENTATION REQUESTED BY THE DIRECTOR.

A-10) APPLICANT WITH PRIOR LEGAL INVOLVEMENT.

PURSUANT TO § 12-61-1003(3)(C), C.R.S., AN APPLICANT WHO HAS BEEN CONVICTED OF OR PLED GUILTY OR NOLO CONTENDERE TO A MISDEMEANOR OR A FELONY, HAS MISDEMEANOR OR FELONY CHARGES PENDING AGAINST HIM OR HER, OR HAS AGREED TO A DEFERRED PROSECUTION, DEFERRED JUDGMENT, OR DEFERRED SENTENCE THAT IS NOT YET COMPLETED, EXCLUDING ALL MISDEMEANOR TRAFFIC VIOLATIONS (COLLECTIVELY REFERRED TO AS A "VIOLATION"), MUST FILE PRIOR TO OR WITH HIS OR HER APPLICATION FOR LICENSING THE FOLLOWING INFORMATION AND DOCUMENTS:

1) A WRITTEN AND SIGNED PERSONAL EXPLANATION AND DETAILED ACCOUNT OF THE FACTS AND CIRCUMSTANCES SURROUNDING EACH VIOLATION;

2) THE COMPLETED COMMUNITY ASSOCIATION MANAGER APPLICATION ADDENDUM FORM FOUND ON THE DIVISION'S WEBSITE;

3) RESULTS OF ALL COURT HEARING(S) RELATED TO EACH VIOLATION, IN THE FORM OF COPIES OF CHARGES, DISPOSITION, PRE-SENTENCING REPORT AND MOST RECENT PROBATION OR PAROLE REPORT;

4) IF THE APPLICANT IS TO BE EMPLOYED UNDER A DESIGNATED MANAGER LICENSEE, THEN THAT DESIGNATED MANAGER MUST SUBMIT A LETTER STATING THAT HE OR SHE IS AWARE OF EACH VIOLATION AND HAS AGREED TO EMPLOY THE APPLICANT; AND

5) ANY OTHER DOCUMENTATION REQUESTED BY THE DIRECTOR.

A-11) PRELIMINARY ADVISORY OPINION.

AT ANY TIME PRIOR TO SUBMISSION OF A FORMAL APPLICATION FOR LICENSURE, A PERSON MAY REQUEST THAT THE DIRECTOR ISSUE A PRELIMINARY ADVISORY OPINION REGARDING THE POTENTIAL EFFECT THAT PREVIOUS CONDUCT, LICENSE AND CERTIFICATION SUSPENSION(S) OR REVOCATION(S), CRIMINAL CONVICTION(S), OR VIOLATION(S) OF COMMUNITY ASSOCIATION LAW, MAY HAVE ON A FORMAL APPLICATION FOR LICENSURE ("PAO"). A PAO MAY BE ISSUED BY THE DIRECTOR IN HIS OR HER SOLE DISCRETION, IN ORDER TO PROVIDE PRELIMINARY ADVISORY GUIDANCE.

1) POTENTIAL APPLICANTS MAY REQUEST A PAO FOR ANY OF THE FOLLOWING REASONS:

    a) IF THE INDIVIDUAL HAS BEEN CONVICTED OF, PLEAD GUILTY OR NOLO CONTENDERE TO ANY CRIME IN A DOMESTIC, FOREIGN OR MILITARY COURT;

    b) IF THE INDIVIDUAL HAS HELD A COMMUNITY ASSOCIATION MANAGER LICENSE OR CERTIFICATION THAT HAS BEEN SUSPENDED OR REVOKED WITHIN THE LAST 10 YEARS;

    c) IF THE INDIVIDUAL HAS HAD OTHER PROFESSIONAL LICENSES, CERTIFICATIONS OR REGISTRATIONS ISSUED BY COLORADO, THE DISTRICT OF COLUMBIA, ANY OTHER STATES OR FOREIGN COUNTRIES, REVOKED OR SUSPENDED FOR FRAUD, THEFT, DECEIT, MATERIAL MISREPRESENTATIONS OR THE BREACH OF A FIDUCIARY DUTY AND SUCH SUSPENSION OR REVOCATION DENIED AUTHORIZATION TO PRACTICE AS: A MORTGAGE LOAN ORIGINATOR OR SIMILAR LICENSE; REAL ESTATE BROKER; REAL ESTATE APPRAISER; AN INSURANCE PRODUCER; AN ATTORNEY; A SECURITIES BROKER-DEALER; A SECURITIES SALES REPRESENTATIVE; AN INVESTMENT ADVISOR; OR AN INVESTMENT ADVISOR REPRESENTATIVE; OR

2) ANY OTHER CONDUCT THAT WOULD IMPACT THE PUBLIC TRUST.
INDIVIDUALS REQUESTING A PAO MUST COMPLETE THE PRELIMINARY ADVISORY OPINION APPLICATION LOCATED ON THE DIVISION OF REAL ESTATE'S WEBSITE.

3) INDIVIDUALS REQUESTING A PAO MUST SUBMIT ALL RELEVANT DOCUMENTS RELATED TO ANY CONDUCT OR ACTIONS AS SET FORTH HEREIN. INCOMPLETE REQUESTS WILL NOT BE PROCESSED. THE DIRECTOR MAY, AT ANY TIME, REQUEST ADDITIONAL

INFORMATION REGARDING THE PAO REQUEST. SUCH RELEVANT OR RELATED DOCUMENTS MAY INCLUDE, BUT ARE NOT LIMITED TO:

a) POLICE OFFICER REPORTS;

b) DISPOSITIONS DOCUMENTS;

c) COURT DOCUMENTS;

d) ORIGINAL CHARGES DOCUMENTS;

e) STIPULATED AGREEMENTS; OR

f) FINAL AGENCY ORDERS.

4) INDIVIDUALS REQUESTING A PAO MUST SUBMIT A WRITTEN AND SIGNED PERSONAL EXPLANATION AND DETAILED ACCOUNT OF THE FACTS AND CIRCUMSTANCES.

5) ANY PAO WILL NOT BE BINDING ON THE DIRECTOR OR LIMIT THE DIRECTOR'S AUTHORITY TO INVESTIGATE A FUTURE FORMAL APPLICATION FOR LICENSURE.

6) AN INDIVIDUAL SEEKING A PAO IS NOT AN APPLICANT FOR LICENSURE AND THE ISSUANCE OF AN UNFAVORABLE OPINION WILL NOT PREVENT SUCH INDIVIDUAL FROM MAKING APPLICATION FOR LICENSURE PURSUANT TO THE ACT AND THE DIRECTOR RULES.

7) NO PAO SHALL BE CONSIDERED FINAL AGENCY ACTION. PAOS ARE NOT SUBJECT TO APPEAL OR JUDICIAL REVIEW.

A-12) CRIMINAL HISTORY CHECK REQUIRED PRIOR TO APPLICATION.

AN APPLICANT FOR AN INITIAL LICENSE MUST SUBMIT A SET OF FINGERPRINTS TO THE COLORADO BUREAU OF INVESTIGATION AND THE FEDERAL BUREAU OF INVESTIGATION FOR THE PURPOSE OF CONDUCTING A STATE AND NATIONAL CRIMINAL HISTORY RECORD CHECK PRIOR TO SUBMITTING AN APPLICATION FOR A LICENSE. FINGERPRINTS MUST BE SUBMITTED TO THE COLORADO BUREAU OF INVESTIGATION FOR PROCESSING IN A MANNER ACCEPTABLE TO THE COLORADO BUREAU OF INVESTIGATION. FINGERPRINTS MUST BE READABLE AND ALL PERSONAL IDENTIFICATION DATA COMPLETED IN A MANNER SATISFACTORY TO THE COLORADO BUREAU OF INVESTIGATION. THE DIRECTOR MAY ACQUIRE A NAME-BASED CRIMINAL HISTORY RECORD CHECK FOR AN APPLICANT WHO HAS TWICE SUBMITTED TO A FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK AND WHOSE FINGERPRINTS ARE UNCLASSIFIABLE.

A-13) DENIED LICENSE NOTICE REQUIRED.

IF AN APPLICANT FOR LICENSURE IS DENIED BY THE DIRECTOR FOR ANY REASON, THE APPLICANT WILL BE INFORMED IN WRITING OF THE DENIAL AND THE REASON(S) THEREFORE. AS SET FORTH IN § 12-61-1011, C.R.S., AN APPLICANT WHOSE LICENSE APPLICATION WAS DENIED FOR ANY REASON HAS A RIGHT TO A PROCEEDING ON THE DENIAL TO BE CONDUCTED BY AN AUTHORIZED REPRESENTATIVE OF THE DIRECTOR OR BY AN ADMINISTRATIVE LAW

JUDGE PURSUANT TO §§ 24-4-104 AND -105, C.R.S.

A-14) DIRECTOR HAS COURSE AUDIT AUTHORITY.

THE DIRECTOR OR HIS OR HER DESIGNEE MAY AUDIT ANY COURSE OF STUDY AND MAY REQUEST FROM EACH EDUCATIONAL PROVIDER OF ANY COURSE UNDER § 12-61-1003(5)(A)(I) THROUGH (III), C.R.S., ALL INSTRUCTIONAL MATERIAL RELATED THERETO AND STUDENT ATTENDANCE RECORDS AS MAY BE NECESSARY FOR AN INVESTIGATION IN THE ENFORCEMENT OF THE ACT AND THE DIRECTOR RULES. THE PURPOSE OF SUCH AUDIT IS TO ENSURE THAT EDUCATIONAL PROVIDERS AND CREDENTIAL PROVIDING ENTITIES ADHERE TO THE APPROVED COURSE OF STUDY AND CREDENTIAL DESIGNATIONS, OFFER COURSE MATERIAL AND INSTRUCTION CONSISTENT WITH ACCEPTABLE EDUCATION STANDARDS AND INSTRUCT IN SUCH A MANNER THAT THE DESIRED LEARNING OBJECTIVES ARE MET. FAILURE TO COMPLY WITH THE PROVISIONS OF THIS RULE A-14 MAY RESULT IN THE WITHDRAWAL OF DIRECTOR COURSE AND DESIGNATED CREDENTIAL APPROVAL.

A-15) INVALID PAYMENT VOIDS APPLICATION.

IF THE FEES ACCOMPANYING ANY APPLICATION OR REGISTRATION MADE TO THE DIRECTOR (INCLUDING FEES FOR RENEWALS, TRANSFERS, ETC.) ARE PAID FOR BY CHECK AND THE CHECK IS NOT IMMEDIATELY PAID UPON PRESENTMENT TO THE BANK UPON WHICH THE CHECK WAS DRAWN, OR IF PAYMENT SUBMITTED IN ANY OTHER MANNER, AND PAYMENT IS DENIED, RESCINDED OR RETURNED AS INVALID, THE APPLICATION WILL BE DEEMED INCOMPLETE. THE APPLICATION WILL ONLY BE DEEMED COMPLETE IF THE DIRECTOR HAS RECEIVED PAYMENT OF ALL APPLICATION OR REGISTRATION FEES TOGETHER WITH ANY FEES INCURRED BY THE DIVISION INCLUDING THE FEE REQUIRED BY STATE FISCAL RULES FOR THE CLERICAL SERVICES NECESSARY FOR REINSTATEMENT WITHIN 60 DAYS OF THE DIVISION MAILING NOTIFICATION OF AN INCOMPLETE APPLICATION.

A hearing on the above subject matter will be held on Wednesday, March 4, 2015, at the Ralph L. Carr Colorado Judicial Center, 2 East 14th Avenue, Conference Room 1B, Denver, Colorado 80203 beginning at 10:00 a.m.

Any interested person may participate in the rule making through submission of written data, views and arguments to the Division of Real Estate. Persons are requested to submit data, views and arguments to the Division of Real Estate in writing no less than ten (10) days prior to the hearing date and time set forth above. However, all data, views and arguments submitted prior to or at the rulemaking hearing or prior to the closure of the rulemaking record (if different from the date and time of hearing), shall be considered. Please be advised that the rule being considered is subject to further changes and modifications after public comment and formal hearing.

Notice of Rulemaking Hearing

Tracking number

2015-00058

Department

700 - Department of Regulatory Agencies

Agency

725 - Division of Real Estate

CCR number

4 CCR 725-7

Rule title

COMMUNITY ASSOCIATION MANAGERS

Rulemaking Hearing

Date

03/04/2015

Time

10:00 AM

Location

Ralph L. Carr Colorado Judicial Center, 2 East 14th Avenue, Room 1B, Denver, CO 80203

Subjects and issues involved

G RULES DECLARATORY ORDERS

Statutory authority

Part 10 of Title 12, Article 61, Colorado Revised Statutes, as amended.

Contact information

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DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
COMMUNITY ASSOCIATION MANAGERS
4 CCR 725-7

NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
March 4, 2015

G RULES – DECLARATORY ORDERS

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado and to all persons who have requested to be advised of the intention of the Director of the Division of Real Estate ("Director") to promulgate rules, or to amend, repeal or repeal and re-enact the present rules related to community association managers.

STATEMENT OF BASIS

The statutory basis for the rules titled Rules Regarding Community Association Managers is Part 10 of Title 12, Article 61, Colorado Revised Statutes, as amended.

STATEMENT OF PURPOSE

The purpose of this rule is to effectuate the legislative directive to promulgate necessary and appropriate rules in conformity with the state statutes of the Community Association Managers Practice Act.

SPECIFIC PURPOSE OF THIS RULEMAKING

The specific purpose of this rule is to create a procedure in which individuals may seek declaratory orders from the Director for purposes of terminating controversies or remove uncertainties regarding the applicability of any statutory provision, rule or order of the Director. The rules ensure compliance with the requirements set forth in the Administrative Procedure Act.

Proposed New, Amended and Repealed Rules

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G RULES – DECLARATORY ORDERS

G-1) ANY PERSON MAY PETITION FOR A DECLARATORY ORDER.

ANY PERSON MAY PETITION THE DIRECTOR FOR A DECLARATORY ORDER TO TERMINATE CONTROVERSIES OR TO REMOVE UNCERTAINTIES AS TO THE APPLICABILITY TO THE PETITIONER OF ANY STATUTORY PROVISIONS OF THE ACT, THE DIRECTOR RULES, OR OF ANY ORDER OF THE DIRECTOR.

G-2) DIRECTOR DETERMINES WHETHER TO RULE.

THE DIRECTOR WILL DETERMINE, IN HIS OR HER DISCRETION AND WITHOUT PRIOR NOTICE TO THE PETITIONER, WHETHER TO RULE UPON ANY SUCH PETITION. IF THE DIRECTOR DETERMINES HE OR SHE WILL NOT RULE UPON SUCH A PETITION, THE DIRECTOR WILL ISSUE A WRITTEN ORDER DISPOSING OF THE SAME, STATING THEREIN HIS OR HER REASONS FOR SUCH ACTION. A COPY OF SUCH ORDER WILL BE PROVIDED TO THE PETITIONER.

G-3) DIRECTOR CONSIDERATIONS.

IN DETERMINING WHETHER TO RULE UPON A PETITION FILED PURSUANT TO THIS RULE, THE DIRECTOR WILL CONSIDER THE FOLLOWING MATTERS, AMONG OTHERS:

1) WHETHER A RULING ON THE PETITION WILL TERMINATE A CONTROVERSY OR REMOVE UNCERTAINTIES AS TO THE APPLICABILITY TO PETITIONER OF ANY STATUTORY PROVISION OF THE ACT, THE DIRECTOR RULES, OR ORDER OF THE DIRECTOR;

2) WHETHER THE PETITION INVOLVES ANY SUBJECT, QUESTION OR ISSUE WHICH IS THE SUBJECT OF A FORMAL OR INFORMAL MATTER OR INVESTIGATION CURRENTLY PENDING BEFORE THE DIRECTOR OR A COURT INVOLVING ONE OR MORE OF THE PETITIONERS WHICH WILL TERMINATE THE CONTROVERSY OR REMOVE THE UNCERTAINTIES AS TO THE APPLICABILITY TO THE PETITIONER OF ANY STATUTORY PROVISION OF THE ACT, THE DIRECTOR RULES, OR ORDER OF THE DIRECTOR, WHICH MATTER OR INVESTIGATION WILL BE SPECIFIED BY THE DIRECTOR;

3) WHETHER THE PETITION INVOLVES ANY SUBJECT, QUESTION OR ISSUE WHICH IS THE SUBJECT OF A FORMAL MATTER OR INVESTIGATION CURRENTLY PENDING BEFORE THE DIRECTOR OR A COURT BUT NOT INVOLVING ANY PETITIONER WHICH WILL TERMINATE THE CONTROVERSY OR REMOVE THE UNCERTAINTIES AS TO THE APPLICABILITY TO THE PETITIONER OF ANY STATUTORY PROVISION OF THE ACT, THE DIRECTOR RULES, OR ORDER OF THE DIRECTOR, WHICH MATTER OR INVESTIGATION WILL BE SPECIFIED BY THE DIRECTOR AND IN WHICH PETITIONER MAY INTERVENE;

4) WHETHER THE PETITION SEEKS A RULING ON A MOOT OR HYPOTHETICAL QUESTION AND WILL RESULT IN MERELY AN ADVISORY RULING OR OPINION; AND

5) WHETHER THE PETITIONER HAS SOME OTHER ADEQUATE LEGAL REMEDY, OTHER THAN AN ACTION FOR DECLARATORY RELIEF, WHICH WILL TERMINATE THE CONTROVERSY OR REMOVE ANY UNCERTAINTY AS TO THE APPLICABILITY TO THE PETITIONER OF THE STATUTORY PROVISION OF THE ACT, THE DIRECTOR RULES, OR ORDER OF THE DIRECTOR IN QUESTION.

G-4) PETITION CONTENTS.

ANY PETITION FILED PURSUANT TO THIS RULE WILL SET FORTH THE FOLLOWING:

1) THE NAME AND ADDRESS OF THE PETITIONER AND WHETHER THE PETITIONER HOLDS A LICENSE ISSUED PURSUANT TO §§ 12-61-1001, ET SEQ., C.R.S.

2) THE STATUTE, RULE OR ORDER TO WHICH THE PETITION RELATES.

3) A CONCISE STATEMENT OF ALL THE FACTS NECESSARY TO SHOW THE NATURE OF THE CONTROVERSY OR UNCERTAINTY AND THE MANNER IN WHICH THE STATUTE, RULE OR ORDER IN QUESTION APPLIES OR POTENTIALLY APPLIES TO THE PETITIONER.

4) A CONCISE STATEMENT OF THE LEGAL AUTHORITIES, IF ANY, AND SUCH OTHER REASONS UPON WHICH THE PETITIONER RELIES.

5) A CONCISE STATEMENT OF THE DECLARATORY ORDER SOUGHT BY THE PETITIONER.

G-5) PROCEDURES IF THE DIRECTOR WILL RULE.

IF THE DIRECTOR DETERMINES THAT HE OR SHE WILL RULE ON THE PETITION, THE FOLLOWING PROCEDURES WILL APPLY:

1) THE DIRECTOR MAY, IN HIS OR HER DISCRETION, RULE UPON THE PETITION BASED SOLELY UPON THE FACTS PRESENTED IN THE PETITION. IN SUCH A CASE:

   a) ANY RULING OF THE DIRECTOR WILL APPLY ONLY TO THE EXTENT OF THE FACTS PRESENTED IN THE PETITION AND ANY AMENDMENT TO THE PETITION;

   b) THE DIRECTOR MAY ORDER THE PETITIONER TO FILE A WRITTEN BRIEF, MEMORANDUM OR STATEMENT OF POSITION;

   c) THE DIRECTOR MAY SET THE PETITION, UPON DUE NOTICE TO PETITIONER, FOR A NON-EVIDENTIARY HEARING;

   d) THE DIRECTOR MAY DISPOSE OF THE PETITION ON THE SOLE BASIS OF THE MATTERS SET FORTH IN THE PETITION;

   e) THE DIRECTOR MAY REQUEST THE PETITIONER TO SUBMIT ADDITIONAL FACTS IN WRITING. IN SUCH EVENT, SUCH ADDITIONAL FACTS WILL BE CONSIDERED AS AN AMENDMENT TO THE PETITION;

   f) THE DIRECTOR MAY TAKE ADMINISTRATIVE NOTICE OF FACTS PURSUANT TO THE ADMINISTRATIVE PROCEDURE ACT, § 24-4-105(8), C.R.S., AND UTILIZE HIS OR HER EXPERIENCE, TECHNICAL COMPETENCE AND SPECIALIZED KNOWLEDGE IN THE DISPOSITION OF THE PETITION;

   g) IF THE DIRECTOR RULES UPON THE PETITION WITHOUT A HEARING, HE OR SHE WILL ISSUE A WRITTEN ORDER, STATING THEREIN HIS OR HER BASIS FOR THE ORDER. A COPY OF SUCH ORDER WILL PROMPTLY BE TRANSMITTED TO THE PETITIONER.

2) THE DIRECTOR MAY, IN HIS OR HER DISCRETION, SET THE PETITION FOR HEARING UPON DUE NOTICE TO THE PETITIONER FOR THE PURPOSE OF OBTAINING ADDITIONAL FACTS OR INFORMATION OR TO DETERMINE THE TRUTH OF ANY FACT SET FORTH IN THE PETITION OR TO HEAR ORAL ARGUMENT ON THE PETITION. NOTICE TO THE PETITIONER SETTING SUCH HEARING WILL SET FORTH, TO THE EXTENT KNOWN, THE FACTUAL OR OTHER MATTERS INTO WHICH THE DIRECTOR INTENDS TO INQUIRE. FOR THE PURPOSE OF SUCH A HEARING THE PETITIONER WILL HAVE THE BURDEN OF PROVING ALL OF THE FACTS STATED IN THE PETITION, ALL OF THE FACTS NECESSARY TO SHOW THE NATURE OF THE CONTROVERSY OR UNCERTAINTY AND THE MANNER IN WHICH THE STATUTE, RULE OR ORDER IN QUESTION APPLIES OR POTENTIALLY APPLIES TO PETITIONER AND ANY OTHER FACTS THE PETITIONER DESIRES THE DIRECTOR TO CONSIDER.

G-6) PARTIES TO PROCEEDINGS.

THE PARTIES TO ANY PROCEEDING PURSUANT TO THIS RULE WILL BE THE DIRECTOR AND THE PETITIONER. ANY OTHER PERSON MAY SEEK LEAVE OF THE DIRECTOR TO INTERVENE IN SUCH A PROCEEDING, AND LEAVE TO INTERVENE WILL BE GRANTED AT THE SOLE DISCRETION OF THE DIRECTOR. A PETITION TO INTERVENE WILL SET FORTH THE SAME MATTERS AS REQUIRED BY RULE G-4. IN SUCH A CASE, ANY REFERENCE TO A “PETITIONER” IN THIS RULE ALSO REFERS TO ANY PERSON WHO HAS BEEN GRANTED LEAVE TO INTERVENE BY THE DIRECTOR.

G-7) ORDERS SUBJECT TO JUDICIAL REVIEW.

ANY DECLARATORY ORDER OR OTHER ORDER DISPOSING OF A PETITION PURSUANT TO THIS RULE G WILL CONSTITUTE AGENCY ACTION SUBJECT TO JUDICIAL REVIEW PURSUANT TO § 24-4-106, C.R.S.

A hearing on the above subject matter will be held on Wednesday, March 4, 2015, at the Ralph L. Carr Colorado Judicial Center, 2 East 14th Avenue, Conference Room 1B, Denver, Colorado 80203 beginning at 10:00 a.m.

Any interested person may participate in the rule making through submission of written data, views and arguments to the Division of Real Estate. Persons are requested to submit data, views and arguments to the Division of Real Estate in writing no less than ten (10) days prior to the hearing date and time set forth above. However, all data, views and arguments submitted prior to or at the rulemaking hearing or prior to the closure of the rulemaking record (if different from the date and time of hearing), shall be considered. Please be advised that the rule being considered is subject to further changes and modifications after public comment and formal hearing.

Notice of Rulemaking Hearing

Tracking number

2015-00053

Department

700 - Department of Regulatory Agencies

Agency

725 - Division of Real Estate

CCR number

4 CCR 725-7

Rule title

COMMUNITY ASSOCIATION MANAGERS

Rulemaking Hearing

Date

03/04/2015

Time

10:00 AM

Location

Ralph L. Carr Colorado Judicial Center, 2 East 14th Avenue, Room 1B, Denver, CO 80203

Subjects and issues involved

B RULES CONTINUING EDUCATION

Statutory authority

Part 10 of Title 12, Article 61, Colorado Revised Statutes, as amended.

Contact information

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DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
COMMUNITY ASSOCIATION MANAGERS
4 CCR 725-7

NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
March 4, 2015

B RULES – CONTINUING EDUCATION

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado and to all persons who have requested to be advised of the intention of the Director of the Division of Real Estate ("Director") to promulgate rules, or to amend, repeal or repeal and re-enact the present rules related to community association managers.

STATEMENT OF BASIS

The statutory basis for the rules titled Rules Regarding Community Association Managers is Part 10 of Title 12, Article 61, Colorado Revised Statutes, as amended.

STATEMENT OF PURPOSE

The purpose of this rule is to effectuate the legislative directive to promulgate necessary and appropriate rules in conformity with the state statutes of the Community Association Managers Practice Act.

SPECIFIC PURPOSE OF THIS RULEMAKING

The specific purpose of this rule is to promulgate rules with respect to the requirements for continuing education and ensures that community association managers are familiar with current regulations.

Proposed New, Amended and Repealed Rules

[Deleted material shown ~~struck through~~, new material shown ALL CAPS. Rules, or portions of rules, which are unaffected are reproduced. Readers are advised to obtain a copy of the complete rules of the Board at www.dora.state.co.us/real-estate/.

B RULES – CONTINUING EDUCATION

B-1) WHEN CONTINUING EDUCATION IS REQUIRED.

THE CONTINUING EDUCATION REQUIREMENTS FOR LICENSED CAM MANAGERS WILL BEGIN AFTER ISSUANCE OF THE INITIAL LICENSE. INDIVIDUALS MUST COMPLETE CONTINUING EDUCATION REQUIREMENTS PRIOR TO APPLYING TO RENEW AN ACTIVE LICENSE, TO ACTIVATE AN INACTIVE LICENSE OR TO REINSTATE AN EXPIRED LICENSE TO ACTIVE STATUS. AS PRESCRIBED IN RULE A-3, COMPLETION OF THE PRE-LICENSING CREDENTIALS IN THE SAME CALENDAR YEAR IN WHICH THE LICENSE WAS APPROVED WILL SATISFY THE CONTINUING EDUCATION REQUIREMENTS IN THAT CALENDAR YEAR.

B-2) METHODS OF COMPLETING CONTINUING EDUCATION.

LICENSED CAM MANAGERS MAY SATISFY THE ENTIRE CONTINUING EDUCATION REQUIREMENT THROUGH ONE OF THE FOLLOWING OPTIONS:

1) COMPLETE 8 HOURS OF CONTINUING EDUCATION COURSES IN APPROVED SUBJECTS

AS PRESCRIBED IN RULE B-3; OR

2) SUCCESSFULLY PASS THE COLORADO STATE PORTION OF THE CAM MANAGER EXAMINATION.

B-3) APPROVED CONTINUING EDUCATION SUBJECTS.

ALL CONTINUING EDUCATION COURSES MUST CONTRIBUTE DIRECTLY TO THE PROFESSIONAL COMPETENCE OF A LICENSEE. CREDIT FOR CONTINUING EDUCATION COURSES MUST BE ACQUIRED THROUGH SUCCESSFUL COMPLETION OF INSTRUCTION IN ONE OR MORE OF THE FOLLOWING SUBJECTS:

1) LEGAL DOCUMENTS OF A COMMON INTEREST COMMUNITY;
2) COLORADO COMMON INTEREST OWNERSHIP ACT;
3) COLORADO AND FEDERAL FAIR HOUSING LAW;
4) COLORADO NON-PROFIT AND CORPORATION ACTS;
5) ROLES AND RESPONSIBILITIES OF MANAGERS, OWNERS, COMMITTEES AND THE EXECUTIVE BOARD OF A COMMON INTEREST COMMUNITY;
6) MANAGEMENT ETHICS FOR PROFESSIONAL COMMUNITY ASSOCIATION MANAGERS;
7) DEVELOPING AND ENFORCING COMMON INTEREST COMMUNITY RULES;
8) MANAGER'S ROLE IN ORGANIZING, ASSISTING, AND CONDUCTING BOARD MEETINGS;
9) PREPARING BUDGETS AND FUNDING RESERVES;
10) ASSESSMENT COLLECTION POLICIES AND PROCEDURES;
11) REMEDIES AVAILABLE FOR COLLECTING DELINQUENT PAYMENTS FROM OWNERS IN A COMMON INTEREST COMMUNITY;
12) OVERVIEW OF FINANCIAL STATEMENTS, REPORTING METHODS, AND OPERATIONS;
13) EFFECTIVE RISK MANAGEMENT AND INSURANCE PROGRAMS;
14) IMPLEMENTING AND EVALUATING MAINTENANCE PROGRAMS;
15) HOW TO PREPARE A BID REQUEST AND KEY CONTRACT PROVISIONS;
16) BASIC AREAS OF EMPLOYMENT ADDRESSED BY FEDERAL, STATE, AND LOCAL LAW; AND
17) ANY OTHER SUBJECT MATTER AS APPROVED BY THE DIRECTOR.

B-4) DISTANCE LEARNING PERMITTED, DEFINED.

ALL CONTINUING EDUCATION COURSES MAY BE OFFERED AND COMPLETED BY DISTANCE LEARNING. DISTANCE LEARNING MEANS COURSES OFFERED OUTSIDE THE TRADITIONAL CLASSROOM SETTING IN WHICH THE INSTRUCTOR AND LEARNER ARE SEPARATED BY DISTANCE AND/OR TIME.

B-5) COURSES EXCLUDED FROM CONTINUING EDUCATION CREDIT.

THE FOLLOWING TYPES OF CONTINUING EDUCATION COURSES WILL NOT QUALIFY FOR CONTINUING EDUCATION CREDIT:

1) SALES OR MARKETING MEETINGS CONDUCTED IN THE GENERAL COURSE OF A MANAGER'S PRACTICE.
2) ORIENTATION, PERSONAL GROWTH, SELF-IMPROVEMENT, SELF-PROMOTION OR MARKETING SESSIONS.
3) MOTIVATIONAL MEETINGS OR SEMINARS.

4) EXAMINATION PREPARATION OR EXAM TECHNIQUE COURSES.

B-6) COURSES AUTOMATICALLY ACCEPTED FOR CONTINUING EDUCATION CREDIT.

THE FOLLOWING CONTINUING EDUCATION COURSES MAY BE ACCEPTED FOR CONTINUING EDUCATION CREDIT WITHOUT DIRECTOR PRE-APPROVAL SO LONG AS THEY COMPLY WITH ALL PROVISIONS OF THIS RULE B EXCEPT RULE B-7.

1) COURSES OFFERED BY ACCREDITED COLLEGES, UNIVERSITIES, COMMUNITY OR JUNIOR COLLEGES, PUBLIC OR PAROCHIAL SCHOOLS OR GOVERNMENT AGENCIES.
2) COURSES DEVELOPED AND OFFERED BY QUASI-GOVERNMENTAL AGENCIES.
3) COURSES APPROVED BY AND TAKEN IN SATISFACTION OF ANOTHER OCCUPATIONAL LICENSING AUTHORITY'S EDUCATION REQUIREMENTS.
4) COURSES IN THE SUBJECT MATTERS LISTED IN RULE B-3 OFFERED BY A PROVIDER APPROVED BY THE COLORADO BOARD OF CONTINUING LEGAL AND JUDICIAL EDUCATION.

B-7) COURSES REQUIRING DIRECTOR APPROVAL FOR CONTINUING EDUCATION CREDIT.

THE FOLLOWING CONTINUING EDUCATION COURSES MUST RECEIVE DIRECTOR APPROVAL PRIOR TO OFFERING:

1) COURSES OFFERED BY PROPRIETARY REAL ESTATE SCHOOLS APPROVED BY THE COLORADO DIVISION OF PRIVATE OCCUPATIONAL SCHOOLS.
2) CURRENTLY APPROVED COURSES THAT ARE CHANGED IN ANY SUBSTANTIVE WAY.
3) COURSES OFFERED BY ANY PROVIDER PROPOSING TO OFFER COURSE(S) ON SUBJECTS NOT LISTED IN RULE B-3.
4) COURSES OFFERED BY PROPRIETARY REAL ESTATE SCHOOLS APPROVED AS OUT OF STATE PROVIDERS BY THE COLORADO DEPARTMENT OF PRIVATE OCCUPATIONAL SCHOOLS, AND ARE NOT APPROVED PURSUANT TO RULE B-6.
5) COURSES OFFERED BY A DESIGNATED MANAGER TO THEIR EMPLOYED MANAGERS.
6) COURSES OFFERED BY PROVIDERS EXEMPT UNDER THE PROVISIONS OF § 12-59-104, C.R.S.
7) COURSES OFFERED BY LOCAL, STATE OR NATIONAL COMMUNITY MANAGER, HOMEOWNER OR BUSINESS ASSOCIATIONS.

B-8) ADMINISTRATIVE RULES FOR CONTINUING EDUCATION COURSES.

THE FOLLOWING COURSE FORMAT AND ADMINISTRATIVE REQUIREMENTS APPLY TO ALL CONTINUING EDUCATION COURSES FOR LICENSED CAM MANAGERS.

1) COURSES MUST BE AT LEAST 1 HOUR IN LENGTH, CONTAINING AT LEAST 50 INSTRUCTIONAL MINUTES.
2) A MAXIMUM OF 8 HOURS OF CREDIT MAY BE EARNED PER DAY.
3) NO COURSE MAY BE REPEATED FOR CREDIT IN THE SAME CALENDAR YEAR.
4) INSTRUCTORS MAY RECEIVE CREDIT FOR CLASSROOM TEACHING HOURS ONCE PER YEAR, PER COURSE TAUGHT.
5) HOURS IN EXCESS OF 8 MAY NOT BE CARRIED FORWARD TO SATISFY A SUBSEQUENT YEAR'S EDUCATION REQUIREMENT.
6) NO PROVIDER MAY WAIVE, EXCUSE COMPLETION OF, OR AWARD PARTIAL

CREDIT FOR THE FULL NUMBER OF COURSE HOURS.

7) NO EXAMINATION OR OTHER EQUIVALENCY MAY SUBSTITUTE FOR THE COMPLETION OF THE ENTIRE CONTINUING EDUCATION COURSE.
8) NO CREDIT MAY BE EARNED FOR REMEDIAL EDUCATION COMPLETED AS PART OF A DISCIPLINARY ACTION, OR ALTERNATIVE TO DISCIPLINARY ACTION.
9) NO COURSE OFFERING BY A PROVIDER WILL BE ACCEPTED UNLESS THE PROVIDER HAS EITHER BEEN GRANTED A CERTIFICATE OF APPROVAL BY THE COLORADO DEPARTMENT OF HIGHER EDUCATION, DIVISION OF PRIVATE OCCUPATIONAL SCHOOLS, OR IS EXEMPT FROM SUCH REQUIREMENT PURSUANT TO § 12-59-104, C.R.S.
10) CONTINUING EDUCATION COURSES MUST MAINTAIN AND IMPROVE A CAM MANAGER'S SKILL, KNOWLEDGE, AND COMPETENCY IN COMMUNITY ASSOCIATION MANAGEMENT PRACTICE.

B-9) TERM OF COURSE APPROVAL.

COURSE APPROVAL CERTIFICATION WILL BE FOR A PERIOD OF 3 YEARS, EXCEPT THAT AN ANNUAL OR ONE-TIME SEMINAR OR CONFERENCE OFFERING MAY BE APPROVED FOR A SPECIFIC DATE OR DATES.

B-10) PROOF OF COURSE COMPLETION.

EACH COLORADO LICENSED CAM MANAGER IS RESPONSIBLE FOR SECURING EVIDENCE OF COURSE COMPLETION IN THE FORM OF AN AFFIDAVIT, CERTIFICATE OR OFFICIAL TRANSCRIPT OF THE COURSE. SAID DOCUMENTATION MUST BE IN SUFFICIENT DETAIL TO SHOW THE NAME OF THE LICENSEE, COURSE SUBJECT, CONTENT, DURATION, DATE(S) AND CONTAIN THE AUTHENTICATION OF THE PROVIDER. LICENSEES MUST RETAIN PROOF OF CONTINUING EDUCATION COMPLETION FOR 4 YEARS, AND PROVIDE SAID PROOF TO THE DIRECTOR UPON REQUEST.

B-11) PROVIDER MUST RETAIN RECORDS.

EACH APPROVED PROVIDER MUST RETAIN COPIES OF COURSE OUTLINES OR SYLLABI, COMPLETE RECORDS OF ATTENDANCE FOR A PERIOD OF 4 YEARS, AND PROVIDE THE RECORDS TO THE DIRECTOR UPON REQUEST.

B-12) COURSE APPROVAL APPLICATION PROCESS.

CONTINUING EDUCATION PROVIDERS REQUIRED TO HAVE DIRECTOR COURSE APPROVAL MUST, IN ACCORDANCE WITH ALL OF THE PROVISIONS OF THE B RULES, SUBMIT AN APPLICATION FORM PRESCRIBED BY THE DIRECTOR, ALONG WITH THE FOLLOWING INFORMATION AT LEAST 30 DAYS PRIOR TO THE PROPOSED CLASS DATES:

1) DETAILED COURSE OUTLINE OR SYLLABUS, INCLUDING THE INTENDED LEARNING OUTCOMES, THE COURSE OBJECTIVES AND THE APPROXIMATE TIME ALLOCATED FOR EACH TOPIC.
2) A COPY OF THE COURSE EXAM(S) AND INSTRUCTOR ANSWER SHEET IF APPLICABLE. IN THE ABSENCE OF AN EXAM, THE CRITERIA USED IN EVALUATING A PERSON'S SUCCESSFUL COMPLETION OF THE COURSE OBJECTIVES.
3) A COPY OF INSTRUCTOR TEACHING CREDENTIALS. IF NONE, A RÉSUMÉ SHOWING EDUCATION AND EXPERIENCE WHICH EVIDENCE MASTERY OF THE MATERIAL TO BE PRESENTED.
4) A COPY OF ADVERTISING OR PROMOTIONAL MATERIAL USED TO ANNOUNCE

THE OFFERING.

5) UPON DIRECTOR REQUEST, A COPY OF ANY TEXTBOOK(S), MANUAL(S), AUDIO(S), VIDEOTAPES, OR OTHER INSTRUCTIONAL MATERIAL.
6) FOR COURSES OFFERED THROUGH DISTANCE LEARNING, EVIDENCE, IN A FORM PRESCRIBED BY THE DIRECTOR, THAT THE METHOD OF DELIVERY AND COURSE STRUCTURE IS CONSISTENT WITH ACCEPTABLE EDUCATION STANDARDS, AND THAT THE DESIRED LEARNING OBJECTIVES WILL BE MET. THE DIRECTOR WILL APPROVE METHODS OF DELIVERY CERTIFIED BY THE ASSOCIATION OF REAL ESTATE LICENSE LAW OFFICIALS (ARELLO), OR BY A SUBSTANTIALLY EQUIVALENT AUTHORITY AND METHOD.

B-13) PROVIDERS SUBJECT TO STATUTE, RULE AND COURSE AUDIT.

BY OFFERING COMMUNITY ASSOCIATION MANAGER CONTINUING EDUCATION IN COLORADO, EACH PROVIDER AGREES TO COMPLY WITH ALL RELEVANT STATUTES AND THE DIRECTOR RULES, AND TO PERMIT THE DIRECTOR OR HIS OR HER DESIGNEE TO AUDIT SAID COURSES AT ANY TIME AND AT NO COST.

B-14) LICENSEE ATTESTS TO COMPLIANCE BY SUBMITTING APPLICATION.

THE ACT OF SUBMITTING AN APPLICATION FOR RENEWAL, ACTIVATION OR REINSTATEMENT OF A CAM MANAGER LICENSE WILL MEAN THAT THE LICENSEE ATTESTS TO COMPLIANCE WITH ALL CONTINUING EDUCATION REQUIREMENTS FOUND IN THE DIRECTOR RULES.

A hearing on the above subject matter will be held on Wednesday, March 4, 2015, at the Ralph L. Carr Colorado Judicial Center, 2 East 14th Avenue, Conference Room 1B, Denver, Colorado 80203 beginning at 10:00 a.m.

Any interested person may participate in the rule making through submission of written data, views and arguments to the Division of Real Estate. Persons are requested to submit data, views and arguments to the Division of Real Estate in writing no less than ten (10) days prior to the hearing date and time set forth above. However, all data, views and arguments submitted prior to or at the rulemaking hearing or prior to the closure of the rulemaking record (if different from the date and time of hearing), shall be considered. Please be advised that the rule being considered is subject to further changes and modifications after public comment and formal hearing.

Notice of Rulemaking Hearing

Tracking number

2015-00059

Department

700 - Department of Regulatory Agencies

Agency

725 - Division of Real Estate

CCR number

4 CCR 725-7

Rule title

COMMUNITY ASSOCIATION MANAGERS

Rulemaking Hearing

Date

03/04/2015

Time

10:00 AM

Location

Ralph L. Carr Colorado Judicial Center, 2 East 14th Avenue, Room 1B, Denver, CO 80203

Subjects and issues involved

H RULES EXCEPTIONS AND DIRECTOR REIVEW OF INITIAL DECISIONS

Statutory authority

Part 10 of Title 12, Article 61, Colorado Revised Statutes, as amended.

Contact information

Name

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DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
COMMUNITY ASSOCIATION MANAGERS
4 CCR 725-7

NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
March 4, 2015

H RULES – EXCEPTIONS AND DIRECTOR REIVEW OF INITIAL DECISIONS

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado and to all persons who have requested to be advised of the intention of the Director of the Division of Real Estate ("Director") to promulgate rules, or to amend, repeal or repeal and re-enact the present rules related to community association managers.

STATEMENT OF BASIS

The statutory basis for the rules titled Rules Regarding Community Association Managers is Part 10 of Title 12, Article 61, Colorado Revised Statutes, as amended.

STATEMENT OF PURPOSE

The purpose of this rule is to effectuate the legislative directive to promulgate necessary and appropriate rules in conformity with the state statutes of the Community Association Managers Practice Act.

SPECIFIC PURPOSE OF THIS RULEMAKING

The purpose of this rule is to set forth the procedure surrounding the filing of exceptions and review of initial decisions pursuant to 24-4-105 (14) and (15), C.R.S.

Proposed New, Amended and Repealed Rules

[Deleted material shown ~~struck through~~, new material shown ALL CAPS. Rules, or portions of rules, which are unaffected are reproduced. Readers are advised to obtain a copy of the complete rules of the Board at www.dora.state.co.us/real-estate/.

H RULES – EXCEPTIONS AND DIRECTOR REIVEW OF INITIAL DECISIONS

H-1) WRITTEN FORM, SERVICE AND FILING REQUIREMENTS.

1) ALL DESIGNATIONS OF RECORD, REQUESTS, EXCEPTIONS AND RESPONSIVE PLEADINGS ("PLEADINGS") MUST BE IN WRITTEN FORM, MAILED WITH A CERTIFICATE OF MAILING TO THE DIRECTOR.

2) ALL PLEADINGS MUST BE RECEIVED BY THE DIRECTOR BY 5:00 P.M. ON THE DATE THE FILING IS DUE. A PLEADING IS CONSIDERED FILED UPON RECEIPT BY THE DIRECTOR. THESE RULES DO NOT PROVIDE FOR ANY ADDITIONAL TIME FOR SERVICE BY MAIL.

3) ANY PLEADINGS MUST BE SERVED ON THE OPPOSING PARTY BY MAIL OR BY HAND DELIVERY ON THE DATE WHICH THE PLEADINGS ARE FILED WITH THE DIRECTOR.

4) ALL PLEADINGS MUST BE FILED WITH THE DIRECTOR, AND NOT WITH THE OFFICE OF ADMINISTRATIVE COURTS. ANY PLEADINGS FILED IN ERROR WITH THE OFFICE OF ADMINISTRATIVE COURTS WILL NOT BE CONSIDERED. THE DIRECTOR'S ADDRESS IS:

DIVISION OF REAL ESTATE
1560 BROADWAY, SUITE 925
DENVER, COLORADO 80202

H-2) AUTHORITY TO REVIEW.

1) THE DIRECTOR HEREBY PRESERVES THE DIRECTOR'S OPTION TO INITIATE A REVIEW OF AN INITIAL DECISION ON HIS OR HER OWN MOTION PURSUANT TO § 24-4-105(14)(A)(II) AND (B)(III), C.R.S. OUTSIDE OF THE 30 DAY EXCEPTIONS FILING PERIOD AFTER SERVICE OF THE INITIAL DECISION UPON THE PARTIES.

2) THIS OPTION TO REVIEW WILL APPLY REGARDLESS OF WHETHER A PARTY FILES EXCEPTIONS TO THE INITIAL DECISION.

H-3) DESIGNATION OF RECORD AND TRANSCRIPTS.

1) ANY PARTY SEEKING TO REVERSE OR MODIFY AN INITIAL DECISION OF AN ADMINISTRATIVE LAW JUDGE MUST FILE WITH THE DIRECTOR A DESIGNATION OF THE RELEVANT PARTS OF THE RECORD FOR REVIEW ("DESIGNATION OF RECORD"). DESIGNATIONS OF RECORD MUST BE FILED WITH THE DIRECTOR WITHIN 20 DAYS OF THE DATE ON WHICH THE DIRECTOR MAILS THE INITIAL DECISION TO THE PARTIES' ADDRESS OF RECORD WITH THE DIRECTOR.
2) WITHIN 10 DAYS AFTER A PARTY'S DESIGNATION OF RECORD IS DUE, ANY OTHER PARTY MAY FILE A SUPPLEMENTAL DESIGNATION OF RECORD REQUESTING INCLUSION OF ADDITIONAL PARTS OF THE RECORD.
3) EVEN IF NO PARTY FILES A DESIGNATION OF RECORD, THE RECORD MUST INCLUDE THE FOLLOWING:

    a) ALL PLEADINGS;

    b) ALL APPLICATIONS PRESENTED OR CONSIDERED DURING THE HEARING;

    c) ALL DOCUMENTARY OR OTHER EXHIBITS ADMITTED INTO EVIDENCE;

    d) ALL DOCUMENTARY OR OTHER EXHIBITS PRESENTED OR CONSIDERED DURING THE HEARING;

    e) ALL MATTERS OFFICIALLY NOTICED;

    f) ANY FINDINGS OF FACT AND CONCLUSIONS OF LAW PROPOSED BY ANY PARTY; AND

    g) ANY WRITTEN BRIEF FILED.
4) TRANSCRIPTS. TRANSCRIPTS WILL NOT BE PART OF A DESIGNATION OF RECORD UNLESS SPECIFICALLY IDENTIFIED AND ORDERED. SHOULD A PARTY WISH TO DESIGNATE A TRANSCRIPT OR PORTION THEREOF, THE FOLLOWING PROCEDURES WILL APPLY:

    a) THE DESIGNATION OF RECORD MUST IDENTIFY WITH SPECIFICITY THE TRANSCRIPT OR PORTION THEREOF TO BE TRANSCRIBED. FOR EXAMPLE, A PARTY MAY DESIGNATE THE ENTIRE TRANSCRIPT, OR MAY IDENTIFY WITNESS(ES) WHOSE TESTIMONY IS TO BE TRANSCRIBED, THE LEGAL RULING OR ARGUMENT TO BE TRANSCRIBED, OR OTHER INFORMATION NECESSARY TO IDENTIFY A PORTION OF THE TRANSCRIPT.

b) ANY PARTY WHO INCLUDES A TRANSCRIPT OR A PORTION THEREOF AS PART OF THE DESIGNATION OF RECORD MUST ORDER THE TRANSCRIPT OR RELEVANT PORTIONS BY THE DATE ON WHICH THE DESIGNATION OF RECORD MUST BE FILED (WITHIN 20 DAYS OF THE DATE ON WHICH THE DIRECTOR MAILS THE INITIAL DECISION TO THE PARTIES).

c) WHEN ORDERING THE TRANSCRIPT, THE PARTY MUST REQUEST A COURT REPORTER OR TRANSCRIBING SERVICE TO PREPARE THE TRANSCRIPT WITHIN 30 DAYS. THE PARTY MUST TIMELY PAY THE NECESSARY FEES TO OBTAIN AND FILE WITH THE DIRECTOR AN ORIGINAL TRANSCRIPT AND ONE COPY WITHIN 30 DAYS.

d) THE PARTY ORDERING THE TRANSCRIPT WILL DIRECT THE COURT REPORTER OR TRANSCRIBING SERVICE TO COMPLETE AND FILE WITH THE DIRECTOR THE TRANSCRIPT AND ONE COPY OF THE TRANSCRIPT WITHIN 30 DAYS.

e) IF A PARTY DESIGNATES A PORTION OF THE TRANSCRIPT, THE OPPOSING PARTY MAY ALSO FILE A SUPPLEMENTAL DESIGNATION OF RECORD, IN WHICH THE OPPOSING PARTY MAY DESIGNATE ADDITIONAL PORTIONS OF THE TRANSCRIPT.

f) AN OPPOSING PARTY FILING A SUPPLEMENTAL DESIGNATION OF RECORD DESIGNATING ADDITIONAL PORTIONS OF THE TRANSCRIPT MUST ORDER AND PAY FOR SUCH TRANSCRIPTS OR PORTIONS THEREOF WITHIN THE DEADLINES SET FORTH ABOVE. AN OPPOSING PARTY MUST ALSO CAUSE THE COURT REPORTER TO COMPLETE AND FILE WITH THE DIRECTOR THE TRANSCRIPT AND ONE COPY OF THE TRANSCRIPT WITHIN 30 DAYS.

g) TRANSCRIPTS THAT ARE ORDERED AND NOT FILED WITH THE DIRECTOR IN A TIMELY MANNER BY THE REPORTER OR THE TRANSCRIPTION SERVICE DUE TO NON-PAYMENT, INSUFFICIENT PAYMENT OR FAILURE TO DIRECT AS SET FORTH ABOVE WILL NOT BE CONSIDERED BY THE DIRECTOR.

H-4) FILING OF EXCEPTIONS AND RESPONSIVE PLEADINGS.

1) ANY PARTY WISHING TO FILE EXCEPTIONS MUST ADHERE TO THE FOLLOWING TIMELINES:

   a) IF NO TRANSCRIPTS ARE ORDERED, EXCEPTIONS ARE DUE WITHIN 30 DAYS FROM THE DATE ON WHICH THE DIRECTOR MAILS THE INITIAL DECISION TO THE PARTIES. BOTH PARTIES' EXCEPTIONS ARE DUE ON THE SAME DATE.

   b) IF TRANSCRIPTS ARE ORDERED BY EITHER PARTY, THE FOLLOWING PROCEDURE WILL APPLY. UPON RECEIPT OF ALL TRANSCRIPTS IDENTIFIED IN ALL DESIGNATIONS OF RECORD AND SUPPLEMENTAL DESIGNATIONS OF RECORD, THE DIRECTOR WILL MAIL NOTIFICATION TO THE PARTIES STATING THAT THE TRANSCRIPTS HAVE BEEN RECEIVED BY THE DIRECTOR. EXCEPTIONS ARE DUE WITHIN 30 DAYS FROM THE DATE ON WHICH SUCH NOTIFICATION IS MAILED. BOTH PARTIES' EXCEPTIONS ARE DUE ON THE SAME DATE.

2) EITHER PARTY MAY FILE A RESPONSIVE PLEADING TO THE OTHER PARTY'S EXCEPTIONS. ALL RESPONSIVE PLEADINGS MUST BE FILED WITHIN 10 DAYS OF THE DATE ON WHICH THE EXCEPTIONS WERE FILED WITH THE DIRECTOR. NO OTHER PLEADINGS WILL BE CONSIDERED EXCEPT FOR GOOD CAUSE SHOWN.

3) THE DIRECTOR MAY IN HIS OR HER SOLE DISCRETION GRANT AN EXTENSION OF TIME TO FILE EXCEPTIONS OR RESPONSIVE PLEADINGS, OR MAY DELEGATE THE DISCRETION TO GRANT SUCH AN EXTENSION OF TIME TO THE DIRECTOR'S DESIGNEE.

H-5) REQUEST FOR ORAL ARGUMENT.

1) ALL REQUESTS FOR ORAL ARGUMENT MUST BE IN WRITING AND FILED BY THE DEADLINE FOR RESPONSIVE PLEADINGS.

2) IT IS WITHIN THE SOLE DISCRETION OF THE DIRECTOR TO GRANT OR DENY A REQUEST FOR ORAL ARGUMENT. IF ORAL ARGUMENT IS GRANTED, BOTH PARTIES WILL HAVE THE OPPORTUNITY TO PARTICIPATE.

3) IF A REQUEST FOR ORAL ARGUMENT IS GRANTED, EACH SIDE WILL BE PERMITTED 10 MINUTES OF ORAL ARGUMENT UNLESS SUCH TIME IS EXTENDED BY THE DIRECTOR.

A hearing on the above subject matter will be held on Wednesday, March 4, 2015, at the Ralph L. Carr Colorado Judicial Center, 2 East 14th Avenue, Conference Room 1B, Denver, Colorado 80203 beginning at 10:00 a.m.

Any interested person may participate in the rule making through submission of written data, views and arguments to the Division of Real Estate. Persons are requested to submit data, views and arguments to the Division of Real Estate in writing no less than ten (10) days prior to the hearing date and time set forth above. However, all data, views and arguments submitted prior to or at the rulemaking hearing or prior to the closure of the rulemaking record (if different from the date and time of hearing), shall be considered. Please be advised that the rule being considered is subject to further changes and modifications after public comment and formal hearing.

Notice of Rulemaking Hearing

Tracking number

2015-00054

Department

700 - Department of Regulatory Agencies

Agency

725 - Division of Real Estate

CCR number

4 CCR 725-7

Rule title

COMMUNITY ASSOCIATION MANAGERS

Rulemaking Hearing

Date

03/04/2015

Time

10:00 AM

Location

Ralph L. Carr Colorado Judicial Center, 2 East 14th Avenue, Room 1B, Denver, CO 80203

Subjects and issues involved

C RULES LICENSING - OFFICE

Statutory authority

Part 10 of Title 12, Article 61, Colorado Revised Statutes, as amended.

Contact information

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DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
COMMUNITY ASSOCIATION MANAGERS
4 CCR 725-7

NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
March 4, 2015

C RULES – LICENSING - OFFICE

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado and to all persons who have requested to be advised of the intention of the Director of the Division of Real Estate ("Director") to promulgate rules, or to amend, repeal or repeal and re-enact the present rules related to community association managers.

STATEMENT OF BASIS

The statutory basis for the rules titled Rules Regarding Community Association Managers is Part 10 of Title 12, Article 61, Colorado Revised Statutes, as amended.

STATEMENT OF PURPOSE

The purpose of this rule is to effectuate the legislative directive to promulgate necessary and appropriate rules in conformity with the state statutes of the Community Association Managers Practice Act.

SPECIFIC PURPOSE OF THIS RULEMAKING

The specific purpose of this rule is to promulgate rules with respect to the requirements for licensing of a community association management company and ensures that community association managers are familiar with current regulations.

Proposed New, Amended and Repealed Rules

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C RULES – LICENSING - OFFICE

C-1) INDIVIDUAL PROPRIETOR MUST BE SOLE OWNER.

A CAM MANAGER LICENSED AS AN INDIVIDUAL DOING BUSINESS UNDER A TRADE NAME MUST BE THE SOLE OWNER OF THAT TRADE NAME.

C-2) INDIVIDUAL PROPRIETOR MAY NOT APPEAR TO BE CORPORATE.

A CAM MANAGER LICENSED AS A SOLE PROPRIETORSHIP MAY NOT ADOPT A TRADE NAME WHICH INCLUDES THE FOLLOWING WORDS: CORPORATION, PARTNERSHIP, LIMITED LIABILITY COMPANY, LIMITED, INCORPORATED, OR THE ABBREVIATIONS THEREOF*.*

C-3) QUALIFICATIONS FOR COMMUNITY ASSOCIATION MANAGEMENT COMPANIES.

AS SET FORTH IN § 12-61-1003(6), C.R.S., WHEN A CAM COMPANY SUBMITS A LICENSE APPLICATION TO QUALIFY AS A CAM MANAGER, IT MUST COMPLY WITH THE FOLLOWING:

1) DESIGNATE, AND THEREAFTER MAINTAIN, A QUALIFIED ACTIVE CAM MANAGER FOR THE

CAM COMPANY WHO IS RESPONSIBLE FOR MANAGEMENT AND SUPERVISION OF THE LICENSED ACTIONS OF THE CAM COMPANY AND ALL PERSONS EMPLOYED BY, OR ACTING AT ANY TIME ON BEHALF OF, THE CAM COMPANY; WHO IS PERSONALLY RESPONSIBLE FOR THE HANDLING OF ANY AND ALL COMMON INTEREST COMMUNITY FUNDS RECEIVED OR DISBURSED BY THE CAM COMPANY PURSUANT TO § 12-61-1003(6)(B) AND (7); WHO HAS PASSED THE EXAMINATION FOR LICENSEES SET FORTH IN THE ACT AND THE DIRECTOR RULES; AND WHO IS QUALIFIED TO ACT AS A CAM MANAGER UNDER THE ACT AND THE DIRECTOR RULES.

2) IF THE CAM COMPANY IS A CORPORATION, IT MUST CERTIFY THAT:
   a) THE CORPORATION HAS BEEN PROPERLY INCORPORATED WITH THE COLORADO SECRETARY OF STATE OR IS AUTHORIZED TO DO BUSINESS IN COLORADO, AND IS IN GOOD STANDING, PROOF OF WHICH MUST BE INCLUDED WITH THE APPLICATION;
   b) IF AN ASSUMED OR TRADE NAME IS TO BE USED, IT HAS BEEN PROPERLY FILED WITH AND ACCEPTED BY THE COLORADO SECRETARY OF STATE, PROOF OF WHICH MUST BE INCLUDED WITH THE APPLICATION; AND
   c) THE APPLICANT HAS DESIGNATED A QUALIFIED ACTIVE MANAGER WHO HAS BEEN APPOINTED BY THE CORPORATION'S BOARD OF DIRECTORS TO ACT AS THE DESIGNATED MANAGER FOR THE CORPORATION.
3) IF THE CAM COMPANY IS A PARTNERSHIP, IT MUST CERTIFY THAT:
   a) THE PARTNERSHIP HAS BEEN PROPERLY REGISTERED WITH THE COLORADO SECRETARY OF STATE AND IS IN GOOD STANDING, PROOF OF WHICH MUST BE INCLUDED WITH THE APPLICATION;
   b) IF AN ASSUMED OR TRADE NAME IS TO BE USED, IT HAS BEEN PROPERLY FILED WITH THE COLORADO SECRETARY OF STATE, PROOF OF WHICH MUST BE INCLUDED WITH THE APPLICATION; AND
   c) THE APPLICANT HAS DESIGNATED A QUALIFIED ACTIVE MANAGER WHO HAS BEEN APPOINTED THE DESIGNATED MANAGER FOR THE PARTNERSHIP BY ALL GENERAL PARTNERS OR MANAGERS/OFFICERS OF THE PARTNERSHIP.
4) IF THE CAM COMPANY IS A LIMITED LIABILITY COMPANY, IT MUST CERTIFY THAT:
   a) THE LIMITED LIABILITY COMPANY HAS BEEN PROPERLY REGISTERED WITH THE COLORADO SECRETARY OF STATE AND IS IN GOOD STANDING, PROOF OF WHICH MUST BE INCLUDED WITH THE APPLICATION;
   b) IF AN ASSUMED OR TRADE NAME IS TO BE USED, IT HAS BEEN PROPERLY FILED WITH THE COLORADO SECRETARY OF STATE, PROOF OF WHICH MUST BE INCLUDED WITH THE APPLICATION; AND
   c) THE APPLICANT HAS DESIGNATED A QUALIFIED ACTIVE MANAGER WHO HAS BEEN APPOINTED THE DESIGNATED MANAGER FOR THE LIMITED LIABILITY COMPANY BY ALL MANAGERS, OR IF MANAGEMENT HAS BEEN RESERVED TO THE MEMBERS IN THE ARTICLES OF ORGANIZATION, BY ALL MEMBERS OF THE LIMITED LIABILITY COMPANY.

C-4) INDIVIDUALS EMPLOYED BY A COMMUNITY ASSOCIATION MANAGEMENT COMPANY, SOLE PROPRIETORSHIP, OR A COMMON INTEREST COMMUNITY.

ANY CAM COMPANY, LICENSED SOLE PROPRIETORSHIP, OR COMMON INTEREST COMMUNITY THAT EMPLOYS INDIVIDUALS WHO PERFORM ACTIVITIES REQUIRING A CAM MANAGER

LICENSE PURSUANT TO § 12-61-1001(3), C.R.S., MUST DESIGNATE AND MAINTAIN A QUALIFIED ACTIVE DESIGNATED MANAGER.

C-5) RESIDENT COMMUNITY ASSOCIATION MANAGERS REQUIRED TO HAVE OFFICE; EXCEPTIONS.

EVERY RESIDENT COLORADO CAM MANAGER MUST MAINTAIN AND SUPERVISE A COMMUNITY ASSOCIATION MANAGEMENT PRACTICE WITH AN OFFICE THAT IS AVAILABLE TO THE PUBLIC, EXCEPT THOSE CAM MANAGERS REGISTERED IN THE DIVISION AS IN THE EMPLOY OF A DESIGNATED MANAGER OR THOSE CAM MANAGERS REGISTERED AS INACTIVE.

C-6) MANAGER AVAILABILITY.

ANY CAM MANAGER LICENSED AS A SOLE PROPRIETORSHIP OR AS A DESIGNATED MANAGER FOR A CAM COMPANY MUST BE REASONABLY AVAILABLE TO MANAGE AND SUPERVISE EACH COMMUNITY ASSOCIATION MANAGEMENT PRACTICE.

C-7) COMMUNITY ASSOCIATION MANAGER LICENSE NON-TRANSFERABLE.

NO AGREEMENT WILL BE ENTERED INTO BY ANY LICENSEE WHEREBY THE LICENSEE TRANSFERS OR LENDS THEIR NAME OR LICENSE TO ANOTHER TO AVOID OR EVADE ANY PROVISION OF THE ACT OR THE DIRECTOR RULES.

C-8) CORPORATE LICENSE NAME MAY NOT DUPLICATE SUSPENDED/REVOKED LICENSE.

THE DIRECTOR MAY REFUSE TO ISSUE A CAM MANAGER LICENSE TO A CAM COMPANY IF THE NAME OF THE CAM COMPANY IS THE SAME AS THAT OF ANY OTHER CAM COMPANY WHOSE LICENSE HAS BEEN SUSPENDED OR REVOKED, OR IS SO SIMILAR AS TO BE EASILY CONFUSED WITH THAT OF THE SUSPENDED OR REVOKED CAM COMPANY BY MEMBERS OF THE GENERAL PUBLIC.

C-9) NO LICENSE NAME IDENTICAL TO ONE PREVIOUSLY ISSUED.

NO CAM MANAGER LICENSE WILL BE ISSUED TO A CAM MANAGER UNDER A TRADE NAME, CORPORATE, PARTNERSHIP OR LIMITED LIABILITY COMPANY NAME WHICH IS IDENTICAL TO ANOTHER LICENSED CAM MANAGER'S TRADE NAME, CORPORATE, PARTNERSHIP OR LIMITED LIABILITY COMPANY NAME.

C-10) COMMUNITY ASSOCIATION MANAGER ACTIVITY ONLY IN TRADE NAME OR FULL LICENSED NAME.

A CAM MANAGER MAY ADOPT A TRADE NAME ACCORDING TO COLORADO LAW AND SUCH TRADE NAME WILL APPEAR ON THE FACE OF THE LICENSE. HOWEVER, PURSUANT TO § 12-61-1003(8), C.R.S., SUCH CAM MANAGER MUST CONDUCT BUSINESS ONLY UNDER SUCH TRADE NAME, OR CONDUCT BUSINESS UNDER THE ENTIRE NAME APPEARING ON THE FACE OF THE LICENSE. CAM MANAGERS WHO ARE LICENSED UNDER A DESIGNATED MANAGER THAT IS DOING BUSINESS UNDER A TRADE NAME MUST BE LICENSED UNDER THE ENTIRE NAME APPEARING ON THE FACE OF THE LICENSE.

C-11) NAME RULES.

PURSUANT TO § 12-61-1003(8), C.R.S., A PERSON WILL NOT BE LICENSED AS A CAM MANAGER UNDER MORE THAN ONE NAME, OR CONDUCT OR PROMOTE BUSINESS AS A CAM MANAGER EXCEPT UNDER THE NAME UNDER WHICH THE PERSON IS LICENSED. HOWEVER, THE USE OF A TRADE NAME, WITH THE PERMISSION OF THE OWNER OF SUCH TRADE, NAME MAY BE USED CONCURRENTLY WITH THE LICENSED NAME OF THE CAM COMPANY IN THE PROMOTION OR CONDUCT OF THE LICENSED COMMUNITY ASSOCIATION MANAGEMENT BUSINESS.

1) NO LICENSEE OR CAM COMPANY WILL ADVERTISE OR PROMOTE ITS BUSINESS IN SUCH A MANNER AS TO MISLEAD THE PUBLIC AS TO THE IDENTITY OF THE LICENSED CAM MANAGER OR CAM COMPANY; NOR MAY A PORTION OF THE LICENSED NAME OF

ANY CAM MANAGER OR CAM COMPANY BE ADVERTISED OR PROMOTED IN A MANNER WHICH WOULD MISLEAD THE PUBLIC AS TO THE IDENTITY OF THE LICENSED CAM MANAGER OR CAM COMPANY.

2) ANY LICENSEE OR CAM COMPANY USING A TRADE NAME, THE USE OF WHICH REQUIRES OBTAINING PERMISSION FROM ANOTHER WHO HAS AN EXISTING AND CONTINUING RIGHT IN THAT TRADE NAME BY VIRTUE OF ANY STATE OR FEDERAL LAW, WILL CLEARLY AND UNMISTAKABLY INCLUDE THE LICENSEE CAM COMPANY NAME AS REGISTERED WITH THE DIRECTOR IN ADDITION TO THE TRADE NAME IN A CONSPICUOUS AND REASONABLE MANNER IN ANY OF THE FOLLOWING:

    a) ADVERTISING;
    b) BUSINESS CARDS;
    c) LETTERHEAD;
    d) CONTRACTS OR ALL OTHER DOCUMENTS RELATING TO COMMUNITY ASSOCIATION MANAGEMENT BUSINESS; AND
    e) SIGNS DISPLAYED AT A PLACE OF BUSINESS.

C-12) NOTICE OF TERMINATION; DESIGNATED MANAGER.

A CAM COMPANY AND ITS DESIGNATED MANAGER BOTH MUST IMMEDIATELY NOTIFY THE DIRECTOR IN WRITING OF THE TERMINATION OF THE DESIGNATED MANAGER'S STATUS AS DESIGNATED MANAGER FOR THE CAM COMPANY, OR UPON THE DESIGNATED MANAGER'S FAILURE TO COMPLY WITH THE ACT OR THE DIRECTOR RULES. UNLESS A TEMPORARY DESIGNATED MANAGER LICENSE IS OBTAINED IN COMPLIANCE WITH THE PROVISIONS OF RULE C-13, UPON SUCH NOTIFICATION THE DESIGNATED MANAGER, ENTITY AND ALL EMPLOYED LICENSEES WILL BE PLACED ON INACTIVE STATUS.

C-13) TEMPORARY DESIGNATED MANAGER LICENSE.

PURSUANT TO § 12-61-1003(6)(C), C.R.S., A TEMPORARY DESIGNATED MANAGER'S LICENSE MAY BE ISSUED TO A CAM COMPANY TO PREVENT HARDSHIP FOR A PERIOD NOT TO EXCEED 90 DAYS TO THE PERSON SO DESIGNATED. NO DESIGNATED MANAGER LICENSE WILL BE APPROVED UNLESS THE INDIVIDUAL DESIGNATED HOLDS A CAM MANAGER LICENSE AND MEETS ALL ADDITIONAL REQUIREMENTS PURSUANT TO § 12-61-1003(6), C.R.S. AND THE DIRECTOR RULES.

C-14) INACTIVE LICENSE.

A CAM MANAGER LICENSE MAY BE ISSUED WHILE ON INACTIVE STATUS. NO ACTIVITIES REQUIRING A LICENSE MAY BE PERFORMED WHILE A CAM MANAGER LICENSE IS ON INACTIVE STATUS.

A hearing on the above subject matter will be held on Wednesday, March 4, 2015, at the Ralph L. Carr Colorado Judicial Center, 2 East 14th Avenue, Conference Room 1B, Denver, Colorado 80203 beginning at 10:00 a.m.

Any interested person may participate in the rule making through submission of written data, views and arguments to the Division of Real Estate. Persons are requested to submit data, views and arguments to the Division of Real Estate in writing no less than ten (10) days prior to the hearing date and time set forth above. However, all data, views and arguments submitted prior to or at the rulemaking hearing or prior to the closure of the rulemaking record (if different from the date and time of hearing), shall be considered. Please be advised that the rule being considered is subject to further changes and modifications after

public comment and formal hearing.

Notice of Rulemaking Hearing

Tracking number

2015-00055

Department

700 - Department of Regulatory Agencies

Agency

725 - Division of Real Estate

CCR number

4 CCR 725-7

Rule title

COMMUNITY ASSOCIATION MANAGERS

Rulemaking Hearing

Date

03/04/2015

Time

10:00 AM

Location

Ralph L. Carr Colorado Judicial Center, 2 East 14th Avenue, Room 1B, Denver, CO 80203

Subjects and issues involved

D RULES RENEWAL, TRANSFER, INACTIVE LICENSE, REINSTATEMENT AND INSURANCE

Statutory authority

Part 10 of Title 12, Article 61, Colorado Revised Statutes, as amended.

Contact information

Name

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Rulemaking Administrator

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DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
COMMUNITY ASSOCIATION MANAGERS
4 CCR 725-7

NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
March 4, 2015

D RULES – RENEWAL, TRANSFER, INACTIVE LICENSE, REINSTATEMENT AND INSURANCE

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado and to all persons who have requested to be advised of the intention of the Director of the Division of Real Estate ("Director") to promulgate rules, or to amend, repeal or repeal and re-enact the present rules related to community association managers.

STATEMENT OF BASIS

The statutory basis for the rules titled Rules Regarding Community Association Managers is Part 10 of Title 12, Article 61, Colorado Revised Statutes, as amended.

STATEMENT OF PURPOSE

The purpose of this rule is to effectuate the legislative directive to promulgate necessary and appropriate rules in conformity with the state statutes of the Community Association Managers Practice Act.

SPECIFIC PURPOSE OF THIS RULEMAKING

The specific purpose of this rule is to promulgate rules with respect to the requirements for renewing, transferring, inactivating, reinstatement and insurance requirements of a licensee and ensures that community association managers are familiar with current regulations.

Proposed New, Amended and Repealed Rules

[Deleted material shown ~~struck through~~, new material shown ALL CAPS. Rules, or portions of rules, which are unaffected are reproduced. Readers are advised to obtain a copy of the complete rules of the Board at www.dora.state.co.us/real-estate/.

D RULES – RENEWAL, TRANSFER, INACTIVE LICENSE, REINSTATEMENT AND INSURANCE

D-1) INITIAL LICENSE RENEWAL.

AN INITIAL LICENSE WILL BE ISSUED FOR A PERIOD COMMENCING ON THE ISSUANCE DATE AND EXPIRING ON DECEMBER 31ST OF THE YEAR OF ISSUANCE.

D-2) ANNUAL RENEWAL.

THE LICENSE RENEWAL PERIOD BEGINS NOVEMBER 1ST OF EACH CALENDAR YEAR AND ENDS DECEMBER 31ST OF EACH CALENDAR YEAR. LICENSEES WHO RENEW THEIR LICENSE MAY ONLY DO SO IF THEY ARE COMPLIANT WITH ALL PROVISIONS OF THE ACT AND THE DIRECTOR RULES.

D-3) INACTIVE LICENSE REQUEST.

A LICENSEE MAY REQUEST THAT THE DIVISION'S RECORDS SHOW THEIR LICENSE INACTIVE UNTIL PROPER REQUEST FOR REACTIVATION HAS BEEN MADE, OR UNTIL THEIR LICENSE HAS EXPIRED.

D-4) INACTIVE LICENSE MUST BE RENEWED.

A CAM MANAGER WHOSE LICENSE IS ON INACTIVE STATUS MUST APPLY FOR RENEWAL OF SUCH INACTIVE LICENSE AND PAY THE REGULAR RENEWAL FEES.

D-5) REINSTATEMENT.

A LICENSEE WITH AN EXPIRED LICENSE MAY CHOOSE TO REINSTATE HIS OR HER LICENSE. THE REINSTATEMENT PERIOD BEGINS JANUARY 1ST OF EACH CALENDAR YEAR IMMEDIATELY FOLLOWING THE EXPIRATION AND ENDS ON DECEMBER 31ST OF EACH CALENDAR YEAR. INDIVIDUALS WHO REINSTATE THEIR EXPIRED LICENSE MAY ONLY DO SO IF THEY ARE COMPLIANT WITH ALL PROVISIONS OF THE ACT AND THE DIRECTOR RULES. THE FEE TO REINSTATE WILL BE BY PAYMENT OF THE REINSTATEMENT FEE EQUAL TO ONE AND ONE-HALF THE REGULAR RENEWAL FEE. ANY PERSON WHO FAILS TO APPLY FOR REINSTATEMENT WITHIN ONE YEAR AFTER EXPIRATION OF A LICENSE WILL BE TREATED AS A NEW APPLICANT FOR LICENSURE.

D-6) RENEWAL OR REINSTATEMENT USING METHOD APPROVED BY DIRECTOR.

A CAM MANAGER MAY RENEW OR REINSTATE THEIR LICENSE ONLINE OR BY SUBMITTING A RENEWAL OR REINSTATEMENT APPLICATION FORM PROVIDED BY THE DIVISION OR BY OTHER METHODS ACCEPTABLE TO THE DIRECTOR.

D-7) RENEWAL AND REINSTATEMENT FEES ARE NON-REFUNDABLE.

ALL FEES PAID FOR THE RENEWAL OR REINSTATEMENT OF A LICENSE ARE NON-REFUNDABLE.

D-8) FORM AND FEES REQUIRED TO CHANGE LICENSE.

NO CHANGE IN LICENSE STATUS WILL BE MADE EXCEPT IN A MANNER ACCEPTABLE TO THE DIRECTOR TO EFFECT SUCH CHANGE AND UPON PAYMENT OF THE STATUTORY FEES FOR SUCH CHANGES.

D-9) ERRORS AND OMISSIONS (E&O) INSURANCE REQUIREMENTS.

EVERY ACTIVE LICENSED CAM COMPANY AND LICENSED SOLE PROPRIETORSHIP MUST HAVE IN EFFECT A GROUP POLICY OF ERRORS AND OMISSIONS INSURANCE TO COVER ALL ACTS REQUIRING A LICENSE.

1) CAM COMPANIES AND LICENSED SOLE PROPRIETORSHIPS MUST OBTAIN ERRORS AND OMISSIONS GROUP COVERAGE FROM AN INSURANCE CARRIER SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

    a) THE INSURANCE CARRIER IS LICENSED AND AUTHORIZED BY THE COLORADO DIVISION OF INSURANCE TO WRITE POLICIES OF ERRORS AND OMISSIONS INSURANCE IN THIS STATE AND IS IN CONFORMANCE WITH ALL COLORADO STATUTES.

b) THE INSURANCE CARRIER MAINTAINS AN A.M. BEST RATING OF “A-” OR BETTER.

2) THE GROUP POLICY, AT A MINIMUM, MUST COMPLY WITH ALL RELEVANT CONDITIONS SET FORTH IN THIS RULE D-9 AND THE INSURANCE CARRIER SO CERTIFIES IN AN AFFIDAVIT ISSUED TO THE INSURED IN A FORM SPECIFIED BY THE DIRECTOR AND AGREES TO IMMEDIATELY NOTIFY THE DIRECTOR OF ANY CANCELLATION OR LAPSE IN COVERAGE. COVERAGE MUST PROVIDE, AT A MINIMUM, THE FOLLOWING:

   a) THE CONTRACT AND POLICY ARE IN CONFORMANCE WITH THIS RULE D-9 AND ALL RELEVANT COLORADO STATUTORY REQUIREMENTS.

   b) COVERAGE FOR ALL ACTS FOR WHICH A COMMUNITY ASSOCIATION MANAGER LICENSE IS REQUIRED, EXCEPT THOSE ILLEGAL, FRAUDULENT OR OTHER ACTS WHICH ARE NORMALLY EXCLUDED FROM SUCH COVERAGE.

   c) COVERAGE IS FOR NOT LESS THAN $1,000,000 PER COVERED CLAIM, WITH AN ANNUAL AGGREGATE LIMIT OF NOT LESS THAN $1,000,000. COSTS OF INVESTIGATIONS AND DEFENSE MUST BE OUTSIDE OF THESE LIMITS AND ARE SUBJECT TO THEIR OWN PER CLAIM AND AGGREGATE LIMITS.

   d) PAYMENT OF CLAIMS BY THE PROVIDER WILL BE ON A FIRST DOLLAR BASIS AND THE PROVIDER WILL LOOK TO THE INSURED FOR PAYMENT OF ANY DEDUCTIBLE.

   e) COVERAGE CONTAINS A DEDUCTIBLE NO GREATER THAN $5,000.

   f) THAT THE PROVIDER OF THE POLICY HAS EXECUTED AN AFFIDAVIT IN A FORM OR MANNER SPECIFIED BY THE DIRECTOR ATTESTING THAT THE POLICY IS IN FORCE AND, AT A MINIMUM, COMPLIES WITH ALL RELEVANT CONDITIONS SET FORTH HEREIN AND THAT THE PROVIDER WILL IMMEDIATELY NOTIFY THE DIRECTOR IN WRITING OF ANY CANCELLATION OR LAPSE IN COVERAGE OF ANY POLICY.

3) EACH CAM COMPANY AND SOLE PROPRIETORSHIP APPLYING FOR LICENSURE, ACTIVATION, RENEWAL OR REINSTATEMENT MUST CERTIFY COMPLIANCE WITH THIS RULE D-9 AND § 12-61-1004, C.R.S., ON FORMS OR IN A MANNER PRESCRIBED BY THE DIRECTOR. ANY CAM COMPANY OR SOLE PROPRIETORSHIP WHO SO CERTIFIES AND FAILS TO OBTAIN ERRORS AND OMISSIONS GROUP COVERAGE OR WHO FAILS TO PROVIDE PROOF OF CONTINUOUS COVERAGE DIRECTLY TO THE DIRECTOR, WILL BE PLACED ON INACTIVE STATUS AND ALL LICENSEES OPERATING UNDER SUCH POLICY WILL PLACED ON INACTIVE STATUS:

      a) IMMEDIATELY, IF CERTIFICATION OF CURRENT INSURANCE COVERAGE IS NOT PROVIDED TO THE DIRECTOR; OR

      b) IMMEDIATELY UPON THE EXPIRATION OF ANY CURRENT INSURANCE WHEN CERTIFICATION OF CONTINUED COVERAGE IS NOT PROVIDED.

D-10) CRIME FIDELITY INSURANCE REQUIREMENTS.

EVERY ACTIVE LICENSED CAM COMPANY AND LICENSED SOLE PROPRIETORSHIP MUST HAVE IN EFFECT A CRIME FIDELITY INSURANCE POLICY COVERING THE DISHONEST ACTS OF ALL

EMPLOYEES IN THE CAM COMPANY OR SOLE PROPRIETORSHIP.

1) CAM COMPANIES AND LICENSED SOLE PROPRIETORSHIPS MUST OBTAIN CRIME FIDELITY COVERAGE FROM AN INSURANCE CARRIER SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

   a) THE INSURANCE CARRIER IS LICENSED AND AUTHORIZED BY THE COLORADO DIVISION OF INSURANCE TO WRITE POLICIES OF CRIME FIDELITY INSURANCE IN THIS STATE AND IS IN CONFORMANCE WITH ALL COLORADO STATUTES.

   b) THE INSURANCE CARRIER MAINTAINS AN A.M. BEST RATING OF “A-“OR BETTER.

2) THE POLICY, AT A MINIMUM, MUST COMPLY WITH ALL RELEVANT CONDITIONS SET FORTH IN THIS RULE D-10 AND THE INSURANCE CARRIER SO CERTIFIES IN AN AFFIDAVIT ISSUED TO THE INSURED IN A FORM SPECIFIED BY THE DIRECTOR AND AGREES TO IMMEDIATELY NOTIFY THE DIRECTOR OF ANY CANCELLATION OR LAPSE IN COVERAGE. COVERAGE MUST PROVIDE, AT A MINIMUM, THE FOLLOWING:

   a) THE CONTRACT AND POLICY ARE IN CONFORMANCE WITH THIS RULE D-10 AND ALL RELEVANT COLORADO STATUTORY REQUIREMENTS.

   b) COVERAGE IS EXCLUSIVE TO COVERING ACTS CONTEMPLATED UNDER THE CURRENT ACT AND THE DIRECTOR RULES.

   c) COVERAGE IS FOR THE MAXIMUM AMOUNT OF FUNDS THAT WILL BE IN THE CUSTODY AND CONTROL OF THE CAM COMPANY OR SOLE PROPRIETORSHIP AT ANY GIVEN TIME. HOWEVER, IN NO EVENT SHALL ANY SUCH AMOUNT BE LESS IN AGGREGATE THAN TWO MONTHS OF CURRENT ASSESSMENTS PLUS RESERVES, AS CALCULATED FROM THE CURRENT BUDGET OF THE COMMON INTEREST COMMUNITY, OR BE LESS THAN FIFTY THOUSAND DOLLARS, WHICHEVER IS GREATER, FOR EACH COMMON INTEREST COMMUNITY MANAGED BY THE CAM COMPANY OR SOLE PROPRIETORSHIP. THIS COVERAGE INCLUDES, BUT IS NOT LIMITED TO, ANY CAM COMPANY, SOLE PROPRIETORSHIP, OR DESIGNATED MANAGER THAT CONTROLS OR DISBURSES FUNDS OF THE COMMON INTEREST COMMUNITY, OR THAT IS AUTHORIZED TO SIGN CHECKS ON BEHALF OF THE COMMON INTEREST COMMUNITY. COSTS OF INVESTIGATIONS AND DEFENSE MUST BE OUTSIDE OF THESE LIMITS AND ARE SUBJECT TO THEIR OWN PER CLAIM AND AGGREGATE LIMITS.

   d) PAYMENT OF CLAIMS BY THE PROVIDER WILL BE ON A FIRST DOLLAR BASIS AND THE PROVIDER WILL LOOK TO THE INSURED FOR PAYMENT OF ANY DEDUCTIBLE.

   e) COVERAGE CONTAINS A DEDUCTIBLE NO GREATER THAN ONE (1) PERCENTAGE POINT OF THE TOTAL FACE AMOUNT OF THE POLICY.

   f) THAT THE PROVIDER OF THE POLICY HAS EXECUTED AN AFFIDAVIT IN A FORM OR MANNER SPECIFIED BY THE DIRECTOR ATTESTING THAT THE POLICY IS IN FORCE AND, AT A MINIMUM, COMPLIES WITH ALL RELEVANT CONDITIONS SET FORTH IN THESE DIRECTOR RULES AND THAT THE PROVIDER WILL IMMEDIATELY NOTIFY THE DIRECTOR IN WRITING OF ANY CANCELLATION OR LAPSE IN COVERAGE OF THE ANY POLICY.

3) EACH CAM COMPANY AND SOLE PROPRIETORSHIP APPLYING FOR LICENSURE, ACTIVATION, RENEWAL OR REINSTATEMENT MUST CERTIFY COMPLIANCE WITH THIS RULE D-10 AND § 12-61-1004, C.R.S., ON FORMS OR IN A MANNER PRESCRIBED BY THE DIRECTOR. ANY CAM COMPANY OR SOLE PROPRIETORSHIP WHO SO CERTIFIES AND FAILS TO OBTAIN FIDELITY COVERAGE OR TO PROVIDE PROOF OF CONTINUOUS COVERAGE DIRECTLY TO THE DIRECTOR, WILL BE PLACED ON INACTIVE STATUS AND ALL LICENSEES OPERATING UNDER SUCH POLICY WILL BE PLACED ON INACTIVE STATUS:

    a) IMMEDIATELY, IF CERTIFICATION OF CURRENT INSURANCE COVERAGE IS NOT PROVIDED TO THE DIRECTOR; OR

    b) IMMEDIATELY UPON THE EXPIRATION OF ANY CURRENT INSURANCE WHEN CERTIFICATION OF CONTINUED COVERAGE IS NOT PROVIDED.

A hearing on the above subject matter will be held on Wednesday, March 4, 2015, at the Ralph L. Carr Colorado Judicial Center, 2 East 14th Avenue, Conference Room 1B, Denver, Colorado 80203 beginning at 10:00 a.m.

Any interested person may participate in the rule making through submission of written data, views and arguments to the Division of Real Estate. Persons are requested to submit data, views and arguments to the Division of Real Estate in writing no less than ten (10) days prior to the hearing date and time set forth above. However, all data, views and arguments submitted prior to or at the rulemaking hearing or prior to the closure of the rulemaking record (if different from the date and time of hearing), shall be considered. Please be advised that the rule being considered is subject to further changes and modifications after public comment and formal hearing.

Notice of Rulemaking Hearing

Tracking number

2015-00056

Department

700 - Department of Regulatory Agencies

Agency

725 - Division of Real Estate

CCR number

4 CCR 725-7

Rule title

COMMUNITY ASSOCIATION MANAGERS

Rulemaking Hearing

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Subjects and issues involved

E RULES SEPARATE ACCOUNTS RECORDS - ACCOUNTINGS

Statutory authority

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Contact information

Name

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NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
March 4, 2015

E RULES – SEPARATE ACCOUNTS – RECORDS - ACCOUNTINGS

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STATEMENT OF BASIS

The statutory basis for the rules titled Rules Regarding Community Association Managers is Part 10 of Title 12, Article 61, Colorado Revised Statutes, as amended.

STATEMENT OF PURPOSE

The purpose of this rule is to effectuate the legislative directive to promulgate necessary and appropriate rules in conformity with the state statutes of the Community Association Managers Practice Act.

SPECIFIC PURPOSE OF THIS RULEMAKING

The specific purpose of this rule is to promulgate rules with respect to the requirements for handling and accounting money belonging to a common interest community and ensures that community association managers are familiar with current regulations.

Proposed New, Amended and Repealed Rules

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E RULES – SEPARATE ACCOUNTS – RECORDS - ACCOUNTINGS

E-1) ESTABLISHMENT OF INTERNAL ACCOUNTING CONTROLS.

EVERY CAM MANAGER AND CAM COMPANY MUST ESTABLISH WRITTEN INTERNAL ACCOUNTING CONTROL POLICIES, WHICH MUST INCLUDE ADEQUATE CHECKS AND BALANCES OVER THE FINANCIAL ACTIVITIES OF THE CAM MANAGER, CAM COMPANY, AND COMMON INTEREST COMMUNITY, AS WELL AS MANAGE THE RISK AND FRAUD OF ILLEGAL ACTS. POLICIES AND PROCEDURES MUST BE DESIGNED TO PROVIDE REASONABLE ASSURANCES IN THE RELIABILITY OF FINANCIAL REPORTING, INCLUDING, WITHOUT LIMITATION, PROPER MAINTENANCE OF ACCOUNTING RECORDS, DOCUMENTATION OF THE AUTHORIZATION FOR RECEIPTS AND DISBURSEMENTS, VERIFICATION OF THE INTEGRITY OF THE DATA USED IN MAKING BUSINESS DECISIONS, FACILITATION OF FRAUD DETECTION AND PREVENTION, AND COMPLIANCE WITH ALL APPLICABLE LAWS AND REGULATIONS GOVERNING FINANCIAL RECORDS.

E-2) ACCOUNTING METHODS.

IN THE ABSENCE OF A WRITTEN AGREEMENT TO THE CONTRARY, THE ACCRUAL BASIS OF ACCOUNTING WILL BE USED FOR MAINTAINING ALL REQUIRED ACCOUNTS AND RECORDS. IF ANY OTHER ACCOUNTING METHOD IS REQUESTED BY THE COMMON INTEREST COMMUNITY TO THE CAM MANAGER OR CAM COMPANY, ANY SUCH REQUEST MUST BE IN WRITING AND AVAILABLE FOR INSPECTION BY AN AUTHORIZED REPRESENTATIVE OF THE DIRECTOR.

E-3) GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.

ALL ACCOUNTING RECORDS MUST BE IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES (GAAP), WHICH ARE ESTABLISHED BY THE AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS (AICPA). ACCOUNTING RECORDS FOR THE PURPOSES OF THIS RULE MEANS ALL BOOKS AND RECORDS THAT IDENTIFY, MEASURE, RECORD OR COMMUNICATE FINANCIAL INFORMATION.

E-4) MONEY BELONGING TO OTHERS DEFINED.

MONEY BELONGING TO OTHERS WHICH IS COLLECTED BY THE CAM MANAGER OR CAM COMPANY INCLUDES, BUT IS NOT LIMITED TO, ANY MONEY COLLECTED IN CONNECTION WITH: ASSESSMENTS, WORKING CAPITAL, FINES, RESERVES, MISCELLANEOUS DEPOSITS (E.G. AMENITY RENTALS), OR MONEY BELONGING TO OTHERS COLLECTED FOR ANY OTHER PURPOSE.

E-5) COMMON INTEREST COMMUNITY FUNDS.

ALL MONEY BELONGING TO OTHERS COLLECTED BY A CAM MANAGER OR CAM COMPANY ON BEHALF OF A COMMON INTEREST COMMUNITY DOING BUSINESS IN THIS STATE, MUST BE DEPOSITED IN ONE OR MORE ACCOUNTS BELONGING TO THE COMMON INTEREST COMMUNITY. IF THE CAM MANAGER OR CAM COMPANY HAS ACCESS TO COMMON INTEREST COMMUNITY FUNDS, WRITTEN AUTHORIZATION TO COLLECT OR DISPERSE MONEY BELONGING TO OTHERS MUST BE OBTAINED AND AN ACCOUNTING OF THE FUNDS MUST BE MAINTAINED. THE CAM MANAGER OR CAM COMPANY MUST RETAIN A COPY OF EACH SUCH AUTHORIZATION EXECUTED FOR INSPECTION BY AN AUTHORIZED REPRESENTATIVE OF THE DIRECTOR.

E-6) COMMINGLING PROHIBITED.

ALL MONEY BELONGING TO OTHERS RECEIVED BY A CAM MANAGER OR CAM COMPANY MUST BE SEGREGATED AND DEPOSITED INTO EACH RESPECTIVE COMMON INTEREST COMMUNITY'S BANK ACCOUNT WITHIN 5 BUSINESS DAYS UPON RECEIPT. MONEY BELONGING TO ONE COMMON INTEREST COMMUNITY MUST BE USED ONLY FOR THE BENEFIT OF THAT COMMON INTEREST COMMUNITY. IT MUST NOT BE USED FOR THE BENEFIT OF ANY OTHER PERSON OR ENTITY, INCLUDING BUT NOT LIMITED TO ANOTHER COMMON INTEREST COMMUNITY, CAM MANAGER, OR CAM COMPANY.

E-7) RECORDKEEPING REQUIREMENTS.

ALL CAM MANAGERS AND CAM COMPANIES MUST SUPERVISE AND MAINTAIN, AT THEIR PLACE OF BUSINESS, A RECORD KEEPING SYSTEM CONSISTING OF AT LEAST THE FOLLOWING ELEMENTS FOR EACH COMMON INTEREST COMMUNITY ACCOUNT FOR WHICH THE CAM MANAGER OR CAM COMPANY HAS ACCESS TO, OR DEPOSITS, MONEY BELONGING TO OTHERS:

1) GENERAL LEDGER.

A GENERAL LEDGER MUST BE MAINTAINED FOR EACH COMMON INTEREST COMMUNITY

ACCOUNT, WHICH INCLUDES SUB-LEDGERS OF INDIVIDUAL ACCOUNTING OF ASSETS, LIABILITIES, FUND BALANCES, INCOME AND EXPENSES. THE GENERAL LEDGER MUST SHOW THE CHRONOLOGICAL SEQUENCE IN WHICH FUNDS ARE RECEIVED INTO AND DISBURSED FROM EACH ACCOUNT.

2) RECORDING OF TRANSACTIONS.

    a) FUNDS RECEIVED. A JOURNAL MUST BE MAINTAINED FOR ALL FUNDS RECEIVED, WHICH INCLUDES THE DATE THE FUNDS WERE RECEIVED, THE NAME OF THE PERSON OR ENTITY ON WHOSE BEHALF THE FUNDS WERE DELIVERED, THE CHECK NUMBER, THE GENERAL LEDGER ACCOUNTS WITHIN WHICH THE TRANSACTIONS ARE TO BE RECORDED AND THE AMOUNT DELIVERED.

    b) FUNDS DISBURSED. A JOURNAL MUST BE MAINTAINED FOR ALL FUNDS DISBURSED, WHICH INCLUDES THE DATE THE FUNDS WERE DISBURSED, THE PAYEE, THE CHECK NUMBER, THE GENERAL LEDGER ACCOUNTS WITHIN WHICH THE TRANSACTION ARE TO BE RECORDED AND THE AMOUNT DISBURSED.

    c) ASSESSMENTS TO MEMBERS. A JOURNAL MUST BE MAINTAINED FOR ALL ASSESSMENTS TO MEMBERS, WHICH INCLUDES THE DATE THE ASSESSMENT IS BILLED, THE NAME OF THE PERSON OR ENTITY TO WHICH THE ASSESSMENT IS RESPONSIBLE AND THE GENERAL LEDGER ACCOUNTS WITHIN WHICH THE TRANSACTIONS ARE TO BE RECORDED.

    d) GENERAL JOURNAL. A JOURNAL MUST BE MAINTAINED OF ALL INVOICES FOR SERVICES AND/OR PRODUCTS AND OTHER TRANSACTION OF THE COMMON INTEREST COMMUNITY, WHICH INCLUDES THE DATE THE INVOICE IS ISSUED, THE NAME OF THE PERSON OR ENTITY TO WHICH THE INVOICE IS DUE, THE GENERAL LEDGER ACCOUNTS WITHIN WHICH THE TRANSACTIONS ARE TO BE RECORDED, THE DATE OF THE TRANSACTION ENTRY, THE GENERAL LEDGER ACCOUNTS WITHIN WHICH THE TRANSACTIONS ARE TO BE RECORDED, THE AMOUNT OF THE TRANSACTION AND AN EXPLANATION OF THE PURPOSE OF THE TRANSACTION.

3) MONTHLY RECONCILIATION STATEMENTS.

    a) BANK ACCOUNTS. EVERY CAM MANAGER OR CAM COMPANY MUST RECONCILE, IN A TIMELY MANNER AFTER RECEIPT OF THE MONTHLY BANK STATEMENT, EACH COMMON INTEREST COMMUNITY ACCOUNT, EXCEPT WHEN THERE HAS BEEN NO TRANSACTIONAL ACTIVITY DURING THE PREVIOUS MONTH. A RECONCILIATION MUST INCLUDE A WRITTEN WORK SHEET COMPARING THE BALANCES AS SHOWN ON THE BANK ASSOCIATION STATEMENT AND THE GENERAL LEDGER, RESPECTIVELY, IN ORDER TO ENSURE AGREEMENT BETWEEN THE COMMON INTEREST COMMUNITY ACCOUNT AND THE GENERAL LEDGER ENTRIES.

    b) MEMBER RECEIVABLES. EVERY CAM MANAGER OR CAM COMPANY MUST RECONCILE, IN A TIMELY MANNER, THE SUB-LEDGER OF MEMBER RECEIVABLES TO THE GENERAL LEDGER.

c) ACCOUNTS PAYABLE. EVERY CAM MANAGER OR CAM COMPANY MUST RECONCILE, IN A TIMELY MANNER, THE SUB-LEDGER OF OUTSTANDING INVOICES TO THE GENERAL LEDGER.

4) SUPPORTING DOCUMENTATION.

a) EVERY CAM MANAGER OR CAM COMPANY MUST MAINTAIN SUPPORTING RECORDS, WHICH ACCURATELY DETAIL ALL MONEY RECEIVED AND DISBURSED ON BEHALF OF THE COMMON INTEREST COMMUNITY. SUCH SUMMARY TOTALS MUST BE RECONCILABLE TO THE RECORDS SUPPORTING THE SUMMARY.

b) ALL DEPOSITS OF FUNDS MUST BE DOCUMENTED (FOR EXAMPLE, THROUGH BANK DEPOSITS), AND MUST INCLUDE CONFIRMATION OF ELECTRONIC AND TELEPHONIC TRANSFERS, OR ON DETAILED SCHEDULES ATTACHED TO THE DEPOSIT SLIPS OR CONFIRMATIONS. THE DOCUMENTATION MUST IDENTIFY EACH PERSON TENDERING FUNDS TO THE CAM MANAGER OR CAM COMPANY FOR DEPOSIT, THE AMOUNT OF FUNDS TENDERED, TYPES OF FUNDS RECEIVED FROM EACH PERSON, AND THE PROPERTY ADDRESS AFFECTED. ALL DISBURSEMENTS OF FUNDS MUST BE SUPPORTED BY SOURCE DOCUMENTS SUCH AS BIDS, INVOICES, CONTRACTS, ETC., THAT IDENTIFY THE PAYEES, THE COMMON INTEREST COMMUNITY AFFECTED AND AMOUNT OF FUNDS TRANSFERRED FOR EACH COMMON INTEREST COMMUNITY.

5)FINANCIAL REPORTS.

EVERY CAM MANAGER OR CAM COMPANY MUST FURNISH, AND HAVE AVAILABLE FOR REVIEW BY THE DIRECTOR, ALL FINANCIAL REPORTS OF THE COMMON INTEREST COMMUNITY IN THE MANNER AND TIME PRESCRIBED IN THE MANAGEMENT AGREEMENT OR, IN THE ABSENCE OF A PROVISION IN THE WRITTEN MANAGEMENT AGREEMENT, WITHIN 30 CALENDAR DAYS AFTER THE END OF EACH MONTH, WHICH INCLUDES AT A MINIMUM THE FOLLOWING:

a) A BALANCE SHEET.

b) INCOME AND EXPENSE STATEMENTS.

c) ALL BANK RECONCILIATIONS AND COPIES OF BANK STATEMENTS THAT SUPPORT THE RECONCILIATION. THE RECONCILED BALANCE MUST AGREE WITH THE BALANCE OF THE ACCOUNT IN THE BALANCE SHEET.

d) AGING OF ACCOUNTS RECEIVABLE. THE AGING MUST AGREE WITH THE BALANCE REPORTED ON THE BALANCE SHEET.

e) AGING OF ACCOUNTS PAYABLE. THE AGING MUST AGREE WITH THE BALANCE REPORTED ON THE BALANCE SHEET.

f) INVESTMENT ACCOUNTS. COPIES OF BANK STATEMENTS AND INVESTMENT ADVISOR REPORTS RECONCILED TO THE BALANCE AS REPORTED ON THE

BALANCE SHEET.

6) MASTER COMMON INTEREST COMMUNITY ACCOUNT LOG.

EVERY CAM MANAGER OR CAM COMPANY MUST MAINTAIN A MASTER ASSOCIATION ACCOUNT LOG ("MASTER ASSOCIATION ACCOUNT LOG") IDENTIFYING ALL COMMON INTEREST COMMUNITY ACCOUNT NUMBERS AND THE NAME AND ADDRESS OF THE BANK WHERE THE COMMON INTEREST COMMUNITY ACCOUNTS ARE LOCATED. THE MASTER ASSOCIATION ACCOUNT LOG MUST SPECIFICALLY INCLUDE ALL BANK ACCOUNT NUMBERS OPENED FOR A COMMON INTEREST COMMUNITY EVEN IF ACCOUNT NUMBERS FALL UNDER ANOTHER UMBRELLA ACCOUNT NUMBER.

E-8) PRODUCE RECORDS FOR INSPECTION.

EVERY CAM MANAGER OR CAM COMPANY MUST PRODUCE FOR INSPECTION, BY AN AUTHORIZED REPRESENTATIVE OF THE DIRECTOR, ANY RECORDS NECESSARY TO COMPLETE AUDITS OR INVESTIGATIONS.

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2015-00057

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Agency

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CCR number

4 CCR 725-7

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F RULES – PROFESSIONAL STANDARDS - INVESTIGATIONS

F-1) MAINTENANCE AND PRODUCTION OF RECORDS.

1) IF A CAM MANAGER OR CAM COMPANY AGREES TO HOLD AND MAINTAIN A COMMON INTEREST COMMUNITY'S DOCUMENTS AND ASSOCIATION RECORDS, THE CAM MANAGER OR CAM COMPANY MUST MAINTAIN THEM IN A SAFE AND SECURE MANNER. SAFE AND SECURE MANNER MEANS THAT REASONABLE MEASURES MUST BE TAKEN TO MINIMIZE THE RISK OF LOSS, DAMAGE, OR THEFT.

   a) ALL SUCH DOCUMENTS AND ASSOCIATION RECORDS ARE THE PROPERTY OF THE COMMON INTEREST COMMUNITY. THE CAM MANAGER OR CAM COMPANY MUST ALSO MAINTAIN COPIES OF SUCH DOCUMENTS AND ASSOCIATION RECORDS FOR THEIR OWN FILES AS SET FORTH IN SUBSECTION 2 OF THIS RULE F-1.

   b) IF THE CAM MANAGER OR CAM COMPANY AGREES TO HOLD AND MAINTAIN DOCUMENTS AND ASSOCIATION RECORDS FOR THE COMMON INTEREST

COMMUNITY, THE TERMS AND CONDITIONS OF SUCH MAINTENANCE AND RETENTION SHALL BE SET FORTH IN A WRITTEN AGREEMENT BETWEEN THE CAM MANAGER OR CAM COMPANY AND THE COMMON INTEREST COMMUNITY.

c) WHILE A MANAGEMENT AGREEMENT IS IN EFFECT BETWEEN A COMMON INTEREST COMMUNITY AND A CAM MANAGER OR CAM COMPANY, THE CAM MANAGER OR CAM COMPANY ACTING AS A MANAGER FOR THE COMMON INTEREST COMMUNITY MUST MAKE AVAILABLE TO THE COMMON INTEREST COMMUNITY, AT NO COST OR EXPENSE, ALL DOCUMENTS AND ASSOCIATION RECORDS RELATED TO THE MANAGEMENT SERVICES FOR THE COMMON INTEREST COMMUNITY THAT ARE NECESSARY FOR THE COMMON INTEREST COMMUNITY TO PERFORM ITS DUTIES AND FUNCTIONS PURSUANT TO COLORADO LAW.

d) WITHIN 30 CALENDAR DAYS OF THE TERMINATION OF A MANAGEMENT AGREEMENT WITH THE COMMON INTEREST COMMUNITY, A CAM MANAGER OR CAM COMPANY WHO ACTED AS A MANAGER FOR THE COMMON INTEREST COMMUNITY MUST PRODUCE ALL DOCUMENTS AND ASSOCIATION RECORDS RELATED TO THE MANAGEMENT SERVICES TO THE COMMON INTEREST COMMUNITY AT NO COST OR EXPENSE, UNLESS OTHERWISE AGREED TO IN WRITING BY BOTH THE COMMON INTEREST COMMUNITY AND THE CAM MANAGER OR CAM COMPANY.

e) EXCEPT AS OTHERWISE SET FORTH IN SUBSECTIONS (1)(C) AND (1)(D) OF THIS RULE F-1, A CAM MANAGER OR CAM COMPANY MAY IMPOSE A REASONABLE CHARGE, WHICH MAY BE COLLECTED IN ADVANCE AND MAY COVER THE COSTS OF LABOR AND MATERIAL, FOR COPIES OF THE COMMON INTEREST COMMUNITY'S DOCUMENTS AND ASSOCIATION RECORDS BEING MAINTAINED BY THE CAM MANAGER OR CAM COMPANY. THE CHARGE MAY NOT EXCEED THE ESTIMATED COST OF PRODUCTION AND REPRODUCTION OF THE RECORDS.

2) FOR INVESTIGATION AND ENFORCEMENT PURPOSES, A CAM MANAGER OR CAM COMPANY MUST KEEP AND RETAIN A COPY OF THE COMMON INTEREST COMMUNITY'S DOCUMENTS AND ASSOCIATION RECORDS MAINTAINED AND PRODUCED DURING THE MANAGEMENT OF THE COMMON INTEREST COMMUNITY FOR A MINIMUM PERIOD OF 3 YEARS. THIS SHALL BE DONE AT NO COST OR EXPENSE TO THE COMMON INTEREST COMMUNITY, UNLESS OTHERWISE AGREED TO IN WRITING BY BOTH THE COMMON INTEREST COMMUNITY AND CAM MANAGER OR CAM COMPANY. A CAM MANAGER AND CAM COMPANY MUST PRODUCE FOR INSPECTION BY AN AUTHORIZED REPRESENTATIVE OF THE DIRECTOR ANY DOCUMENT OR RECORD AS MAY BE REASONABLY NECESSARY FOR INVESTIGATION OR AUDIT IN THE ENFORCEMENT OF §§ 12-61-1010 AND 12-61-1002(3)(C), C.R.S., AND THE DIRECTOR RULES. FAILURE TO SUBMIT ANY SUCH DOCUMENTS OR RECORDS WITHIN THE TIME SET BY THE DIRECTOR IN ITS NOTIFICATION WILL BE GROUNDS FOR DISCIPLINARY ACTION UNLESS THE DIRECTOR HAS GRANTED AN EXTENSION OF TIME FOR SUCH PRODUCTION.

3) ALL REQUIRED RECORDS MAY BE MAINTAINED IN AN ELECTRONIC FORMAT AS PERMITTED BY §§ 24-71.3-101 ET SEQ., C.R.S. AN ELECTRONIC RECORD MEANS ANY RECORD GENERATED, COMMUNICATED, RECEIVED, OR STORED BY ELECTRONIC MEANS. SUCH ELECTRONIC RECORDS MUST BE PRODUCED UPON REQUEST BY THE DIRECTOR AND MUST BE IN A FORMAT THAT HAS THE CONTINUED CAPABILITY TO BE RETRIEVED AND LEGIBLY PRINTED. ELECTRONIC RECORDS MUST BE PRINTED AND PRODUCED UPON REQUEST OF THE DIRECTOR, OR BY THE COMMON INTEREST COMMUNITY, OR THEIR DESIGNEE.

F-2) ADVERTISING.

A CAM MANAGER THAT ADVERTISES COMMUNITY ASSOCIATION MANAGEMENT SERVICES FOR A COMMON INTEREST COMMUNITY MUST DO SO IN THE NAME OF THE LICENSED CAM MANAGER AND THE CAM COMPANY UNDER WHICH THE LICENSEE IS LICENSED.

F-3) LICENSEE MUST RESPOND TO COMPLAINT OR AUDIT NOTICE IN WRITING.

WHEN A CAM MANAGER LICENSEE HAS RECEIVED WRITTEN NOTIFICATION FROM THE DIRECTOR, OR A REPRESENTATIVE OF THE DIRECTOR, THAT: (1) A COMPLAINT HAS BEEN FILED AGAINST THE LICENSEE, (2) THE LICENSEE HAS BEEN SELECTED FOR AN AUDIT, OR (3) THAT AN AUDIT HAS IDENTIFIED RECORD KEEPING OR TRUST ACCOUNT DEFICIENCIES, SUCH LICENSEE MUST SUBMIT A WRITTEN RESPONSE TO THE DIRECTOR. FAILURE TO SUBMIT A WRITTEN RESPONSE WITHIN THE TIME SET BY THE DIRECTOR IN ITS NOTIFICATION WILL BE GROUNDS FOR DISCIPLINARY ACTION UNLESS THE DIRECTOR HAS GRANTED AN EXTENSION OF TIME FOR THE RESPONSE IN WRITING. THIS IS TRUE REGARDLESS OF WHETHER THE UNDERLYING COMPLAINT WARRANTS FURTHER INVESTIGATION OR SUBSEQUENT ACTION BY THE DIRECTOR. THE CAM MANAGER'S WRITTEN RESPONSE MUST CONTAIN THE FOLLOWING:

1) A COMPLETE AND SPECIFIC RESPONSE TO THE FACTUAL RECITATIONS, ALLEGATIONS OR CLAIMS MADE IN THE COMPLAINT FILED AGAINST THE LICENSEE, WHETHER MADE BY A MEMBER OF THE PUBLIC, ON THE DIRECTOR'S OWN MOTION OR BY AN AUTHORIZED REPRESENTATIVE OF THE DIRECTOR;

2) A COMPLETE AND SPECIFIC RESPONSE TO ANY ADDITIONAL QUESTIONS, ALLEGATIONS OR CLAIMS PRESENTED IN THE NOTIFICATION LETTER;

3) ANY DOCUMENTS OR RECORDS REQUESTED IN THE NOTIFICATION LETTER; AND

4) ANY FURTHER INFORMATION RELATIVE TO THE COMPLAINT THAT THE LICENSEE BELIEVES TO BE RELEVANT OR MATERIAL TO THE MATTERS ADDRESSED IN THE NOTIFICATION LETTER.

F-4) IMMEDIATE NOTIFICATION OF CONVICTION, PLEA OR VIOLATION REQUIRED.

A CAM MANAGER MUST NOTIFY THE DIRECTOR IN WRITING PURSUANT TO § 12-61-1010(1)(J), C.R.S., WITHIN 30 CALENDAR DAYS OF ANY OF THE FOLLOWING:

1) A PLEA OF GUILTY, A PLEA OF NOLO CONTENDERE OR A CONVICTION OF ANY CRIME IDENTIFIED IN § 12-61-1010(1)(I), C.R.S.

2) A VIOLATION OR AIDING AND ABETTING IN THE VIOLATION OF THE COLORADO OR FEDERAL FAIR HOUSING LAWS.

3) ANY DISCIPLINARY ACTION TAKEN AGAINST THE CAM MANAGER IN ANY OTHER JURISDICTION, IF THE CAM MANAGER'S ACTION(S) WOULD CONSTITUTE A VIOLATION OF THE COMMUNITY ASSOCIATION MANAGER LICENSING LAW IN COLORADO.

4) ANY PRACTICE RESTRICTIONS AS SET FORTH IN § 12-61-1010(1)(O) AND (P), C.R.S.

F-5) COMMUNITY ASSOCIATION MANAGER MAINTAINING CURRENT CONTACT INFORMATION AND ALL INFORMATION REQUIRED FOR LICENSING.

EACH CAM MANAGER MUST MAINTAIN ALL CURRENT CONTACT INFORMATION AND ALL INFORMATION REQUIRED FOR LICENSING, IN A MANNER ACCEPTABLE TO THE DIRECTOR, WHICH WILL BE INCLUDED IN THE DIVISION OF REAL ESTATE DATABASE.

1) CAM MANAGER CONTACT INFORMATION MUST INCLUDE, BUT IS NOT LIMITED TO:

   a) E-MAIL ADDRESS, IF APPLICABLE;

   b) LEGAL FIRST, MIDDLE AND LAST NAMES;

   c) PHYSICAL HOME ADDRESS;

d) HOME PHONE NUMBER;

e) PHYSICAL BUSINESS ADDRESS;

f) BUSINESS PHONE NUMBER; AND

g) BUSINESS NAME.

2) INFORMATION REQUIRED FOR LICENSING INCLUDES, BUT IS NOT LIMITED TO:

a) ERRORS AND OMISSIONS INSURANCE PROVIDER;

b) ERRORS AND OMISSIONS POLICY NUMBER;

c) ERRORS AND OMISSIONS EFFECTIVE AND EXPIRATION DATES;

d) CRIME FIDELITY INSURANCE PROVIDER;

e) CRIME FIDELITY POLICY NUMBER; AND

f) CRIME FIDELITY INSURANCE EFFECTIVE AND EXPIRATION DATES.

3) WITHIN 30 CALENDAR DAYS OF ANY CHANGES, INDIVIDUALS REQUIRED TO BE LICENSED AS A CAM MANAGER MUST UPDATE THE DIRECTOR WITH ANY CHANGES TO THE INFORMATION DEFINED IN THIS RULE IN A MANNER PRESCRIBED BY THE DIRECTOR.

F-6) CONTRACTS, AGREEMENTS, AUTHORIZATIONS AND DISCLOSURES MUST BE IN WRITING.

1) ALL CONTRACTS, AGREEMENTS, AUTHORIZATIONS AND DISCLOSURES BETWEEN A CAM MANAGER OR CAM COMPANY AND A COMMON INTEREST COMMUNITY MUST BE IN WRITING AND MUST CONTAIN THE ENTIRE AGREEMENT OF THE PARTIES.

2) THE WRITTEN AGREEMENT BETWEEN THE PARTIES MUST BE LEGIBLE AND CLEARLY SPECIFY THE TERMS AND CONDITIONS OF THE MANAGEMENT SERVICES TO BE PERFORMED BY THE CAM MANAGER OR CAM COMPANY. THE AGREEMENT MUST INCLUDE, BUT IS NOT LIMITED TO, THE FOLLOWING:

a) BEGINNING AND ENDING DATES OF THE CONTRACT;

b) DETAILS OF ALL COMPENSATION, FEES AND CHARGES;

c) CANCELLA

TION RIGHTS OF THE PARTIES;

d) RECORD RETENTION AND DISTRIBUTION POLICY;

e) ERRORS AND OMISSIONS INSURANCE COVERAGE;

f) CRIME FIDELITY INSURANCE COVERAGE;

g) A GENERAL DESCRIPTION OF THE RECORDS TO BE KEPT AND THE ACCOUNTING OR BOOKKEEPING SYSTEM TO BE USED; AND

h) THE DESIGNATED MANAGER'S LICENSE

NUMBER.

3) A CAM MANAGER OR CAM COMPANY MUST DISCLOSE IN WRITING AND AT NO CHARGE, WITHIN 3 BUSINESS DAYS AFTER A REQUEST BY AN OWNER IN A COMMON INTEREST COMMUNITY, OR BY A BUYER OR SELLER WHO IS UNDER CONTRACT FOR THE PURCHASE OF REAL PROPERTY OR A UNIT IN A COMMON INTEREST COMMUNITY, OR THEIR RESPECTIVE AGENT, ALL FEES AND CHARGES THAT THE CAM MANAGER OR CAM COMPANY WILL CHARGE IN CONNECTION WITH THE SALE, TRANSFER AND CLOSING OF THE REAL ESTATE OR UNIT IN A COMMON INTEREST COMMUNITY.

F-7) DESIGNATED MANAGER RESPONSIBILITIES.

DESIGNATED MANAGERS' RESPONSIBILITIES INCLUDE, BUT ARE NOT LIMITED TO, THE FOLLOWING:

1) MAINTAINING ALL BANK ACCOUNTS AND ACCOUNTING RECORDS FOR ANY MANAGED COMMON INTEREST COMMUNITIES.

2) PROVIDING REASONABLE SUPERVISION OVER THE LICENSED ACTIVITIES OF ALL EMPLOYEES.

3) TAKING REASONABLE STEPS TO ENSURE THAT VIOLATIONS OF STATUTES AND THE DIRECTOR RULES DO NOT OCCUR OR REOCCUR.

4) TAKING REASONABLE STEPS TO ENSURE ALL LICENSED CAM MANAGERS RESPOND TO ANY NOTICES FROM THE DIRECTOR OR ITS DESIGNEE.

5) PROVIDING SUPERVISION OF LICENSED ACTIVITIES FOR ALL OFFICES OPERATED BY THE CAM COMPANY.

F-8) REASONABLE SUPERVISION.

PURSUANT TO §§ 12-61-1010(1)(L), AND 12-61-1003(2), C.R.S., AND IN ADDITION TO THE REQUIREMENTS OF RULE F-7, REASONABLE SUPERVISION OF LICENSEES INCLUDES, BUT IS NOT LIMITED TO, COMPLIANCE WITH THE FOLLOWING:

1) MAINTAINING A WRITTEN POLICY DESCRIBING THE DUTIES AND RESPONSIBILITIES OF LICENSEES EMPLOYED BY THE CAM MANAGER OR CAM COMPANY. A COPY OF THE WRITTEN POLICY MUST:

    a) BE GIVEN TO, READ AND SIGNED BY EACH LICENSEE, AND

    b) BE AVAILABLE FOR INSPECTION, UPON REQUEST, BY ANY AUTHORIZED REPRESENTATIVE OF THE DIRECTOR.

2) REVIEW OF ALL COMMON INTEREST COMMUNITY CONTRACTS, AGREEMENTS, AND AUTHORIZATIONS TO ENSURE COMPLIANCE WITH ALL APPLICABLE DIRECTOR RULES.

3) ENSURE ALL LICENSED INDIVIDUALS COMPLY WITH INSURANCE REQUIREMENTS AS SET FORTH IN RULE D-9 AND RULE D-10.

4) NOTHING IN THIS RULE PROHIBITS A DESIGNATED MANAGER FROM DELEGATING SUPERVISORY AUTHORITY TO OTHER EXPERIENCED LICENSEES.

    a) CAM MANAGERS WHO ACCEPT SUPERVISORY AUTHORITY FROM A

DESIGNATED MANAGER WILL BEAR RESPONSIBILITY WITH THE DESIGNATED MANAGER FOR ENSURING COMPLIANCE WITH ALL STATUTES AND THE DIRECTOR RULES BY ALL SUPERVISED LICENSEES. A DESIGNATED MANAGER WHO DELEGATES SUPERVISORY AUTHORITY TO ANOTHER LICENSEE REMAINS RESPONSIBLE FOR ENSURING COMPLIANCE WITH ALL STATUTES AND THE DIRECTOR RULES BY ALL SUPERVISED LICENSEES.

b) ANY SUCH DELEGATION OF AUTHORITY MUST BE IN WRITING AND SIGNED BY THE LICENSED CAM MANAGER TO WHOM SUCH AUTHORITY IS DELEGATED. A COPY OF SUCH DELEGATION MUST BE MAINTAINED BY THE DESIGNATED MANAGER FOR INSPECTION, UPON REQUEST, BY ANY AUTHORIZED REPRESENTATIVE OF THE DIRECTOR.

F-9) DISCLOSE ANY CONFLICT OF INTEREST.

WHEN ACTING IN A LICENSED CAPACITY, A LICENSEE HAS A CONTINUING DUTY TO DISCLOSE TO A COMMON INTEREST COMMUNITY ANY ACTUAL, POTENTIAL OR PERCEIVED CONFLICTS OF INTEREST THAT MAY ARISE IN THE COURSE OF ANY ACTIVITY WITH REGARD TO THE MANAGEMENT DUTIES AND FUNCTIONS OF THE COMMON INTEREST COMMUNITY AND ITS EXECUTIVE BOARD. A CAM MANAGER MUST AVOID ANY PERCEIVED FAVORITISM OR IMPROPRIETY IN CARRYING OUT ALL THE DUTIES AND OBLIGATIONS WITH REGARD TO THE MANAGEMENT OF THE COMMON INTEREST COMMUNITY AND ITS EXECUTIVE BOARD. A LICENSEE ACTING AS A CAM MANAGER HAS A DUTY TO IMMEDIATELY DISCLOSE, IN WRITING, ANY KNOWN CONFLICT OF INTEREST THAT MAY ARISE IN THE SELECTION OR USE OF A BUSINESS, THIRD PARTY OR VENDOR THAT PROVIDES SERVICES PERTAINING TO THE MANAGEMENT OF A COMMON INTEREST COMMUNITY AND ITS EXECUTIVE BOARD. IN ADDITION, THE CAM MANAGER MUST NOT ACCEPT, DIRECTLY OR INDIRECTLY ANY COMMISSION, FEE, REBATE, DISCOUNT OR ANY OTHER REMUNERATION OR BENEFIT THAT COULD BE REASONABLY PERCEIVED AS A CONFLICT WITH THE INTERESTS OF THE COMMON INTEREST COMMUNITY AND ITS EXECUTIVE BOARD, UNLESS IT IS FIRST DISCLOSED TO AND CONSENTED TO IN WRITING BY THE COMMON INTEREST COMMUNITY AND ITS EXECUTIVE BOARD.

F-10) LICENSE REVOKED, EXPIRED, SUSPENDED OR INACTIVATED.

UPON SUSPENSION, REVOCATION, EXPIRATION OR INACTIVATION OF A CAM MANAGER LICENSE, THE LICENSEE IS RESPONSIBLE FOR IMMEDIATE COMPLIANCE WITH THE FOLLOWING:

1) CEASE ANY ACTIVITIES REQUIRING A CAM MANAGER LICENSE.

2) RETURN THE LICENSE TO THE DIRECTOR. IF THE INDIVIDUAL IS A DESIGNATED MANAGER, INFORM ALL EMPLOYED LICENSEES OF THE CHANGE IN LICENSE STATUS AND THE EFFECT OF SUCH CHANGE ON THE LICENSE STATUS OF THOSE LICENSEES.

3) CEASE ALL ADVERTISING, INCLUDING, BUT NOT LIMITED TO, THE USE OF SIGNAGE, NEWSPAPERS, MAGAZINES, INTERNET, AND DIRECT MAILINGS.

4) A LICENSEE MUST INFORM ALL COMMON INTEREST COMMUNITIES THEY ARE MANAGING THAT THEIR CAM MANAGER LICENSE HAS EXPIRED, OR HAS BEEN SUSPENDED, REVOKED OR INACTIVATED, PURSUANT TO § 38-33.3-402, C.R.S., NOT LATER THAN 5 BUSINESS DAYS AFTER ANY SUCH EXPIRATION, SUSPENSION, REVOCATION OR INACTIVATION.

5) INFORM THE COMMON INTEREST COMMUNITY AND ITS EXECUTIVE BOARD OF THE ACTION TAKEN AND THE IMPACT THAT THE CHANGE IN LICENSE STATUS WILL HAVE ON THE COMMON INTEREST COMMUNITY, IF ANY.

6) IN THE CASE OF A DESIGNATED MANAGER WHO IS BEING REPLACED BY A NEW DESIGNATED MANAGER, THE DEPARTING DESIGNATED MANAGER MUST PROPERLY ACCOUNT FOR AND TRANSFER ALL ENTRUSTED FUNDS TO THE NEW DESIGNATED MANAGER, AND PROVIDE ALL RECORDS AND DOCUMENTS RELATED TO MANAGEMENT SERVICES TO THE NEW DESIGNATED MANAGER.

7) IN THE CASE OF A DESIGNATED MANAGER WHO WILL NOT BE REPLACED AND THE LICENSED CAM COMPANY WILL BE DISSOLVED, THE DESIGNATED MANAGER IS RESPONSIBLE FOR AN ACCOUNTING OF ALL FUNDS AND FOR MAKING ALL FINAL DISBURSEMENTS. THE CAM MANAGER IS RESPONSIBLE FOR MAINTAINING ALL RECORDS FOR 3 YEARS.

8) FEES EARNED PRIOR TO THE SUSPENSION, REVOCATION, EXPIRATION OR INACTIVATION MAY BE RETAINED BY THE LICENSEE.

9) PURSUANT TO § 38-33.3-402, C.R.S., ANY AGREEMENT BY A COMMON INTEREST COMMUNITY TO PAY A FEE FOR THE SERVICES OF A CAM MANAGER OR TO HOLD HARMLESS OR INDEMNIFY THE CAM MANAGER FOR ANY ACT OR OMISSION IN THE COURSE OF PROVIDING THOSE SERVICES IS VOID AND UNENFORCEABLE FOR ANY PERIOD IN WHICH THE CAM MANAGER'S LICENSE IS EXPIRED, SUSPENDED, REVOKED OR INACTIVATED. THIS WOULD NOT APPLY, HOWEVER, IF A CAM COMPANY HAD A LICENSED DESIGNATED MANAGER OR ADDITIONAL LICENSED CAM MANAGER WITHIN ITS COMPANY, WHOSE LICENSE IS IN FULL FORCE AND EFFECT, AND WHO IS PROVIDING THE MANAGEMENT SERVICES FOR THE COMMON INTEREST COMMUNITY PURSUANT TO A MANAGEMENT AGREEMENT.

A hearing on the above subject matter will be held on Wednesday, March 4, 2015, at the Ralph L. Carr Colorado Judicial Center, 2 East 14th Avenue, Conference Room 1B, Denver, Colorado 80203 beginning at 10:00 a.m.

Any interested person may participate in the rule making through submission of written data, views and arguments to the Division of Real Estate. Persons are requested to submit data, views and arguments to the Division of Real Estate in writing no less than ten (10) days prior to the hearing date and time set forth above. However, all data, views and arguments submitted prior to or at the rulemaking hearing or prior to the closure of the rulemaking record (if different from the date and time of hearing), shall be considered. Please be advised that the rule being considered is subject to further changes and modifications after public comment and formal hearing.

Notice of Rulemaking Hearing

Tracking number

2015-00036

Department

1000 - Department of Public Health and Environment

Agency

1007 - Hazardous Materials and Waste Management Division

CCR number

6 CCR 1007-1 Part 02

Rule title

RADIATION CONTROL - REGISTRATION OF RADIATION MACHINES, FACILITIES AND SERVICES

Rulemaking Hearing

Date

02/18/2015

Time

10:00 AM

Location

Sabin-Cleere Conference Room, Colorado Department of Public Health and Environment, Bldg. A, 4300 Cherry Creek Drive, South, Denver, CO. 80246

Subjects and issues involved

To consider the promulgation of 6 CCR 1007-1, Colorado Rules and Regulations Pertaining to Radiation Control, Part 12, Fees for Radiation Control Services and Part 2, Registration of Radiation Machines, Facilities, and Services.

Statutory authority

Section 25-1.5-101(1)(k), 25-1.5-101(1)(l), 25-11-103, 25-11-104, and 25-1-108, C.R.S.

Contact information

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Title

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COLORADO
Department of Public Health & Environment

Dedicated to protecting and improving the health and environment of the people of Colorado

To: Members of the State Board of Health

From: James Jarvis, Health Physicist, Hazardous Materials and Waste Management Division

Through: Gary Baughman, Division Director GB

Date: December 8, 2014

Subject: **Request for Rulemaking Hearing**
Proposed Amendments to **6** CCR 1007-1, Part 12, "Fees for Radiation Control Services" and Part 2, "Registration of Radiation Machines, Facilities, and Services", with a request for the rulemaking hearing to occur December 17, 2014

The Division is proposing changes to the fees it charges for services which are outlined in Part 12 of the regulations, titled *Fees for Radiation Control Services*. Changes are also proposed for Part 2 of the regulations, titled Registration of Radiation Machines, Facilities, and Services, necessary to support the proposed changes to Part 12.

The proposed regulatory changes are being initiated to address a projected budget shortfall in program funding. During a recent analysis of fees, budgets and expenditures, it was determined that the program will have a projected income shortfall of approximately $394K for FY 2015. Fees for radioactive materials licensing have not changed since 2009 and fees for radiation machine services have not changed since 2001. The Division is proposing fee increases (above the current fees) ranging from 16%-25% which will impact approximately 975 specific and general radioactive materials licensees and all radiation machine registrants. Additionally, the Division is proposing a new radiation machine facility registration fee of $50 per year per facility to meet department costs for administering radiation control services to support the approximate 5,200 facilities using radiation machines in Colorado.

The proposed amendment to Part 2 adds language consistent with the proposed changes in Part 12. Language is added to reference the proposed facility registration fee for radiation control services, and to indicate that Service Company, Qualified Inspector, and Qualified Expert registrations are for a 1-year period. Additionally, two typographical errors are corrected.

Over 6,000 stakeholders were notified of the proposed changes and the opportunity to ask questions and comment via email, and were offered the opportunity to participate in three stakeholder meetings. The Division received written comments from ~20 individuals as well as a few comments from the 12 individuals participating in the three stakeholder meetings. The primary concern expressed by radiation machine facility stakeholders were that the increase in radiation machine fees, and in particular, the proposed annual $50 registration application fee would have a negative impact on small businesses in the medical field (primarily dentistry, veterinary, and chiropractic medicine). Additionally, stakeholders commented on the need for government entities to work within established budgets. One radioactive materials licensee provided comments supporting the proposed changes while the remainder of comments generally opposed the proposed fees.

Further details on the proposed changes are listed in a Statement of Basis and Purpose and Specific Statutory Authority for the proposed revised rule, which, along with a Regulatory Analysis and supporting information, is available at:
http://www.colorado.gov/pacific/cdphe/radregs

At the December 17, 2014 request for rulemaking, the Radiation Program requests Board of Health approval for a rulemaking hearing on February 18, 2015.

cc: Deborah Nelson, Administrator, State Board of Health

STATEMENT OF BASIS AND PURPOSE
AND SPECIFIC STATUTORY AUTHORITY
for Amendments to
6 CCR 1007-1, Radiation Control, Part 12, Fees for Radiation Control Services and Part 2, Registration of Radiation Machines, Facilities, and Services

Basis and Purpose.

The Colorado Radiation Control Act, Title 25, Article 11, Colorado Revised Statutes (the Act), requires the State Board of Health to formulate, adopt and promulgate rules and regulations pertaining to radiation control.

Section 25-11-103 of the Act requires the Colorado Department of Public Health and Environment (Department) to develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing radiation, including requiring registration of sources of ionizing radiation such as radiation machines and to issue licenses governing the use of radioactive materials.

Section 25-11-104 of the Act requires Colorado's radiation regulations to be modeled after the Suggested State Regulations for Control of Radiation (SSRCR) of the Conference of Radiation Control Program Directors, Inc., except when the Board of Health concludes, on the basis of detailed findings, that a substantial deviation from the SSRCR is warranted. The Department's regulations, in certain parts, must also be compatible with the regulations adopted by the U.S. Nuclear Regulatory Commission (NRC). The Act establishes the SSRCR as the model for Colorado to use in adopting NRC regulatory provisions. In some instances, maintaining consistency with the SSRCR may not be possible due to the model regulation being out of date with NRC changes or where no model regulation exists.

Section 25-11-104(6) of the Radiation Control Act requires:

- The state board of health shall formulate, adopt, and promulgate a fee schedule for radiation control services provided by the Department;
- The board of health shall provide for sufficient revenues from fees to reimburse the state for cost of the radiation control services;
- The fees shall be related to the actual costs incurred in administering such radiation control services; and
- Licenses and fees shall be in accordance with policies and priorities of NRC.

Due to the differing funding sources and fee structure variances in radiation programs from state to state, there is no established SSRCR which is equivalent to Colorado Part 12. The SSRCR equivalent to Colorado Part 2, (known as SSRCR Part "B") is generic in nature thus permitting individual states to shape the rule to fit the individual registration and business processes of the state. The NRC does not require Agreement States to collect fees as a matter of compatibility. However, the NRC does require that a radiation control program have a stable source of funding. The Colorado Radiation Control Program (Program) in the Hazardous Materials and Waste Management Division (Division) is sustained almost wholly from the radiation control cash fund (Fund) derived from the fees charged. Without sufficient funding support, the State of Colorado would not have an adequate radiation control program. The consequence of such a finding by NRC could be that NRC would reassert its authority over Colorado licensees, imposing NRC's higher fees on Colorado licenses. Under such a scenario radioactive materials licensees would also be required to work with a federal regulatory agency not physically located in Colorado. The proposed amendments to Part 12 and Part 2

are written to follow statutory requirements and Colorado's specific business processes and program which are unique and specific to Colorado.

The Department is proposing revisions to Part 12, *Fees for Radiation Control Services*, of the *State of Colorado Rules and Regulations Pertaining to Radiation Control*. The most recent changes to Part 12 were adopted March 16, 2011 and became effective April 30, 2011. The 2011 changes did not involve adjustments to fees. The currently proposed amendment is intended to adequately provide for the Program's costs for radiation control services through fiscal year 2017, at which time fees and costs will be reviewed again. The adjustments maintain the equitable distribution of program costs among existing licensees and radiation machine registrants.

Concurrent with the Part 12 changes, the Program is also proposing minor changes to Part 2, *Registration of Radiation Machines, Facilities, and Services,* necessary to clarify and support the changes to Part 12. Part 2 was previously adopted June 18, 2014 and became effective August 14, 2014. The proposed Part 2 change includes added language to incorporate the annual radiation machine facility registration fee and to specify that the registrations for qualified inspectors, qualified experts and service companies are issued annually.
An analysis of overall annual fees was conducted. In 2014 the Program evaluated projected costs and revenue under the current fee schedule. The analysis indicates that a deficit is now projected for the current fiscal year (FY 2014-15) and beyond if the fee schedule is not altered. The proposed approach provides the increased revenue needed for the department to administer radiation control services.

Each radioactive material licensee in Part 12, Appendix 12A has a fixed annual fee, fixed new application fee and fixed fee for a non-routine inspections. Some licensees are subject to full-cost-fee recovery at an hourly billable rate. No changes to the hourly rate are proposed in this rulemaking as the analysis has indicated that the current hourly rate is adequate to support such hourly based activities and is consistent with other hourly rates in the Division.

The Program proposes five types of fee adjustments in the Part 12 rule:
(1) An increase of 20% in the radiation machine certification label fee from the current $50 to $60 per machine label;
(2) The establishment of a new annual radiation machine facility registration fee for radiation control services of $50;
(3) An increase of 20% in the application review fee for certain radiation machine operators (limited scope operators, bone densitometry operators, provisional mammographers);
(4) An increase of 25% in the application review fee for qualified experts, qualified inspectors, and service companies, and making the application cycle annual rather than the current biennial cycle; and
(5) An increase of 16-20% in annual fees and non-routine inspection fees for specific and the annual fee for general radioactive materials licensees.

Part 12, Section 12.11 of the rule, authorizes the Department to adjust all fees and the cost per person-hour every six months based on the consumer price index (CPI). A consumer price index is not calculated for the whole State of Colorado. According to a table published on the Legislative Council web site, http://www.colorado.gov/cs/Satellite/DOLA-Main/CBON/1251594680280, the CPI, calculated semiannually for the Denver-Boulder-Greeley metropolitan statistical area, is often used as a proxy for the inflation rate of Colorado. Since 2001 when radiation machine fees were last adjusted, the CPI has increased approximately 27% (~2-2.5% per year on average). Since 2009, when the radioactive materials license fees were last adjusted, the CPI has increased by approximately 11% (~2.75% per year). To account for an additional CPI increase in 2014-15, an increase of 16% is proposed.

The overall impact of the proposed modifications would be to increase total revenue by approximately $394,319 for FY 2014-15. Overall, Colorado's proposed radioactive materials annual fees are comparable to surrounding states and on average about 45% of the equivalent NRC fees.

Note that editorial comments, notes, and information shown in the right side margin of the draft proposed rule are for information only to aid the reader, and are not considered part of the regulation. These will be removed from the final regulation prior to submission to the Colorado Secretary of State's office for publishing in the Colorado register.

Specific Statutory Authority.
These rules are promulgated pursuant to the following statutory provisions: 25-1.5-101(1)(k), 25-1.5(1)(l), 25-11-103, 25-11-104, and 25-1-108, C.R.S.

SUPPLEMENTAL QUESTIONS

Is this rulemaking due to a change in state statute?

_____ Yes, the bill number is _____; rules are ___ authorized ___ required.
___X__ No

Is this rulemaking due to a federal statutory or regulatory change?

_____ Yes
___X__ No

Does this rule incorporate materials by reference?

_____ Yes
__X___ No

Does this rule create or modify fines or fees?

__X___ Yes
_____ No

REGULATORY ANALYSIS
for Amendments to
6 CCR 1007-1, Radiation Control, Part 12, Fees for Radiation Control Services and Part 2, Registration of Radiation Machines, Facilities, and Services

1. **A description of the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.**

The Radiation Program is part of the Hazardous Materials and Waste Management Division at the Colorado Department of Public Health and Environment. The mission of the program is to protect the citizens of Colorado from the hazards of radiation by regulating radioactive materials and radiation machine use throughout the state. The program achieves its mission primarily by licensing and inspecting facilities that use radioactive materials and requiring and tracking inspections of radiation machines through (privatized) qualified inspectors. Radioactive materials and radiation machines are used in a wide range of fields including the healing arts (medicine, chiropractic, veterinary, dentistry, and podiatry), industry (construction, security, analytical, research, mining, and oil and gas) and higher education (research, teaching). Therefore, the entities that will be affected by the proposed rule change and proposed fee increases include any organization using radioactive materials requiring licensing or any organization using radiation producing machines requiring registration. These entities include large and small businesses, some governmental entities, and institutions of higher education all of whom are regulated by the Radiation Program due to their use of radioactive materials and/or radiation (X-Ray) machines. Currently, there are approximately 5,200 facilities registered to use radiation machines; approximately 319 specific radioactive materials licensees; approximately 418 general radioactive materials licensees; and an additional ~1000 other individuals and entities registered with the Department as operators, inspectors, or service providers for radiation machines.

The Radiation Program charges fees for its services including the licensing and inspection for persons using radioactive materials. Fees are charged and received for the registration of radiation machines (and facilities) through sale of radiation machine certification labels. Fees are also charged for the registration of the private individuals who perform inspections on radiation machines, for the companies who perform service and maintenance on radiation machines, and certain individuals who operate radiation machines. These registration requirements are in place to insure that only qualified individuals perform such activities. All of these entities will bear the cost of the proposed changes and fee increases. Similarly, the citizens of Colorado along with all of these entities will receive the benefit of the continued regulatory program and proposed rule/fee since the program helps to ensure the safe use of radioactive materials and the safe output (radiation levels), operation, and maintenance of radiation machines.

Part 2 is specific to radiation producing (x-ray) machines and therefore, only those entities registered with the program as a facility, qualified inspector, qualified expert, or service company would be specifically impacted by the Part 2 changes. The Part 2 changes are necessary to clarify and support the proposed Part 12 changes. Although Part 2 is only applicable to radiation machine registrants, the Part 12 changes impacts all radioactive materials licensees and radiation machine registrants.

2. To the extent practicable, a description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

The quantitative impact of the proposed rule changes in Parts 12 and 2 and associated fee change is that licensees and registrants will be required to pay higher fees for licensing and registration ranging from 16% to 25% above current fee amounts. Additionally, under the proposed Part 2 changes each x-ray machine facility will be required to register and pay a fee annually; and qualified inspectors, qualified experts, and service companies will be required to register with the department on an annual rather than biennial cycle. The table below outlines the changes in fees in term of percent increase by type of entity for the current fees and the approximate number of entities impacted.

Entity Type	% Increase in fees over current fee amount [Approximate number of entities impacted]
-RADIATION MACHINE FEES-	
Radiation (X-Ray) Machine Registration - Certification Label Fee Per Machine[1]	20% [5,200]
Qualified Inspector, Qualified Expert, Service Company Registration Fee[2]	25% [~354]
Application Review Fee - Provisional Mammography Operator	20% [30-34 per year]
Review of adequate training for Limited Scope Operators, Bone Densitometry Operators, CT Operators, Service Company Engineers	20% [450+ per year]
Radiation Machine enforcement action/inspection fee	18% [~10 per year][3]
-RADIOACTIVE MATERIALS LICENSEE FEES-	
Radioactive Materials General Licensee Annual Registration - All (excluding in-vitro)	20% [~417]
Radioactive Materials General Licensee Annual Registration - in-vitro	20% [1]
Specific Licensee Annual Fee - All Categories (full fee, non-small entities)	16% [~255]
Specific Licensee Annual Fee - "Tier I" Small Entity	20% [~19]
Specific Licensee Annual Fee - "Tier II" Small Entity	16% [~45]
Radioactive materials non-routine inspection fee maximum amount. (Non-routine inspections are based the hourly rate for which no changes are proposed)[4]	16% [<~4 per year]

[1] Inspection/certification frequencies vary from 1-3 years and therefore not all machines will require an inspection certification label each year.

[2] The QI, QE, and Service Company registration fee is currently a biennial (every 2 year) fee. Under the proposed changes, this will become an annual fee.

[3] The number of enforcement actions/inspection fees is not fully predictable for future activities as it is dependent upon regulatory compliance by the regulated entity. Historically, for 2011-2013 the hourly fee for non-routine inspections/enforcement actions has been invoked ~10 times per year on average, with a typical non-routine inspection fee of less than $300 per facility. This fee is in addition to any administrative penalty assessed in the event of significant non-compliance findings.

[4] Non-routine inspection fees for radioactive materials licensees are invoked infrequently and only in cases of escalated enforcement where a licensee must be re-inspected at a shorter than standard frequency. The range per year values shown is for 2010-2014. Routine inspection costs are included in the annual license fee. This fee is in addition to any administrative penalty assessed in the event of significant non-compliance findings.

In addition to the current fees charged as outlined in the table above, the Division is proposing a new nominal annual radiation machine facility registration fee of $50 per year. This will impact all ~5,200 facilities registered to use radiation machines but who do not currently pay a registration fee.

3. The probable costs to the agency and to any other agency for the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

It is expected that some minimal additional effort by the Radiation Program will be necessary to implement the proposed annual facility registration fee identified in the proposed changes to Part 12 and Part 2, to include annual notifications/billing activities for the fee, payment tracking, and follow-up for those registrants failing to pay fees in a timely manner. These activities are expected to be carried out by the Radiation Program and a centralized business process unit within the Division. Efforts are being initiated to allow the registration form and fee to be completed/paid online, thus minimizing some agency costs, although there will be some up-front costs to establish the required business process. Additionally, the program will be implementing a new database program and electronic filing procedures that will further streamline the work required to register and track radiation machines and radiation machine facilities. This increased efficiency is anticipated to offset some of the additional work of collecting the annual facility registration fee and the annual renewal cycle for Qualified Inspectors, Qualified Experts and Service Companies.

4. A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

The current X-ray certification registration program for the 14,500 radiation machines in Colorado is maintained by a staff of ~4.0 FTE, including program management. One additional program FTE equivalent is dedicated and funded separately (by the US Food and Drug Administration) for the annual inspection of mammography machines.

The benefits of the proposed rule changes and associated fee increases will allow the program to continue at its current workload. Efforts are currently underway to improve the programs efficiency through development of web based data handling and payment methods.

Inaction on raising fees may result in a loss of staff (Full Time Equivalent or FTE's) necessary to support the statutorily driven regulatory functions of the state radiation program and in particular the X-ray machine certification program. Additionally, any decrease in staff would expectedly diminish the functionality of the program and increase the turnaround time for facility and individual registrations.

5. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

It is believed that there are no less costly or less intrusive methods for providing funding for the radiation machine registration program. As discussed in item 6 below, an alternative approach to the annual radiation machine registration fee would be to raise the per label fee by 60% ($30) rather than the proposed 20%. Such an approach would rely on the existing infrastructure and would not likely need additional support or new activities for billing or maintenance. Such an approach would however affect and effectively penalize the larger facilities disproportionately since such facilities have a greater number of machines that must be inspected more frequently. Smaller facilities with only a few machines would pay about the same or slightly lower amounts under a higher label fee scenario, although this depends upon machine inspection frequencies.

Similarly, with the radioactive materials licensing program, it is believed there are no less costly or less intrusive methods for providing funding for the activities conducted by the radioactive materials unit. Under Colorado's agreement with NRC, adequate funding must be ensured to maintain compatibility and agreement state status. Failure to provide adequate funding could result in the state program deferring to federal control, and thus resulting in federal fees that are on average 40-50% higher than current Colorado fees.

6. Alternative Rules or Alternatives to Rulemaking Considered and Why Rejected.

One alternative to the proposed annual facility registration fee is to make up the budget deficit through an increase in label fees which would use the existing infrastructure for label sales. Presently, radiation machine certification label sales to privatized Qualified Inspectors are the primary source of revenue the Radiation Program receives for maintaining the registry and tracking of the approximate 5,200 radiation machine facilities in Colorado. To achieve the same funding level in lieu of the new proposed nominal facility registration fee of $50, the per-machine label fee would have to increase to an estimated $80 per label (an additional $30 per label above the current $50 per label cost) rather than the currently proposed increase of $10 per label.

The approach to raise label fees alone would disproportionately impact the largest facilities (typically larger medical centers and hospitals) that would ultimately pay more due to a larger number of machines to certify and register and because typically large facilities have machines on 1, 2 and 3-year inspection cycles (while many small businesses' machines are on a 3-year inspection cycle). Medical facilities and hospitals which range from small community and rural medical centers to large hospitals typically have an average of 11 machines per facility, with the largest facilities having over 100 radiation producing machines. This disproportionate impact is why the Division determined that a new "flat rate" facility registration fee would provide for a more equitable and balanced approach to fees.

7. To the extent practicable, a quantification of the data used in the analysis; the analysis must take into account both short-term and long-term consequences.

The analysis for the proposed rule change and fee increases considered multiple sources of information and data, including the current (full-year) consumer price index

data, evaluation of current FY 2014 revenue data, and projected revenue and costs for 2015 and beyond. All sources of income were considered in the evaluation, along with the current radiation machine and facility data, and radioactive materials license data.

SHORT-TERM CONSEQUENCES

The short-term consequences of failing to implement the proposed regulatory and fee changes for the radiation machines program would likely be a reduction in the current staffing levels below the current ~4.0 FTE required for maintaining the current tracking and registration of Colorado's 15,000+ X-Ray machines at 5,200+ facilities. This would expectedly result in reduced customer service due to an increase in the turnaround time for facility registrations and information updates; label sales; response to registrant inquiries, questions, and support; and may reduce the timeliness of current inspections and data. Inspection of the 100+ mammography machines as performed by state inspectors may lag or be compromised, and would thus fail to meet the annual FDA prescribed inspections.

The short-term consequences of failing to implement the proposed regulatory and fee changes for the radioactive materials program would likely result in a reduction in the current staffing levels below the current FTE required for the licensing and inspection of Colorado's 325+ radioactive materials facilities and regulatory program. This would expectedly increase the turnaround time for issuance of new licenses, license actions, renewal licenses, response to licensee inquiries, questions and support, response to incidents, allegations and inspections. Such delays could also compromise or otherwise negatively impact Colorado's ability to maintain its agreement state status with NRC.

LONG-TERM CONSEQUENCES

The long-term consequences of failing to implement the proposed regulatory and fee changes for the radiation machines program would be the potential elimination of the state radiation machine regulatory program in Colorado. As there is no equivalent federal regulatory program or agency for regulating radiation machines, the program would be left inoperable and thus the safety of members of the public would potentially be compromised due to a lack of radiation machine inspections/certifications and regulatory oversight and a lack of ensuring that personnel operating and servicing machines would be unchecked. Elimination of the radiation machine program would be contrary to the requirements of current state statute.

The long-term consequences of failing to implement the proposed regulatory and fee changes for the radioactive materials program would potentially result in elimination of the agreement state program in Colorado and deferral of the program to the federal government (US NRC). Based upon current federal fee data for radioactive materials licenses, regulated entities would pay approximately 45+% more per year in annual licensing fees, higher hourly rates, and would not benefit from a local regulatory agency presence. Elimination of the radioactive materials program would be contrary to the requirements of current state statute.

STAKEHOLDER COMMENTS
for Amendments to
6 CCR 1007-1, Radiation Control, Part 12, Fees for Radiation Control Services andPart 2, Registration of Radiation Machines, Facilities, and Services

The following individuals and/or entities were included in the development of these proposed rules:
Notification of the opportunity to comment on the proposed changes to Part 12 and Part 2 were sent on October 30, 2014 to a total of approximately 6,000+ entities via US Mail and/or email.

The entities represented:
- Approximately 5,200 X-Ray facilities (registrants);
- Approximately 124 Radiation Machine Qualified Inspectors;
- Approximately 176 Radiation Machine Service Companies/Qualified Experts;
- Approximately 425 Radiation Machine Limited Scope Operators;
- Approximately 325 specific radioactive materials licensees;
- Approximately 418 general radioactive materials licensees;
- Approximately 159 "other stakeholders" representing individuals who have specifically signed up to receive notification of any proposed radiation regulation changes and who represent a wide variety of interests, including: x-ray registrants, radioactive materials licensees; private citizens; private companies; professional organizations; and activist groups; and
- Seven professional healing arts related organizations including: Colorado Hospital Association; Colorado Medical Society; Colorado Radiological Society; Colorado Dental Association; Colorado Chiropractic Association; Colorado Veterinary Medical Association; and Rocky Mountain Oncology Society. These entities were notified via U.S. mail and email where available. Some organizations also passed the information along to their members.

In addition to the opportunity for written comment, stakeholders were provided with the opportunity to participate in three stakeholder meetings held in November (prior to the conclusion of the comment period). A total of 12 stakeholders participated in these meetings either in-person or via phone.

This rulemaking does not include a local government mandate. EO5 does not apply.

The following individuals and/or entities were notified that this rule-making was proposed for consideration by the Board of Health:

The notice of opportunity to comment and sent to all of the aforementioned stakeholders included a link/URL address to the Radiation Program website:
https://www.colorado.gov/pacific/cdphe/radiation-regulations-development-part-12
which includes a summary of the proposed changes for both Part 12 and Part 2, a copy of the original notice, copies of the draft rules, stakeholder meeting information, and the tentative dates for both the request for rulemaking and final rulemaking before the Board of Health.

Summarize Major Factual and Policy Issues Encountered and the Stakeholder Feedback Received. If there is a lack of consensus regarding the proposed rule, please also identify the Department's efforts to address stakeholder feedback or why the Department was unable to accommodate the request.

The Department has engaged licensees and minimal concern has been raised; licensees are aware that Department services are provided for substantially less than what the NRC would charge if the CDPHE program was no longer financially viable. Similarly, the x-ray machine registrants were also engaged. As outlined in the table below, the greatest concern is from small businesses – predominantly those in the Dentistry, Veterinary, and Chiropractic fields – that are concerned about the proposed increase in fees and feel that they are not warranted or fully justified.

COMMENTS ASSOCIATED WITH THOSE IN FAVOR OF THE PROPOSED CHANGES	**RESPONSE / RESOLUTION**
A radioactive materials licensee radiation safety officer in support of the proposed fee and regulatory changes commented that the program is more educational than punitive and that it stays current with advances in medicine with respect to regulatory knowledge and oversight.	N/A
COMMENTS ASSOCIATED WITH THOSE OPPOSED TO THE PROPOSED CHANGES	**RESPONSE / RESOLUTION**
A commenter representing hospitals throughout Colorado suggested that the Department consider the impacts on smaller, rural hospitals as impacts on such facilities may be greater.	While the radiation program recognizes that all facilities are not the same size nor are the impacts the same, there is not a current method to fully realize the size of any facility to make fee adjustments based on size. The radiation program fees are typically based on the type of use, the associated risks, and the effort expended by the Department in regulating such facilities. The radioactive materials licensing process allows licensees to apply for small entity status and reduced fees. Four hospital facilities are currently approved as small entity licensees. No change was made to the rule as a result of the comment.
A Qualified Inspector (QI) registrant expressed concern that QI's would be made into "bill collectors" and would be responsible for collecting the proposed facility registration fee.	If implemented, any new facility registration fee will be collected directly by the Department and not by the privatized qualified inspectors. No change was made to the rule as a result of the comment.
A QI registrant raised the issue that the proposed shift from biennial (2 year) registration to an annual (yearly) registration for QI's would result in additional effort for both the QI and the Department.	The department recognizes that some additional, more frequent effort will have to be expended by both the program and the QI's if the registration process is changed to an annual frequency. It is believed that the annual cycle will provide a more stable and consistent income stream needed to support the regulatory program. Additionally requiring annual registration will

	allow for better tracking and auditing of QIs. Some offset of the efforts expended is expected due to implementation of new data management systems. Development of these systems is currently underway. No change was made to the rule as a result of the comment.
A Service Company registrant expressed concern over when the current registrations would expire and that some loss of their registration term would occur upon implementation of the proposed annual cycle.	While all details of implementation of the proposed annual registration cycle for Service Company (and other) registrants has not been fully developed, the Department intends to implement the annual renewal cycle upon expiration of the current registrations. For example, a Service Company registration, that currently expires in 2016, would not begin the annual renewal cycle until the current registration expires in 2016. No change was made to the rule as a result of the comment.
A general licensee express concern over the proposed increase in fees in light of all of the other fees that are paid to or otherwise required by the state (as a whole) and the combined regulatory impact of such a fee change.	The annual fee for general licensees is currently $100 per year. The radiation program believes the proposed $20 per year increase in this annual fee is moderate and necessary to maintain the regulatory program. In the event the state of Colorado did not retain the general license program, it would automatically defer to federal control under the US Nuclear Regulatory Commission (NRC). Current NRC fees for general licensing is $400 per year, which is over 3 times higher than the proposed $120 annual fee. No change was made to the rule as a result of the comment.
Several commenter's (a radioactive materials licensee and multiple x-ray registrants) commented that other sources of funding should be sought, and in particular, that monies obtained through enforcement actions (administrative penalties) should be redirected to the radiation program rather than the state general fund.	Current statutory language in the Colorado Radiation Control Act (law) specifically identifies that funds (administrative penalties) obtained through escalated enforcement be directed to the states' general fund. This is consistent with the laws regulating other regulatory programs within the hazardous materials division. Since this is a requirement of state law, a change to this process would require an act of the legislature. While staff and attorney time and effort is expended by the radiation program in pursuit of escalated enforcement actions, it is believed that overall this approach is in the best interest of the regulated community and supports a balanced approach to the program. By not receiving the administrative penalty funds back into the program, it removes the "incentive" to pursue enforcement actions in cases where it is not truly warranted from a regulatory perspective.

	No change was made to the rule as a result of the comment.
An employee of a radioactive materials licensee commented on the proposed rule and fee changes indicating uncertainty as to whether fees would be changing or increasing for radioactive materials licensees.	The radiation program is proposing fee changes for all entities it regulates, including both radioactive materials licensees and radiation machine registrants. The proposed fee increases for all regulated entities ranges from 16%-25%. No change was made to the rule as a result of the comment.
An organization representing dentists throughout Colorado commented that: - The financial impact is that fees nearly double for dental offices and dentists, who are typically small businesses, have a harder time absorbing increased costs relative to larger facilities; - A disproportionate amount of the fee increases are being paid by the dental profession in light of the fact that dental machines present less risk. Estimates indicate that dentistry would fund ~25% of the total fee increase; - The radiation program should review costs and ensure fees charged are aligned with program expenses; - Perhaps the facility or label fee could be tiered based on the complexity of equipment.	The Program is proposing a new annual registration fee of $50/facility regardless of the number of machines the facility uses. This fee will cover the costs of maintaining facility information. The average dentist has 4 machines that are subject to a 3 year inspection cycle. The current annual cost for the average dentist is $67 dollars. The proposed changes would increase the annual cost for the average dentist to $130; an increase of 51%, but monetarily only an increase of $63 annually. The department believes that radiation program fees are reasonable in relation to the radiation control services provided to the dentistry field. Of the ~14,500+ machines regulated by the X-ray program, ~69% (~9,000+) are used in dental facilities. Over half (~54 %) of the registered X-ray facilities are dental facilities. Accounting for the 3 year inspection cycle for dental machines, over 40% (~3,066) of the (7,328) inspection/certification reports received and processed in a year by the program are for dental facilities. While the routine radiation machine inspection program is conducted by independent privatized inspectors (known as “qualified inspectors”) approved by the department, the department is responsible for overall monitoring and regulatory follow up. With the exception of the certification label fee, the radiation program does not set or dictate the amount charged by the qualified inspector for the inspections and therefore it is a “free market” program. Typical monitoring activities related to the 14,500+ machines in Colorado include maintaining and verifying changes in facility information (the legal authorized owner, contact information, location, etc.); changes in radiation machine information (machine or component replacement, disposition of equipment, etc.); per facility and machine inspection data; and inspection follow up. Smaller facilities and operations tend to relocate more frequently resulting in more modifications to track.

	It is unclear how the "complexity" of the radiation machine could be established and used in a tiered fee structure or what the benefit of such a structure would have from a radiation safety perspective that is not otherwise addressed. The inspection frequency (which varies from 1-3 years) is directly associated with the risk presented by the machine. Higher risk machines (volumetric dental, fluoroscopy, computed tomography, etc.) are inspected more frequently. Since a new label is placed on a machine during each inspection, the consideration of risk is already tied to the label fee. Facilities using higher risk machines pay for inspections and inspection labels more often than do facilities having lower risk machines.
Multiple comments (~16) were received from numerous x-ray registrants representing Dentists, Chiropractors, and Veterinarians. The questions and comments expressed were somewhat similar in nature and addressed the following issues, concerns, and questions: - The proposed fee changes are unreasonable and excessive and present hardships for small businesses and medical practitioners who already face multiple fees and taxes, and the fee increases make no sense; - While some fee increase may be justified, it was felt that both the annual facility registration fee and increasing the per label fee was not justified; - It is already costly to have the (x-ray) machines certified by the (qualified) inspectors; - Why are fee increases proposed despite the reduction in participants (in the regulated program) and the fact there are fewer x-ray machines producing radioactive waste/materials; - Prior regulatory changes (related to sensitometry) several years ago has resulted in patients having to go to higher priced large facilities for imaging resulting in higher health care costs; - The radiation program should work "smarter", and spot and cut waste, making (fee) adjustments only as the market will bear, and seek other methods to make up the budget, including a reduction in staffing, raising other fees, or making other program changes; - Why are fees being increased 48-75%? - The department has not identified the health problems necessary to justify the fee increases; - The process used for finding/registering ambulatory (mobile) veterinarian radiation users (registrants) is flawed as many have	The Radiation Program considers the increase in fees as a serious matter that it does not take lightly, especially in consideration of the impacts to small businesses and consumers in Colorado. However, as indicated in the summary information available online and as presented during the stakeholder meetings, the proposed increases are needed to support the regulatory program which helps to ensure that only qualified individuals own, operate, service, or inspect radiation producing machines in accordance with state law and that the output of such machines is consistent with federal requirements. The radiation program is seeking to maintain its existing radiation control services. Historically, there has been an upward trend in the number of radiation machines in Colorado. Data for the prior 4 years (2010-2014) indicates a 1 to 2 % net increase in the number of radiation machines registered each year (a net addition of 1700 machines were registered for the period 2010-2014). This amounts to ~300+ new radiation machines at 90+ new facilities each year on average. As economic conditions in Colorado continue to improve, it is expected that this number will remain the same or increase slightly. The radiation program believes that the proposed increase in radiation machines label and registration application fees are balanced, reasonable, and justified in light of the fact that the fees for machine certification labels - the primary source of income supporting the radiation machine regulatory program – have not changed for 13 years despite the net increase in registration and tracking of 100-300 new radiation machines each year over the past several years. The proposed nominal $10 increase per label will make up for some budgetary deficit, but it will not address the entire shortage. In order to make up the entire budget shortfall through label sales, the label

not heard of Colorado's (radiation machine) regulatory program and may not be registered or impacted by these fees. Because of this, your agency is only targeting a small percentage of (the veterinary) radiation users in the field which is unfair; - Fees for radiation machines should be based upon use of the machine (–number of x-rays taken); - Medical reimbursement rates tend to be going down and any increase in fees or changes to certification periods for medical practitioners presents a hardship. Some commenter's indicated that no increase in fees should be proposed while another suggested that only the $10 increase in label fee be proposed.	cost would have to increase by at least $30 per label, thus penalizing larger facilities to a greater degree. While a nominal $50 annual facility registration fee is newly proposed, such a flat "per facility" fee provides some balance and does not unduly penalize larger facilities who currently pay more in label fees due to the larger number of machines they possess and the increased inspection frequency required for such facilities. Larger facilities may have some greater ability to "absorb" increased costs than do smaller facilities, the majority of healing arts registrants are small in size and typically possess only a few machines which must be certified. Although it is dependent upon the type of use of the machine, the majority of smaller facilities pay less per facility in label fees each year as the inspection frequencies are typically 3 years rather than the 1-year inspection frequency required for the vast majority of machines at most larger medical facilities. Some commenter's questioned why there was an increase in fees when there was a reduction in the number of regulated entities and there are fewer x-ray machines producing radioactive materials (due to "conversion to digital systems"). It should be noted that the conversion from film-based to digital x-ray systems does not result in or create radioactive materials. Radiation producing machines used in diagnostic applications are not radioactive nor do they create or produce any type of radioactive wastes or radioactive materials. The costs associated with machine inspections are neither set nor controlled by the radiation program or the state. The qualified inspector program is a privatized, "free market" system and the certification/inspection fees they charge are set by each individual inspector. Only the certification label fee and the inspection frequency is set by the state through regulation. There are no proposed changes to the inspection frequencies with this rulemaking. As only QIs may purchase certification labels, the label fee is typically passed along to the end user registrant as part of the inspection. The radiation program continues to seek ways to improve its services to the regulated community, including being responsive to inquiries and questions; providing exemptions from certain requirements; maintaining a small staffing level relative to the number of radiation machines and facilities and other entities regulated under the program; and continuing efforts to improve the effectiveness and efficiency of the program in cost effective ways.

	The radiation machine regulatory program is primarily a pre-emptive, preventative program intended to ensure that radiation machines are installed and serviced by qualified, monitored personnel; that they are owned and operated by qualified personnel; and the machine output is consistent with manufacturer specifications and such inspections are performed only by trained and qualified personnel. The program is most commonly notified of new radiation machines in use through registered service companies who have installed the equipment. Failure of such service companies to obtain registration or to notify the department of new installations is in conflict with state regulations. A commenter suggested that fees for radiation machines should be tied to the amount of use of the machine which relates to risk. To some degree, more "risk based" fees are already in place in the form of more frequent inspections. The risk is tied to the type of radiation machine, radiation output and potential harm rather than the amount of use, which could only be provided by the user. The program does not track or require tracking of any specific machines use. A commenter questioned a change to the inspection or certification frequency. No changes to the inspection frequency for medical practitioners or any other radiation machine user or radiation machine is being proposed. The proposed radiation machine facility registration fee does not change the machine inspection frequency. No change was made to the rule as a result of the comments.

Please identify health equity and environmental justice (HEEJ) impacts. Does this proposal impact Coloradoans equally or equitably? Does this proposal provide an opportunity to advance HEEJ? Are there other factors that influenced these rules?

The Department has proposed a fee structure that treats entities needing radiation control services equitably. Fees are tiered based upon the type of use, risk of materials involved, and efforts necessary to regulate the facility. Fees are also tiered based upon the number of radiation machines housed within a facility. Specifically, the annual registration fee, coupled with the increased label fee, creates a balance between the minimum cost to provide radiation control services to a facility using radiation machines and the increased workload associated with tracking and ensuring the safety of multiple machines within a facility. Though the increase in fees impacts business and health care provider costs, a majority of stakeholders have not indicated that the increase will create an undue burden on workers, customers or patients. This is consistent with the increased annual cost of $629,922 being allocated across 5,375 entities. The increase cost is justified as it directly advances worker and patient safety.

DRAFT 1 12/08/14

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Hazardous Materials and Waste Management Division

RADIATION CONTROL - FEES FOR RADIATION CONTROL SERVICES

6 CCR 1007-1 Part 12

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

Adopted by the Board of Health February 18, 2015.

PART 12: FEES FOR RADIATION CONTROL SERVICES

12.1 Purpose and Scope.

12.1.1 Authority.

12.1.1.1 Rules and regulations set forth herein are adopted pursuant to the provisions of Sections 25-1-108, 25-1.5-101(1)(k) and 25-1.5-101(1)(l), and 25-11-104(6), CRS.

12.1.2 Basis and Purpose.

12.1.2.1 A statement of basis and purpose accompanies this part and changes to this part. A copy may be obtained from the Department.

12.1.3 Scope

12.1.3.1 The regulations in this part establish fees for radiation control services rendered by the Department as authorized by the Act.

12.1.4 Applicability.

12.1.4.1 The regulations in this part apply to radiation control services for a person who is an applicant for, or holder of, a:

(1) Specific radioactive material license or a general radioactive material license, issued pursuant to Part 3:

(a) Except for a person who applies for or holds a specific license exempted in 12.3.

(2) Registration, issued pursuant to Part 2.

12.1.4.2 The regulations of this part also apply to a request for:

(1) Evaluation of a sealed source and/or device containing radioactive material;

(2) A special project review that the Department completes or makes whether or not in conjunction with a license application on file or which may be filed, and/or

(3) Any other service as specified.

12.1.5 Published Material Incorporated by Reference.

Comment [JJ1]:
EDITORIAL NOTE 1: ALL COMMENTS (SUCH AS THIS ONE) SHOWN IN THE RIGHT SIDE MARGIN OF THIS DRAFT RULE ARE FOR INFORMATION PURPOSES ONLY TO PROVIDE ADDITIONAL INFORMATION AND TO AID THE READER IN UNDERSTANDING THE PROPOSED CHANGE DURING THE DRAFT REVIEW PROCESS.

THESE COMMENTS ARE **NOT** PART OF THE RULE AND ALL COMMENTS WILL BE DELETED PRIOR TO FINAL SUBMISSION TO THE COLORADO SECRETARY OF STATE'S OFFICE FOR FINAL PUBLISHING IN THE COLORADO CODE OF REGULATIONS.

EDITORIAL NOTES WITHIN THE BODY OF THE RULE ARE FOR INFORMATION PURPOSES ONLY AND ARE NOT CONSIDERED PART OF THE RULE.

Comment [JJ2]:
This date reflects the tentative rulemaking date, pending approval by the Board of Health.

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12.1.5.1 Published material incorporated in Part 12 by reference is available in accord with Part 1, Section 1.4.

12.2 Definitions.

12.2.1 As used in this part, these terms have the definitions set forth as follows.

"Abandoned application" means any application filed with the Department for which the Department has in writing requested additional information needed to process the application and the Department does not receive a written reply from the applicant within forty-five (45) days after the Department's most recent written request for additional information.

"Anniversary Date" means that date upon which annual fees shall be due and payable. Anniversary Date is determined as the last day of the month corresponding to the month listed as the licensee's expiration date.

"Application" means any request filed with the Department for a permit, license, approval, exemption, exception, certificate, registration, other permission, or for any other service.

"Full cost fee" means a fee based on reasonable and actual professional staff time and appropriate contractual support services expended for certain radiation control activities as specified in Appendix 12A.

"Inspection" (routine or non-routine) means:

(1) "Routine inspection" designed to evaluate the licensee's or registrant's activities within the context of the licensee or registrant having primary responsibility for protection of the public and environment.

(2) "Non-routine inspection" in response or reaction to an incident, allegation, follow up to inspection deficiencies, inspection to determine implementation of safety issues including radioactive waste control services pursuant to CRS Sections 25-11-101–305 and Sections 24-60-2201–2212 and these regulations. A non-routine or reactive inspection has the same purpose as the routine inspection.

"Low-Level Radioactive Waste Access Approval" means those reviews and on-site evaluations necessary to assure waste generator compliance with low-level radioactive waste site access criteria as established by the Rocky Mountain Low-Level Radioactive Waste Board (the Board) or by a compact with which the Board has an agreement to accept low-level radioactive waste from Colorado or by a state with which the Board has an agreement to accept low-level radioactive waste from Colorado or by any state or site to which a Colorado generator ships low-level radioactive waste.

"Open Records Act" means the Colorado Open Records Act, CRS 24-72-201 et seq.

"Permanent location" means, for purposes of Part 12, a location where radioactive material is used and/or stored for more than 180 cumulative total days in any calendar year.

"Special Project" means a request submitted to the Department for review for which a fee is not otherwise specified in this part. Examples of special projects include, but are not limited to, early site reviews, consultation, emergency response plan reviews, assessment of responses to Department orders, contamination surveys in response to license termination or relocation, and financial surety reviews.

12.3 Exemptions.

12.3.1 No fees pursuant to 12.4.1 through 12.4.5 shall be required for a radioactive materials license authorizing the use of source material as shielding only in devices and containers, provided that all other licensed radioactive material in the device or container will be subject to the fees described in Appendix 12A.

12.3.2 Application for Exemptions.

12.3.2.1 The Department may, upon application by an interested person, or upon its own initiative, grant such exemptions from the requirements of this part for good cause as it determines are authorized by law and are otherwise in the public interest.

12.3.2.2 Applications for exemption under this section may include activities such as, but not limited to, the use of licensed materials for educational or noncommercial public displays or scientific collections.

12.4 Specific Radioactive Materials Licenses and Radiation Machine Registrations.

Comment [JJ3]: The section title is expanded to address the added language specific to radiation machine facility registrations.

12.4.1 Application Fees for Specific Radioactive Materials Licenses.

12.4.1.1 The application fee for a new radioactive materials license not subject to full cost fees must accompany the application when it is filed.

(1) Except for a license subject to full cost fees, no application for a new license, for the reinstatement of an expired license, or for an application for amendment to a materials license that would place the licensee in a higher fee category will be accepted for filing or processed prior to payment of the full amount specified in Appendix 12A.

(2) Except for a license subject to full cost fees, an application fee is not required for a routine or renewal license amendment that does not involve a change in fee category.

(3) Applications for which fee payment is required and no remittance is received may be returned to the applicant.

12.4.1.2 An application for renewal of a license not subject to full cost fees which has expired and for which a renewal was not timely filed pursuant to 3.17.2 shall be accompanied by a reinstatement fee of $~~400~~**465**.

Comment [JJ4]: The fee specified here is increased, consistent with other proposed fee changes throughout Part 12.

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12.4.1.3 Application fees for new radioactive materials licenses, renewals, amendments, other required approvals and requests for dismantling, decommissioning and termination of licensed activities, that are subject to the full cost fees are payable upon notification by the Department.

12.4.1.4 All licensing fees will be charged irrespective of the Department's disposition of the application or a withdrawal of the application.

12.4.1.5 Abandoned Applications.

(1) In the case of an abandoned amendment application, if the licensee desires to submit a new amendment application for the same or similar authorization, the reapplication shall be accompanied by a $~~100~~**115** reapplication fee.

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(2) In the case of an abandoned new license application, if the applicant desires to submit a new application, then the applicant is subject to the application fee specified in Appendix 12A.

12.4.1.6 Expedited License Review.

(1) An hourly rate for direct staff time associated with the review of an application will be assessed for an expedited review.

(2) This expedited license review fee only applies when, by consent of the applicant, a licensing request is taken out of the date order in which it was received.

12.4.2 Fee for Radiation Machine Facility Registration for Radiation Control Services

12.4.2.1 The fee for a new radiation machine facility registration not subject to full cost fees must accompany the application when it is filed.

(1) Except for a registration subject to full cost fees, no application for a new registration, or for the reinstatement of an expired registration will be accepted for filing or processed prior to payment of the full registration application amount specified in Appendix 12A.

(2) Except for a radiation machine facility registration subject to full cost fees, a fee is not required for an amendment to registration information, except as otherwise specified in Appendix 12A.

(3) Applications for which fee payment is required and no remittance is received may be returned to the applicant.

12.4.2.2 An application for renewal of a registration not subject to full cost fees which has expired and for which a renewal was not timely filed pursuant to 2.4.1.1 shall be accompanied by a reinstatement fee of $50.

12.4.2.3 All radiation machine facility fees will be charged irrespective of the Department's disposition of the application or a withdrawal of the application.

12.4.2.4 Abandoned Applications.

(1) In the case of an abandoned new registration application, or an abandoned registration amendment application, then the applicant is subject to the application fee specified in Appendix 12A.

12.4.~~3~~2 Termination Fees **for Licensees**.

12.4.~~3~~2.1 Applications for license termination for licensees not subject to full cost fees will not be subject to fees provided that the licensee notifies the Department and requests termination pursuant to 3.16, as appropriate, and provided that there is no decommissioning or decontamination involved subsequent to the request for termination. Licensees subject to full cost fees shall be billed for the full cost of the review of the application for termination.

12.4.~~3~~2.2 Staff time spent in obtaining information which is not provided by the licensee as required by 3.16.6 and 3.16.7 when decontamination is necessary, or in supervising the licensee's decommissioning or decontamination of the site, will be billed at the Department's hourly rate.

12.4.~~3~~2.3 The charges for staff time billed under 12.4.~~3~~2 are payable upon notification by the Department.

12.4.~~4~~3 Inspection Fees **for Radioactive Materials Licensees and Radiation Machine Facility Registrants**.

12.4.~~4~~3.1 Inspection costs include reasonable and actual preparation time, time on site, documentation time, any associated contractual service costs, and time involved in the processing and issuance of a notice of violation or ~~civil~~**administrative** penalty.

12.4.~~4~~3.2 Fees for inspection of licensees and registrants not subject to full cost fees:

(1) Fees for routine inspections are included in the annual fee and will not be charged separately.

Comment [JJ5]: This section is added to address a new proposed registration fee and process for facilities using radiation machines. Currently, all facilities using a radiation producing (X-Ray) machine must be registered with the Department, but do not pay a registration fee.

The proposed language/process will require each facility possessing a radiation producing (X-Ray) machine to pay a proposed $50 annual registration fee and provide an updated registration form to the Department. The proposed annual radiation machine facility registration fee will be a "flat rate" fee per facility regardless of the number of radiation machines possessed by the facility.

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Comment [JJ6]: The section title is modified for clarity, since the current section language already addresses both (radioactive materials) licensees and (radiation machine) licensees.

Other than the proposed "across the board" (~16-25%) fee increases throughout the rule, there are no new fees associated with routine or non-routine inspections.

Comment [JJ7]: In accordance with the terminology used in Part 13, the terminology is changed. Administrative penalties are administered by the Department whereas civil penalties are administered by a court of law.

(2) Fees for all non-routine inspections will be assessed on a per-inspection basis and are payable upon notification by the Department.

12.4.~~43~~.3 Fees for inspections of licensees and registrants subject to full cost fees:

(1) Inspection fees will be assessed to recover the full cost for each specific inspection as specified in Appendix 12A, including licensee-specific performance reviews and assessments, evaluations, and incident investigations.

(2) Inspection fees for licensees and registrants subject to full cost fees, and for inspections other than routine, are due upon notification by the Department.

12.4.~~54~~ Annual fees.

Radiation Machine Facility Registrants

12.4.5.1 Persons who hold radiation machine facility registrations shall pay an annual fee.

(1) The licensee or registrant shall pay the fee in Appendix 12A for each registration the person holds on the date the annual fee is due.

(2) If a person holds more than one registration, the fee will be the cumulative total of the annual fee for all registrations held by that person.

Specific Radioactive Materials Licensees

12.4.**5.2**~~4.1~~ Persons who hold specific radioactive materials licenses shall pay an annual fee.

(1) The licensee shall pay the fee in Appendix 12A for each license the person holds on the date the annual fee is due.

(2) If a person holds more than one license, the fee will be the cumulative total of the annual fee for all licenses held by that person.

(3) For those **radioactive materials** licenses that authorize more than one activity (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license.

(4) Persons with **radioactive materials** licenses authorizing permanent, multiple locations of use and/or storage that are separated by more than one mile shall increase the annual fee by 75 percent for the second location; 50 percent for the third location; and 25 percent for each additional location of use.

12.4.**5.3**~~4.2~~ A **specific radioactive materials** licensee required to pay an annual fee may qualify as a small entity.

(1) If a licensee qualifies as a small entity and provides the Department with the proper certification, the licensee may pay reduced annual fees as shown in Table 12-1.

Table 12-1: Small Entity Fees Applicable to Specific Radioactive Materials Licensees

Entity Category	Size Standard	Maximum Annual Fee Per Licensed Category
Small businesses not engaged in manufacturing and small not for profit organizations	$~~485~~350,000 – $~~5~~7,000,000 gross annual receipts	1/2 Annual Fee or $~~600~~500, whichever is greater
	Less than	$ ~~600~~500

Comment [JJ8]: This new section is added to address the requirements associated with the proposed annual fee and registration process for radiation producing (X-Ray) machine facilities.

The proposed annual radiation machine facility registration fee will be a "flat rate" fee per facility regardless of the number of radiation machines possessed by the facility.

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Comment [JJ9]: The title of the table is modified for clarity, as small entity status applies only to specific radioactive materials licensees.

Comment [JJ10]: The Size Standard is adjusted, consistent with that used by the US NRC in 10 CFR 171.16.

Comment [JJ11]: The small entity fee is adjusted upward by ~20%, consistent with other increases in the proposed rule. The proposed small entity fee is equal to the lowest fee charged by NRC for such small entities/businesses.

In 2014, Colorado had approximately 64 specific licensees who qualified for small entity status, of which 30% fall into the lowest fee category.

	$**485**~~350~~,000 gross annual receipts	
Manufacturing entities that have an annual average of 500 employees or less	35 to 500 employees	1/2 Annual Fee or $**600**~~500~~, whichever is greater
	Less than 35 employees	$ **600**~~500~~
Small governmental jurisdictions (including cities, counties, towns, townships, villages, school districts, special districts or publicly supported educational institutions)	20,000 – 50,000 population	1/2 Annual Fee or $**600**~~500~~, whichever is greater
	Less than 20,000 population	$ **600**~~500~~
Educational institutions that are not state or publicly supported, and have 500 employees or less	35 to 500 employees	1/2 Annual Fee or $**600**~~500~~, whichever is greater
	Less than 35 employees	$ **600**~~500~~

(2) A licensee who seeks to establish status as a small entity for purpose of paying the annual fees required under this section shall file a certification statement with the Department.

(3) The licensee shall file the required "radioactive materials licensee certification of small entity status," Department Form R-62, for each license under which the licensee is billed.

(4) For the licensee to be granted small entity status by the Department, a completed Form R-62, signed by the owner of the entity or an official empowered to act on behalf of the entity, shall accompany each application for a new license and each annual fee.

(5) The licensee shall provide a new Department Form R-62, signed by the owner of the entity or an official empowered to act on behalf of the entity, within thirty days from receipt of such a request from the Department.

(6) Failure to file a small entity certification, or to provide an updated certification upon the request of the Department, could result in the denial of the fee reduction that might otherwise be granted.

(7) A licensee who is a subsidiary of a large entity does not qualify as a small entity for purposes of Table 12-1.

12.4.**5.**~~4.3~~ An annual management fee shall be charged for **radioactive materials licensees**~~persons~~ operating in the State under reciprocity as follows:

(1) Any radioactive material brought into the state for use under reciprocity shall pay a reciprocal recognition fee equal to 75 percent of the appropriate annual fee in Appendix 12A.

(2) Reciprocal fees shall be due and payable prior to entry into the state.

(3) An acknowledgement of fee payment will be provided by the Department. The acknowledgement of fee payment shall be retained by the licensee and maintained with the pertinent documents prescribed in 3.24.1.1(6).

(4) Reciprocal recognition fees shall not be transferred or refunded.

(5) Reciprocal recognition fees shall expire 12 months from the issue date[2].

2 Pursuant to 3.24, an out-of-state licensee may operate in Colorado under reciprocity for no more than 180 cumulative total days in any calendar year.

12.4.5.5~~4.4~~ Payment of Annual Fees.

Radiation Machine Facility Registrants

(1) The annual fees shall be due and payable each year by the expiration date. The annual fees are not refundable except in those cases where the Department has determined that the fee is not required.

(2) Annual fees shall be charged and payment required for any registrant that has not terminated their registration on or before the expiration date.

Specific Radioactive Materials Licensees

(1) The annual fees shall be due and payable each year on the anniversary date. The annual fees are not refundable except in those cases where the Department has determined that the fee is not required.

(2) Annual fees shall be charged and payment required for any license that has not been terminated on or before the anniversary date or for which a request for termination has not been submitted to the Department pursuant to 3.16.7.

12.5 General Licenses.

12.5.1 Persons who hold general licenses under the following categories shall pay an annual fee:

12.5.1.1 Depleted uranium in industrial products and devices authorized under 3.5.5;

12.5.1.2 Possession of more than 1 kilogram of source material other than depleted uranium for shielding under 3.5;

12.5.1.3 Measuring, gauging and controlling devices under 3.6.4; and

12.5.1.4 In vitro licenses under 3.6.9.

12.5.2 The basis for the annual fee is to cover the Department's cost associated with the regulation and control of these sources, and to cover the Department's administrative costs for those generic activities directly related to the regulation of materials licensees.

12.5.3 Fees for general licenses are listed in Appendix 12A and shall be payable every July 1, for as long as the license remains in effect.

12.5.4 Fees for inspection of licenses, authorized under 3.5.5 and 3.6, that are based on the full cost of the inspection are payable upon notification by the Department.

12.6 Special Project Fees.

12.6.1 Fees for special projects are assessed for the full cost of the review, as specified in Appendix 12A.

12.6.1.1 Special project fees shall be based on reasonable and actual professional staff time.

12.6.1.2 Appropriate contractual support services expended for certain radiation control activities will also be included.

12.6.2 Fees for special projects are payable upon notification by the Department.

12.7 Low-Level Radioactive Waste Access Approval Fees.

Comment [JJ12]: This new subsection is added, consistent with prior section changes pertaining to the proposed annual radiation producing (X-Ray) machine facility registration process/fee.

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12.7.1 Fees for services required for low-level radioactive waste access approval are payable upon notification by the Department.

SEARCH, REVIEW, DUPLICATION AND SPECIAL SERVICE FEES

12.8 ReservedSearch, Review, Duplication and Special Service Fees.

12.8.1 Search, Review, and Special Service Fees.

12.8.1.1 The Department charges fees for search, duplication and review.

(1) The Department may assess fees even when no Department records are located as a result of the search or when Department records that are located as a result of the search are not disclosed; and,

(2) If the public record is a result of a computer output, other than word processing, the fee for a copy, printout, or other photograph thereof may be based on recovery of the actual incremental costs of providing the electronic services and products together with a reasonable portion of the costs associated with building and maintaining the information system.

(a) The Department shall charge a reasonable fee, if, in response to a specific request, it has performed a manipulation of data so as to generate a record in a form not used by the State. Such fees shall not exceed the actual cost of manipulating the said data and generating the said record in accordance with the request.

(b) Persons making subsequent requests for the same or similar records may be charged a fee not in excess of the original fee.

12.8.1.2 The Department shall charge requesters who request the following services for the direct costs of the service:

(1) Certifying that records are true copies; or

(2) Sending records by special methods, such as Express Mail, package delivery service, etc.

12.8.2 Duplication Fees.

12.8.2.1 The charge for duplicating records shall be computed on the basis of Department's direct costs, including both the cost of staff and the cost of the actual copy.

12.8.2.2 Copyrighted material shall not be reproduced in violation of the copyright laws.

12.8.3 Fees for Search and Review of Department Records by Department Personnel.

12.8.3.1 The Department shall charge the following hourly rates for search and review of Department records by Department personnel:

(1) Clerical search, review, and duplication at a rate that is equivalent to the actual cost of an Administrative Assistant III at the five-year rate;

(2) Professional search, review, and duplication at a rate that is equivalent to the actual cost of an Environmental Protection Specialist II at the five-year rate; and

(3) Senior management search, review, and duplication at a rate that is equivalent to the actual cost of an Environmental Protection Specialist V at the five-year rate.

12.8.4 Search and Duplication Provided Without Charge.

12.8.4.1 The Department may not bill any requester for fees if the cost of collecting the fee would be equal to or greater than the fee itself.

Comment [JJ13]:
For consistency with state requirements relating to fees for duplication of records, the contents of section 12.8 are deleted.

The fees received by the program for duplication and related services are minimal.

12.8.4.2 The Department may aggregate requests in determining search and duplication to be provided without charge as provided in 12.8.4.1, if the Department finds a requester, or multiple requestors acting in concert, has filed multiple requests for only portions of a Department record or similar Department records for the purpose of avoiding charges.

12.8.5 Assessment of Fees.

12.8.5.1 If the request is expected to require the Department to assess fees in excess of $25 for search and/or duplication, the Department shall notify the requester that fees will be assessed unless the requester has indicated in advance the willingness to pay fees as high as estimated.

12.8.5.2 In the notification, the Department shall include the estimated cost of search fees and the nature of the search required and estimated cost of duplicating fees.

12.8.5.3 The Department will encourage requesters to discuss with the Department the possibility of narrowing the scope of the request with the goal of reducing the cost while retaining the requester's original objective.

12.8.5.4 If the fee is determined to be in excess of $250, the Department may require payment at the time the information is provided.

12.8.6 Requests for Waiver or Reduction of Fees.

12.8.6.1 The Department shall collect fees for searching for, reviewing, and duplicating Department records, except as provided in 12.8.4, unless a requester submits a request in writing for a waiver or reduction of fees and the Department approves such request.

(1) To assure that there will be no delay in the processing of Open Records Act requests, the request for a waiver or reduction of fees should be included in the initial Open Records Act request letter.

12.8.6.2 Each request for a waiver or reduction of fees must be addressed to the Director, Hazardous Materials and Waste Management Division, Colorado Department of Public Health and Environment.

12.8.6.3 A person requesting the Department to waive or reduce search, review, or duplication fees shall:

(1) Describe the purpose for which the requester intends to use the requested information;

(2) Explain the extent to which the requester will extract and analyze the substantive content of the Department record;

(3) Describe the nature of the specific activity or research in which the Department records will be used and the specific qualifications the requester possesses to utilize information for the intended use in such a way that it will contribute to public understanding;

(4) Describe the likely impact on the public's understanding of the subject as compared to the level of understanding of the subject existing prior to disclosure;

(5) Describe the size and nature of the public to whose understanding a contribution will be made;

(6) Describe the intended means of dissemination to the general public;

(7) Indicate if public access to information will be provided free of charge or provided for an access fee or publication fee; and

(8) Describe any commercial or private interest the requester or any other party has in the Department records sought.

~~12.8.6.4 The Department may waive or reduce the fee if, from information provided with the request for Department records made under 12.8.6.3, the Department determines that disclosure of the information in the Department records is for a public purpose, including public agency program support, nonprofit activities, journalism, and academic research, and is not primarily in the commercial interest of the requester.~~

~~12.8.6.5 In making a determination regarding a request for a waiver or reduction of fees, the Department may consider the following factors:~~

~~(1) If disclosure is likely to contribute significantly to public understanding of government operations or activities;~~

~~(2) If, and the extent to which, the requester has a commercial interest that would be furthered by the disclosure of the requested Department records; and~~

~~(3) If the magnitude of the identified commercial interests of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.~~

12.9 Partial Payment of Fees.

12.9.1 In the case of services, which are subject to full cost fees, the Department may bill monthly for any service rendered.

12.10 Method of Payment.

12.10.1 Approved credit cards, checks, drafts or money orders for payment of fees shall be payable to the Colorado Department of Public Health and Environment.

12.11 Schedule of Fees for Materials Licenses and Other Radiation Control Services.

12.11.1 Applicants for radioactive materials licenses, for services related to radiation machines, for other regulatory services and holders of materials licenses shall pay fees for the categories of services listed in Appendix 12A.

12.11.1.1 License applications received prior to the effective date of this rule shall be billed in accordance with the fee schedule, as updated by the hourly rate in effect at that time the service is performed.

12.11.2 For each service provided subject to full cost fees, records will be maintained of time spent, using reasonable accounting procedures by at least 15 minute intervals. A summary of time spent on any activity will be provided upon request.

12.11.3 The Department will **review and evaluate**~~adjust~~ all fees**, costs,** and the cost per person-hour every **two (2) years**~~six (6) months~~ from the effective date of this part ~~based on~~**relative to expenses and** the **most recent** Denver-Boulder-Greeley Consumer Price Index **(CPI)** for All Urban Consumers ~~(January 1, 2007 summary)~~. ~~An updated version of the fee schedule will be available upon request.~~

~~12.11.4 Every two (2) years from the effective date of these regulations, the Department will review the fees and the Department's costs.~~

12.11.4**3**.1 If the ~~adjusted~~ **CPI changes by more than ten (10) percent, or where** ~~fees and~~ costs **exceed revenues** for any categories ~~differ by more than ten percent (10%)~~**over a single review cycle or multiple review cycles since the last effective date of this part**, the Department will propose ~~a~~ revised fee**(s)** to the Board of Health for ~~those~~ **the applicable** categories **or fees**.

12.12 Failure by Applicant or Licensee to Pay Prescribed Fee.

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Comment [JJ14]:
Original sections 12.11.3 – 12.11.4 are revised to clarify the frequency and process by which fees are reviewed and modified by the Department as the current language lacks clarity.

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12.12.1 In any case where the Department finds that an applicant**, registrant,** or a licensee has failed to pay a prescribed fee for any licensing**, registration** or inspection activities required in this Part, the Department will not process any application, may suspend or revoke any license **or registration** involved pursuant to **2.10, or** 3.23 and may request action pursuant to CRS 25-11-107(4). Staff time expended in collection of any fee not paid within sixty (60) days of the date due will be billed at the Department's hourly rate.

12.13 Penalties.

12.13.1 A $20.00 penalty will be assessed for checks returned to the Department due to insufficient funds.

12.13.2 Late Payments.

12.13.2.1 A penalty shall be assessed to any person whose fee is collected by a collection agency.

12.13.2.2 The penalty shall be equal to the fee charged by the collection agency.

12.14 Severability.

12.14.1 The provisions of this regulation are severable, and if any provisions or the application of the provisions to any circumstances is held invalid, the application of such provision to other circumstances, and the remainder of this regulation shall not be affected thereby.

PART 12, APPENDIX 12A: SCHEDULE OF FEES FOR RADIOACTIVE MATERIALS LICENSEES, FOR SERVICES RELATED TO RADIATION MACHINES, AND FOR OTHER SERVICES[3,4,5,6]

3 Applications for new licenses, applications to reinstate expired or terminated licenses, except those subject to fees assessed at full costs, must be accompanied by the prescribed application fee for each category.

4 Application for amendments to licenses that would place the license in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for each category.

5 Renewal fees – Fees for applications for renewal of materials licenses will not be charged, except that fees for applications for renewal of licensees subject to full cost fees are due upon notification by the Department.

6 Inspection Fees: (a) Fees for routine inspections at locations authorized by the license or reciprocity permit will not be charged, except that routine inspections subject to full cost fees are due upon notification by the Department. (b) Separate charges will be assessed for each non-routine inspection which is performed. The frequency of routine inspections are those established in the Hazardous Materials And Waste Management Division Radiation Program Inspection and Enforcement Manual, and will be in accord with the frequencies established by the U.S. Nuclear Regulatory Commission for similar types of licenses.

CATEGORY 1 - SPECIAL NUCLEAR MATERIAL[7,8]

7 Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

8 Applications for new licenses that cover both special nuclear material and radioactive material and/or naturally occurring and accelerator produced material in sealed sources for use of gauging devices will pay the appropriate processing fee for category 1.C only.

1.A Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of U-235 in unsealed form or 200 grams or more of U-233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only.

NOTE: Colorado does not license this category of license.

Application Not Applicable

Annual Fee Not Applicable

Inspection Not Applicable

1.B Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI).

NOTE: Colorado does not license this category of license.

Application Not Applicable

Annual Fee Not Applicable

Inspection Not Applicable

1.C Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems including x-ray fluorescence analyzers.

Application $ ~~1,380~~**1,600**

Annual Fee $ ~~1,380~~**1,600**

Inspection $ ~~1,080~~**1,255**

1.D All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combinations that would constitute a critical quantity.

Application $ ~~3,300~~**3,830**

Annual Fee $ ~~3,300~~**3,830**

Comment [JJ15]:
The Radiation Program is proposing an "across the board" fee increase ranging from approximately 16-25 %, consistent with changes in the Consumer Price Index (Denver-Boulder-Greeley area; 2013). This fee increase is reflected in the proposed changes shown through Appendix 12A. The proposed fee change is to address the rising costs of the Department in providing Radiation Control related services.

All values have been rounded to the nearest $5 increment for consistency.

Inspection $ ~~2,445~~**2,835**

CATEGORY 2 - SOURCE MATERIAL

2.A1 Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride.

NOTE: Colorado does not license this category of license.

Annual Fee Not Applicable

Licensing and Inspection Not Applicable

2.A2 Licenses for possession and use of source material in recovery operations such as milling, in situ leaching, heap-leaching, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, and licenses authorizing decommissioning, reclamation or restoration activities as well as licenses authorizing the possession and maintenance of a facility in a standby mode.

2.A2 Class I License includes mill licenses issued for the extraction of uranium from uranium ore.

Annual Fee $ ~~94,300~~**109,390**

Licensing and Inspection Full Cost

2.A2 Class II License includes solution mining licenses (in-situ and heap leach) issued for the extraction of uranium from uranium ores including research and development licenses.

Annual Fee $ ~~79,005~~**91,645**

Licensing and Inspection Full Cost

2.A2 Class III "Other" license includes licenses for extraction of metals, heavy metals, and rare earths.

Annual Fee $ ~~29,900~~**34,685**

Licensing and Inspection Full Cost

2.A3 Licenses that authorize the receipt of uranium waste tailings generated by milling operations from other persons for possession and disposal, except those licenses subject to the fees in category 2.A2 or category 2.A4.

Annual Fee $ ~~58,190~~**67,500**

Licensing and Inspection Full Cost

2.A4 Licenses that authorize the receipt of uranium waste tailings generated by milling operations from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in category 2.A2.

Annual Fee $ ~~9,200~~**10,670**

Licensing and Inspection Full Cost

2.B Licenses for possession and use of source material for shielding.

Application $ ~~690~~**800**

Annual Fee $ ~~690~~**800**

Inspection $ ~~1,220~~**1,415**

2.C All other source material licenses.

Application $ ~~11,040~~**12,805**

Annual Fee $ ~~11,040~~**12,805**

Inspection $ ~~4,520~~**5,245**

CATEGORY 3 - BYPRODUCT MATERIAL, NATURALLY OCCURRING AND ACCELERATOR PRODUCED RADIOACTIVE MATERIAL

3.A Licenses of broad scope for possession and use of radioactive material issued pursuant to 3.11 for processing or manufacturing of items containing radioactive material for commercial distribution.

Application $ ~~20,470~~**23,745**

Annual Fee $ ~~20,470~~**23,745**

Inspection $ ~~8,655~~**10,040**

3.B Other licenses for possession and use of radioactive material for processing or manufacturing of items containing radioactive material for commercial distribution.

Application $ ~~5,290~~**6,135**

Annual Fee $ ~~5,290~~**6,135**

Inspection $ ~~2,530~~**2,935**

3.C Licenses authorizing the processing or manufacture and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing radioactive material.

Application $ ~~12,305~~**14,275**

Annual Fee $ ~~12,305~~**14,275**

Inspection $ ~~2,530~~**2,935**

3.D Licenses authorizing distribution of radiopharmaceuticals, generators, reagent kits, and/or sources or devices not involving processing of radioactive material.

Application $ ~~3,910~~**4,535**

Annual Fee $ ~~3,910~~**4,535**

Inspection $ ~~1,300~~**1,510**

3.E Licenses for possession and use of radioactive material in sealed sources for irradiation of materials where the source is not removed from its shield (self-shielded units).

Application $ ~~3,195~~**3,705**

Annual Fee $ ~~3,195~~**3,705**

Inspection $ ~~1,380~~**1,600**

3.F Licenses for possession and use of less than 370 TBq (10,000 Ci) of radioactive material in sealed sources for irradiation of materials where the source is exposed for irradiation purposes.

Application $ ~~5,795~~**6,720**

Annual Fee $ ~~5,795~~**6,720**

Inspection $ ~~2,150~~**2,495**

3.G Licenses for possession and use of 370 TBq (10,000 Ci) or more of radioactive material in sealed sources for irradiation of materials where the source is exposed for irradiation purposes. This category includes under water irradiators for irradiation of materials where the source is not exposed.

Application $ ~~20,930~~**24,280**

Annual Fee $ ~~20,930~~**24,280**

Inspection $ ~~4,140~~**4,800**

3.H Licenses issued to distribute items containing radioactive material which requires device review to persons exempt from the licensing requirements of Part 3.

Application $ ~~3,195~~**3,705**

Annual Fee $ ~~3,195~~**3,705**

Inspection $ ~~1,300~~**1,510**

3.I Licenses issued to distribute items containing radioactive material or quantities of radioactive material which do not require device evaluation to persons exempt from the licensing requirements of Part 3 except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed by the U.S. Nuclear Regulatory Commission or an Agreement State.

Application $ ~~4,600~~**5,335**

Annual Fee $ ~~4,600~~**5,335**

Inspection $ ~~1,530~~**1,775**

3.J Licenses issued to distribute items containing radioactive material which require sealed source and/or device review to persons generally licensed. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 3.

Application $ ~~2,095~~**2,430**

Annual Fee $ ~~2,095~~**2,430**

Inspection $ ~~1,425~~**1,655**

3.K Licenses issued to distribute items containing radioactive material or quantities of radioactive material that do not require sealed and/or device review to persons generally licensed. This

category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 3.

Application $ ~~1,380~~**1,600**

Annual Fee $ ~~1,380~~**1,600**

Inspection $ ~~770~~**895**

3.L Licenses of a broad scope for possession and use of radioactive material for research and development which do not authorize commercial distribution.

Application $ ~~10,005~~**11,605**

Annual Fee $ ~~10,005~~**11,605**

Inspection $ ~~3,520~~**4,085**

3.M Other licenses for possession and use of radioactive material for research and development which do not authorize~~d~~ commercial distribution.

Application $ ~~4,405~~**5,110**

Annual Fee $ ~~4,405~~**5,110**

Inspection $ ~~1,755~~**2,035**

3.N Licenses that authorize services for other licensees, except (1) licenses that authorize calibration and/or leak testing services only are subject to the fees specified in fee category 3.Q, and (2) licensees that authorize waste disposal services are subject to the fees specified in fee Categories 4.A, 4.B., or 4.C.

Application $ ~~4,795~~**5,560**

Annual Fee $ ~~4,795~~**5,560**

Inspection $ ~~2,070~~**2,400**

3.O Licenses for possession and use of radioactive material for industrial radiography operations.

Application $ ~~12,535~~**14,540**

Annual Fee $ ~~12,535~~**14,540**

Inspection $ ~~2,680~~**3,110**

3.P Portable gauge radioactive material licensees.

Application $ ~~2,405~~**2,790**

Annual Fee $ ~~2,405~~**2,790**

Inspection $ ~~1,680~~**1,950**

3.Q All other specific radioactive material licensees, except those in fee categories 1, 2, 3.A through 3.P, and 4.A. through 9.D.

Application $ ~~2,405~~**2,790**

Annual Fee $ ~~2,405~~**2,790**

Inspection $ ~~1,680~~**1,950**

3.S Licenses for production of accelerator-produced radionuclides.

Application $ 14,275

Annual Fee $ 14,275

Inspection $ 2,935

CATEGORY 4 - WASTE HANDLERS

4.A Licenses specifically authorizing the receipt of waste byproduct material, source material, special nuclear material, or naturally occurring and accelerator produced material from other persons for the purpose of commercial disposal by land burial by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for treatment or disposal by incineration and transfer of packages to another person authorized to receive or dispose of waste material.

Annual Fee Not Applicable[9]

9 There are no existing Colorado licenses in these fee categories. Once Colorado issues a license for these categories, the Department will consider establishing an annual fee for that type of license.

Licensing and Inspection Full Cost

4.B Licenses specifically authorizing the receipt of waste byproduct material, source material, special nuclear material, or naturally occurring and accelerator produced material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.

Application $ ~~9,775~~**11,340**

Annual Fee $ ~~9,775~~**11,340**

Inspection $ ~~2,530~~**2,935**

4.C Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, special nuclear material, or naturally occurring and accelerator produced material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.

Application $ ~~7,395~~**8,580**

Annual Fee $ ~~7,395~~**8,580**

Inspection $ ~~2,830~~**3,285**

CATEGORY 5 - WELL LOGGING

5.A Licenses for possession and use of byproduct material, source material, special nuclear material, or naturally occurring and accelerator produced material for well logging, well surveys, and tracer studies other than field.

Application $ ~~8,795~~**10,200**

Annual Fee $ ~~8,795~~**10,200**

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Comment [JJ16]:
This is a new fee category which is intendeed to better describe and categorize this type of licensee and used of material consistent with the approach used by NRC.

Colorado currently has 3 radioactive materials licensees which would be moved into this fee category. These licensees currently pay an annual fee amount equivalent to the "3.C" fee category. Under the proposed revisions, these entities would pay a fee equivalent to the amount in the proposed (revised) 3.C fee category.

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Inspection $ ~~2,830~~**3,285**

5.B Licenses for possession and use of byproduct material for field flooding tracer studies.

Annual Fee $ ~~10,395~~**12,060**

Licensing and Inspection Full Cost

CATEGORY 6 - NUCLEAR LAUNDRIES

Comment [JJ17]:

Colorado does not currently have any licensees in this fee category.

6.A Licenses for commercial collection and laundry of items contaminated with radioactive material, source material, special nuclear material, or naturally occurring and accelerator produced material.

Application $ ~~16,905~~**19,610**

Annual Fee $ ~~16,905~~**19,610**

Inspection $ ~~4,140~~**4,800**

CATEGORY 7 - HUMAN AND VETERINARY USE OF RADIOACTIVE MATERIAL

7.A Licenses issued for human or veterinary use of radioactive material, source material, special nuclear material, or naturally occurring and accelerator produced material in sealed sources contained in teletherapy devices.

Application $ ~~13,915~~**16,140**

Annual Fee $ ~~13,915~~**16,140**

Inspection $ ~~2,370~~**2,750**

7.B Licenses of broad scope issued to medical institutions or two or more physicians or veterinarians authorizing research and development including human and/or veterinary use of radioactive material, source material, special nuclear material, or naturally occurring and accelerator produced material except material in sealed sources.

Application $ ~~24,150~~**28,015**

Annual Fee $ ~~24,150~~**28,015**

Inspection $ ~~6,325~~**7,335**

7.C Other licenses issued for human or veterinary use of radioactive material, source material, and/or naturally occurring and accelerator produced material except material in sealed sources contained in teletherapy devices.

Application $ ~~4,600~~**5,335**

Annual Fee $ ~~4,600~~**5,335**

Inspection $ ~~2,220~~**2,575**

CATEGORY 8 - CIVIL DEFENSE

Comment [JJ18]:

Colorado does not currently have any licensees in this fee category

8.A Licenses for possession and use of radioactive material for civil defense activities.

Application $ ~~1,095~~**1,270**

Annual Fee $ ~~1,095~~**1,270**

Inspection $ ~~1,840~~**2,135**

CATEGORY 9 - DEVICE, PRODUCT, OR SEALED SOURCE SAFETY EVALUATION

9.A Safety evaluation of devices or products containing byproduct material, source material, special nuclear material, or naturally occurring and accelerator produced material except reactor fuel devices, for commercial distribution.

Annual Fee $ ~~5,795~~**6,720**

Evaluations Full Cost

9.B Safety evaluation of devices or products containing radioactive material, source material, special nuclear material, or naturally occurring and accelerator produced material manufactured in accordance with the unique specifications of, and for use by a single applicant, except reactor fuel devices.

Annual Fee $ ~~5,795~~**6,720**

Evaluations Full Cost

9.C Safety evaluation of sealed sources containing byproduct material, source material, special nuclear material, or naturally occurring and accelerator produced material, except reactor fuel, for commercial distribution.

Annual Fee $ ~~1,690~~**1,960**

Evaluations Full Cost

9.D Safety evaluation of sealed sources containing byproduct material, source material, special nuclear material, or naturally occurring and accelerator produced material, manufactured in accordance with the unique specifications of, and for use by a single applicant, except reactor fuel.

Annual Fee $ ~~575~~**665**

Evaluations Full Cost

CATEGORY 10 - TRANSPORTATION OF RADIOACTIVE MATERIAL

Note: Colorado does not license this category of license.

CATEGORY 11 - REVIEW OF STANDARDIZED SPENT FUEL FACILITIES

Note: Colorado does not license this category of license.

CATEGORY 12 - SPECIAL PROJECTS

12.A Special Projects and all uses of radioactive material which are not included in any other category.

Application Full Cost

Annual Fee Full Cost

Inspection Full Cost

CATEGORY 13 - SPENT FUEL STORAGE COSTS

Note: Colorado does not license this category of license.

CATEGORY 14

14.A Byproduct material, source material, special nuclear material, naturally occurring or accelerator produced radioactive material licenses and other approvals authorizing decommissioning, decontamination, reclamation or site restoration activities.

Annual Fee Not Applicable[10]

10 Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

Licensing and Inspection Full Cost

CATEGORY 15 - EMERGENCY RESPONSE

15.A Emergency response requiring over 10 person-hours in any 12 consecutive months.

Full Cost

15.B Emergency response planning and exercises.

Full Cost[11]

11 Fees will be charged only when service is requested or required by an authorized person outside of the Department who has legal authority to make such requests.

CATEGORY 16 - ANALYTICAL PROCEDURES

Full Cost

CATEGORY 17 - GENERAL LICENSES[12]

12 Fees are for each license at each facility. Fees for general licenses are annual fees, and are due July 1 each year. Non-routine inspections of general licensees related to (1) exposures to individuals; or (2) release of radioactive materials in excess of limits established in Part 4 of these regulations.

17.A Source material, gauges and other similar devices pursuant to 12.5.1.1 through 12.5.1.3.

Annual Fee $ ~~100~~**115**

Inspection Full Cost

17.B In vitro pursuant to 12.5.1.4.

Annual Fee $ ~~50~~**60**

Inspection Full Cost

CATEGORY 18 - LOW-LEVEL RADIOACTIVE WASTE ACCESS APPROVAL

Full Cost

CATEGORY 19 - HOURLY RATE[13]

$ 152

13 For any service provided by the Department in accord with **this part,**~~12.11.2 and 12.11.3. A~~ **a** statement will be sent to the registrant indicating the actual costs incurred.

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CATEGORY 20 - TRANSFER OF RECORDS TO DEPARTMENT PURSUANT TO 4.40 THROUGH 4.50

Per box for indexed paper records submitted in state storage boxes

$ ~~40~~**45**

For records not indexed and/or requiring repackaging in standard storage boxes

Full Cost

CATEGORY 21 - RADIATION MACHINES ENFORCEMENT ACTION

Maximum fee per each radiation machines certification enforcement action[14,15]: $ ~~1,330~~**1,545**

14 Any registrant that fails the requirements of 2.5.1, or does not correct any violation in accordance with the compliance schedule established in ~~2.5.2.3~~**2.9.1.2**, shall be subject to a Department enforcement action at the current hourly rate and/or maximum fee. The Department shall charge enforcement fees, which may include inspection fees for the inspection of radiation machines and facilities that have been determined, by either a qualified inspector or by the Department, to be in noncompliance with these regulations and with the certification frequency. These fees do not include penalties imposed under Part 13.

15 This represents the maximum fee that may be incurred for the Department enforcement actions of each radiation machine and/or facility determined to be in violation with these regulations by either a qualified inspector or by the Department.

CATEGORY 22 - QUALIFIED INSPECTOR, QUALIFIED EXPERT, OR COMPANIES PROVIDING RADIATION MACHINE SERVICING AND SERVICES

Maximum fee per registration every **year**~~2 years~~: $ ~~160~~**100**[16,17]

16 The qualified inspector **and qualified expert** registration fee is an individual fee. The servicing and services registration fee is a company fee.

17 ~~The annual fee is $80 and is payable every two years in the amount of $160.~~ This fee is non-refundable in the event that the application is not approved by the Department.

CATEGORY 23 – REVIEW OF RADIATION MACHINE PROVISIONAL MAMMOGRAPHER~~Y~~ CERTIFICATION APPLICATION

Maximum fee per each certification review or renewal: $ ~~50~~**60**

CATEGORY 24 – REVIEW OF ADEQUATE TRAINING FOR RADIATION MACHINE LIMITED SCOPE OPERATORS, BONE DENSITOMETRY OPERATORS, ~~AND~~ COMPUTED TOMOGRAPHY OPERATORS AND SERVICE COMPANY ENGINEER[18]

Maximum fee per each acceptance review: $ ~~50~~**60**

18 The fee for service company engineers is a "per application" fee for any number of service company engineers to be authorized to work under a service company registration.

CATEGORY 25 - RADIATION MACHINE CERTIFICATION LABEL ISSUED BY A QUALIFIED INSPECTOR

Required fee for each certification label issued to a registrant: $ ~~50~~**60**

CATEGORY 26 - RADIATION MACHINE FACILITY REGISTRATION FEE FOR RADIATION CONTROL SERVICES

Maximum annual registration fee per facility using a radiation machine: $ 50

EDITOR'S NOTES

6 CCR 1007-1 has been divided into separate parts for ease of use. Versions prior to 04/01/2007 are located in the first section, 6 CCR 1007-1. Prior versions can be accessed from the All Versions list on the rule's current version page. To view versions effective on or after 04/01/2007, select the desired part of the rule, for example 6 CCR 1007-1 Part 01 or 6 CCR 1007-1 Part 10.

Comment [JJ19]: Due to the previous renumbering/reorganization of Part 2, the section referenced is updated.

Comment [JJ20]: Category 22 fees have always included the "qualified expert" category as part of the service company category. The added language is intended to clarify this.

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History

Part 12 entire rule eff. 03/02/2009.

Part 12 Rules 12.1.4, 12.3.1.1(2), Appendix A, Categories 23, 24 eff. 04/30/2011.

CONCURRENT WITH THE PROPOSED CHANGES TO PART 12 (“FEES FOR RADIATION CONTROL SERVICES”), THE FOLLOWING SECTION OUTLINES THE PROPOSED CHANGES TO PART 2 (“REGISTRATION OF RADIATION MACHINES, FACILITIES AND SERVICES”). NOTE THAT UNAFFECTED SECTIONS ARE OMMITTED FROM THE PROPOSED DRAFT CHANGES.

DRAFT 1 11/2/14

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Hazardous Materials and Waste Management Division

STATE BOARD OF HEALTH

RADIATION CONTROL - REGISTRATION OF RADIATION MACHINES, FACILITIES AND SERVICES

6 CCR 1007-1 Part 02

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

[* * * = Indicates omission of unaffected rules]

* * *

REQUIREMENTS FOR DEPARTMENT APPROVAL AND/OR REGISTRATION

2.4 State of Colorado Authorization or Approval Recognized by the Department is Required for Each Category Designated in This Section.

2.4.1 Registration of a Facility.

2.4.1.1 Each person possessing or in the process of coming into the possession of a radiation machine facility shall:

(1) Be registered with the Department prior to using a radiation producing machine at the facility;

(2) ~~Complete and~~**Before the facility registration expiration date,** submit ~~an~~ **a complete** application for registration on the applicable Department R-4 series Form, and include all of the information required by the form and any accompanying instructions. The facility shall:

(a) Designate a radiation safety officer who meets the applicable requirements of Appendix 2A to be responsible for overall radiation protection for the facility; and

(b) Document that a written shielding design has been:

(i) Completed in accordance with Parts 6, 8, or 9 of these regulations, as applicable, prior to any radiation machine installation; and

(ii) Retained on file at the facility for the life of the facility.

(c) Pay the radiation machine facility registration fee for radiation control services indicated by Part 12, Category 26. The radiation machine facility registration fee is not required for registration updates required by 2.4.6.5 unless the update is submitted less than thirty (30) days prior to the registrant's expiration date.

2.4.1.2 As prescribed by 6.3.3.3 for a healing arts screening program, registrants shall complete and submit a Healing Arts Screening application including all of the information required by Part 6, Appendix 6F).

Comment [JJ21]:
EDITORIAL NOTE 1: ALL COMMENTS (SUCH AS THIS ONE) SHOWN IN THE RIGHT SIDE MARGIN OF THIS DRAFT RULE ARE FOR INFORMATION PURPOSES ONLY TO PROVIDE ADDITIONAL INFORMATION AND TO AID THE READER IN UNDERSTANDING THE PROPOSED CHANGE DURING THE DRAFT REVIEW PROCESS.

THESE COMMENTS ARE **NOT** PART OF THE RULE AND ALL COMMENTS WILL BE DELETED PRIOR TO FINAL SUBMISSION TO THE COLORADO SECRETARY OF STATE'S OFFICE FOR FINAL PUBLISHING IN THE COLORADO CODE OF REGULATIONS.

EDITORIAL NOTES WITHIN THE BODY OF THE RULE ARE FOR INFORMATION PURPOSES ONLY AND ARE NOT CONSIDERED PART OF THE RULE.

EDITORIAL NOTE 2: THE PROPOSED AMENDMENT TO THIS (PART 2) RULE ARE IN SUPPORT OF CONCURRENT PROPOSED CHANGES TO PART 12 (FEES FOR RADIATION CONTROL SERVICES). THE PROPOSED DRAFT IS BASED ON THE FINAL PART 2 RULE WHICH BECAME EFFECTIVE IN AUGUST 2014 AND DO NOT REFLECT OTHER CHANGES WHICH MAY BE IN-PROCESS AND NOT YET FINALIZED.

Comment [JJ22]: Consistent with the proposed, concurrent changes to Part 12 (fees for radiation control services), additional language is added to introduce an annual facility registration fee.

2.4.1.3 In addition to the other requirements of 2.4, any research using radiation machines on humans shall be approved by an Institutional Review Board (IRB).

2.4.2 Registration as a Service Company.

2.4.2.1 Each person who is engaged (or offers to engage) in the business of selling, leasing, transferring, lending, assembling, installing, maintaining, repairing, storing, trading out, disabling or disposing of radiation machines and their related components, or is engaged in the business of furnishing or offering to furnish radiation machine servicing or services in this State, shall be registered with the Department prior to performing such activities.

2.4.2.2 Each Service Company shall complete the Form R-60 series application for registration with all of the information required by the Department indicated on the form and all accompanying instructions, together with the fee required by Part 12, Category 22.

2.4.2.3 Each person applying for registration under 2.4.2 shall identify and provide:

(1) The service category for which registration is being requested, including but not limited to:

(a) Selling, leasing, transferring, lending, assembling, installing, maintaining, trading out, disabling or disposing of radiation machines and associated radiation machine components; and

(b) Servicing of radiation machines and associated radiation machine components, to include preventative maintenance, performance adjustment, calibration, or repair.

(2) The name and qualifications of each service technician who will provide service, including:

(a) Documentation of the training and experience that demonstrate compliance with the requirements of Appendix 2H; and

(b) Certification that each service technician has been instructed in, and demonstrates an understanding of the requirements of:

(i) these regulations; and

(ii) the Federal Performance Standard (21 CFR Chapter I, Subchapter J; and

(3) Documentation of the type of personnel dosimetric monitoring used that meets the requirements of 4.17 and 4.18; and

(4) A list of instruments that will be used to ensure that machine performance meets the manufacturer's specifications.

(5) Each servicing and services registrant under 2.4.2 shall notify the Department each time the registrant adds or deletes any service technician(s) to the list of service technicians authorized to provide radiation machine service(s).

(a) The registrant will be assessed ~~an~~ **the** acceptance review fee **required by Part 12, Category 24** when adding a technician, unless the technicians are added during a registration renewal.

2.4.2.4 Service Company registration will be for a one (1) year period.

Comment [JJ23]: Language is added for clarification to cross-reference the applicable Part 12 fee category.

Comment [JJ24]: Consistent with the proposed changes to Part 12 (fees for radiation control services), the Service Company registration process is changed from a biennial registration cycle to an annual registration.

2.4.3 Registration as a Qualified Expert.

2.4.3.1 Each individual who designs or evaluates protective shielding around a radiation area so the area meets the public exposure requirements of Part 4, shall be registered with the Department as a qualified expert designated QE(R), QE(S) or QE(T).

(1) Each individual who designs or evaluates shielding for a radiation machine regulated by Parts 8 or 9 and not used in the healing arts shall be registered with the department as a QE(S) and meet the requirements of Appendix 2C.

(2) Each individual who designs or evaluates shielding for a radiation machine used in the healing arts as regulated by Part 6, but not used in radiation therapy, shall be registered with the department as a QE(R) and meet the requirements of Appendix 2B

(3) Each individual who designs or evaluates shielding for a radiation machine used in radiation therapy as regulated by Part 24, shall be registered as a QE(T) and meet the requirements of Appendix 2B.

2.4.3.2 Each Qualified Expert shall complete the applicable Form R-68 series application for registration and include all of the information required by the form and any accompanying instructions, together with the fee required by Part 12, Category 22.

2.4.3.3 Qualified Expert registration shall be for a one (1) year period.

Comment [JJ25]: Consistent with the proposed changes to Part 12 (fees for radiation control services), the Qualified Expert registration process is changed from a biennial registration cycle to an annual registration.

2.4.4 Registration as a Qualified Inspector.

2.4.4.1 Each individual who performs a certification evaluation of a radiation machine or an evaluation of a facility shall be registered with the Department as a qualified inspector who meets the criteria established in Appendix 2I.

2.4.4.2 Each individual who performs a certification evaluation on mammography, fluoroscopy or computed tomography machines used in the healing arts or, evaluates the quality assurance programs of digital imaging systems used in the healing arts shall be registered with the department as a qualified inspector with approval in the Registered Medical Physicist category.

(1) Individuals who perform a certification evaluation on Volumetric Dental Imaging Systems shall be registered with the department as a qualified inspector with approval in "Volumetric Dental Imaging Systems".

2.4.4.3 Each individual who performs registered medical physicist duties required by Part 24 shall be registered with the department as a qualified inspector with approval in the radiation therapy Registered Medical Physicist category.

2.4.4.4 Each Qualified Inspector shall complete the applicable Form R-53 series application for registration and include all of the information required by the form and any accompanying instructions, together with the fee required by Part 12.

2.4.4.5 Qualified Inspector registration shall be for a period of one (1) year.

Comment [JJ26]: Consistent with the proposed changes to Part 12 (fees for radiation control services), the Qualified Inspector registration process is changed from a biennial registration cycle to an annual registration.

2.4.4.~~5~~ **6** Certification evaluation measurements shall be made with instruments that are sufficiently sensitive to determine compliance with these regulations.

(1) The instruments shall be maintained and used in good working order.

(2) The instruments shall be calibrated at least every two (2) years, or in accordance with the manufacturer's recommendation, whichever is more frequent, or after any repair that could affect the calibration of the instrument.

(3) Calibrations shall be NIST-traceable where such traceability is feasible.

(4) Procedures for instrument calibration done by inter-comparison with a suitable and appropriately calibrated instrument must be approved by the department.

(a) The comparison shall be between an instrument that has a current calibration traceable to NIST and an instrument for which a calibration factor is to be determined.

(b) The comparison shall be made using the actual physical quantity to be routinely measured (for example, radiation energy/quality or visible light spectrum) and shall be compared in the same physical geometry.

(c) The procedure(s) for inter-comparison shall be documented and available for review by the department.

(5) In addition to the requirements in 2.4.4.~~65~~, instruments used for the certification evaluation report to measure the air kerma or air kerma rate of mammography machines shall be calibrated with an accuracy of ± six (6) percent (95 percent confidence level) in the mammography energy range.

Comment [JJ27]: This section cross-reference is updated, consistent with the renumbering of (previous) section 2.4.4.5.

* * *

2.6.3 For each radiation machine finding of noncompliance (Form R-59-1), the facility registrant shall:

2.6.3.1 Correct any failure of a radiation machine or imaging system to meet the requirements of these regulations or manufacturer's required specifications, within thirty (30) calendar days or as otherwise specified by the Department, in particular as identified on Form R 59 1, "X ray Machine Certification Evaluation Report."

2.6.3.2 Not use a radiation machine that has been determined to be unsafe for use, as determined by the criteria in Part 6, Appendix 6D, until subsequent certification by a Department-approved qualified inspector or the Department.

2.6.3.3 Permit only a person who has provided evidence of current registration with the Department in accordance with 2.4.2 to provide radiation machine servicing or services.

2.6.3.4 Notify the qualified inspector who issued the Certification Evaluation Report when the radiation machine violations have been corrected.

(1) A copy of the Certification Evaluation Report, Form R-59-1, with the service repair certification signed and dated by the person providing service, shall be provided to the qualified inspector who initiated the certification evaluation..

(2) A copy of any service report shall be provided to the qualified inspector upon request as evidence of completed corrective action.

2.6.3.5 Retain documentation that each indicated violation has been corrected to bring the machine into compliance in accordance with Section 2.6.6.

2.6.3.6 Pay the fee required by Part 12**, Category 25** for each certification label issued by the qualified inspector.

Comment [JJ28]: Reference to Part 12 fee category added for clarity.

* * *

PART 2, APPENDIX 2F: BONE DENSITOMETRY (BD) ADEQUATE RADIATION SAFETY TRAINING AND EXPERIENCE

Each operator of a dual-energy x-ray absorptiometry system used on a living human shall meet the following education and experience requirements:

2F.1 Is certified or registered by:

2F.1.1 ARRT(R), ARRT(M), ARRT(N), ARRT(T), or CNMT; or

2F.1.2 The International Society for Clinical Densitometry (ISCD), combined with or including the didactic radiation safety training in 2F.~~2A~~**2.1**, 2F.~~2B~~ **2.2** and 2F.~~2C~~**2.3**; or

Comment [JJ29]: This change is unrelated to the proposed Part 12 changes, but rather to update cross reference errors consistent with the current numbering format for Appendix 2F.

* * *

COLORADO
Board of Health
Department of Public Health & Environment

Notice of Public Rule-Making Hearing
6 CCR 1007-1, Radiation Control, Part 2 and Part 12
February 18, 2015

NOTICE is hereby given pursuant to the provisions of Section 24-4-103, C.R.S., that the Colorado Board of Health will conduct a public rule-making hearing on February 18, 2014 at 10 a.m. in the Sabin-Cleere Conference Room of the Colorado Department of Public Health and Environment, Bldg. A, First Floor, 4300 Cherry Creek Drive, South, Denver, CO 80246, to consider the promulgation of 6 CCR 1007-1, Colorado Rules and Regulations Pertaining to Radiation Control, Part 12, *Fees for Radiation Control Services and Part 2, Registration of Radiation Machines, Facilities, and Services.* The proposed rules have been developed by the Hazardous Materials and Waste Management Division of the Colorado Department of Public Health and Environment pursuant to Section 25-1.5-101(1)(k), 25-1.5-101(1)(l), 25-11-103, 25-11-104, and 25-1-108, C.R.S.

The agenda for the meeting and the proposed amendments will also be available on the Board's website, https://www.colorado.gov/pacific/cdphe/boh at least 7 days prior to the meeting. The proposed rules, together with the proposed statement of basis and purpose, specific statutory authority and regulatory analysis will be available for inspection at the Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South EDO-A5, Denver, Colorado 80246-1530 at least five working days prior to the hearing. Copies of the proposed rules may be obtained by contacting the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division, HMWM-RM-B2, 4300 Cherry Creek Drive S., Denver, CO 80246, (303) 692-3454.

The Board encourages all interested persons to participate in the hearing by providing written data, views, or comments, or by making oral comments at the hearing. At the discretion of the Chair, oral testimony at the hearing may be limited to three minutes or less depending on the number of persons wishing to comment. Pursuant to 6 CCR 1014-8, §3.02.1, written testimony must be submitted no later than five (5) calendar days prior to the rulemaking hearing. Written testimony is due by 5:00 p.m. on Thursday, February 12, 2015. Persons wishing to submit written comments should submit them to: Colorado Board of Health, ATTN: Jamie L. Thornton, Program Assistant, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South EDO-A5, Denver, Colorado 80246-1530 or by e-mail at: Jamie.thornton@state.co.us

Dated this 30th day of December, 2014.

Deborah Nelson
Board of Health Administrator

Notice of Rulemaking Hearing

Tracking number

2015-00033

Department

1000 - Department of Public Health and Environment

Agency

1007 - Hazardous Materials and Waste Management Division

CCR number

6 CCR 1007-1 Part 12

Rule title

RADIATION CONTROL - FEES FOR RADIATION CONTROL SERVICES

Rulemaking Hearing

Date

02/18/2015

Time

10:00 AM

Location

Sabin-Cleere Conference Room, Colorado Department of Public Health and Environment, Bldg. A, 4300 Cherry Creek Drive, South, Denver, CO. 80246

Subjects and issues involved

To consider the promulgation of 6 CCR 1007-1, Colorado Rules and Regulations Pertaining to Radiation Control, Part 12, Fees for Radiation Control Services and Part 2, Registration of Radiation Machines, Facilities, and Services.

Statutory authority

Section 25-1.5-101(1)(k), 25-1.5-101(1)(l), 25-11-103, 25-11-104, and 25-1-108, C.R.S.

Contact information

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Title

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COLORADO
Department of Public Health & Environment

Dedicated to protecting and improving the health and environment of the people of Colorado

To: Members of the State Board of Health

From: James Jarvis, Health Physicist, Hazardous Materials and Waste Management Division

Through: Gary Baughman, Division Director GB

Date: December 8, 2014

Subject: **Request for Rulemaking Hearing**
Proposed Amendments to **6** CCR 1007-1, Part 12, "Fees for Radiation Control Services" and Part 2, "Registration of Radiation Machines, Facilities, and Services", with a request for the rulemaking hearing to occur December 17, 2014

The Division is proposing changes to the fees it charges for services which are outlined in Part 12 of the regulations, titled *Fees for Radiation Control Services*. Changes are also proposed for Part 2 of the regulations, titled Registration of Radiation Machines, Facilities, and Services, necessary to support the proposed changes to Part 12.

The proposed regulatory changes are being initiated to address a projected budget shortfall in program funding. During a recent analysis of fees, budgets and expenditures, it was determined that the program will have a projected income shortfall of approximately $394K for FY 2015. Fees for radioactive materials licensing have not changed since 2009 and fees for radiation machine services have not changed since 2001. The Division is proposing fee increases (above the current fees) ranging from 16%-25% which will impact approximately 975 specific and general radioactive materials licensees and all radiation machine registrants. Additionally, the Division is proposing a new radiation machine facility registration fee of $50 per year per facility to meet department costs for administering radiation control services to support the approximate 5,200 facilities using radiation machines in Colorado.

The proposed amendment to Part 2 adds language consistent with the proposed changes in Part 12. Language is added to reference the proposed facility registration fee for radiation control services, and to indicate that Service Company, Qualified Inspector, and Qualified Expert registrations are for a 1-year period. Additionally, two typographical errors are corrected.

Over 6,000 stakeholders were notified of the proposed changes and the opportunity to ask questions and comment via email, and were offered the opportunity to participate in three stakeholder meetings. The Division received written comments from ~20 individuals as well as a few comments from the 12 individuals participating in the three stakeholder meetings. The primary concern expressed by radiation machine facility stakeholders were that the increase in radiation machine fees, and in particular, the proposed annual $50 registration application fee would have a negative impact on small businesses in the medical field (primarily dentistry, veterinary, and chiropractic medicine). Additionally, stakeholders commented on the need for government entities to work within established budgets. One radioactive materials licensee provided comments supporting the proposed changes while the remainder of comments generally opposed the proposed fees.

Further details on the proposed changes are listed in a Statement of Basis and Purpose and Specific Statutory Authority for the proposed revised rule, which, along with a Regulatory Analysis and supporting information, is available at:
http://www.colorado.gov/pacific/cdphe/radregs

At the December 17, 2014 request for rulemaking, the Radiation Program requests Board of Health approval for a rulemaking hearing on February 18, 2015.

cc: Deborah Nelson, Administrator, State Board of Health

STATEMENT OF BASIS AND PURPOSE
AND SPECIFIC STATUTORY AUTHORITY
for Amendments to
6 CCR 1007-1, Radiation Control, Part 12, Fees for Radiation Control Services and Part 2, Registration of Radiation Machines, Facilities, and Services

Basis and Purpose.

The Colorado Radiation Control Act, Title 25, Article 11, Colorado Revised Statutes (the Act), requires the State Board of Health to formulate, adopt and promulgate rules and regulations pertaining to radiation control.

Section 25-11-103 of the Act requires the Colorado Department of Public Health and Environment (Department) to develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing radiation, including requiring registration of sources of ionizing radiation such as radiation machines and to issue licenses governing the use of radioactive materials.

Section 25-11-104 of the Act requires Colorado's radiation regulations to be modeled after the Suggested State Regulations for Control of Radiation (SSRCR) of the Conference of Radiation Control Program Directors, Inc., except when the Board of Health concludes, on the basis of detailed findings, that a substantial deviation from the SSRCR is warranted. The Department's regulations, in certain parts, must also be compatible with the regulations adopted by the U.S. Nuclear Regulatory Commission (NRC). The Act establishes the SSRCR as the model for Colorado to use in adopting NRC regulatory provisions. In some instances, maintaining consistency with the SSRCR may not be possible due to the model regulation being out of date with NRC changes or where no model regulation exists.

Section 25-11-104(6) of the Radiation Control Act requires:

- The state board of health shall formulate, adopt, and promulgate a fee schedule for radiation control services provided by the Department;
- The board of health shall provide for sufficient revenues from fees to reimburse the state for cost of the radiation control services;
- The fees shall be related to the actual costs incurred in administering such radiation control services; and
- Licenses and fees shall be in accordance with policies and priorities of NRC.

Due to the differing funding sources and fee structure variances in radiation programs from state to state, there is no established SSRCR which is equivalent to Colorado Part 12. The SSRCR equivalent to Colorado Part 2, (known as SSRCR Part "B") is generic in nature thus permitting individual states to shape the rule to fit the individual registration and business processes of the state. The NRC does not require Agreement States to collect fees as a matter of compatibility. However, the NRC does require that a radiation control program have a stable source of funding. The Colorado Radiation Control Program (Program) in the Hazardous Materials and Waste Management Division (Division) is sustained almost wholly from the radiation control cash fund (Fund) derived from the fees charged. Without sufficient funding support, the State of Colorado would not have an adequate radiation control program. The consequence of such a finding by NRC could be that NRC would reassert its authority over Colorado licensees, imposing NRC's higher fees on Colorado licenses. Under such a scenario radioactive materials licensees would also be required to work with a federal regulatory agency not physically located in Colorado. The proposed amendments to Part 12 and Part 2

are written to follow statutory requirements and Colorado's specific business processes and program which are unique and specific to Colorado.

The Department is proposing revisions to Part 12, *Fees for Radiation Control Services*, of the *State of Colorado Rules and Regulations Pertaining to Radiation Control*. The most recent changes to Part 12 were adopted March 16, 2011 and became effective April 30, 2011. The 2011 changes did not involve adjustments to fees. The currently proposed amendment is intended to adequately provide for the Program's costs for radiation control services through fiscal year 2017, at which time fees and costs will be reviewed again. The adjustments maintain the equitable distribution of program costs among existing licensees and radiation machine registrants.

Concurrent with the Part 12 changes, the Program is also proposing minor changes to Part 2, *Registration of Radiation Machines, Facilities, and Services,* necessary to clarify and support the changes to Part 12. Part 2 was previously adopted June 18, 2014 and became effective August 14, 2014. The proposed Part 2 change includes added language to incorporate the annual radiation machine facility registration fee and to specify that the registrations for qualified inspectors, qualified experts and service companies are issued annually.
An analysis of overall annual fees was conducted. In 2014 the Program evaluated projected costs and revenue under the current fee schedule. The analysis indicates that a deficit is now projected for the current fiscal year (FY 2014-15) and beyond if the fee schedule is not altered. The proposed approach provides the increased revenue needed for the department to administer radiation control services.

Each radioactive material licensee in Part 12, Appendix 12A has a fixed annual fee, fixed new application fee and fixed fee for a non-routine inspections. Some licensees are subject to full-cost-fee recovery at an hourly billable rate. No changes to the hourly rate are proposed in this rulemaking as the analysis has indicated that the current hourly rate is adequate to support such hourly based activities and is consistent with other hourly rates in the Division.

The Program proposes five types of fee adjustments in the Part 12 rule:
(1) An increase of 20% in the radiation machine certification label fee from the current $50 to $60 per machine label;
(2) The establishment of a new annual radiation machine facility registration fee for radiation control services of $50;
(3) An increase of 20% in the application review fee for certain radiation machine operators (limited scope operators, bone densitometry operators, provisional mammographers);
(4) An increase of 25% in the application review fee for qualified experts, qualified inspectors, and service companies, and making the application cycle annual rather than the current biennial cycle; and
(5) An increase of 16-20% in annual fees and non-routine inspection fees for specific and the annual fee for general radioactive materials licensees.

Part 12, Section 12.11 of the rule, authorizes the Department to adjust all fees and the cost per person-hour every six months based on the consumer price index (CPI). A consumer price index is not calculated for the whole State of Colorado. According to a table published on the Legislative Council web site, http://www.colorado.gov/cs/Satellite/DOLA-Main/CBON/1251594680280, the CPI, calculated semiannually for the Denver-Boulder-Greeley metropolitan statistical area, is often used as a proxy for the inflation rate of Colorado. Since 2001 when radiation machine fees were last adjusted, the CPI has increased approximately 27% (~2-2.5% per year on average). Since 2009, when the radioactive materials license fees were last adjusted, the CPI has increased by approximately 11% (~2.75% per year). To account for an additional CPI increase in 2014-15, an increase of 16% is proposed.

The overall impact of the proposed modifications would be to increase total revenue by approximately $394,319 for FY 2014-15. Overall, Colorado's proposed radioactive materials annual fees are comparable to surrounding states and on average about 45% of the equivalent NRC fees.

Note that editorial comments, notes, and information shown in the right side margin of the draft proposed rule are for information only to aid the reader, and are not considered part of the regulation. These will be removed from the final regulation prior to submission to the Colorado Secretary of State's office for publishing in the Colorado register.

Specific Statutory Authority.
These rules are promulgated pursuant to the following statutory provisions: 25-1.5-101(1)(k), 25-1.5(1)(l), 25-11-103, 25-11-104, and 25-1-108, C.R.S.

SUPPLEMENTAL QUESTIONS

Is this rulemaking due to a change in state statute?

_____ Yes, the bill number is _____; rules are ___ authorized ___ required.
___X__ No

Is this rulemaking due to a federal statutory or regulatory change?

_____ Yes
___X__ No

Does this rule incorporate materials by reference?

_____ Yes
__X___ No

Does this rule create or modify fines or fees?

__X___ Yes
_____ No

REGULATORY ANALYSIS
for Amendments to
6 CCR 1007-1, Radiation Control, Part 12, Fees for Radiation Control Services and Part 2, Registration of Radiation Machines, Facilities, and Services

1. **A description of the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.**

The Radiation Program is part of the Hazardous Materials and Waste Management Division at the Colorado Department of Public Health and Environment. The mission of the program is to protect the citizens of Colorado from the hazards of radiation by regulating radioactive materials and radiation machine use throughout the state. The program achieves its mission primarily by licensing and inspecting facilities that use radioactive materials and requiring and tracking inspections of radiation machines through (privatized) qualified inspectors. Radioactive materials and radiation machines are used in a wide range of fields including the healing arts (medicine, chiropractic, veterinary, dentistry, and podiatry), industry (construction, security, analytical, research, mining, and oil and gas) and higher education (research, teaching). Therefore, the entities that will be affected by the proposed rule change and proposed fee increases include any organization using radioactive materials requiring licensing or any organization using radiation producing machines requiring registration. These entities include large and small businesses, some governmental entities, and institutions of higher education all of whom are regulated by the Radiation Program due to their use of radioactive materials and/or radiation (X-Ray) machines. Currently, there are approximately 5,200 facilities registered to use radiation machines; approximately 319 specific radioactive materials licensees; approximately 418 general radioactive materials licensees; and an additional ~1000 other individuals and entities registered with the Department as operators, inspectors, or service providers for radiation machines.

The Radiation Program charges fees for its services including the licensing and inspection for persons using radioactive materials. Fees are charged and received for the registration of radiation machines (and facilities) through sale of radiation machine certification labels. Fees are also charged for the registration of the private individuals who perform inspections on radiation machines, for the companies who perform service and maintenance on radiation machines, and certain individuals who operate radiation machines. These registration requirements are in place to insure that only qualified individuals perform such activities. All of these entities will bear the cost of the proposed changes and fee increases. Similarly, the citizens of Colorado along with all of these entities will receive the benefit of the continued regulatory program and proposed rule/fee since the program helps to ensure the safe use of radioactive materials and the safe output (radiation levels), operation, and maintenance of radiation machines.

Part 2 is specific to radiation producing (x-ray) machines and therefore, only those entities registered with the program as a facility, qualified inspector, qualified expert, or service company would be specifically impacted by the Part 2 changes. The Part 2 changes are necessary to clarify and support the proposed Part 12 changes. Although Part 2 is only applicable to radiation machine registrants, the Part 12 changes impacts all radioactive materials licensees and radiation machine registrants.

2. To the extent practicable, a description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

The quantitative impact of the proposed rule changes in Parts 12 and 2 and associated fee change is that licensees and registrants will be required to pay higher fees for licensing and registration ranging from 16% to 25% above current fee amounts. Additionally, under the proposed Part 2 changes each x-ray machine facility will be required to register and pay a fee annually; and qualified inspectors, qualified experts, and service companies will be required to register with the department on an annual rather than biennial cycle. The table below outlines the changes in fees in term of percent increase by type of entity for the current fees and the approximate number of entities impacted.

Entity Type	% Increase in fees over current fee amount [Approximate number of entities impacted]
-RADIATION MACHINE FEES-	
Radiation (X-Ray) Machine Registration - Certification Label Fee Per Machine[1]	20% [5,200]
Qualified Inspector, Qualified Expert, Service Company Registration Fee[2]	25% [~354]
Application Review Fee - Provisional Mammography Operator	20% [30-34 per year]
Review of adequate training for Limited Scope Operators, Bone Densitometry Operators, CT Operators, Service Company Engineers	20% [450+ per year]
Radiation Machine enforcement action/inspection fee	18% [~10 per year][3]
-RADIOACTIVE MATERIALS LICENSEE FEES-	
Radioactive Materials General Licensee Annual Registration - All (excluding in-vitro)	20% [~417]
Radioactive Materials General Licensee Annual Registration - in-vitro	20% [1]
Specific Licensee Annual Fee - All Categories (full fee, non-small entities)	16% [~255]
Specific Licensee Annual Fee - "Tier I" Small Entity	20% [~19]
Specific Licensee Annual Fee - "Tier II" Small Entity	16% [~45]
Radioactive materials non-routine inspection fee maximum amount. (Non-routine inspections are based the hourly rate for which no changes are proposed)[4]	16% [<~4 per year]

[1] Inspection/certification frequencies vary from 1-3 years and therefore not all machines will require an inspection certification label each year.

[2] The QI, QE, and Service Company registration fee is currently a biennial (every 2 year) fee. Under the proposed changes, this will become an annual fee.

[3] The number of enforcement actions/inspection fees is not fully predictable for future activities as it is dependent upon regulatory compliance by the regulated entity. Historically, for 2011-2013 the hourly fee for non-routine inspections/enforcement actions has been invoked ~10 times per year on average, with a typical non-routine inspection fee of less than $300 per facility. This fee is in addition to any administrative penalty assessed in the event of significant non-compliance findings.

[4] Non-routine inspection fees for radioactive materials licensees are invoked infrequently and only in cases of escalated enforcement where a licensee must be re-inspected at a shorter than standard frequency. The range per year values shown is for 2010-2014. Routine inspection costs are included in the annual license fee. This fee is in addition to any administrative penalty assessed in the event of significant non-compliance findings.

In addition to the current fees charged as outlined in the table above, the Division is proposing a new nominal annual radiation machine facility registration fee of $50 per year. This will impact all ~5,200 facilities registered to use radiation machines but who do not currently pay a registration fee.

3. The probable costs to the agency and to any other agency for the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

It is expected that some minimal additional effort by the Radiation Program will be necessary to implement the proposed annual facility registration fee identified in the proposed changes to Part 12 and Part 2, to include annual notifications/billing activities for the fee, payment tracking, and follow-up for those registrants failing to pay fees in a timely manner. These activities are expected to be carried out by the Radiation Program and a centralized business process unit within the Division. Efforts are being initiated to allow the registration form and fee to be completed/paid online, thus minimizing some agency costs, although there will be some up-front costs to establish the required business process. Additionally, the program will be implementing a new database program and electronic filing procedures that will further streamline the work required to register and track radiation machines and radiation machine facilities. This increased efficiency is anticipated to offset some of the additional work of collecting the annual facility registration fee and the annual renewal cycle for Qualified Inspectors, Qualified Experts and Service Companies.

4. A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

The current X-ray certification registration program for the 14,500 radiation machines in Colorado is maintained by a staff of ~4.0 FTE, including program management. One additional program FTE equivalent is dedicated and funded separately (by the US Food and Drug Administration) for the annual inspection of mammography machines.

The benefits of the proposed rule changes and associated fee increases will allow the program to continue at its current workload. Efforts are currently underway to improve the programs efficiency through development of web based data handling and payment methods.

Inaction on raising fees may result in a loss of staff (Full Time Equivalent or FTE's) necessary to support the statutorily driven regulatory functions of the state radiation program and in particular the X-ray machine certification program. Additionally, any decrease in staff would expectedly diminish the functionality of the program and increase the turnaround time for facility and individual registrations.

5. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

It is believed that there are no less costly or less intrusive methods for providing funding for the radiation machine registration program. As discussed in item 6 below, an alternative approach to the annual radiation machine registration fee would be to raise the per label fee by 60% ($30) rather than the proposed 20%. Such an approach would rely on the existing infrastructure and would not likely need additional support or new activities for billing or maintenance. Such an approach would however affect and effectively penalize the larger facilities disproportionately since such facilities have a greater number of machines that must be inspected more frequently. Smaller facilities with only a few machines would pay about the same or slightly lower amounts under a higher label fee scenario, although this depends upon machine inspection frequencies.

Similarly, with the radioactive materials licensing program, it is believed there are no less costly or less intrusive methods for providing funding for the activities conducted by the radioactive materials unit. Under Colorado's agreement with NRC, adequate funding must be ensured to maintain compatibility and agreement state status. Failure to provide adequate funding could result in the state program deferring to federal control, and thus resulting in federal fees that are on average 40-50% higher than current Colorado fees.

6. Alternative Rules or Alternatives to Rulemaking Considered and Why Rejected.

One alternative to the proposed annual facility registration fee is to make up the budget deficit through an increase in label fees which would use the existing infrastructure for label sales. Presently, radiation machine certification label sales to privatized Qualified Inspectors are the primary source of revenue the Radiation Program receives for maintaining the registry and tracking of the approximate 5,200 radiation machine facilities in Colorado. To achieve the same funding level in lieu of the new proposed nominal facility registration fee of $50, the per-machine label fee would have to increase to an estimated $80 per label (an additional $30 per label above the current $50 per label cost) rather than the currently proposed increase of $10 per label.

The approach to raise label fees alone would disproportionately impact the largest facilities (typically larger medical centers and hospitals) that would ultimately pay more due to a larger number of machines to certify and register and because typically large facilities have machines on 1, 2 and 3-year inspection cycles (while many small businesses' machines are on a 3-year inspection cycle). Medical facilities and hospitals which range from small community and rural medical centers to large hospitals typically have an average of 11 machines per facility, with the largest facilities having over 100 radiation producing machines. This disproportionate impact is why the Division determined that a new "flat rate" facility registration fee would provide for a more equitable and balanced approach to fees.

7. To the extent practicable, a quantification of the data used in the analysis; the analysis must take into account both short-term and long-term consequences.

The analysis for the proposed rule change and fee increases considered multiple sources of information and data, including the current (full-year) consumer price index

data, evaluation of current FY 2014 revenue data, and projected revenue and costs for 2015 and beyond. All sources of income were considered in the evaluation, along with the current radiation machine and facility data, and radioactive materials license data.

SHORT-TERM CONSEQUENCES

The short-term consequences of failing to implement the proposed regulatory and fee changes for the radiation machines program would likely be a reduction in the current staffing levels below the current ~4.0 FTE required for maintaining the current tracking and registration of Colorado's 15,000+ X-Ray machines at 5,200+ facilities. This would expectedly result in reduced customer service due to an increase in the turnaround time for facility registrations and information updates; label sales; response to registrant inquiries, questions, and support; and may reduce the timeliness of current inspections and data. Inspection of the 100+ mammography machines as performed by state inspectors may lag or be compromised, and would thus fail to meet the annual FDA prescribed inspections.

The short-term consequences of failing to implement the proposed regulatory and fee changes for the radioactive materials program would likely result in a reduction in the current staffing levels below the current FTE required for the licensing and inspection of Colorado's 325+ radioactive materials facilities and regulatory program. This would expectedly increase the turnaround time for issuance of new licenses, license actions, renewal licenses, response to licensee inquiries, questions and support, response to incidents, allegations and inspections. Such delays could also compromise or otherwise negatively impact Colorado's ability to maintain its agreement state status with NRC.

LONG-TERM CONSEQUENCES

The long-term consequences of failing to implement the proposed regulatory and fee changes for the radiation machines program would be the potential elimination of the state radiation machine regulatory program in Colorado. As there is no equivalent federal regulatory program or agency for regulating radiation machines, the program would be left inoperable and thus the safety of members of the public would potentially be compromised due to a lack of radiation machine inspections/certifications and regulatory oversight and a lack of ensuring that personnel operating and servicing machines would be unchecked. Elimination of the radiation machine program would be contrary to the requirements of current state statute.

The long-term consequences of failing to implement the proposed regulatory and fee changes for the radioactive materials program would potentially result in elimination of the agreement state program in Colorado and deferral of the program to the federal government (US NRC). Based upon current federal fee data for radioactive materials licenses, regulated entities would pay approximately 45+% more per year in annual licensing fees, higher hourly rates, and would not benefit from a local regulatory agency presence. Elimination of the radioactive materials program would be contrary to the requirements of current state statute.

STAKEHOLDER COMMENTS
for Amendments to
6 CCR 1007-1, Radiation Control, Part 12, Fees for Radiation Control Services andPart 2, Registration of Radiation Machines, Facilities, and Services

The following individuals and/or entities were included in the development of these proposed rules:
Notification of the opportunity to comment on the proposed changes to Part 12 and Part 2 were sent on October 30, 2014 to a total of approximately 6,000+ entities via US Mail and/or email.

The entities represented:
- Approximately 5,200 X-Ray facilities (registrants);
- Approximately 124 Radiation Machine Qualified Inspectors;
- Approximately 176 Radiation Machine Service Companies/Qualified Experts;
- Approximately 425 Radiation Machine Limited Scope Operators;
- Approximately 325 specific radioactive materials licensees;
- Approximately 418 general radioactive materials licensees;
- Approximately 159 "other stakeholders" representing individuals who have specifically signed up to receive notification of any proposed radiation regulation changes and who represent a wide variety of interests, including: x-ray registrants, radioactive materials licensees; private citizens; private companies; professional organizations; and activist groups; and
- Seven professional healing arts related organizations including: Colorado Hospital Association; Colorado Medical Society; Colorado Radiological Society; Colorado Dental Association; Colorado Chiropractic Association; Colorado Veterinary Medical Association; and Rocky Mountain Oncology Society. These entities were notified via U.S. mail and email where available. Some organizations also passed the information along to their members.

In addition to the opportunity for written comment, stakeholders were provided with the opportunity to participate in three stakeholder meetings held in November (prior to the conclusion of the comment period). A total of 12 stakeholders participated in these meetings either in-person or via phone.

This rulemaking does not include a local government mandate. EO5 does not apply.

The following individuals and/or entities were notified that this rule-making was proposed for consideration by the Board of Health:

The notice of opportunity to comment and sent to all of the aforementioned stakeholders included a link/URL address to the Radiation Program website:
https://www.colorado.gov/pacific/cdphe/radiation-regulations-development-part-12
which includes a summary of the proposed changes for both Part 12 and Part 2, a copy of the original notice, copies of the draft rules, stakeholder meeting information, and the tentative dates for both the request for rulemaking and final rulemaking before the Board of Health.

Summarize Major Factual and Policy Issues Encountered and the Stakeholder Feedback Received. If there is a lack of consensus regarding the proposed rule, please also identify the Department's efforts to address stakeholder feedback or why the Department was unable to accommodate the request.

The Department has engaged licensees and minimal concern has been raised; licensees are aware that Department services are provided for substantially less than what the NRC would charge if the CDPHE program was no longer financially viable. Similarly, the x-ray machine registrants were also engaged. As outlined in the table below, the greatest concern is from small businesses – predominantly those in the Dentistry, Veterinary, and Chiropractic fields – that are concerned about the proposed increase in fees and feel that they are not warranted or fully justified.

COMMENTS ASSOCIATED WITH THOSE IN FAVOR OF THE PROPOSED CHANGES	**RESPONSE / RESOLUTION**
A radioactive materials licensee radiation safety officer in support of the proposed fee and regulatory changes commented that the program is more educational than punitive and that it stays current with advances in medicine with respect to regulatory knowledge and oversight.	N/A
COMMENTS ASSOCIATED WITH THOSE OPPOSED TO THE PROPOSED CHANGES	**RESPONSE / RESOLUTION**
A commenter representing hospitals throughout Colorado suggested that the Department consider the impacts on smaller, rural hospitals as impacts on such facilities may be greater.	While the radiation program recognizes that all facilities are not the same size nor are the impacts the same, there is not a current method to fully realize the size of any facility to make fee adjustments based on size. The radiation program fees are typically based on the type of use, the associated risks, and the effort expended by the Department in regulating such facilities. The radioactive materials licensing process allows licensees to apply for small entity status and reduced fees. Four hospital facilities are currently approved as small entity licensees. No change was made to the rule as a result of the comment.
A Qualified Inspector (QI) registrant expressed concern that QI's would be made into "bill collectors" and would be responsible for collecting the proposed facility registration fee.	If implemented, any new facility registration fee will be collected directly by the Department and not by the privatized qualified inspectors. No change was made to the rule as a result of the comment.
A QI registrant raised the issue that the proposed shift from biennial (2 year) registration to an annual (yearly) registration for QI's would result in additional effort for both the QI and the Department.	The department recognizes that some additional, more frequent effort will have to be expended by both the program and the QI's if the registration process is changed to an annual frequency. It is believed that the annual cycle will provide a more stable and consistent income stream needed to support the regulatory program. Additionally requiring annual registration will

	allow for better tracking and auditing of QIs. Some offset of the efforts expended is expected due to implementation of new data management systems. Development of these systems is currently underway. No change was made to the rule as a result of the comment.
A Service Company registrant expressed concern over when the current registrations would expire and that some loss of their registration term would occur upon implementation of the proposed annual cycle.	While all details of implementation of the proposed annual registration cycle for Service Company (and other) registrants has not been fully developed, the Department intends to implement the annual renewal cycle upon expiration of the current registrations. For example, a Service Company registration, that currently expires in 2016, would not begin the annual renewal cycle until the current registration expires in 2016. No change was made to the rule as a result of the comment.
A general licensee express concern over the proposed increase in fees in light of all of the other fees that are paid to or otherwise required by the state (as a whole) and the combined regulatory impact of such a fee change.	The annual fee for general licensees is currently $100 per year. The radiation program believes the proposed $20 per year increase in this annual fee is moderate and necessary to maintain the regulatory program. In the event the state of Colorado did not retain the general license program, it would automatically defer to federal control under the US Nuclear Regulatory Commission (NRC). Current NRC fees for general licensing is $400 per year, which is over 3 times higher than the proposed $120 annual fee. No change was made to the rule as a result of the comment.
Several commenter's (a radioactive materials licensee and multiple x-ray registrants) commented that other sources of funding should be sought, and in particular, that monies obtained through enforcement actions (administrative penalties) should be redirected to the radiation program rather than the state general fund.	Current statutory language in the Colorado Radiation Control Act (law) specifically identifies that funds (administrative penalties) obtained through escalated enforcement be directed to the states' general fund. This is consistent with the laws regulating other regulatory programs within the hazardous materials division. Since this is a requirement of state law, a change to this process would require an act of the legislature. While staff and attorney time and effort is expended by the radiation program in pursuit of escalated enforcement actions, it is believed that overall this approach is in the best interest of the regulated community and supports a balanced approach to the program. By not receiving the administrative penalty funds back into the program, it removes the "incentive" to pursue enforcement actions in cases where it is not truly warranted from a regulatory perspective.

	No change was made to the rule as a result of the comment.
An employee of a radioactive materials licensee commented on the proposed rule and fee changes indicating uncertainty as to whether fees would be changing or increasing for radioactive materials licensees.	The radiation program is proposing fee changes for all entities it regulates, including both radioactive materials licensees and radiation machine registrants. The proposed fee increases for all regulated entities ranges from 16%-25%. No change was made to the rule as a result of the comment.
An organization representing dentists throughout Colorado commented that: - The financial impact is that fees nearly double for dental offices and dentists, who are typically small businesses, have a harder time absorbing increased costs relative to larger facilities; - A disproportionate amount of the fee increases are being paid by the dental profession in light of the fact that dental machines present less risk. Estimates indicate that dentistry would fund ~25% of the total fee increase; - The radiation program should review costs and ensure fees charged are aligned with program expenses; - Perhaps the facility or label fee could be tiered based on the complexity of equipment.	The Program is proposing a new annual registration fee of $50/facility regardless of the number of machines the facility uses. This fee will cover the costs of maintaining facility information. The average dentist has 4 machines that are subject to a 3 year inspection cycle. The current annual cost for the average dentist is $67 dollars. The proposed changes would increase the annual cost for the average dentist to $130; an increase of 51%, but monetarily only an increase of $63 annually. The department believes that radiation program fees are reasonable in relation to the radiation control services provided to the dentistry field. Of the ~14,500+ machines regulated by the X-ray program, ~69% (~9,000+) are used in dental facilities. Over half (~54 %) of the registered X-ray facilities are dental facilities. Accounting for the 3 year inspection cycle for dental machines, over 40% (~3,066) of the (7,328) inspection/certification reports received and processed in a year by the program are for dental facilities. While the routine radiation machine inspection program is conducted by independent privatized inspectors (known as “qualified inspectors”) approved by the department, the department is responsible for overall monitoring and regulatory follow up. With the exception of the certification label fee, the radiation program does not set or dictate the amount charged by the qualified inspector for the inspections and therefore it is a “free market” program. Typical monitoring activities related to the 14,500+ machines in Colorado include maintaining and verifying changes in facility information (the legal authorized owner, contact information, location, etc.); changes in radiation machine information (machine or component replacement, disposition of equipment, etc.); per facility and machine inspection data; and inspection follow up. Smaller facilities and operations tend to relocate more frequently resulting in more modifications to track.

	It is unclear how the "complexity" of the radiation machine could be established and used in a tiered fee structure or what the benefit of such a structure would have from a radiation safety perspective that is not otherwise addressed. The inspection frequency (which varies from 1-3 years) is directly associated with the risk presented by the machine. Higher risk machines (volumetric dental, fluoroscopy, computed tomography, etc.) are inspected more frequently. Since a new label is placed on a machine during each inspection, the consideration of risk is already tied to the label fee. Facilities using higher risk machines pay for inspections and inspection labels more often than do facilities having lower risk machines.
Multiple comments (~16) were received from numerous x-ray registrants representing Dentists, Chiropractors, and Veterinarians. The questions and comments expressed were somewhat similar in nature and addressed the following issues, concerns, and questions: - The proposed fee changes are unreasonable and excessive and present hardships for small businesses and medical practitioners who already face multiple fees and taxes, and the fee increases make no sense; - While some fee increase may be justified, it was felt that both the annual facility registration fee and increasing the per label fee was not justified; - It is already costly to have the (x-ray) machines certified by the (qualified) inspectors; - Why are fee increases proposed despite the reduction in participants (in the regulated program) and the fact there are fewer x-ray machines producing radioactive waste/materials; - Prior regulatory changes (related to sensitometry) several years ago has resulted in patients having to go to higher priced large facilities for imaging resulting in higher health care costs; - The radiation program should work "smarter", and spot and cut waste, making (fee) adjustments only as the market will bear, and seek other methods to make up the budget, including a reduction in staffing, raising other fees, or making other program changes; - Why are fees being increased 48-75%? - The department has not identified the health problems necessary to justify the fee increases; - The process used for finding/registering ambulatory (mobile) veterinarian radiation users (registrants) is flawed as many have	The Radiation Program considers the increase in fees as a serious matter that it does not take lightly, especially in consideration of the impacts to small businesses and consumers in Colorado. However, as indicated in the summary information available online and as presented during the stakeholder meetings, the proposed increases are needed to support the regulatory program which helps to ensure that only qualified individuals own, operate, service, or inspect radiation producing machines in accordance with state law and that the output of such machines is consistent with federal requirements. The radiation program is seeking to maintain its existing radiation control services. Historically, there has been an upward trend in the number of radiation machines in Colorado. Data for the prior 4 years (2010-2014) indicates a 1 to 2 % net increase in the number of radiation machines registered each year (a net addition of 1700 machines were registered for the period 2010-2014). This amounts to ~300+ new radiation machines at 90+ new facilities each year on average. As economic conditions in Colorado continue to improve, it is expected that this number will remain the same or increase slightly. The radiation program believes that the proposed increase in radiation machines label and registration application fees are balanced, reasonable, and justified in light of the fact that the fees for machine certification labels - the primary source of income supporting the radiation machine regulatory program – have not changed for 13 years despite the net increase in registration and tracking of 100-300 new radiation machines each year over the past several years. The proposed nominal $10 increase per label will make up for some budgetary deficit, but it will not address the entire shortage. In order to make up the entire budget shortfall through label sales, the label

not heard of Colorado's (radiation machine) regulatory program and may not be registered or impacted by these fees. Because of this, your agency is only targeting a small percentage of (the veterinary) radiation users in the field which is unfair; - Fees for radiation machines should be based upon use of the machine (–number of x-rays taken); - Medical reimbursement rates tend to be going down and any increase in fees or changes to certification periods for medical practitioners presents a hardship. Some commenter's indicated that no increase in fees should be proposed while another suggested that only the $10 increase in label fee be proposed.	cost would have to increase by at least $30 per label, thus penalizing larger facilities to a greater degree. While a nominal $50 annual facility registration fee is newly proposed, such a flat "per facility" fee provides some balance and does not unduly penalize larger facilities who currently pay more in label fees due to the larger number of machines they possess and the increased inspection frequency required for such facilities. Larger facilities may have some greater ability to "absorb" increased costs than do smaller facilities, the majority of healing arts registrants are small in size and typically possess only a few machines which must be certified. Although it is dependent upon the type of use of the machine, the majority of smaller facilities pay less per facility in label fees each year as the inspection frequencies are typically 3 years rather than the 1-year inspection frequency required for the vast majority of machines at most larger medical facilities. Some commenter's questioned why there was an increase in fees when there was a reduction in the number of regulated entities and there are fewer x-ray machines producing radioactive materials (due to "conversion to digital systems"). It should be noted that the conversion from film-based to digital x-ray systems does not result in or create radioactive materials. Radiation producing machines used in diagnostic applications are not radioactive nor do they create or produce any type of radioactive wastes or radioactive materials. The costs associated with machine inspections are neither set nor controlled by the radiation program or the state. The qualified inspector program is a privatized, "free market" system and the certification/inspection fees they charge are set by each individual inspector. Only the certification label fee and the inspection frequency is set by the state through regulation. There are no proposed changes to the inspection frequencies with this rulemaking. As only QIs may purchase certification labels, the label fee is typically passed along to the end user registrant as part of the inspection. The radiation program continues to seek ways to improve its services to the regulated community, including being responsive to inquiries and questions; providing exemptions from certain requirements; maintaining a small staffing level relative to the number of radiation machines and facilities and other entities regulated under the program; and continuing efforts to improve the effectiveness and efficiency of the program in cost effective ways.

	The radiation machine regulatory program is primarily a pre-emptive, preventative program intended to ensure that radiation machines are installed and serviced by qualified, monitored personnel; that they are owned and operated by qualified personnel; and the machine output is consistent with manufacturer specifications and such inspections are performed only by trained and qualified personnel. The program is most commonly notified of new radiation machines in use through registered service companies who have installed the equipment. Failure of such service companies to obtain registration or to notify the department of new installations is in conflict with state regulations. A commenter suggested that fees for radiation machines should be tied to the amount of use of the machine which relates to risk. To some degree, more "risk based" fees are already in place in the form of more frequent inspections. The risk is tied to the type of radiation machine, radiation output and potential harm rather than the amount of use, which could only be provided by the user. The program does not track or require tracking of any specific machines use. A commenter questioned a change to the inspection or certification frequency. No changes to the inspection frequency for medical practitioners or any other radiation machine user or radiation machine is being proposed. The proposed radiation machine facility registration fee does not change the machine inspection frequency. No change was made to the rule as a result of the comments.

Please identify health equity and environmental justice (HEEJ) impacts. Does this proposal impact Coloradoans equally or equitably? Does this proposal provide an opportunity to advance HEEJ? Are there other factors that influenced these rules?

The Department has proposed a fee structure that treats entities needing radiation control services equitably. Fees are tiered based upon the type of use, risk of materials involved, and efforts necessary to regulate the facility. Fees are also tiered based upon the number of radiation machines housed within a facility. Specifically, the annual registration fee, coupled with the increased label fee, creates a balance between the minimum cost to provide radiation control services to a facility using radiation machines and the increased workload associated with tracking and ensuring the safety of multiple machines within a facility. Though the increase in fees impacts business and health care provider costs, a majority of stakeholders have not indicated that the increase will create an undue burden on workers, customers or patients. This is consistent with the increased annual cost of $629,922 being allocated across 5,375 entities. The increase cost is justified as it directly advances worker and patient safety.

DRAFT 1 12/08/14

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Hazardous Materials and Waste Management Division

RADIATION CONTROL - FEES FOR RADIATION CONTROL SERVICES

6 CCR 1007-1 Part 12

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

Adopted by the Board of Health February 18, 2015.

PART 12: FEES FOR RADIATION CONTROL SERVICES

12.1 Purpose and Scope.

12.1.1 Authority.

12.1.1.1 Rules and regulations set forth herein are adopted pursuant to the provisions of Sections 25-1-108, 25-1.5-101(1)(k) and 25-1.5-101(1)(l), and 25-11-104(6), CRS.

12.1.2 Basis and Purpose.

12.1.2.1 A statement of basis and purpose accompanies this part and changes to this part. A copy may be obtained from the Department.

12.1.3 Scope

12.1.3.1 The regulations in this part establish fees for radiation control services rendered by the Department as authorized by the Act.

12.1.4 Applicability.

12.1.4.1 The regulations in this part apply to radiation control services for a person who is an applicant for, or holder of, a:

(1) Specific radioactive material license or a general radioactive material license, issued pursuant to Part 3:

(a) Except for a person who applies for or holds a specific license exempted in 12.3.

(2) Registration, issued pursuant to Part 2.

12.1.4.2 The regulations of this part also apply to a request for:

(1) Evaluation of a sealed source and/or device containing radioactive material;

(2) A special project review that the Department completes or makes whether or not in conjunction with a license application on file or which may be filed, and/or

(3) Any other service as specified.

12.1.5 Published Material Incorporated by Reference.

Comment [JJ1]:
EDITORIAL NOTE 1: ALL COMMENTS (SUCH AS THIS ONE) SHOWN IN THE RIGHT SIDE MARGIN OF THIS DRAFT RULE ARE FOR INFORMATION PURPOSES ONLY TO PROVIDE ADDITIONAL INFORMATION AND TO AID THE READER IN UNDERSTANDING THE PROPOSED CHANGE DURING THE DRAFT REVIEW PROCESS.

THESE COMMENTS ARE **NOT** PART OF THE RULE AND ALL COMMENTS WILL BE DELETED PRIOR TO FINAL SUBMISSION TO THE COLORADO SECRETARY OF STATE'S OFFICE FOR FINAL PUBLISHING IN THE COLORADO CODE OF REGULATIONS.

EDITORIAL NOTES WITHIN THE BODY OF THE RULE ARE FOR INFORMATION PURPOSES ONLY AND ARE NOT CONSIDERED PART OF THE RULE.

Comment [JJ2]:
This date reflects the tentative rulemaking date, pending approval by the Board of Health.

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12.1.5.1 Published material incorporated in Part 12 by reference is available in accord with Part 1, Section 1.4.

12.2 Definitions.

12.2.1 As used in this part, these terms have the definitions set forth as follows.

"Abandoned application" means any application filed with the Department for which the Department has in writing requested additional information needed to process the application and the Department does not receive a written reply from the applicant within forty-five (45) days after the Department's most recent written request for additional information.

"Anniversary Date" means that date upon which annual fees shall be due and payable. Anniversary Date is determined as the last day of the month corresponding to the month listed as the licensee's expiration date.

"Application" means any request filed with the Department for a permit, license, approval, exemption, exception, certificate, registration, other permission, or for any other service.

"Full cost fee" means a fee based on reasonable and actual professional staff time and appropriate contractual support services expended for certain radiation control activities as specified in Appendix 12A.

"Inspection" (routine or non-routine) means:

(1) "Routine inspection" designed to evaluate the licensee's or registrant's activities within the context of the licensee or registrant having primary responsibility for protection of the public and environment.

(2) "Non-routine inspection" in response or reaction to an incident, allegation, follow up to inspection deficiencies, inspection to determine implementation of safety issues including radioactive waste control services pursuant to CRS Sections 25-11-101–305 and Sections 24-60-2201–2212 and these regulations. A non-routine or reactive inspection has the same purpose as the routine inspection.

"Low-Level Radioactive Waste Access Approval" means those reviews and on-site evaluations necessary to assure waste generator compliance with low-level radioactive waste site access criteria as established by the Rocky Mountain Low-Level Radioactive Waste Board (the Board) or by a compact with which the Board has an agreement to accept low-level radioactive waste from Colorado or by a state with which the Board has an agreement to accept low-level radioactive waste from Colorado or by any state or site to which a Colorado generator ships low-level radioactive waste.

"Open Records Act" means the Colorado Open Records Act, CRS 24-72-201 et seq.

"Permanent location" means, for purposes of Part 12, a location where radioactive material is used and/or stored for more than 180 cumulative total days in any calendar year.

"Special Project" means a request submitted to the Department for review for which a fee is not otherwise specified in this part. Examples of special projects include, but are not limited to, early site reviews, consultation, emergency response plan reviews, assessment of responses to Department orders, contamination surveys in response to license termination or relocation, and financial surety reviews.

12.3 Exemptions.

12.3.1 No fees pursuant to 12.4.1 through 12.4.5 shall be required for a radioactive materials license authorizing the use of source material as shielding only in devices and containers, provided that all other licensed radioactive material in the device or container will be subject to the fees described in Appendix 12A.

12.3.2 Application for Exemptions.

12.3.2.1 The Department may, upon application by an interested person, or upon its own initiative, grant such exemptions from the requirements of this part for good cause as it determines are authorized by law and are otherwise in the public interest.

12.3.2.2 Applications for exemption under this section may include activities such as, but not limited to, the use of licensed materials for educational or noncommercial public displays or scientific collections.

12.4 Specific Radioactive Materials Licenses and Radiation Machine Registrations.

Comment [JJ3]: The section title is expanded to address the added language specific to radiation machine facility registrations.

12.4.1 Application Fees for Specific Radioactive Materials Licenses.

12.4.1.1 The application fee for a new radioactive materials license not subject to full cost fees must accompany the application when it is filed.

(1) Except for a license subject to full cost fees, no application for a new license, for the reinstatement of an expired license, or for an application for amendment to a materials license that would place the licensee in a higher fee category will be accepted for filing or processed prior to payment of the full amount specified in Appendix 12A.

(2) Except for a license subject to full cost fees, an application fee is not required for a routine or renewal license amendment that does not involve a change in fee category.

(3) Applications for which fee payment is required and no remittance is received may be returned to the applicant.

12.4.1.2 An application for renewal of a license not subject to full cost fees which has expired and for which a renewal was not timely filed pursuant to 3.17.2 shall be accompanied by a reinstatement fee of $~~400~~**465**.

Comment [JJ4]: The fee specified here is increased, consistent with other proposed fee changes throughout Part 12.

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12.4.1.3 Application fees for new radioactive materials licenses, renewals, amendments, other required approvals and requests for dismantling, decommissioning and termination of licensed activities, that are subject to the full cost fees are payable upon notification by the Department.

12.4.1.4 All licensing fees will be charged irrespective of the Department's disposition of the application or a withdrawal of the application.

12.4.1.5 Abandoned Applications.

(1) In the case of an abandoned amendment application, if the licensee desires to submit a new amendment application for the same or similar authorization, the reapplication shall be accompanied by a $~~100~~**115** reapplication fee.

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(2) In the case of an abandoned new license application, if the applicant desires to submit a new application, then the applicant is subject to the application fee specified in Appendix 12A.

12.4.1.6 Expedited License Review.

(1) An hourly rate for direct staff time associated with the review of an application will be assessed for an expedited review.

(2) This expedited license review fee only applies when, by consent of the applicant, a licensing request is taken out of the date order in which it was received.

12.4.2 Fee for Radiation Machine Facility Registration for Radiation Control Services

12.4.2.1 The fee for a new radiation machine facility registration not subject to full cost fees must accompany the application when it is filed.

(1) Except for a registration subject to full cost fees, no application for a new registration, or for the reinstatement of an expired registration will be accepted for filing or processed prior to payment of the full registration application amount specified in Appendix 12A.

(2) Except for a radiation machine facility registration subject to full cost fees, a fee is not required for an amendment to registration information, except as otherwise specified in Appendix 12A.

(3) Applications for which fee payment is required and no remittance is received may be returned to the applicant.

12.4.2.2 An application for renewal of a registration not subject to full cost fees which has expired and for which a renewal was not timely filed pursuant to 2.4.1.1 shall be accompanied by a reinstatement fee of $50.

12.4.2.3 All radiation machine facility fees will be charged irrespective of the Department's disposition of the application or a withdrawal of the application.

12.4.2.4 Abandoned Applications.

(1) In the case of an abandoned new registration application, or an abandoned registration amendment application, then the applicant is subject to the application fee specified in Appendix 12A.

12.4.~~3~~2 Termination Fees **for Licensees**.

12.4.~~3~~2.1 Applications for license termination for licensees not subject to full cost fees will not be subject to fees provided that the licensee notifies the Department and requests termination pursuant to 3.16, as appropriate, and provided that there is no decommissioning or decontamination involved subsequent to the request for termination. Licensees subject to full cost fees shall be billed for the full cost of the review of the application for termination.

12.4.~~3~~2.2 Staff time spent in obtaining information which is not provided by the licensee as required by 3.16.6 and 3.16.7 when decontamination is necessary, or in supervising the licensee's decommissioning or decontamination of the site, will be billed at the Department's hourly rate.

12.4.~~3~~2.3 The charges for staff time billed under 12.4.~~3~~2 are payable upon notification by the Department.

12.4.~~4~~3 Inspection Fees **for Radioactive Materials Licensees and Radiation Machine Facility Registrants**.

12.4.~~4~~3.1 Inspection costs include reasonable and actual preparation time, time on site, documentation time, any associated contractual service costs, and time involved in the processing and issuance of a notice of violation or ~~civil~~**administrative** penalty.

12.4.~~4~~3.2 Fees for inspection of licensees and registrants not subject to full cost fees:

(1) Fees for routine inspections are included in the annual fee and will not be charged separately.

Comment [JJ5]: This section is added to address a new proposed registration fee and process for facilities using radiation machines. Currently, all facilities using a radiation producing (X-Ray) machine must be registered with the Department, but do not pay a registration fee.

The proposed language/process will require each facility possessing a radiation producing (X-Ray) machine to pay a proposed $50 annual registration fee and provide an updated registration form to the Department. The proposed annual radiation machine facility registration fee will be a "flat rate" fee per facility regardless of the number of radiation machines possessed by the facility.

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Comment [JJ6]: The section title is modified for clarity, since the current section language already addresses both (radioactive materials) licensees and (radiation machine) licensees.

Other than the proposed "across the board" (~16-25%) fee increases throughout the rule, there are no new fees associated with routine or non-routine inspections.

Comment [JJ7]: In accordance with the terminology used in Part 13, the terminology is changed. Administrative penalties are administered by the Department whereas civil penalties are administered by a court of law.

(2) Fees for all non-routine inspections will be assessed on a per-inspection basis and are payable upon notification by the Department.

12.4.~~43~~.3 Fees for inspections of licensees and registrants subject to full cost fees:

(1) Inspection fees will be assessed to recover the full cost for each specific inspection as specified in Appendix 12A, including licensee-specific performance reviews and assessments, evaluations, and incident investigations.

(2) Inspection fees for licensees and registrants subject to full cost fees, and for inspections other than routine, are due upon notification by the Department.

12.4.~~54~~ Annual fees.

Radiation Machine Facility Registrants

12.4.5.1 Persons who hold radiation machine facility registrations shall pay an annual fee.

(1) The licensee or registrant shall pay the fee in Appendix 12A for each registration the person holds on the date the annual fee is due.

(2) If a person holds more than one registration, the fee will be the cumulative total of the annual fee for all registrations held by that person.

Specific Radioactive Materials Licensees

12.4.**5.2**~~4.1~~ Persons who hold specific radioactive materials licenses shall pay an annual fee.

(1) The licensee shall pay the fee in Appendix 12A for each license the person holds on the date the annual fee is due.

(2) If a person holds more than one license, the fee will be the cumulative total of the annual fee for all licenses held by that person.

(3) For those **radioactive materials** licenses that authorize more than one activity (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license.

(4) Persons with **radioactive materials** licenses authorizing permanent, multiple locations of use and/or storage that are separated by more than one mile shall increase the annual fee by 75 percent for the second location; 50 percent for the third location; and 25 percent for each additional location of use.

12.4.**5.3**~~4.2~~ A **specific radioactive materials** licensee required to pay an annual fee may qualify as a small entity.

(1) If a licensee qualifies as a small entity and provides the Department with the proper certification, the licensee may pay reduced annual fees as shown in Table 12-1.

Table 12-1: Small Entity Fees Applicable to Specific Radioactive Materials Licensees

Entity Category	Size Standard	Maximum Annual Fee Per Licensed Category
Small businesses not engaged in manufacturing and small not for profit organizations	$~~485~~350,000 – $~~5~~7,000,000 gross annual receipts	1/2 Annual Fee or $~~600~~500, whichever is greater
	Less than	$ ~~600~~500

Comment [JJ8]: This new section is added to address the requirements associated with the proposed annual fee and registration process for radiation producing (X-Ray) machine facilities.

The proposed annual radiation machine facility registration fee will be a "flat rate" fee per facility regardless of the number of radiation machines possessed by the facility.

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Comment [JJ9]: The title of the table is modified for clarity, as small entity status applies only to specific radioactive materials licensees.

Comment [JJ10]: The Size Standard is adjusted, consistent with that used by the US NRC in 10 CFR 171.16.

Comment [JJ11]: The small entity fee is adjusted upward by ~20%, consistent with other increases in the proposed rule. The proposed small entity fee is equal to the lowest fee charged by NRC for such small entities/businesses.

In 2014, Colorado had approximately 64 specific licensees who qualified for small entity status, of which 30% fall into the lowest fee category.

	$**485**~~350~~,000 gross annual receipts	
Manufacturing entities that have an annual average of 500 employees or less	35 to 500 employees	1/2 Annual Fee or $**600**~~500~~, whichever is greater
	Less than 35 employees	$ **600**~~500~~
Small governmental jurisdictions (including cities, counties, towns, townships, villages, school districts, special districts or publicly supported educational institutions)	20,000 – 50,000 population	1/2 Annual Fee or $**600**~~500~~, whichever is greater
	Less than 20,000 population	$ **600**~~500~~
Educational institutions that are not state or publicly supported, and have 500 employees or less	35 to 500 employees	1/2 Annual Fee or $**600**~~500~~, whichever is greater
	Less than 35 employees	$ **600**~~500~~

(2) A licensee who seeks to establish status as a small entity for purpose of paying the annual fees required under this section shall file a certification statement with the Department.

(3) The licensee shall file the required "radioactive materials licensee certification of small entity status," Department Form R-62, for each license under which the licensee is billed.

(4) For the licensee to be granted small entity status by the Department, a completed Form R-62, signed by the owner of the entity or an official empowered to act on behalf of the entity, shall accompany each application for a new license and each annual fee.

(5) The licensee shall provide a new Department Form R-62, signed by the owner of the entity or an official empowered to act on behalf of the entity, within thirty days from receipt of such a request from the Department.

(6) Failure to file a small entity certification, or to provide an updated certification upon the request of the Department, could result in the denial of the fee reduction that might otherwise be granted.

(7) A licensee who is a subsidiary of a large entity does not qualify as a small entity for purposes of Table 12-1.

12.4.**5.**~~4.3~~ An annual management fee shall be charged for **radioactive materials licensees**~~persons~~ operating in the State under reciprocity as follows:

(1) Any radioactive material brought into the state for use under reciprocity shall pay a reciprocal recognition fee equal to 75 percent of the appropriate annual fee in Appendix 12A.

(2) Reciprocal fees shall be due and payable prior to entry into the state.

(3) An acknowledgement of fee payment will be provided by the Department. The acknowledgement of fee payment shall be retained by the licensee and maintained with the pertinent documents prescribed in 3.24.1.1(6).

(4) Reciprocal recognition fees shall not be transferred or refunded.

(5) Reciprocal recognition fees shall expire 12 months from the issue date[2].

2 Pursuant to 3.24, an out-of-state licensee may operate in Colorado under reciprocity for no more than 180 cumulative total days in any calendar year.

12.4.5.5~~4.4~~ Payment of Annual Fees.

Radiation Machine Facility Registrants

(1) The annual fees shall be due and payable each year by the expiration date. The annual fees are not refundable except in those cases where the Department has determined that the fee is not required.

(2) Annual fees shall be charged and payment required for any registrant that has not terminated their registration on or before the expiration date.

Specific Radioactive Materials Licensees

(1) The annual fees shall be due and payable each year on the anniversary date. The annual fees are not refundable except in those cases where the Department has determined that the fee is not required.

(2) Annual fees shall be charged and payment required for any license that has not been terminated on or before the anniversary date or for which a request for termination has not been submitted to the Department pursuant to 3.16.7.

12.5 General Licenses.

12.5.1 Persons who hold general licenses under the following categories shall pay an annual fee:

12.5.1.1 Depleted uranium in industrial products and devices authorized under 3.5.5;

12.5.1.2 Possession of more than 1 kilogram of source material other than depleted uranium for shielding under 3.5;

12.5.1.3 Measuring, gauging and controlling devices under 3.6.4; and

12.5.1.4 In vitro licenses under 3.6.9.

12.5.2 The basis for the annual fee is to cover the Department's cost associated with the regulation and control of these sources, and to cover the Department's administrative costs for those generic activities directly related to the regulation of materials licensees.

12.5.3 Fees for general licenses are listed in Appendix 12A and shall be payable every July 1, for as long as the license remains in effect.

12.5.4 Fees for inspection of licenses, authorized under 3.5.5 and 3.6, that are based on the full cost of the inspection are payable upon notification by the Department.

12.6 Special Project Fees.

12.6.1 Fees for special projects are assessed for the full cost of the review, as specified in Appendix 12A.

12.6.1.1 Special project fees shall be based on reasonable and actual professional staff time.

12.6.1.2 Appropriate contractual support services expended for certain radiation control activities will also be included.

12.6.2 Fees for special projects are payable upon notification by the Department.

12.7 Low-Level Radioactive Waste Access Approval Fees.

Comment [JJ12]: This new subsection is added, consistent with prior section changes pertaining to the proposed annual radiation producing (X-Ray) machine facility registration process/fee.

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12.7.1 Fees for services required for low-level radioactive waste access approval are payable upon notification by the Department.

SEARCH, REVIEW, DUPLICATION AND SPECIAL SERVICE FEES

12.8 ReservedSearch, Review, Duplication and Special Service Fees.

12.8.1 Search, Review, and Special Service Fees.

12.8.1.1 The Department charges fees for search, duplication and review.

(1) The Department may assess fees even when no Department records are located as a result of the search or when Department records that are located as a result of the search are not disclosed; and,

(2) If the public record is a result of a computer output, other than word processing, the fee for a copy, printout, or other photograph thereof may be based on recovery of the actual incremental costs of providing the electronic services and products together with a reasonable portion of the costs associated with building and maintaining the information system.

(a) The Department shall charge a reasonable fee, if, in response to a specific request, it has performed a manipulation of data so as to generate a record in a form not used by the State. Such fees shall not exceed the actual cost of manipulating the said data and generating the said record in accordance with the request.

(b) Persons making subsequent requests for the same or similar records may be charged a fee not in excess of the original fee.

12.8.1.2 The Department shall charge requesters who request the following services for the direct costs of the service:

(1) Certifying that records are true copies; or

(2) Sending records by special methods, such as Express Mail, package delivery service, etc.

12.8.2 Duplication Fees.

12.8.2.1 The charge for duplicating records shall be computed on the basis of Department's direct costs, including both the cost of staff and the cost of the actual copy.

12.8.2.2 Copyrighted material shall not be reproduced in violation of the copyright laws.

12.8.3 Fees for Search and Review of Department Records by Department Personnel.

12.8.3.1 The Department shall charge the following hourly rates for search and review of Department records by Department personnel:

(1) Clerical search, review, and duplication at a rate that is equivalent to the actual cost of an Administrative Assistant III at the five-year rate;

(2) Professional search, review, and duplication at a rate that is equivalent to the actual cost of an Environmental Protection Specialist II at the five-year rate; and

(3) Senior management search, review, and duplication at a rate that is equivalent to the actual cost of an Environmental Protection Specialist V at the five-year rate.

12.8.4 Search and Duplication Provided Without Charge.

12.8.4.1 The Department may not bill any requester for fees if the cost of collecting the fee would be equal to or greater than the fee itself.

Comment [JJ13]:
For consistency with state requirements relating to fees for duplication of records, the contents of section 12.8 are deleted.

The fees received by the program for duplication and related services are minimal.

12.8.4.2 The Department may aggregate requests in determining search and duplication to be provided without charge as provided in 12.8.4.1, if the Department finds a requester, or multiple requestors acting in concert, has filed multiple requests for only portions of a Department record or similar Department records for the purpose of avoiding charges.

12.8.5 Assessment of Fees.

12.8.5.1 If the request is expected to require the Department to assess fees in excess of $25 for search and/or duplication, the Department shall notify the requester that fees will be assessed unless the requester has indicated in advance the willingness to pay fees as high as estimated.

12.8.5.2 In the notification, the Department shall include the estimated cost of search fees and the nature of the search required and estimated cost of duplicating fees.

12.8.5.3 The Department will encourage requesters to discuss with the Department the possibility of narrowing the scope of the request with the goal of reducing the cost while retaining the requester's original objective.

12.8.5.4 If the fee is determined to be in excess of $250, the Department may require payment at the time the information is provided.

12.8.6 Requests for Waiver or Reduction of Fees.

12.8.6.1 The Department shall collect fees for searching for, reviewing, and duplicating Department records, except as provided in 12.8.4, unless a requester submits a request in writing for a waiver or reduction of fees and the Department approves such request.

(1) To assure that there will be no delay in the processing of Open Records Act requests, the request for a waiver or reduction of fees should be included in the initial Open Records Act request letter.

12.8.6.2 Each request for a waiver or reduction of fees must be addressed to the Director, Hazardous Materials and Waste Management Division, Colorado Department of Public Health and Environment.

12.8.6.3 A person requesting the Department to waive or reduce search, review, or duplication fees shall:

(1) Describe the purpose for which the requester intends to use the requested information;

(2) Explain the extent to which the requester will extract and analyze the substantive content of the Department record;

(3) Describe the nature of the specific activity or research in which the Department records will be used and the specific qualifications the requester possesses to utilize information for the intended use in such a way that it will contribute to public understanding;

(4) Describe the likely impact on the public's understanding of the subject as compared to the level of understanding of the subject existing prior to disclosure;

(5) Describe the size and nature of the public to whose understanding a contribution will be made;

(6) Describe the intended means of dissemination to the general public;

(7) Indicate if public access to information will be provided free of charge or provided for an access fee or publication fee; and

(8) Describe any commercial or private interest the requester or any other party has in the Department records sought.

~~12.8.6.4 The Department may waive or reduce the fee if, from information provided with the request for Department records made under 12.8.6.3, the Department determines that disclosure of the information in the Department records is for a public purpose, including public agency program support, nonprofit activities, journalism, and academic research, and is not primarily in the commercial interest of the requester.~~

~~12.8.6.5 In making a determination regarding a request for a waiver or reduction of fees, the Department may consider the following factors:~~

~~(1) If disclosure is likely to contribute significantly to public understanding of government operations or activities;~~

~~(2) If, and the extent to which, the requester has a commercial interest that would be furthered by the disclosure of the requested Department records; and~~

~~(3) If the magnitude of the identified commercial interests of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.~~

12.9 Partial Payment of Fees.

12.9.1 In the case of services, which are subject to full cost fees, the Department may bill monthly for any service rendered.

12.10 Method of Payment.

12.10.1 Approved credit cards, checks, drafts or money orders for payment of fees shall be payable to the Colorado Department of Public Health and Environment.

12.11 Schedule of Fees for Materials Licenses and Other Radiation Control Services.

12.11.1 Applicants for radioactive materials licenses, for services related to radiation machines, for other regulatory services and holders of materials licenses shall pay fees for the categories of services listed in Appendix 12A.

12.11.1.1 License applications received prior to the effective date of this rule shall be billed in accordance with the fee schedule, as updated by the hourly rate in effect at that time the service is performed.

12.11.2 For each service provided subject to full cost fees, records will be maintained of time spent, using reasonable accounting procedures by at least 15 minute intervals. A summary of time spent on any activity will be provided upon request.

12.11.3 The Department will **review and evaluate**~~adjust~~ all fees**, costs,** and the cost per person-hour every **two (2) years**~~six (6) months~~ from the effective date of this part ~~based on~~**relative to expenses and** the **most recent** Denver-Boulder-Greeley Consumer Price Index **(CPI)** for All Urban Consumers ~~(January 1, 2007 summary)~~. ~~An updated version of the fee schedule will be available upon request.~~

~~12.11.4 Every two (2) years from the effective date of these regulations, the Department will review the fees and the Department's costs.~~

12.11.4**3**.1 If the ~~adjusted~~ **CPI changes by more than ten (10) percent, or where** ~~fees and~~ costs **exceed revenues** for any categories ~~differ by more than ten percent (10%)~~**over a single review cycle or multiple review cycles since the last effective date of this part**, the Department will propose ~~a~~ revised fee**(s)** to the Board of Health for ~~those~~ **the applicable** categories **or fees**.

12.12 Failure by Applicant or Licensee to Pay Prescribed Fee.

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Comment [JJ14]:
Original sections 12.11.3 – 12.11.4 are revised to clarify the frequency and process by which fees are reviewed and modified by the Department as the current language lacks clarity.

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12.12.1 In any case where the Department finds that an applicant**, registrant,** or a licensee has failed to pay a prescribed fee for any licensing**, registration** or inspection activities required in this Part, the Department will not process any application, may suspend or revoke any license **or registration** involved pursuant to **2.10, or** 3.23 and may request action pursuant to CRS 25-11-107(4). Staff time expended in collection of any fee not paid within sixty (60) days of the date due will be billed at the Department's hourly rate.

12.13 Penalties.

12.13.1 A $20.00 penalty will be assessed for checks returned to the Department due to insufficient funds.

12.13.2 Late Payments.

12.13.2.1 A penalty shall be assessed to any person whose fee is collected by a collection agency.

12.13.2.2 The penalty shall be equal to the fee charged by the collection agency.

12.14 Severability.

12.14.1 The provisions of this regulation are severable, and if any provisions or the application of the provisions to any circumstances is held invalid, the application of such provision to other circumstances, and the remainder of this regulation shall not be affected thereby.

PART 12, APPENDIX 12A: SCHEDULE OF FEES FOR RADIOACTIVE MATERIALS LICENSEES, FOR SERVICES RELATED TO RADIATION MACHINES, AND FOR OTHER SERVICES[3,4,5,6]

3 Applications for new licenses, applications to reinstate expired or terminated licenses, except those subject to fees assessed at full costs, must be accompanied by the prescribed application fee for each category.

4 Application for amendments to licenses that would place the license in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for each category.

5 Renewal fees – Fees for applications for renewal of materials licenses will not be charged, except that fees for applications for renewal of licensees subject to full cost fees are due upon notification by the Department.

6 Inspection Fees: (a) Fees for routine inspections at locations authorized by the license or reciprocity permit will not be charged, except that routine inspections subject to full cost fees are due upon notification by the Department. (b) Separate charges will be assessed for each non-routine inspection which is performed. The frequency of routine inspections are those established in the Hazardous Materials And Waste Management Division Radiation Program Inspection and Enforcement Manual, and will be in accord with the frequencies established by the U.S. Nuclear Regulatory Commission for similar types of licenses.

CATEGORY 1 - SPECIAL NUCLEAR MATERIAL[7,8]

7 Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

8 Applications for new licenses that cover both special nuclear material and radioactive material and/or naturally occurring and accelerator produced material in sealed sources for use of gauging devices will pay the appropriate processing fee for category 1.C only.

1.A Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of U-235 in unsealed form or 200 grams or more of U-233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only.

NOTE: Colorado does not license this category of license.

Application Not Applicable

Annual Fee Not Applicable

Inspection Not Applicable

1.B Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI).

NOTE: Colorado does not license this category of license.

Application Not Applicable

Annual Fee Not Applicable

Inspection Not Applicable

1.C Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems including x-ray fluorescence analyzers.

Application $ ~~1,380~~**1,600**

Annual Fee $ ~~1,380~~**1,600**

Inspection $ ~~1,080~~**1,255**

1.D All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combinations that would constitute a critical quantity.

Application $ ~~3,300~~**3,830**

Annual Fee $ ~~3,300~~**3,830**

Comment [JJ15]:
The Radiation Program is proposing an "across the board" fee increase ranging from approximately 16-25 %, consistent with changes in the Consumer Price Index (Denver-Boulder-Greeley area; 2013). This fee increase is reflected in the proposed changes shown through Appendix 12A. The proposed fee change is to address the rising costs of the Department in providing Radiation Control related services.

All values have been rounded to the nearest $5 increment for consistency.

Inspection $ ~~2,445~~**2,835**

CATEGORY 2 - SOURCE MATERIAL

2.A1 Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride.

NOTE: Colorado does not license this category of license.

Annual Fee Not Applicable

Licensing and Inspection Not Applicable

2.A2 Licenses for possession and use of source material in recovery operations such as milling, in situ leaching, heap-leaching, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, and licenses authorizing decommissioning, reclamation or restoration activities as well as licenses authorizing the possession and maintenance of a facility in a standby mode.

2.A2 Class I License includes mill licenses issued for the extraction of uranium from uranium ore.

Annual Fee $ ~~94,300~~**109,390**

Licensing and Inspection Full Cost

2.A2 Class II License includes solution mining licenses (in-situ and heap leach) issued for the extraction of uranium from uranium ores including research and development licenses.

Annual Fee $ ~~79,005~~**91,645**

Licensing and Inspection Full Cost

2.A2 Class III "Other" license includes licenses for extraction of metals, heavy metals, and rare earths.

Annual Fee $ ~~29,900~~**34,685**

Licensing and Inspection Full Cost

2.A3 Licenses that authorize the receipt of uranium waste tailings generated by milling operations from other persons for possession and disposal, except those licenses subject to the fees in category 2.A2 or category 2.A4.

Annual Fee $ ~~58,190~~**67,500**

Licensing and Inspection Full Cost

2.A4 Licenses that authorize the receipt of uranium waste tailings generated by milling operations from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in category 2.A2.

Annual Fee $ ~~9,200~~**10,670**

Licensing and Inspection Full Cost

2.B Licenses for possession and use of source material for shielding.

Application $ ~~690~~**800**

Annual Fee $ ~~690~~**800**

Inspection $ ~~1,220~~**1,415**

2.C All other source material licenses.

Application $ ~~11,040~~**12,805**

Annual Fee $ ~~11,040~~**12,805**

Inspection $ ~~4,520~~**5,245**

CATEGORY 3 - BYPRODUCT MATERIAL, NATURALLY OCCURRING AND ACCELERATOR PRODUCED RADIOACTIVE MATERIAL

3.A Licenses of broad scope for possession and use of radioactive material issued pursuant to 3.11 for processing or manufacturing of items containing radioactive material for commercial distribution.

Application $ ~~20,470~~**23,745**

Annual Fee $ ~~20,470~~**23,745**

Inspection $ ~~8,655~~**10,040**

3.B Other licenses for possession and use of radioactive material for processing or manufacturing of items containing radioactive material for commercial distribution.

Application $ ~~5,290~~**6,135**

Annual Fee $ ~~5,290~~**6,135**

Inspection $ ~~2,530~~**2,935**

3.C Licenses authorizing the processing or manufacture and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing radioactive material.

Application $ ~~12,305~~**14,275**

Annual Fee $ ~~12,305~~**14,275**

Inspection $ ~~2,530~~**2,935**

3.D Licenses authorizing distribution of radiopharmaceuticals, generators, reagent kits, and/or sources or devices not involving processing of radioactive material.

Application $ ~~3,910~~**4,535**

Annual Fee $ ~~3,910~~**4,535**

Inspection $ ~~1,300~~**1,510**

3.E Licenses for possession and use of radioactive material in sealed sources for irradiation of materials where the source is not removed from its shield (self-shielded units).

Application $ ~~3,195~~**3,705**

Annual Fee $ ~~3,195~~**3,705**

Inspection $ ~~1,380~~**1,600**

3.F Licenses for possession and use of less than 370 TBq (10,000 Ci) of radioactive material in sealed sources for irradiation of materials where the source is exposed for irradiation purposes.

Application $ ~~5,795~~**6,720**

Annual Fee $ ~~5,795~~**6,720**

Inspection $ ~~2,150~~**2,495**

3.G Licenses for possession and use of 370 TBq (10,000 Ci) or more of radioactive material in sealed sources for irradiation of materials where the source is exposed for irradiation purposes. This category includes under water irradiators for irradiation of materials where the source is not exposed.

Application $ ~~20,930~~**24,280**

Annual Fee $ ~~20,930~~**24,280**

Inspection $ ~~4,140~~**4,800**

3.H Licenses issued to distribute items containing radioactive material which requires device review to persons exempt from the licensing requirements of Part 3.

Application $ ~~3,195~~**3,705**

Annual Fee $ ~~3,195~~**3,705**

Inspection $ ~~1,300~~**1,510**

3.I Licenses issued to distribute items containing radioactive material or quantities of radioactive material which do not require device evaluation to persons exempt from the licensing requirements of Part 3 except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed by the U.S. Nuclear Regulatory Commission or an Agreement State.

Application $ ~~4,600~~**5,335**

Annual Fee $ ~~4,600~~**5,335**

Inspection $ ~~1,530~~**1,775**

3.J Licenses issued to distribute items containing radioactive material which require sealed source and/or device review to persons generally licensed. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 3.

Application $ ~~2,095~~**2,430**

Annual Fee $ ~~2,095~~**2,430**

Inspection $ ~~1,425~~**1,655**

3.K Licenses issued to distribute items containing radioactive material or quantities of radioactive material that do not require sealed and/or device review to persons generally licensed. This

category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 3.

Application $ ~~1,380~~**1,600**

Annual Fee $ ~~1,380~~**1,600**

Inspection $ ~~770~~**895**

3.L Licenses of a broad scope for possession and use of radioactive material for research and development which do not authorize commercial distribution.

Application $ ~~10,005~~**11,605**

Annual Fee $ ~~10,005~~**11,605**

Inspection $ ~~3,520~~**4,085**

3.M Other licenses for possession and use of radioactive material for research and development which do not authorize~~d~~ commercial distribution.

Application $ ~~4,405~~**5,110**

Annual Fee $ ~~4,405~~**5,110**

Inspection $ ~~1,755~~**2,035**

3.N Licenses that authorize services for other licensees, except (1) licenses that authorize calibration and/or leak testing services only are subject to the fees specified in fee category 3.Q, and (2) licensees that authorize waste disposal services are subject to the fees specified in fee Categories 4.A, 4.B., or 4.C.

Application $ ~~4,795~~**5,560**

Annual Fee $ ~~4,795~~**5,560**

Inspection $ ~~2,070~~**2,400**

3.O Licenses for possession and use of radioactive material for industrial radiography operations.

Application $ ~~12,535~~**14,540**

Annual Fee $ ~~12,535~~**14,540**

Inspection $ ~~2,680~~**3,110**

3.P Portable gauge radioactive material licensees.

Application $ ~~2,405~~**2,790**

Annual Fee $ ~~2,405~~**2,790**

Inspection $ ~~1,680~~**1,950**

3.Q All other specific radioactive material licensees, except those in fee categories 1, 2, 3.A through 3.P, and 4.A. through 9.D.

Application $ ~~2,405~~**2,790**

Annual Fee $ ~~2,405~~**2,790**

Inspection $ ~~1,680~~**1,950**

3.S Licenses for production of accelerator-produced radionuclides.

Application $ 14,275

Annual Fee $ 14,275

Inspection $ 2,935

CATEGORY 4 - WASTE HANDLERS

4.A Licenses specifically authorizing the receipt of waste byproduct material, source material, special nuclear material, or naturally occurring and accelerator produced material from other persons for the purpose of commercial disposal by land burial by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for treatment or disposal by incineration and transfer of packages to another person authorized to receive or dispose of waste material.

Annual Fee Not Applicable[9]

9 There are no existing Colorado licenses in these fee categories. Once Colorado issues a license for these categories, the Department will consider establishing an annual fee for that type of license.

Licensing and Inspection Full Cost

4.B Licenses specifically authorizing the receipt of waste byproduct material, source material, special nuclear material, or naturally occurring and accelerator produced material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.

Application $ ~~9,775~~**11,340**

Annual Fee $ ~~9,775~~**11,340**

Inspection $ ~~2,530~~**2,935**

4.C Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, special nuclear material, or naturally occurring and accelerator produced material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.

Application $ ~~7,395~~**8,580**

Annual Fee $ ~~7,395~~**8,580**

Inspection $ ~~2,830~~**3,285**

CATEGORY 5 - WELL LOGGING

5.A Licenses for possession and use of byproduct material, source material, special nuclear material, or naturally occurring and accelerator produced material for well logging, well surveys, and tracer studies other than field.

Application $ ~~8,795~~**10,200**

Annual Fee $ ~~8,795~~**10,200**

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Comment [JJ16]:
This is a new fee category which is intendeed to better describe and categorize this type of licensee and used of material consistent with the approach used by NRC.

Colorado currently has 3 radioactive materials licensees which would be moved into this fee category. These licensees currently pay an annual fee amount equivalent to the "3.C" fee category. Under the proposed revisions, these entities would pay a fee equivalent to the amount in the proposed (revised) 3.C fee category.

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Inspection $ ~~2,830~~**3,285**

5.B Licenses for possession and use of byproduct material for field flooding tracer studies.

Annual Fee $ ~~10,395~~**12,060**

Licensing and Inspection Full Cost

CATEGORY 6 - NUCLEAR LAUNDRIES

Comment [JJ17]:

Colorado does not currently have any licensees in this fee category.

6.A Licenses for commercial collection and laundry of items contaminated with radioactive material, source material, special nuclear material, or naturally occurring and accelerator produced material.

Application $ ~~16,905~~**19,610**

Annual Fee $ ~~16,905~~**19,610**

Inspection $ ~~4,140~~**4,800**

CATEGORY 7 - HUMAN AND VETERINARY USE OF RADIOACTIVE MATERIAL

7.A Licenses issued for human or veterinary use of radioactive material, source material, special nuclear material, or naturally occurring and accelerator produced material in sealed sources contained in teletherapy devices.

Application $ ~~13,915~~**16,140**

Annual Fee $ ~~13,915~~**16,140**

Inspection $ ~~2,370~~**2,750**

7.B Licenses of broad scope issued to medical institutions or two or more physicians or veterinarians authorizing research and development including human and/or veterinary use of radioactive material, source material, special nuclear material, or naturally occurring and accelerator produced material except material in sealed sources.

Application $ ~~24,150~~**28,015**

Annual Fee $ ~~24,150~~**28,015**

Inspection $ ~~6,325~~**7,335**

7.C Other licenses issued for human or veterinary use of radioactive material, source material, and/or naturally occurring and accelerator produced material except material in sealed sources contained in teletherapy devices.

Application $ ~~4,600~~**5,335**

Annual Fee $ ~~4,600~~**5,335**

Inspection $ ~~2,220~~**2,575**

CATEGORY 8 - CIVIL DEFENSE

Comment [JJ18]:

Colorado does not currently have any licensees in this fee category

8.A Licenses for possession and use of radioactive material for civil defense activities.

Application $ ~~1,095~~**1,270**

Annual Fee $ ~~1,095~~**1,270**

Inspection $ ~~1,840~~**2,135**

CATEGORY 9 - DEVICE, PRODUCT, OR SEALED SOURCE SAFETY EVALUATION

9.A Safety evaluation of devices or products containing byproduct material, source material, special nuclear material, or naturally occurring and accelerator produced material except reactor fuel devices, for commercial distribution.

Annual Fee $ ~~5,795~~**6,720**

Evaluations Full Cost

9.B Safety evaluation of devices or products containing radioactive material, source material, special nuclear material, or naturally occurring and accelerator produced material manufactured in accordance with the unique specifications of, and for use by a single applicant, except reactor fuel devices.

Annual Fee $ ~~5,795~~**6,720**

Evaluations Full Cost

9.C Safety evaluation of sealed sources containing byproduct material, source material, special nuclear material, or naturally occurring and accelerator produced material, except reactor fuel, for commercial distribution.

Annual Fee $ ~~1,690~~**1,960**

Evaluations Full Cost

9.D Safety evaluation of sealed sources containing byproduct material, source material, special nuclear material, or naturally occurring and accelerator produced material, manufactured in accordance with the unique specifications of, and for use by a single applicant, except reactor fuel.

Annual Fee $ ~~575~~**665**

Evaluations Full Cost

CATEGORY 10 - TRANSPORTATION OF RADIOACTIVE MATERIAL

Note: Colorado does not license this category of license.

CATEGORY 11 - REVIEW OF STANDARDIZED SPENT FUEL FACILITIES

Note: Colorado does not license this category of license.

CATEGORY 12 - SPECIAL PROJECTS

12.A Special Projects and all uses of radioactive material which are not included in any other category.

Application Full Cost

Annual Fee Full Cost

Inspection Full Cost

CATEGORY 13 - SPENT FUEL STORAGE COSTS

Note: Colorado does not license this category of license.

CATEGORY 14

14.A Byproduct material, source material, special nuclear material, naturally occurring or accelerator produced radioactive material licenses and other approvals authorizing decommissioning, decontamination, reclamation or site restoration activities.

Annual Fee Not Applicable[10]

10 Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

Licensing and Inspection Full Cost

CATEGORY 15 - EMERGENCY RESPONSE

15.A Emergency response requiring over 10 person-hours in any 12 consecutive months.

Full Cost

15.B Emergency response planning and exercises.

Full Cost[11]

11 Fees will be charged only when service is requested or required by an authorized person outside of the Department who has legal authority to make such requests.

CATEGORY 16 - ANALYTICAL PROCEDURES

Full Cost

CATEGORY 17 - GENERAL LICENSES[12]

12 Fees are for each license at each facility. Fees for general licenses are annual fees, and are due July 1 each year. Non-routine inspections of general licensees related to (1) exposures to individuals; or (2) release of radioactive materials in excess of limits established in Part 4 of these regulations.

17.A Source material, gauges and other similar devices pursuant to 12.5.1.1 through 12.5.1.3.

Annual Fee $ ~~100~~**115**

Inspection Full Cost

17.B In vitro pursuant to 12.5.1.4.

Annual Fee $ ~~50~~**60**

Inspection Full Cost

CATEGORY 18 - LOW-LEVEL RADIOACTIVE WASTE ACCESS APPROVAL

Full Cost

CATEGORY 19 - HOURLY RATE[13]

$ 152

13 For any service provided by the Department in accord with **this part,**~~12.11.2 and 12.11.3. A~~ **a** statement will be sent to the registrant indicating the actual costs incurred.

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CATEGORY 20 - TRANSFER OF RECORDS TO DEPARTMENT PURSUANT TO 4.40 THROUGH 4.50

Per box for indexed paper records submitted in state storage boxes

$ ~~40~~**45**

For records not indexed and/or requiring repackaging in standard storage boxes

Full Cost

CATEGORY 21 - RADIATION MACHINES ENFORCEMENT ACTION

Maximum fee per each radiation machines certification enforcement action[14,15]: $ ~~1,330~~**1,545**

14 Any registrant that fails the requirements of 2.5.1, or does not correct any violation in accordance with the compliance schedule established in ~~2.5.2.3~~**2.9.1.2**, shall be subject to a Department enforcement action at the current hourly rate and/or maximum fee. The Department shall charge enforcement fees, which may include inspection fees for the inspection of radiation machines and facilities that have been determined, by either a qualified inspector or by the Department, to be in noncompliance with these regulations and with the certification frequency. These fees do not include penalties imposed under Part 13.

15 This represents the maximum fee that may be incurred for the Department enforcement actions of each radiation machine and/or facility determined to be in violation with these regulations by either a qualified inspector or by the Department.

CATEGORY 22 - QUALIFIED INSPECTOR, QUALIFIED EXPERT, OR COMPANIES PROVIDING RADIATION MACHINE SERVICING AND SERVICES

Maximum fee per registration every **year**~~2 years~~: $ ~~160~~**100**[16,17]

16 The qualified inspector **and qualified expert** registration fee is an individual fee. The servicing and services registration fee is a company fee.

17 ~~The annual fee is $80 and is payable every two years in the amount of $160.~~ This fee is non-refundable in the event that the application is not approved by the Department.

CATEGORY 23 – REVIEW OF RADIATION MACHINE PROVISIONAL MAMMOGRAPHER~~Y~~ CERTIFICATION APPLICATION

Maximum fee per each certification review or renewal: $ ~~50~~**60**

CATEGORY 24 – REVIEW OF ADEQUATE TRAINING FOR RADIATION MACHINE LIMITED SCOPE OPERATORS, BONE DENSITOMETRY OPERATORS, ~~AND~~ COMPUTED TOMOGRAPHY OPERATORS AND SERVICE COMPANY ENGINEER[18]

Maximum fee per each acceptance review: $ ~~50~~**60**

18 The fee for service company engineers is a "per application" fee for any number of service company engineers to be authorized to work under a service company registration.

CATEGORY 25 - RADIATION MACHINE CERTIFICATION LABEL ISSUED BY A QUALIFIED INSPECTOR

Required fee for each certification label issued to a registrant: $ ~~50~~**60**

CATEGORY 26 - RADIATION MACHINE FACILITY REGISTRATION FEE FOR RADIATION CONTROL SERVICES

Maximum annual registration fee per facility using a radiation machine: $ 50

EDITOR'S NOTES

6 CCR 1007-1 has been divided into separate parts for ease of use. Versions prior to 04/01/2007 are located in the first section, 6 CCR 1007-1. Prior versions can be accessed from the All Versions list on the rule's current version page. To view versions effective on or after 04/01/2007, select the desired part of the rule, for example 6 CCR 1007-1 Part 01 or 6 CCR 1007-1 Part 10.

Comment [JJ19]: Due to the previous renumbering/reorganization of Part 2, the section referenced is updated.

Comment [JJ20]: Category 22 fees have always included the "qualified expert" category as part of the service company category. The added language is intended to clarify this.

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History

Part 12 entire rule eff. 03/02/2009.

Part 12 Rules 12.1.4, 12.3.1.1(2), Appendix A, Categories 23, 24 eff. 04/30/2011.

CONCURRENT WITH THE PROPOSED CHANGES TO PART 12 (“FEES FOR RADIATION CONTROL SERVICES”), THE FOLLOWING SECTION OUTLINES THE PROPOSED CHANGES TO PART 2 (“REGISTRATION OF RADIATION MACHINES, FACILITIES AND SERVICES”). NOTE THAT UNAFFECTED SECTIONS ARE OMMITTED FROM THE PROPOSED DRAFT CHANGES.

DRAFT 1 11/2/14

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Hazardous Materials and Waste Management Division

STATE BOARD OF HEALTH

RADIATION CONTROL - REGISTRATION OF RADIATION MACHINES, FACILITIES AND SERVICES

6 CCR 1007-1 Part 02

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

[* * * = Indicates omission of unaffected rules]

* * *

REQUIREMENTS FOR DEPARTMENT APPROVAL AND/OR REGISTRATION

2.4 State of Colorado Authorization or Approval Recognized by the Department is Required for Each Category Designated in This Section.

2.4.1 Registration of a Facility.

2.4.1.1 Each person possessing or in the process of coming into the possession of a radiation machine facility shall:

(1) Be registered with the Department prior to using a radiation producing machine at the facility;

(2) ~~Complete and~~**Before the facility registration expiration date,** submit ~~an~~ **a complete** application for registration on the applicable Department R-4 series Form, and include all of the information required by the form and any accompanying instructions. The facility shall:

(a) Designate a radiation safety officer who meets the applicable requirements of Appendix 2A to be responsible for overall radiation protection for the facility; and

(b) Document that a written shielding design has been:

(i) Completed in accordance with Parts 6, 8, or 9 of these regulations, as applicable, prior to any radiation machine installation; and

(ii) Retained on file at the facility for the life of the facility.

(c) Pay the radiation machine facility registration fee for radiation control services indicated by Part 12, Category 26. The radiation machine facility registration fee is not required for registration updates required by 2.4.6.5 unless the update is submitted less than thirty (30) days prior to the registrant's expiration date.

2.4.1.2 As prescribed by 6.3.3.3 for a healing arts screening program, registrants shall complete and submit a Healing Arts Screening application including all of the information required by Part 6, Appendix 6F).

Comment [JJ21]:
EDITORIAL NOTE 1: ALL COMMENTS (SUCH AS THIS ONE) SHOWN IN THE RIGHT SIDE MARGIN OF THIS DRAFT RULE ARE FOR INFORMATION PURPOSES ONLY TO PROVIDE ADDITIONAL INFORMATION AND TO AID THE READER IN UNDERSTANDING THE PROPOSED CHANGE DURING THE DRAFT REVIEW PROCESS.

THESE COMMENTS ARE **NOT** PART OF THE RULE AND ALL COMMENTS WILL BE DELETED PRIOR TO FINAL SUBMISSION TO THE COLORADO SECRETARY OF STATE'S OFFICE FOR FINAL PUBLISHING IN THE COLORADO CODE OF REGULATIONS.

EDITORIAL NOTES WITHIN THE BODY OF THE RULE ARE FOR INFORMATION PURPOSES ONLY AND ARE NOT CONSIDERED PART OF THE RULE.

EDITORIAL NOTE 2: THE PROPOSED AMENDMENT TO THIS (PART 2) RULE ARE IN SUPPORT OF CONCURRENT PROPOSED CHANGES TO PART 12 (FEES FOR RADIATION CONTROL SERVICES). THE PROPOSED DRAFT IS BASED ON THE FINAL PART 2 RULE WHICH BECAME EFFECTIVE IN AUGUST 2014 AND DO NOT REFLECT OTHER CHANGES WHICH MAY BE IN-PROCESS AND NOT YET FINALIZED.

Comment [JJ22]: Consistent with the proposed, concurrent changes to Part 12 (fees for radiation control services), additional language is added to introduce an annual facility registration fee.

2.4.1.3 In addition to the other requirements of 2.4, any research using radiation machines on humans shall be approved by an Institutional Review Board (IRB).

2.4.2 Registration as a Service Company.

2.4.2.1 Each person who is engaged (or offers to engage) in the business of selling, leasing, transferring, lending, assembling, installing, maintaining, repairing, storing, trading out, disabling or disposing of radiation machines and their related components, or is engaged in the business of furnishing or offering to furnish radiation machine servicing or services in this State, shall be registered with the Department prior to performing such activities.

2.4.2.2 Each Service Company shall complete the Form R-60 series application for registration with all of the information required by the Department indicated on the form and all accompanying instructions, together with the fee required by Part 12, Category 22.

2.4.2.3 Each person applying for registration under 2.4.2 shall identify and provide:

(1) The service category for which registration is being requested, including but not limited to:

(a) Selling, leasing, transferring, lending, assembling, installing, maintaining, trading out, disabling or disposing of radiation machines and associated radiation machine components; and

(b) Servicing of radiation machines and associated radiation machine components, to include preventative maintenance, performance adjustment, calibration, or repair.

(2) The name and qualifications of each service technician who will provide service, including:

(a) Documentation of the training and experience that demonstrate compliance with the requirements of Appendix 2H; and

(b) Certification that each service technician has been instructed in, and demonstrates an understanding of the requirements of:

(i) these regulations; and

(ii) the Federal Performance Standard (21 CFR Chapter I, Subchapter J; and

(3) Documentation of the type of personnel dosimetric monitoring used that meets the requirements of 4.17 and 4.18; and

(4) A list of instruments that will be used to ensure that machine performance meets the manufacturer's specifications.

(5) Each servicing and services registrant under 2.4.2 shall notify the Department each time the registrant adds or deletes any service technician(s) to the list of service technicians authorized to provide radiation machine service(s).

(a) The registrant will be assessed ~~an~~ **the** acceptance review fee **required by Part 12, Category 24** when adding a technician, unless the technicians are added during a registration renewal.

2.4.2.4 Service Company registration will be for a one (1) year period.

Comment [JJ23]: Language is added for clarification to cross-reference the applicable Part 12 fee category.

Comment [JJ24]: Consistent with the proposed changes to Part 12 (fees for radiation control services), the Service Company registration process is changed from a biennial registration cycle to an annual registration.

2.4.3 Registration as a Qualified Expert.

2.4.3.1 Each individual who designs or evaluates protective shielding around a radiation area so the area meets the public exposure requirements of Part 4, shall be registered with the Department as a qualified expert designated QE(R), QE(S) or QE(T).

(1) Each individual who designs or evaluates shielding for a radiation machine regulated by Parts 8 or 9 and not used in the healing arts shall be registered with the department as a QE(S) and meet the requirements of Appendix 2C.

(2) Each individual who designs or evaluates shielding for a radiation machine used in the healing arts as regulated by Part 6, but not used in radiation therapy, shall be registered with the department as a QE(R) and meet the requirements of Appendix 2B

(3) Each individual who designs or evaluates shielding for a radiation machine used in radiation therapy as regulated by Part 24, shall be registered as a QE(T) and meet the requirements of Appendix 2B.

2.4.3.2 Each Qualified Expert shall complete the applicable Form R-68 series application for registration and include all of the information required by the form and any accompanying instructions, together with the fee required by Part 12, Category 22.

2.4.3.3 Qualified Expert registration shall be for a one (1) year period.

Comment [JJ25]: Consistent with the proposed changes to Part 12 (fees for radiation control services), the Qualified Expert registration process is changed from a biennial registration cycle to an annual registration.

2.4.4 Registration as a Qualified Inspector.

2.4.4.1 Each individual who performs a certification evaluation of a radiation machine or an evaluation of a facility shall be registered with the Department as a qualified inspector who meets the criteria established in Appendix 2I.

2.4.4.2 Each individual who performs a certification evaluation on mammography, fluoroscopy or computed tomography machines used in the healing arts or, evaluates the quality assurance programs of digital imaging systems used in the healing arts shall be registered with the department as a qualified inspector with approval in the Registered Medical Physicist category.

(1) Individuals who perform a certification evaluation on Volumetric Dental Imaging Systems shall be registered with the department as a qualified inspector with approval in "Volumetric Dental Imaging Systems".

2.4.4.3 Each individual who performs registered medical physicist duties required by Part 24 shall be registered with the department as a qualified inspector with approval in the radiation therapy Registered Medical Physicist category.

2.4.4.4 Each Qualified Inspector shall complete the applicable Form R-53 series application for registration and include all of the information required by the form and any accompanying instructions, together with the fee required by Part 12.

2.4.4.5 Qualified Inspector registration shall be for a period of one (1) year.

Comment [JJ26]: Consistent with the proposed changes to Part 12 (fees for radiation control services), the Qualified Inspector registration process is changed from a biennial registration cycle to an annual registration.

2.4.4.~~5~~ **6** Certification evaluation measurements shall be made with instruments that are sufficiently sensitive to determine compliance with these regulations.

(1) The instruments shall be maintained and used in good working order.

(2) The instruments shall be calibrated at least every two (2) years, or in accordance with the manufacturer's recommendation, whichever is more frequent, or after any repair that could affect the calibration of the instrument.

(3) Calibrations shall be NIST-traceable where such traceability is feasible.

(4) Procedures for instrument calibration done by inter-comparison with a suitable and appropriately calibrated instrument must be approved by the department.

(a) The comparison shall be between an instrument that has a current calibration traceable to NIST and an instrument for which a calibration factor is to be determined.

(b) The comparison shall be made using the actual physical quantity to be routinely measured (for example, radiation energy/quality or visible light spectrum) and shall be compared in the same physical geometry.

(c) The procedure(s) for inter-comparison shall be documented and available for review by the department.

(5) In addition to the requirements in 2.4.4.~~65~~, instruments used for the certification evaluation report to measure the air kerma or air kerma rate of mammography machines shall be calibrated with an accuracy of ± six (6) percent (95 percent confidence level) in the mammography energy range.

Comment [JJ27]: This section cross-reference is updated, consistent with the renumbering of (previous) section 2.4.4.5.

* * *

2.6.3 For each radiation machine finding of noncompliance (Form R-59-1), the facility registrant shall:

2.6.3.1 Correct any failure of a radiation machine or imaging system to meet the requirements of these regulations or manufacturer's required specifications, within thirty (30) calendar days or as otherwise specified by the Department, in particular as identified on Form R 59 1, "X ray Machine Certification Evaluation Report."

2.6.3.2 Not use a radiation machine that has been determined to be unsafe for use, as determined by the criteria in Part 6, Appendix 6D, until subsequent certification by a Department-approved qualified inspector or the Department.

2.6.3.3 Permit only a person who has provided evidence of current registration with the Department in accordance with 2.4.2 to provide radiation machine servicing or services.

2.6.3.4 Notify the qualified inspector who issued the Certification Evaluation Report when the radiation machine violations have been corrected.

(1) A copy of the Certification Evaluation Report, Form R-59-1, with the service repair certification signed and dated by the person providing service, shall be provided to the qualified inspector who initiated the certification evaluation..

(2) A copy of any service report shall be provided to the qualified inspector upon request as evidence of completed corrective action.

2.6.3.5 Retain documentation that each indicated violation has been corrected to bring the machine into compliance in accordance with Section 2.6.6.

2.6.3.6 Pay the fee required by Part 12**, Category 25** for each certification label issued by the qualified inspector.

Comment [JJ28]: Reference to Part 12 fee category added for clarity.

* * *

PART 2, APPENDIX 2F: BONE DENSITOMETRY (BD) ADEQUATE RADIATION SAFETY TRAINING AND EXPERIENCE

Each operator of a dual-energy x-ray absorptiometry system used on a living human shall meet the following education and experience requirements:

2F.1 Is certified or registered by:

2F.1.1 ARRT(R), ARRT(M), ARRT(N), ARRT(T), or CNMT; or

2F.1.2 The International Society for Clinical Densitometry (ISCD), combined with or including the didactic radiation safety training in 2F.~~2A~~**2.1**, 2F.~~2B~~ **2.2** and 2F.~~2C~~**2.3**; or

Comment [JJ29]: This change is unrelated to the proposed Part 12 changes, but rather to update cross reference errors consistent with the current numbering format for Appendix 2F.

* * *

COLORADO
Board of Health
Department of Public Health & Environment

Notice of Public Rule-Making Hearing
6 CCR 1007-1, Radiation Control, Part 2 and Part 12
February 18, 2015

NOTICE is hereby given pursuant to the provisions of Section 24-4-103, C.R.S., that the Colorado Board of Health will conduct a public rule-making hearing on February 18, 2014 at 10 a.m. in the Sabin-Cleere Conference Room of the Colorado Department of Public Health and Environment, Bldg. A, First Floor, 4300 Cherry Creek Drive, South, Denver, CO 80246, to consider the promulgation of 6 CCR 1007-1, Colorado Rules and Regulations Pertaining to Radiation Control, Part 12, *Fees for Radiation Control Services and Part 2, Registration of Radiation Machines, Facilities, and Services.* The proposed rules have been developed by the Hazardous Materials and Waste Management Division of the Colorado Department of Public Health and Environment pursuant to Section 25-1.5-101(1)(k), 25-1.5-101(1)(l), 25-11-103, 25-11-104, and 25-1-108, C.R.S.

The agenda for the meeting and the proposed amendments will also be available on the Board's website, https://www.colorado.gov/pacific/cdphe/boh at least 7 days prior to the meeting. The proposed rules, together with the proposed statement of basis and purpose, specific statutory authority and regulatory analysis will be available for inspection at the Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South EDO-A5, Denver, Colorado 80246-1530 at least five working days prior to the hearing. Copies of the proposed rules may be obtained by contacting the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division, HMWM-RM-B2, 4300 Cherry Creek Drive S., Denver, CO 80246, (303) 692-3454.

The Board encourages all interested persons to participate in the hearing by providing written data, views, or comments, or by making oral comments at the hearing. At the discretion of the Chair, oral testimony at the hearing may be limited to three minutes or less depending on the number of persons wishing to comment. Pursuant to 6 CCR 1014-8, §3.02.1, written testimony must be submitted no later than five (5) calendar days prior to the rulemaking hearing. Written testimony is due by 5:00 p.m. on Thursday, February 12, 2015. Persons wishing to submit written comments should submit them to: Colorado Board of Health, ATTN: Jamie L. Thornton, Program Assistant, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South EDO-A5, Denver, Colorado 80246-1530 or by e-mail at: Jamie.thornton@state.co.us

Dated this 30th day of December, 2014.

Deborah Nelson
Board of Health Administrator

Permanent Rules Adopted

Department

Department of Revenue

Agency

Taxpayer Service Division - Tax Group

CCR number

1 CCR 201-4

Rule title

1 CCR 201-4 SALES AND USE TAX 1 - eff 02/14/2015

Effective date

02/14/2015

~~REGULATION 26-104.1(B)(I)(A).~~

~~When a trade-in of tangible personal property is received by a retailer upon the sale of tangible personal property, the tax imposed by C.R.S. 1973, 39-26-106 shall be based upon the purchase price of the tangible personal property sold, less trade-in allowance, provided the property taken in trade is to be resold in the usual course of the retailer's trade or business. This is not limited to exchanges in Colorado. Out of state trade-in's are an allowable adjustment to the purchase price. (Matthews v. State of Colorado, Dept. of Revenue, 193 Colo. 44, 562 P.2d 415 (1977))~~

John W. Suthers
Attorney General

Cynthia H. Coffman
Chief Deputy Attorney General

Daniel D. Domenico
Solicitor General

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Colorado Judicial Center
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State of Colorado
Department of Law

Office of the Attorney General

Tracking number: 2014-00912

Opinion of the Attorney General rendered in connection with the rules adopted by the
Taxpayer Service Division - Tax Group

on 12/22/2014

1 CCR 201-4

SALES AND USE TAX

The above-referenced rules were submitted to this office on 12/23/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

January 02, 2015 15:49:03

John W. Suthers
Attorney General
by Daniel D. Domenico
Solicitor General

Permanent Rules Adopted

Department

Department of Revenue

Agency

Taxpayer Service Division - Tax Group

CCR number

1 CCR 201-4

Rule title

1 CCR 201-4 SALES AND USE TAX 1 - eff 02/14/2015

Effective date

02/14/2015

CHARITABLE AND OTHER EXEMPT ORGANIZATIONS

39-26-718

(1) **General Rule.**

(a) Purchases by charitable organizations are exempt from state sales and use taxes and state-administered local sales and use taxes if the purchases are part of the charitable organization's regular charitable functions and activities.

(b) Sales by charitable organizations generally are not exempt from sales tax, except for occasional sales, sales where a portion of the purchase price is a donation, and sales by certain school-related entities.

(c) The following are common situations where the acquisition of property by a charitable organization is not subject to sales tax.

(i) The charitable organization does not pay the donor for the donation (sales tax does not apply to transactions when consideration is not paid), or

(ii) The purchase was part of its regular charitable function and activity, or

(iii) The purchase was made with the intention of reselling the item at a fundraising event, in which case the charitable organization's purchase is exempt as a wholesale purchase for resale.

(2) **Types of Charitable Organizations.**

(a) Charitable organizations must serve a public rather than a private interest and be organized and operated exclusively for one or more of the following purposes or functions:

(i) Religious; to the extent consistent with Catholic Health Initiatives Colo. v. City of Pueblo, 207 P.3d 812, (Colo. 2009).

(ii) Charitable;

(iii) Scientific;

(iv) Literary;

(v) Educational;

(vi) Testing for public safety;

(vii) Fostering national or international amateur sports competition, as long as no part of its activities involves providing athletic facilities or equipment;

(viii) Preventing cruelty to children or animals;

(b) *Limited Purpose Charitable Organizations.* A veterans' organization registered under section 501(c)(19) of the Internal Revenue Code of 1986 is a charitable organization only when sponsoring a special event, meeting or other function in the State of Colorado, so long as such event, meeting or function is not part of such organization's regular activities in the state.

(c) Charitable, as used in (2)(a)(ii) of this rule, is used in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration of other tax-exempt purposes which may fall within the broad outlines of *charity* as developed by judicial decisions. Charitable includes:

(i) Relief of the poor and distressed or of the underprivileged;

(ii) Advancement of education or science;

(iii) Erection or maintenance of public buildings, monuments, or works;

(iv) Lessening of the burdens of government;

(v) Care of the sick, infirm, or aged;

(vi) Lessen neighborhood tensions;

(vii) Eliminate prejudice and discrimination;

(viii) Defend human and civil rights secured by law; or

(ix) Combat community deterioration and juvenile delinquency.

(d) Educational, as used in (2)(a)(v) of this rule, relates to:

(i) The instruction or training of the individual for the purpose of improving or developing his capabilities; or

(ii) The instruction of the public on subjects useful to the individual and beneficial to the community.

(e) Testing for public safety, as used in (2)(a)(vi) of this rule, includes the testing of consumer products to determine whether they are safe for use by the general public.

(f) Scientific, as used in (2)(a)(iii) of this rule, includes carrying on of scientific research in the public interest. For research to be scientific, it must be carried on in furtherance of the scientific purpose.

(g) *IRS 501(c)(3) Certificates.* A charitable organization that holds a 501(c)(3) determination letter from the Internal Revenue Service is provisionally presumed to qualify as a charitable organization that is exempt from Colorado sales and use tax. However, the Department is not bound by an IRS determination of an organization's charitable status, and the Department may independently evaluate whether the entity qualifies as a charitable entity.

(h) *Religious Organization.* The IRS does not require religious organizations to apply for a 501(c)(3) certificate in order to qualify as a tax-exempt charitable organization. In such cases, the Department will issue a sales tax exemption certificate to a religious charitable

entity, even in the absence of an 501(c)(3) certificate, if the organization has a charitable purpose and meets the conditions set forth below. In lieu of the 501(c)(3) certificate, a religious organization shall provide to the Department a copy of its IRS No Record of Exempt Organization letter and Department Form DR 0716, "Statement of Nonprofit Church, Synagogue, or Organization".

(i) If the applicant is a religious organization that is an affiliate of a national organization that holds a Colorado exemption certificate, applicant may submit, in lieu of such a determination letter, documentation from the national organization demonstrating that applicant is an affiliate of such organization.

(i) *Nonprofit Organizations.* An organization that is a nonprofit or an organization that performs some charitable services or provides funding to a qualified charitable organization does not automatically qualify as a charitable organization for sales and use tax purposes. In order to qualify, the organization must be established and operated exclusively for one or more of the charitable purposes listed above. Examples of organizations that do not typically qualify as a charitable organization for purposes of this exemption are nonprofit country clubs, private clubs, employees or social clubs or organizations, nonprofit recreational organizations, lodges, patriotic organizations (veteran organizations have a limited exemption, discussed below), fraternities, sororities, professional and trade associations, civic organizations, labor unions, political organizations, and other nonprofit entities.

(3) **Application for Exemption Certificates.**

(a) Applicants must submit a completed application for a sales tax exemption certificate and include a copy of the organization's federal 501(c)(3) determination.

(b) Notwithstanding a determination by the IRS of an applicant's charitable status, the Department may conduct, either before or after the issuance of an exemption certificate, an independent review of whether the organization qualifies as a charitable organization.

(4) **Restrictions on Charitable Organization Activities.**

(a) *Exclusively.* An organization will be regarded as operating exclusively for one or more exempt purpose only if the organization exclusively engages in activities in furtherance of its exempt purpose. A charitable organization will not lose its exempt charitable status if its non-charitable activities are insubstantial.

(i) *Examples.*

(A) If the religious organization operates a restaurant or coffee shop for the public unrelated to its charitable propose, then the organization does not qualify for the exemption because this activity is not considered part of the organization's charitable function. Note that sales by a charitable organization are not generally exempt from sales tax. For example, sales by a church in a coffee shop operated on church property are subject to sales tax even if the revenues from such sales are insubstantial, unless the sales qualify under the occasional sale exemption or the donation exemption, discussed below.

(B) Providing meals to the poor or homeless for free or below cost is generally considered a charitable activity.

(b) *Other Restrictions.* A charitable organization, excluding veterans' organizations, is subject to the following limitations in order to qualify for the sales and use tax exemption certificate:

(i) No part of an organization's net earnings can benefit any private shareholder or individual. Compensation paid by the organization for services rendered, including services performed by employees or officers of the charitable organization, must be reasonable.

(A) The fact that an organization charges a fee for its goods or services is not fatal to a claim that it is a charitable organization. However any profit that a charitable organization generates must be used for charitable purposes. Factors that the Department will consider with respect to whether an organization that charges fees is a charitable organization include: (i) whether such fees vary depending on the need of the recipient of the goods or services; and (ii) the extent to which such fees show material reciprocity or *quid pro quo* transactions between the organization and those it serves.

(B) Example: A mutual benefit society is an organization whose benefits are available only to its members and/or their beneficiaries and requires payment by its members as a condition to receiving such benefits. A mutual benefit society is not organized for a charitable purpose, and is not a charitable organization exempt from sales and use taxes under this exemption.

(ii) No substantial part of an organization's activities can be carrying-on propaganda or otherwise attempting to influence legislation. For example, an organization whose main activity is scientific is not a charitable organization for sales and use tax purposes if a substantial portion of the organization's activities involves dissemination of propaganda that is favorable to its political objectives or consists of lobbying for legislation that supports the organization's activities and mission.

(iii) An organization may not participate in, or intervene in, a political campaign on behalf of any candidate for public office (including the publishing or distributing of statements).

(5) **Purchases by Charitable Organizations.**

(a) Purchases by charitable organizations are exempt from sales and use taxes if the goods or services are used exclusively in the conduct of the charitable organization's regular charitable functions and activities. Purchases must be made directly from the organization's funds and, for purchases over one-hundred dollars, must be made with a check or credit card issued in the organization's name. Purchases made with funds other than the organization's own funds or purchases made with a charitable organization's funds but reimbursed by someone who is not a qualified charitable organization are not exempt from sales or use tax. Whenever a charitable organization purchases tangible personal property (such as cards, food, cars, etc.) that is to be transferred to anyone else for personal use and all or part of the price of the goods is recouped from the user through direct payment, donation or games of chance (but not including a sale), the organization's exempt status does not apply and sales tax must be paid to the vendor by the exempt organization. If such purchases are made outside Colorado or in Colorado without payment of Colorado sales tax, the tax must be paid directly to the Department by the organization.

(i) *Examples.*

(A) A purchase made on behalf of a charitable organization with a credit card issued in the name of an individual is not exempt.

(B) An educational charitable organization's purchase of computers is not exempt if the computers are given to members of the organization who use the computers for their own personal use or who reimburse the organization.

(C) An educational institution's purchase of athletic equipment or uniforms is not exempt from sales and use tax if the educational institution is reimbursed for the equipment or uniforms from students or their families.

(b) *Veterans' Organizations.* Purchases by veterans' organizations that are registered under section 501(c)(19) of the Internal Revenue Code are exempt only if the goods are used for a special event, meeting, or other function that is not part of the organization's regular activities in Colorado. The Department does not issue an exemption certificate to veterans' organizations. Instead, veterans' organizations must apply for a special event license for each special event or function. Veterans' organizations make exempt purchases by presenting the special events license to the vendor. Because veterans' organizations are only a charitable organization when sponsoring a special event, meeting, or other function so long as such event, meeting, or function is not part of the organization's regular activities in this state and because the occasional sales exemption requires that the funds be used in the regular course of the organization's charitable activities, sales by veterans' organizations do not qualify for the occasional sales exemption.

(6) **Donor's Obligation for Sales and Use Tax.**

(a) A donor who purchases tangible personal property for the purpose of donating it to a charity must pay sales or use tax on the purchase and cannot claim the charitable organization's exemption. The donor cannot claim a sale for resale exemption because the property is donated, not resold, to the charitable organization.

(b) A retailer who initially makes a wholesale (exempt) purchase of an item for resale (e.g., retailer buys an item for its inventory it plans to resale) and later withdraws that item from inventory and donates it to a charitable organization incurs use tax on the withdrawal from inventory. However, see the cross reference (5) for information on the exemption for donations of manufactured goods by manufacturers.

(7) **Sales by Charitable Organization.**

(a) *General Rule.* Sales made by charitable organizations are generally not exempt from sales tax, unless the sale qualifies for the occasional sale exemption, as a donation, or for any other exemption that may apply (see paragraphs (8) and (9) of this rule). For that reason, a charitable organization that makes repeated sales of tangible personal property to the public and otherwise meets the definition of a retailer must have a sales tax license and collect and remit tax in the same manner as any other retailer. For example, a charitable organization that operates a gift or book shop, rummage store, or coffee shop must collect sales tax on sales. The fact that the merchandise sold may have been acquired by gift or donation, or that the proceeds are to be used for charitable purposes, does not make the sales exempt from tax.

(b) *Occasional Sale Exemption.* Occasional sales of taxable tangible personal property by a charitable organization that holds a Colorado exemption certificate are exempt from sales and use taxes. See paragraph (10), below, for information of local taxes. An occasional sale must meet the following criteria:

(i) The charitable organization conducts sales for a total of twelve days or less during a calendar year, and

(A) Each day a sale occurs is counted as an entire day, even if the sale occurs for less than a full day or the organization characterizes a multi-day sale as one event.

(ii) The "net proceeds" from all these events do not exceed twenty-five thousand dollars in that calendar year. "Net proceeds" means the total gross receipt(s) minus expenses directly attributable to the event(s).

(A) "Directly attributable" generally means those expenses that would not have arisen but for the occurrence of the event and do not include indirect and overhead costs, such as administrative staff wages, insurance unless purchased for the specific event, rent otherwise due even if no event was held, property taxes, and other expenses that would be incurred even in the absence of the event.

(B) Payment by the charitable organization to acquire any goods that are later sold at a fundraising event is an expense that is deducted from the gross proceeds to determine net proceeds.

(C) When a charitable organization exceeds either threshold described in paragraph (7)(b)(i)or (ii), then all sales that occur in that calendar year are subject to tax, including sales in that calendar year that were previously exempt prior to the date when the threshold was exceeded. Sales tax applies to the gross proceeds, not the net proceeds. The charitable organization must have a sales tax license if and when either of these limits is exceeded.

(I) *Example 1.* Charitable organization conducts one auction sale which generates $30,000 in gross proceeds and $20,000 in net proceeds. Because neither threshold was exceeded, the charitable organization does not collect, report, or remit sales tax.

(II) *Example 2*. Same facts as Example No. 1, but net proceeds are $26,000. Charitable organization has exceeded the $25,000 threshold, and, therefore, must collect, report, and remit sales tax on the gross proceeds of $30,000.

(iii) The funds retained by the charitable organization are used in the course of the organization's charitable service.

(iv) *Living accommodations and other taxable services*. The exemption for occasional sales applies only to the sale of tangible personal property. Therefore, sales of taxable services by a charitable organization are subject to tax. For example, a charitable organization conducts a silent auction at which it auctions a weekend rental of a timeshare or hotel room. The sale of living

accommodations is a sale of a service. The sale is subject to state and local sales taxes applicable to where the accommodation is located even if the charitable organization has not exceeded the twelve day or twenty-five thousand dollar thresholds. The sale of the living accommodation is not included in the calculation of the twenty-five thousand dollar threshold.

(A) If the auction is not conducted in the same state-administered local jurisdiction in which the living accommodation is located, then the charitable organization must register with the Department for the local jurisdiction where the accommodation is located and collect the local sales taxes, including any lodging or local marketing district taxes, applicable to the rental of living accommodations.

(v) *Goods sold on consignment.* Goods given by a retailer to a charitable organization for sale at a fundraising event with the understanding that the goods will be offered for sale at a minimum price and the minimum price is paid to the retailer, and with the further understanding that the goods would be returned to the retailer if not sold at the event are subject to sales tax on the minimum price even if the twenty-five thousand dollar threshold is not met. For example, a bike shop offers a bike to a charitable organization to be sold at a fundraising auction, but the bike shop requires the charitable organization to pay the bike shop a portion of the purchase price in the event the bike is sold. The charitable organization must collect sales tax from the successful bidder for the payment made to the bike shop, even if the net proceeds from the event do not exceed the twenty-five thousand dollar threshold.

(c) *Donations.* A portion of the purchase price for a sale made by a charitable organization may be a donation if the amount paid exceeds the fair market value of the good purchased.

(i) The exclusion of donations from the tax base applies even if the charitable organization exceeds the twelve day / twenty-five thousand dollar threshold of the occasional sale exemption. This rule also applies to state-administered local sales taxes even if the local tax jurisdiction elected to tax occasional sales of charitable organizations.

(ii) The donation amount is not included in the calculation of the twenty-five thousand dollar net proceeds threshold for the occasional sale exemption.

(iii) *Examples.*

(A) An electronic retailer donates a laptop computer that it sells for $700 at retail. The charitable organization offers the laptop computer at a silent auction and discloses that the fair market value of the laptop computer is $700. The winning bid is $1,000. $300 is a donation not subject to tax.

(B) Charitable organization sells 300 tickets for $100 for a dinner and silent auction event. This is the charitable organization's only event that calendar year. Organization discloses to ticket purchasers that $75 of the $100 ticket price is a donation. Each dinner costs the charitable organization $10. Charitable organization generates $33,000 in silent auction gross sale proceeds ($30,000 derived from the auction of taxable tangible personal property, $1,000 from the auction of non-taxable services and gift certificates, and $2,000 from the auction of taxable vacation rentals), $20,000 in net proceeds from the silent auction, and

$4,500 from the sale of dinner (($25-$10) X 300), for a total in net proceeds of $24,500. Because the $75 is a donation and not proceeds from a sale of what would otherwise be taxable goods, the $22,500 ($75 X 300) in donations from ticket sales is not added to the $24,500 in net proceeds to determine whether the $25,000 in net proceeds threshold is exceeded. Sales tax is not due on the net proceeds because the charity has not exceeded the $25,000 threshold. The $1,000 in non-taxable services and gift certificates and the $2,000 in taxable living accommodations are excluded from the net proceeds calculations because the services and gift certificates are not taxable and the living accommodations do not qualify under the occasional sales exemption, which applies only to taxable tangible personal property and not taxable services. (Tax must be collected on the living accommodations.)

(I) *Local Sales Taxes*. If the state-administered local tax jurisdiction in which the sale occurred elected not to exempt occasional sales by charitable organizations, then the local tax applies to the gross proceeds from the sale of dinner and auction items, even if the organization did not exceed the $25,000 net proceeds threshold, but local tax does not apply to the $75 per ticket because a donation is not subject to state or local sales taxes.

(C) Same facts as Example No. 2, except the net proceeds from the auction sale are $23,000. Because the net proceeds threshold is exceeded ($23,000+$4,500), sale tax applies to the gross price, not just the net proceeds, for all dinners ($25 X 300) and to the gross price all of the sales at auction ($30,000 + $2,000). Sales tax is not collected on the $1,000 in the sales of non-taxable services and gift cards and not on the $22,500 in donations.

(iv) In order to claim a sales tax exemption for a donation included in the buyer's purchase price, the buyer and charitable organization must establish the following:

(A) the fair market value of the taxable item or service, and

(B) that the buyer knowingly paid in excess of the fair market value with the intent to donate that excess portion of the price to the charitable organization.

(v) The Department will presume that the price paid for an item sold at auction is the item's fair market value and that the buyer did not knowingly pay in excess of the fair market value. These presumptions can be rebutted by reasonable evidence, such as the price for comparable goods sold by a retailer in its regular course of business and that buyer knew the fair market value of the goods at the time of the purchase. For example, the fair market value of a signed professional sports jersey sold at auction will be presumed to be the price paid by the successful bidder, but the presumption can be rebutted by documentation of the sales price of a comparable signed jersey sold to the public at the professional team's or other retail store.

(A) *Examples.*

(I) A charitable organization holds a fundraising dinner for which patrons purchase a ticket for $100 per person. The organization

compiles information that establishes that the fair market value of the dinner is $25 and the cost per meal is $10. The organization establishes that purchasers knowingly paid in excess of the fair market value of the item by disclosing to patrons, at the time tickets are sold, that the fair market value of the dinner is $25 (or that $75 of the $100 purchase price is a donation). State sales tax is due on the $25 if the organization exceeded the $25,000 net proceeds threshold.

(II) The fair market value of an item sold at auction is not based on the cost to the organization to acquire the item. For example, a donor may donate a set of golf clubs or a night stay at a condominium to the organization to be auctioned at a fundraising event. The fair market value of the golf clubs or room is not zero even though the organization acquired the golf clubs or room for free. The fair market value is the price at which the item would sell on the open market.

(III) A charitable organization holds a fundraising auction. The organization previously conducted concession sales and other fundraising sales for twelve days in the same year. The organization compiles information of the fair market value of each of the items sold at auction. The organization establishes that the purchaser knowingly paid in excess of the fair market value of the item by disclosing the fair market value of the auctioned items to potential bidders prior to bidding. The organization does not collect sales tax on that portion of the purchase price that exceeds the fair market value.

(vi) The Department will presume that any donation that qualifies as a donation for federal income tax purposes also qualifies as a donation for sales tax purposes.

(8) **Parent-Teacher Associations.** Sales by associations or organizations of parents and teachers of public school students are exempt from sales tax if:

(a) The association or organization is a charitable organization, and;

(b) The sale proceeds are used for the benefit of a public school, an organized public school activity, or to pay reasonable expenses of the association or organization.

(c) The exemption does not apply to sales by private schools. However, sales by private schools that qualify as charitable organizations are exempt as occasional sales or are not taxable to the extent the purchase price is a donation, or are exempt pursuant to paragraph 9, below. §39-26-718(1)(c), C.R.S. See paragraph (10), below, for information on local taxes.

(d) *Occasional Sales Restrictions Do Not Apply*. This exemption applies even if the sale has exceeded the occasional sale exemption threshold (twelve days / twenty-five thousand dollar as discussed in (7)(b) “Occasional Sale Exemption”).

(i) *Example.* A public school parent-teacher association can raise funds by selling candy exempt from sales tax in order to purchase school sports uniforms. However, if the parent-teacher association is supporting a private school, its sales are taxable, unless the association is a charitable organization for

educational purposes. In addition, if students reimburse the school for the uniforms, then tax must be collected on the amount paid by students.

(9) **Sales by Public, Private Schools and Supporting Organizations.** Sales by public and private schools and supporting organizations are exempt from sales tax if the conditions described in paragraphs (a) to (d) are met. See paragraph (10), below, for information on local taxes.

(a) The school is for students in kindergarten through twelfth grade.

(b) Preschools, trade schools and post-secondary schools do not qualify.

(c) The sale is made by any of the following:

(i) the school;

(ii) an association or organization of parents and school teachers;

(iii) booster club or other club, group or organization whose primary purpose is to support a school activity; or

(iv) a school class, student club, group or organization.

These organizations qualify for this exemption even if they are not charitable organizations. Examples include: concession sales by booster club or a silent auction sales conducted by a parent-teacher association or school are exempt if all the proceeds are donated to the school or school-approved student organization

(d) All the proceeds from the sale, except the actual cost incurred by a person or entity to acquire the good or service sold, must be donated to the school or school-approved student organization. Actual costs incurred to acquire the goods or services include, payment facility charges (rent for space, furniture or equipment), labor (wages for security, independent contractors, employees), transportation, meals, insurance, and other costs.

(e) Sales by a parent-teacher association that are not exempt under this paragraph (9) may, nevertheless, be as exempt if the sale meets the requirements for an exempt sale as a charitable organization or as a public school parent-teacher association or organization.

(f) *Occasional Sales Restrictions do not apply*. This exemption applies even if the sale has exceeded the thresholds for the occasional sale exemption (twelve days / twenty-five thousand dollar as discussed in (7)(b) “Occasional Sale Exemption,”).

(g) Purchases by public schools are exempt from sales tax. §39-26-704(4), C.R.S. Purchases by private schools are not exempt unless the private school is a charitable organization.

(10) **State-Administered Local Tax Jurisdictions.** State-administered cities and counties have the option to exempt from sales tax (1) occasional sales by charitable organizations, (2) sales that benefit a Colorado school, and (3) sales by an association or organization of parents and teachers of public school students that is a charitable organization. See, §29-2-105(1)(d)(I)(E), (K), and (L) C.R.S., respectively. However, state-administered special districts, such as the Regional Transportation District, must levy sales tax on these exemptions. Unless exempt, charitable organizations are responsible for collecting state-administered city and county sales taxes for the local jurisdiction in which the sale occurs. If the state-administered city or county

taxes occasional sales, then the charitable organization must obtain a Colorado sales tax license prior to such sales so that the organization can report and remit the local sales tax to the Department, even though these sales are exempt from Colorado state sales tax. Home rule cities are not governed by these rules and procedures and should be contacted directly for more information on their procedures

(11) **Other Tax Exempt Organizations.** Other tax-exempt organizations (including governmental entities) that sell tangible personal property (for example, through a secondhand goods retail store, a fundraiser sales event or routine sales of organization-related items) must obtain a sales tax license and collect all applicable state and local sales taxes.

Cross Reference(s):

1. For a list of state-administered local tax jurisdictions that levy sales tax on occasional sales, see Department publication “Colorado Sales/Use Tax Rates” (DR 1002), available at www.colorado.gov/revenue/tax > Forms > Forms by Number > DR 1002.

2. For a list of home rule cities, see also Department publication “Colorado Sales/Use Tax Rates” (DR 1002).

3. For information on the exemption for donations of manufactured goods by manufacturers, see §39-26-705(2), C.R.S.

4. For additional information on sales related to schools, see §39-26-725, C.R.S.

5. Catholic Health Initiatives Colo. v. City of Pueblo, 207 P.3d 812, (Colo. 2009).

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State of Colorado
Department of Law

Office of the Attorney General

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Opinion of the Attorney General rendered in connection with the rules adopted by the
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on 12/22/2014

1 CCR 201-4

SALES AND USE TAX

The above-referenced rules were submitted to this office on 12/23/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

January 02, 2015 15:51:37

John W. Suthers
Attorney General
by Daniel D. Domenico
Solicitor General

Permanent Rules Adopted

Department

Department of Revenue

Agency

Taxpayer Service Division - Tax Group

CCR number

1 CCR 201-4

Rule title

1 CCR 201-4 SALES AND USE TAX 1 - eff 02/14/2015

Effective date

02/14/2015

REMITTANCE OF TAX

39-26-105

(1) **Retailer Requirements.**

(a) A retailer is liable for the total tax received from all taxable sales made in each month. The tax shall be calculated using the tax rate in effect at the time of the sale and applied to all sales, including all sales made for less than the minimum amount subject to tax.

(b) The retailer shall file with the Department a report of their gross sales during the preceding month and shall include nontaxable sales permitted under Article 26 of Title 39 made during such time. The returns and supplemental forms must be fully filled out in detail. Supplemental forms must be attached whenever necessary to demonstrate all pertinent facts.

(b) The retailer must file their monthly return and remit any sales or use tax to the Department on the due date, unless permission has been obtained from the Department, in writing, to make quarterly, seasonal, or annual returns. Payment must be made payable to the Department by check, draft, or money order or may be made by acceptable forms of electronic payment. Cash payments should only be made by personal messenger.

(2) **Due Date of Returns.**

(a) Returns and payments for any accounting period are due and shall be filed on the twentieth day following the last day of the accounting period reported, or the next business day if the twentieth day is a Saturday, Sunday or holiday. All returns filed or payments remitted after this due date are delinquent.

(b) Returns mailed by the United States Postal Service or any mail Common Carriers, such as UPS, FedEx, and DHL, are considered to be received by the Department on the date shown on the cancellation mark or other mark showing the date mailed.

(3) **Vendor's Fee.** The vendor's fee is allowed if the retailer timely files a complete tax return, all required schedules and makes full remittance of tax due.

(a) If the retailer is delinquent in filing the tax return or any required schedules or the payment of tax, other than in unusual circumstances shown to the satisfaction of the executive director, the retailer shall not retain the vendor's fee and shall remit to the executive director an amount equal to the full amount of the tax due for the filing period.

(b) The vendor's fee shall not apply to organizers of special sales events unless the organizer elects to obtain a sales tax license, file a sales tax return, and remit the sales tax as provided in §39-26-103(9)(b.5)(IV)(B), C.R.S.

Cross Reference(s):

1. You can find returns, schedules, etc. on the Department's website at www.colorado.gov/revenue/tax > Forms

2. For procedural information on electronic funds transfer, see Procedure and Administration Special Rule 1, EFT Payment Due.

3. §§39-21-119 and 39-21-120, C.R.S.

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1 CCR 201-4

SALES AND USE TAX

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John W. Suthers
Attorney General
by Daniel D. Domenico
Solicitor General

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Department

Department of Revenue

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1 CCR 201-4 SALES AND USE TAX 1 - eff 02/14/2015

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DEFINITION OF TAXPAYER

39-26-102(17)-

In the statutory definition of “taxpayer”, the term “person obligated to account to the executive director” means any person obligated to make a return and to pay over to the Department any tax collected or to be paid under Article 26 of Title 39, C.R.S., and includes licensed or unlicensed retailers, sellers, consumers, and purchasers.

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1 CCR 201-4

SALES AND USE TAX

The above-referenced rules were submitted to this office on 12/23/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

January 02, 2015 15:43:44

John W. Suthers
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1 CCR 201-4 SALES AND USE TAX 1 - eff 02/14/2015

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DIRECT PAYMENT PERMIT

REGULATION 39-26-103.5

(1) **General Rule.** A purchaser who holds a direct payment permit ("Qualified Purchaser") shall remit sales and use taxes directly to the Colorado Department of Revenue ("Department") and not to the retailer. Retailers who sell taxable goods or services to a Qualified Purchaser shall not collect sales tax from such purchasers.

(2) **Qualified Purchaser Qualifications.** An applicant, which can be an entity or individual, for a direct payment permit must meet the following conditions.

(a) *Dollar Threshold*. An applicant must have had a minimum of $7,000,000 in purchases on which Colorado state sales or use tax was owed during the twelve months preceding the application. The dollar threshold excludes purchases that are exempt from Colorado state sales and use tax, even if such purchases are subject to state-administered local sales or use taxes. See, §29-2-105, C.R.S. for a description of the local tax base. For example, the dollar threshold excludes exempt wholesale purchases of inventory. Additionally, commodities or tangible personal property that are to be erected upon or affixed to real property, such as building and construction materials and fixtures, are not included in the dollar threshold. See, §39-26-103.5(1)(a), C.R.S.

(b) Good Standing. If an applicant has been subject to any tax administered by the Department for at least three years prior to the date of the application, an applicant cannot have been delinquent in collecting, remitting, or reporting any sales, use, income, or other tax administered by the Department for the immediate three years prior to the date applicant submits its application. If an applicant has not been subject to any tax administered by the Department for at least three years, the applicant cannot have been delinquent in collecting, remitting, or reporting taxes for any period after the date the applicant was first obligated to collect, remit, and report such taxes. The Department can waive this requirement if an applicant demonstrates to the satisfaction of the director or their designee that the failure to comply with the collecting, remitting, and reporting requirements was due to reasonable cause. In determining whether reasonable cause exists, the Department will consider, among other relevant aggravating and mitigating factors, whether:

(i) the failure was due to willful or reckless disregard of applicant's tax obligations;

(ii) the applicant failed to comply on more than one occasion;

(iii) the magnitude of the failure was significant in terms of dollars or time; and

(iv) the applicant made subsequent efforts to avoid future failures.

(c) *Accounting Systems and Practices*. An applicant must have in place an accounting system and set of practices that are acceptable to the Department. The accounting system and practices must fully and accurately report the amount of sales or use tax to be reported on the appropriate sales or use tax return(s), including state-administered local tax jurisdictions. The Department may revoke a direct payment permit ~~or~~ and may make assessments of tax, penalties, or interest if such system or practices are not adequate to enable the Department to fully and accurately collect and allocate to cities,

counties, and other local taxing entities all the sales and use taxes that the Department collects on behalf of such entities.

(d) A Qualified Purchaser is not required to be subject to the collection, remittance, and reporting requirements for sales taxes in order to obtain such a permit. Rather, a Qualified Purchaser can be subject to the collection, remittance, and reporting requirements for any tax administered by the Department.

(3) **Effective Date.** A direct payment permit is effective from the date of issuance until December 31 of the third year following the year in which it is issued unless sooner revoked.

(4) **Purchaser's Funds.** When a Qualified Purchaser uses a direct payment permit, the Qualified Purchaser must use its own funds when paying a retailer for a transaction to which the direct payment permit applies. Retailers cannot accept payment from persons other than the Qualified Purchaser, including payment from the personal funds of an individual if the permit is held in the name of an entity. Retailers must collect tax if a Qualified Purchaser is making a purchase with funds other than the Qualified Purchaser's funds and will be liable for unpaid taxes for transactions paid in contravention of this subsection (4).

(5) **Revocation of Permits.**

(a) The Department may revoke a direct payment permit if the Qualified Purchaser violates any statute or rule governing the administration of sales and use taxes, or if in the opinion of the Department the Qualified Purchaser becomes otherwise unable to meet any of the conditions for holding a direct payment permit. The Department shall provide written notice of the revocation by first-class mail to the last known address of the Qualified Purchaser thirty days prior to the effective date of such revocation. The notice of revocation shall set forth:

(i) the factual and legal basis for revocation,

(ii) advise the Qualified Purchaser of its right to appeal, and

(iii) the date the Department issued the notice.

The Department will issue a denial of a direct payment permit application in the same manner.

(b) An applicant who is denied a permit or a Qualified Purchaser whose permit was revoked, may appeal the decision by submitting to the Department's executive director a written request for hearing. The notice of appeal must be received by the Department within thirty days of the date of issuance of the notice of revocation or denial and contain the permit holder's name, address, permit account number (for revocations), and the legal and factual basis explaining why the permit should not be revoked or denied. Qualified Purchaser's notice of appeal shall suspend the effective date of the revocation until a final order resolving the appeal is issued by the executive director or the director's designee. The executive director or director's designee shall conduct a hearing and issue a final ruling on such appeal within a reasonable time.

(6) **Reporting Requirements.**

(a) A Qualified Purchaser holding a direct payment permit must directly remit to the Department all state and state-administered city, county and special district sales taxes that would have been collected by the retailer had the Qualified Purchaser purchased such goods or services without a direct payment permit.

(i) *Exceptions.* A Qualified Purchaser holding a direct payment permit cannot pay county lodging taxes, county short-term rental taxes, and local marketing district taxes directly to the Department because such taxes are not sales taxes. Retailer must collect such taxes from the Qualified Purchaser and remit them to the Department. See, §30-11-107.5 and §30-11-107.7, C.R.S.

(b) A Qualified Purchaser must report and remit state and state-administered local taxes on or before the 20th day of each month following the month the Qualified Purchaser purchases taxable goods or services with a direct payment permit.

(c) The vendor must retain a copy of Qualified Purchaser's direct pay permit.

(7) **Determining Local Sales Taxes.**

(a) *Service fees*. With regard to sales taxes only, a Qualified Purchaser may deduct from its remittance to the Department the service fee for state sales tax and any local service fee(s).

(b) A sale occurs when and where a Qualified Purchaser takes title or possession of the good(s) or where a taxable service is performed.

(c) If the Qualified Purchaser takes title or delivery of any taxable good(s) within the State of Colorado, then the Qualified Purchaser shall remit the state-administered local sales taxes for the local jurisdiction(s) in which the Qualified Purchaser took the title or delivery.

(d) If the Qualified Purchaser takes title or delivery of any taxable good(s) outside the State of Colorado, then the Qualified Purchaser shall remit use tax for the location where the Qualified Purchaser first uses, stores, or consumes the goods.

(e) Sales and use taxes of home rule cities and counties cannot be paid by direct payment permit to the Department, unless the Department has agreed to collect such taxes.

(f) *Examples*.

(i) Qualified Purchaser takes delivery of goods at seller's store which is located in the City and County of Denver, Regional Transportation District (RTD) and Scientific and Cultural Facilities District (CD). Qualified Purchaser remits state sales tax and RTD/CD sales taxes to the Department because purchaser took possession in these state-administered local tax jurisdictions. Qualified Purchaser does not remit the City and County of Denver sales taxes to the Department because Denver is a home rule city and county and the Department does not administer their local taxes.

(ii) Seller, who is located in Arapahoe County and in RTD/CD special districts, ships goods with its own vehicle, or engages a common carrier (e.g., United States Postal Service, UPS, or other common carrier), to Qualified Purchaser which is located in that portion of El Paso County that also includes the Pikes Peak Rural Transportation Authority. Qualified Purchaser does not remit Arapahoe County or RTD/CD special districts sales taxes because the sale does not occur in those local tax jurisdictions. Qualified Purchaser remits Colorado state, El Paso County, and Pikes Peak Rural Transportation Authority sales taxes because the sale takes place in those state-administered local tax jurisdictions.

(iii) The same facts occur as in Example ii, except Qualified Purchaser engages a third-party transportation company to pick up the goods from seller's store. The

Department will presume the third-party transportation company is acting as Qualified Purchaser's agent and the sale occurs in the local tax jurisdiction in which the third-party takes delivery from seller. Therefore, Qualified Purchaser remits Colorado state, Arapahoe County, RTD, and CD special district sales taxes to the Department.

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State of Colorado
Department of Law

Office of the Attorney General

Tracking number: 2014-00910

Opinion of the Attorney General rendered in connection with the rules adopted by the
Taxpayer Service Division - Tax Group

on 12/22/2014

1 CCR 201-4

SALES AND USE TAX

The above-referenced rules were submitted to this office on 12/23/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

January 02, 2015 15:47:15

John W. Suthers
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by Daniel D. Domenico
Solicitor General

Permanent Rules Adopted

Department

Department of Revenue

Agency

Taxpayer Service Division - Tax Group

CCR number

1 CCR 201-4

Rule title

1 CCR 201-4 SALES AND USE TAX 1 - eff 02/14/2015

Effective date

02/14/2015

EXCHANGED TANGIBLE PERSONAL PROPERTY

39-26-104(1)(B)(I)

(1) **General Rule.** When tangible personal property is received by a retailer as part or full payment for the sale of tangible personal property, sales tax shall be calculated upon the purchase price of the tangible personal property sold, minus the fair market value of the tangible personal property exchanged by the purchaser, provided the property taken by the retailer in the exchange is to be resold in the usual course of the retailer's trade or business. The general rule applies to exchanges that occur both inside and outside Colorado (e.g., motor vehicles exchanged in another state and one or both cars are subsequently registered in Colorado).

(2) **Exceptions**. The general rule does not apply if:

(a) The property transferred from purchaser, or by a third party on behalf of the purchaser, to seller is not tangible personal property.

(i) *Examples.*

(A) Intangible property, such as stock certificates, and real property are not subject to sales or use tax.

(B) Services (because they are not property).

(b) Retailer does not resell, in the usual course of its business, the property transferred from purchaser.

(i) *Examples.*

(A) Retailer does not resell the property in a commercially reasonable period.

(B) Retailer takes a used computer from buyer in exchange for the sale of a new computer to buyer. Retailer then donates the used computer to a school. A donation does not constitute a sale and, therefore, the initial exchange does not qualify under the general rule.

(C) Retailer is in the business of selling only construction equipment. Buyer exchanges a boat as partial payment of its purchase of a large compressor. Retailer cannot reduce the price on which sales tax is calculated for the compressor by the fair market value of the boat even if the seller resells the boat. The resale of boats is not part of the retailer's usual course of business. Retailer and buyer also do not qualify for the vehicle exchange, even though the boat qualifies as a vehicle, because both the buyer and retailer must exchange vehicles. Therefore, both the retailer, as a licensed vendor, and buyer are liable for the sales tax on the purchase of the equipment and the retailer, as a buyer, is liable for sales tax on the fair market value of the boat (buyer would also be liable for the sales tax on the boat if buyer is a licensed retailer).

(ii) *Exception to the Resale Requirement - Vehicles.* The resale requirement does not apply if the property transferred (exchanged) by the seller to buyer is a vehicle and the property transferred (exchanged) by the buyer to the seller is a

vehicle. Both vehicles must be subject to licensing, registration, or certification by the laws of Colorado. “Vehicles” include:

(A) Trailers, semi-trailers, trailer coach,

(B) Special mobile machinery (except such machinery used solely on property of the owner),

(C) Vehicles designed primarily to be operated or drawn on public highways, (§§42-3-103(1) and 104, C.R.S.),

(D) Watercraft (§33-13-103, C.R.S.),

(E) Aircraft (Colorado does not license aircraft but Colorado law requires aircraft possessed in this state be licensed by FAA) (§43-10-114(1), C.R.S.).

Purchaser, on whom the obligation to pay sales tax is levied, is the person who pays money or other consideration in addition to the exchanged vehicle. If the seller is a licensed retailer, then the retailer must collect sales tax from the purchaser. Persons who engage in three or more such exchanges may be required to obtain a motor vehicle dealer’s license

(c) Exchanges that do not occur at the same time and place. See, §39-26-104(1)(b).

(i) *Examples.*

(A) Motor vehicle dealer sells a motor vehicle to buyer, who pays cash. Two weeks later, buyer decides to sell another vehicle he owns to the dealer. Buyer cannot claim a refund for taxes paid for the first purchase because the second vehicle was not exchanged as part of the first sale.

(B) Retailer is in the business of leasing equipment. Customer rents a forklift for 30 days and retailer and customer agree at the time the lease is signed that customer will give retailer, as part of the payment, a used compressor that retailer intends to lease to third parties. The exchange does not qualify because the use of the forklift occurs over thirty days and does not occur at the same time and place as the exchange of the compressor. In contrast, a finance lease is treated as a credit sale and not as a true lease. An exchange involving a finance lease is treated as occurring at the same time and place as the other party’s exchange of property.

Cross Reference(s):

1. For additional requirements regarding the collection of tax for motor vehicles, see §39-26-113, C.R.S.

2. See, §39-26-104(1)(b)(I)(B), C.R.S. and §12-6-101, et seq., C.R.S. for laws governing motor vehicle dealer licensing.

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State of Colorado
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Office of the Attorney General

Tracking number: 2014-00911

Opinion of the Attorney General rendered in connection with the rules adopted by the
Taxpayer Service Division - Tax Group

on 12/22/2014

1 CCR 201-4

SALES AND USE TAX

The above-referenced rules were submitted to this office on 12/23/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

January 02, 2015 15:47:57

John W. Suthers
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by Daniel D. Domenico
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Permanent Rules Adopted

Department

Department of Revenue

Agency

Taxpayer Service Division - Tax Group

CCR number

1 CCR 201-4

Rule title

1 CCR 201-4 SALES AND USE TAX 1 - eff 02/14/2015

Effective date

02/14/2015

REFUNDS OF SALES AND USE TAX FOR VEHICLES USED IN INTERSTATE COMMERCE

39-26-113.5

(1) **Qualification Requirements.**

(a) The truck tractor or semitrailer giving rise to the refund must be model year 2010 or newer with a gross vehicle weight rating of fifty-four thousand pounds or greater, and must be purchased on or after July 1, 2011.

(b) Only truck tractors or semitrailers that were purchased or first stored or used in the year when the model year of such truck tractor or semitrailer was sold as new are eligible for the refund allowed by this section.

(2) **Refund Calculation.**

(a) The percentage of tax to be refunded will be computed by dividing the non-Colorado miles by the total miles as used in the computation of the specific ownership tax. (Example: If the total miles driven is 10,000 with 8,000 of those Colorado miles and 2,000 non-Colorado miles, the refund percentage will be 20%.) This percentage establishes the amount of the refund, which shall be paid in three equal installments.

(3) **Prioritization of Claims.**

(a) Claims will be eligible for issue based on the date they are received by the Department. Claims will be prioritized based on the date received. Once a claim has been filed, if it is not paid in the year in which it was filed, its priority will carry over to the next year. Therefore, the taxpayer need not file another claim in subsequent years. However, claims for leases must be filed for each of the 3 years as stated in paragraph (5).

(4) **Remaining Balance to be Refunded.**

(a) The annual funds available for refund is limited by §42-1-225, C.R.S. Claims will be honored based on the prioritization stated in paragraph (3), above. Claims filed after the fund has been depleted will not receive a refund for that year, but may be for the year 2 and/or year 3 refund.

(b) In the event that more than one claim is received on the same date and the amount available in the fund is less than the total amount of the claims, the earlier purchase date will be used to determine which refund claims will be issued.

(5) **Leases.**

(a) A lease term must be for more than 3 years and must be entered into after July 1, 2011 to qualify for the refund. All leases entered into prior to July 1, 2011 are not eligible for this refund.

(b) If the total sales tax is paid at the time the vehicle is leased, then the lessee may apply for a refund of the total tax paid and the refund will be calculated in the same manner listed in paragraph (2).

(c) If the tax is included in the lease payments, the applicant must wait until the last payment has been made for that calendar year before a refund claim can be submitted. The refund

will be calculated based on the amount of tax paid in the previous calendar year. A separate refund claim must be submitted for each of the 3 years that the refund is allowed under §39-26-113.5, C.R.S.

(6) **Application and Documentation Required to Qualify for the Refund.**

(a) A taxpayer shall apply for the refund allowed by this section by filing a claim for refund after registering the vehicle and being assessed specific ownership tax at less than one hundred percent as noted in (2)(a).

(b) For purchases in Colorado, a refund request must include a copy of the retail purchase agreement from the dealer, the standard sales tax receipt (DR 0024) and any other documentation the Department requests to validate the statutory requirements for the refund.

(c) For purchases made outside of Colorado, a refund request must include a copy of the purchase agreement, a copy of the county registration and any other documentation the Department requests to validate the statutory requirements for the refund.

(d) For leases, a refund request must include a copy of the lease agreement, documentation stating the term of lease, the taxes paid with each lease payment and any other documentation the Department requests to validate the statutory requirements for the refund.

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Tracking number: 2014-00915

Opinion of the Attorney General rendered in connection with the rules adopted by the
Taxpayer Service Division - Tax Group

on 12/22/2014

1 CCR 201-4

SALES AND USE TAX

The above-referenced rules were submitted to this office on 12/23/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

January 02, 2015 15:50:51

John W. Suthers
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Permanent Rules Adopted

Department

Department of Revenue

Agency

Taxpayer Service Division - Tax Group

CCR number

1 CCR 201-16

Rule title

1 CCR 201-16 GASOLINE AND SPECIAL FUEL TAX 1 - eff 02/14/2015

Effective date

02/14/2015

REFUNDS OF GASOLINE AND SPECIAL FUEL TAX

REGULATION 39-27-103

(1) **Definitions.**

(a) Account Percentage: a percentage assigned to a particular account, representing the proportion of taxable fuel used for purposes other than the operation of a motor vehicle upon the highways of this state.

(b) Alternate-Jurisdiction Percentage: an exempt-use percentage used in another state.

(c) Default Percentage: an exempt-use percentage to be assigned to new account-holders whose activities closely mirror that of the average industry participant.

(d) Established Account Percentage: an exempt-use percentage previously assigned to an account by the Department of Revenue.

(e) Industry-Group Proffered Standard: the percentage obtained from an industry association, or other disinterested party.

(f) Industry Segment: a group of companies or businesses engaged in similar activities using similar vehicles and/or equipment.

(g) Industry Segment Historical Average: a percentage derived from the historical, non-highway fuel usage of previously established accounts identified as being in the industry.

(h) Refund Permit Account: an account established for an entity allowing it to claim refunds for exempt use of fuel.

(i) Refundable Gallons: the account percentage multiplied by the gallons purchased and used for the period.

(2) **Qualifying Fuel.** The gallons included in the percentage calculations, on the refund claims, and in all other aspects of the refund process under §39-27-103, C.R.S. can only be those upon which Colorado motor fuel excise tax was paid. Red-dyed diesel, fuel purchased in another jurisdiction, fuel purchased tax-exempt, and fuel used in vehicles licensed and plated for on-road use in Colorado do not qualify as exempt fuel.

(3) **Establishing the Default Percentage for a Given Industry.**

(a) Based on the Department of Revenue's determination of the most reliable information, the default percentage shall be:

(i) The Industry Segment Historical Average;

(ii) An Industry-Group Proffered Standard; or

(iii) An Alternate-Jurisdiction Percentage.

(b) The Department will calculate percentages of exempt and non-exempt fuel ("default percentages") for various industries. These percentages shall be used by the taxpayer

unless the taxpayer demonstrates that a different percentage should apply. The denominator shall be the total amount of fuel used by the industry, excluding any International Fuel Tax Agreement ("IFTA") gallonage, and the numerator shall be the amount of tax paid fuel used by the industry that qualifies for a refund but that excludes any IFTA gallonage. Fuel used for idling or for powering air conditioning and electrical systems on a vehicle are on road uses and, therefore, are not included in the numerator. However, fuel used for a power take off unit mounted on a vehicle for the refrigeration of a trailer while the trailer is attached to the vehicle, for mixing on a truck hauling concrete, or for other similar uses shall be included in the numerator. This ratio is then multiplied by the total amount of fuel purchased, including both exempt and non-exempt fuel, but excludes IFTA gallons.

(c) The Department of Revenue may update default percentages~~,~~ should it obtain information deemed to be more reliable.

(4) **Assigning an Account Percentage to a New Account.**

(a) A default percentage shall be assigned to entities based on activities that closely mirror the average industry participant.

(b) Otherwise:

(i) A weighted average of the relevant industry default percentages shall be assigned to entities whose activities span more than one industry.

(ii) Entities whose activities are not representative of established industry segments must provide documentation enabling the Department of Revenue to assign a percentage. Documentation must include information concerning actual use of fuel, equipment used, mileage over the road, miles per gallon, etc. This documentation must span one year of activity

(5) **Documentation for an Industry-Group Proffered Standard.**

(a) Proposal documentation shall include:

(i) A definition of the segment;

(ii) An explanation of typical business operations for the segment;

(iii) Identification of the typical equipment used;

(iv) Information concerning any seasonal or cyclical events that might affect the industry;

(v) An explanation of the measuring method used. Information and testing results provided by a manufacturer may be considered;

(vi) Fuel records and other data;

(vii) Identification of the period of time involved in the study. To be valid, a period of study must span one year, as well as any relevant cyclical or seasonal patterns.

(6) **Protests of the Assigned Percentage.**

(a) An applicant may file a protest with the Department of Revenue if the applicant disagrees with the assigned percentage. Supporting documentation must be included with any request for a change of percentage. Documentation must include sufficient information to support an alternative percentage. Documentation must include information concerning actual use of fuel, equipment used, mileage over the road, miles per gallon, etc. This documentation must span one year of activity

(b) Subsequent appeal procedures will be handled under the provision of §39-21-104 C.R.S and §39-21-105 C.R.S.

(7) **Audits of Accounts.**

(a) If the Department of Revenue, through the examination of records concerning actual use of fuel, equipment used, mileage over the road, miles per gallon, etc. of an established account holder, finds that the account has an incorrect percentage, the Department may adjust the percentage both retroactively and prospectively.

(b) The new percentage shall be arrived at as if a new account were being established.

(c) The Department may make assessments or issue refunds using a percentage other than the default percentage for any period open for assessment if the default percentage does not fairly reflect the amount of exempt use of fuel.

(8) **Penalty.**

(a) The Department may suspend, cancel, revoke, or deny a refund permit in accordance with the Colorado Administrative Procedures Act (§24-4-104, C.R.S.).

(b) A taxpayer cannot claim a refund of gasoline and special fuel taxes purchased during a period in which the taxpayer's refund permit was suspended, cancelled, revoked, or denied, even if the taxpayer is subsequently granted a new or reinstated permit. However, if the taxpayer's application for refund permit is denied for reasons other than making a false statement in the application (e.g., clerical errors) or if the permit is cancelled because no refund claim was submitted for twenty-four consecutive months, then the taxpayer is not prohibited from filing a refund claim for the period the application was denied or cancelled if the taxpayer is subsequently granted a permit and the claim is otherwise valid.

(c) Applications for a permit or claims for a refund made in violation of statute shall be denied and, as a penalty, the amount so claimed shall also be deducted from any future claim for refund. For example, any applicant for refund who makes a false statement on an application for permit or credit for refund, or submits any invoices on which erasures, changes, alterations, or additions have been made, or that are otherwise incorrect shall be denied and the penalty described above shall be applied.

(d) The suspension of a refund permit shall be for a period not longer than one year. After the suspension period expires, the permit is automatically reinstated and taxpayer is not required to apply for a new refund permit.

(e) Except as provided for in (8)(b), a cancellation, revocation, or denial of a refund permit shall be effective for a period of one year after which the taxpayer may apply for a new permit pursuant to (8)(f), below.

(f) Any taxpayer whose refund permit was cancelled, revoked, or denied may apply for a new refund permit after the effective period of such cancellation, revocation, or denial has

expired. The Department may impose conditions, limitations, and qualifications to the granting of a new refund permit as the Department determines, in the exercise of its discretion, are necessary to ensure the proper administration of taxes. However, if a permit was cancelled because taxpayer had not filed a refund claim for twenty-four consecutive months or if an application was denied as a result of clerical errors, then taxpayer can apply for a new permit at any time.

(9) **Change in Business Operations by an Established Account Holder.**

(a) Entities whose business operations change, in such a manner that a refund issued under the previously-set percentage would be incorrect, must notify the Department of Revenue.

(b) The Department will require a new application.

(c) The new application will be processed, and the previously-held account shall be closed.

(10) **Filing Quarterly Claims.**

(a) Only one claim can be filed each calendar quarter. Missing gallons on a claim for refund cannot be resubmitted or amended to include those missing gallons if a claim was already filed in that calendar quarter. The missing gallons shall be claimed in a subsequent calendar quarter within twelve months of the date of purchase by including a copy of the prior quarter's claim and showing the missing fuel on such claim. Gallons claimed for refund must be submitted in a claim postmarked within twelve months of the date of purchase or the claim will be denied.

(b) A taxpayer cannot file a claim for refund for any period unless taxpayer holds a refund permit at the time of filing the claim for refund.

(11) **Taxpayers Holding IFTA Licenses.**

(a) Taxpayers may separately file a claim for refund for nontaxable fuel used in Colorado in an IFTA-plated vehicle. Such a claim must demonstrate the actual amount of fuel used in Colorado in taxable and nontaxable applications. Taxpayers wishing to receive a refund on fuel placed in the ordinary fuel tank of a vehicle whose miles are reported on an IFTA return must obtain an account with the Department specifically for this purpose.

(b) Taxpayers wishing to receive a refund on fuel placed in the ordinary fuel tank of a vehicle whose miles are reported on an IFTA return, and also receive a refund on fuel used in other equipment, must file two separate refund claims – one for IFTA gallons described in this paragraph (11), and one for non-IFTA gallons described in paragraphs (1) through (10) of this rule. Taxpayers must separate each reported activity.

(c) Gallons used in an IFTA-plated vehicle are not eligible for a refund using the industry default percentage as defined in paragraphs (1) through (9) of this rule.

(d) Out-of-state IFTA licensees holding an account upon which they shall receive a refund of fuel placed in the ordinary fuel tank of a vehicle whose miles are reported on an IFTA return must attach a copy of the corresponding IFTA return to each quarterly claim for refund.

(e) For the purposes of this regulation, the ordinary fuel tank of a vehicle is that which is drawn upon to propel the vehicle down the road.

(12) **Invoice Record-Retention Requirements.**

(a) Invoices are the delivery tickets issued at the time of the sale and delivery. Billing invoices prepared subsequent to the sale and delivery of the fuel are not acceptable, unless accompanied by a delivery ticket. Invoices must be retained for a period of three years from the date of the purchase of the fuel or the date of the refund claim, whichever is later. These invoices must be available for audit or review upon request by the Department.

(b) Invoices must show the following information:

(i) Dealer's name and address, and the address of the delivery;

(ii) Purchaser's name and address;

(iii) Correct date of sale and delivery, as to month, day, and year;

(iv) Bill of lading number, if applicable;

(v) Delivery ticket number;

(vi) Type and quantity of gasoline or special fuel sold;

(vii) Price per gallon, total amount of Colorado tax, and total amount paid.

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State of Colorado
Department of Law

Office of the Attorney General

Tracking number: 2014-00917

Opinion of the Attorney General rendered in connection with the rules adopted by the
Taxpayer Service Division - Tax Group

on 12/22/2014

1 CCR 201-16

GASOLINE AND SPECIAL FUEL TAX

The above-referenced rules were submitted to this office on 12/23/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

January 02, 2015 15:52:41

John W. Suthers
Attorney General
by Daniel D. Domenico
Solicitor General

Permanent Rules Adopted

Department

Department of Revenue

Agency

Division of Liquor Enforcement

CCR number

1 CCR 203-1

Rule title

1 CCR 203-1 CIGARETTE WHOLESALERS AND TOBACCO PRODUCTS DISTRIBUTORS 1 - eff 02/14/2015

Effective date

02/14/2015

COLORADO DEPARTMENT OF REVENUE
LIQUOR ENFORCEMENT DIVISION
REPEAL OF EXISTING RULES - REVIEW

1 C.C.R. 203-1

In 2008, SB08-091 was passed that eliminated certain requirements that persons involved in the sale of products derived from tobacco submit retailer information as a condition of license renewal. The following request to repeal Regulations 28-102 and 28.5-104, 1 C.C.R. 203-1, would reflect those legislative changes.

Regulation 28-102. Wholesaler List Requirements. (Repealed)

Regulation 28.5-104 Distributor List Requirements. (Repealed)

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Statement of Adoption

To: Ron Kammerzell, Senior Director of Enforcement

From: Barbara Brohl, Executive Director

Re: Statement of Adoption

Pursuant to the state Administrative Procedure Act, Title 24, Article 4, C.R.S. (2013), I, Barbara J. Brohl, Executive Director of the Colorado Department of Revenue and State Licensing Authority, promulgate the following additions and amendments to rules:

1 CCR 203-2, Liquor Enforcement Division Rules

Permanent Rule	Regulation 47-312	Change of Location (Amended)
Permanent Rule	Regulation 47-328	Entertainment Districts (New)
Permanent Rule	Regulation 47-506	Fees (New)
Permanent Rule	Regulation 47-601	Assurance of Voluntary Compliance (New)
Permanent Rule	Regulation 47-604	Compliance Check Penalties (Amended)
Permanent Rule	Regulation 47-605	Responsible Alcohol Beverage Vendor and Permitted Tastings by Retail Liquor Stores and Liquor Licensed Drugstores (Amended)
Permanent Rule	Regulation 47-912	Identification (Amended)

1 CCR 203-1, Cigarette Wholesalers and Tobacco Products Distributors

Permanent Rule	Regulation 28-102	Wholesaler List Requirements (Repealed)
Permanent Rule	Regulation 28.5-104	Distributor List Requirements (Repealed)

The new and amended rules are adopted this 18th day of December, 2014.

Barbara J. Brohl
Executive Director and Licensing Authority

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State of Colorado
Department of Law

Office of the Attorney General

Tracking number: 2014-01147

Opinion of the Attorney General rendered in connection with the rules adopted by the
Division of Liquor Enforcement

on 12/18/2014

1 CCR 203-1

CIGARETTE WHOLESALERS AND TOBACCO PRODUCTS DISTRIBUTORS

The above-referenced rules were submitted to this office on 12/19/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

January 02, 2015 08:35:13

John W. Suthers
Attorney General
by Daniel D. Domenico
Solicitor General

Permanent Rules Adopted

Department

Department of Revenue

Agency

Division of Liquor Enforcement

CCR number

1 CCR 203-2

Rule title

1 CCR 203-2 LIQUOR CODE 1 - eff 02/14/2015

Effective date

02/14/2015

STATEMENT OF AUTHORITY, BASIS AND PURPOSE FOR
PROPOPSED AMENDMENT TO REGULATION 47-312, 1 C.C.R. 203-2
COLORADO DEPARTMENT OF REVENUE
LIQUOR ENFORCEMENT DIVISION

Statement of Authority, Basis and Purpose:

The statutory authority for this regulation is found at subsections 12-47-202(1)(b) and 12-47-202(2)(a) C.R.S. The purpose of the change to 1 C.C.R. 203-2, Regulation 47-312 is to clarify that approval of a change of location must be obtained from the local licensing authority (if applicable) and state licensing authority prior to a change of location for a retail license but that permits are not issued.

Regulation 47-312. Change of Location.

C. For retail licenses, no change of location shall be permitted until the state licensing authority has, after approval of the local licensing authority, considered the application and such additional information as they may require, and approved of such change. The licensee shall, within sixty (60) days of approval, change the location of its licensed premises to the place specified therein. Once at the new location, the licensee shall no longer conduct the manufacture or sale of alcohol beverages at the former location. A local licensing authority may, at its discretion, extend the time to change the location of the licensed premises, for good cause shown. However, no extension that is beyond twelve (12) months from the original date of approval shall be granted.

D. For those licensees not subject to approval by the local licensing authority, no change of location shall be permitted until the state licensing authority has considered the application and such additional information as it may require, and approved of such change. The licensee shall, within sixty (60) days of approval, change the location of its licensed premises to the place specified therein. Once at the new location, the licensee shall no longer conduct the manufacture or sale of alcohol beverages at the former location. The state licensing authority may, at its discretion, extend the time to change the location, for good cause shown. However, no extension that is beyond twelve months from the original date of approval shall be granted.

STATEMENT OF AUTHORITY, BASIS AND PURPOSE FOR
PROPOPSED REGULATION 47-328, 1 C.C.R. 203-2
COLORADO DEPARTMENT OF REVENUE
LIQUOR ENFORCEMENT DIVISION

Statement of Authority, Basis and Purpose:

The statutory authority for this regulation is found at subsections 12-47-202(1)(b) and 12-47-202(2)(a), C.R.S. The purpose of this rule is to establish a uniform procedure to report to the state licensing authority the creation of a new or any change to an existing entertainment district established pursuant to subsection 12-47-301(11) in order to notify the division of the existence of such entertainment district and assist the state licensing authority in the effective administration and enforcement of the Colorado Liquor Code and inform the Liquor Enforcement Division of the licensed premises, common consumption areas, and hours of operation of any entertainment district created by local licensing authorities.

Regulation 47-328. Entertainment districts.

Within fifteen (15) days of the creation of an entertainment district pursuant to 12-47-301(11), A local licensing authority shall notify the state licensing authority of the entertainment district, and provide (1) a map of the entertainment district and any common consumption areas, (2) a list of licensed premises attached to any common consumption area, and (3) the hours of operation for any common consumption area and attached licensed premises. changes to an existing entertainment district shall be reported to the state licensing authority by the local licensing authority within fifteen (15) days of such changes.

STATEMENT OF AUTHORITY, BASIS AND PURPOSE FOR
PROPOPSED REGULATION 47-506, 1 C.C.R. 203-2
COLORADO DEPARTMENT OF REVENUE
LIQUOR ENFORCEMENT DIVISION

Statement of Authority, Basis and Purpose:

The statutory authority for this regulation is found at subsection 12-47-501(1.5). The purpose of this regulation is to provide transparency in the publication of application fees and in reducing state fees identified in subsection 12-47-501(1) in order to reduce uncommitted reserves of the fund pursuant to section 24-75-402(3), C.R.S. After the uncommitted reserves of the fund are sufficiently reduced, the Executive Director may by rule or as otherwise provided by law may increase the amount of the fees as provided in section 24-75-402(4).

Regulation 47-506. Fees.

Below are the fees set by the State Licensing Authority pursuant to Sections 12-47-501(2) and 12-47-501(3), C.R.S.

Alternating Proprietor Licensed Premises	$ 150.00
Application for New License	$ 600.00
Application for New License with Concurrent Review	$ 700.00
Application for Transfer License	$ 600.00
Art Gallery Permit	$ 71.25
Bed & Breakfast Permit	$ 50.00
Branch Warehouse or Warehouse Storage Permit	$ 100.00
Change of Corporate or Trade Name	$ 50.00
Change of Location	$ 150.00
Corporate/LLC Change (Per Person)	$ 100.00
Duplicate Liquor License	$ 50.00
Limited Liability Change	$ 100.00
Manager Registration (Hotel/Restaurant or Tavern)	$ 75.00
Master File Background	$ 250.00
Master File Location Fee (Per Location)	$ 25.00
Modification of License Premises (City or County)	$ 150.00
New Product Registration (Per Unit)	$ 5.00
Optional Premises Added to H&R License (Per Unit)	$ 100.00
Retail Warehouse Storage Permit	$ 100.00
Wine Festival Permit	$ 25.00
Wine Direct Shipment Permit	$ 50.00
Subpoena Testimony (Per Hour)	$ 50.00

Minimum of four (4) hours of appearance or on-call or travel time to court and mileage, meals, and lodging at state employee per-diem rate. Actual hourly rate for all hours in excess of four (4) hours.

STATEMENT OF AUTHORITY, BASIS AND PURPOSE FOR
PROPOPSED REGULATION 47-601, 1 C.C.R. 203-2
COLORADO DEPARTMENT OF REVENUE
LIQUOR ENFORCEMENT DIVISION

Statement of Authority, Basis and Purpose:

The statutory authority for this regulation is found at subsections 12-47-202(1)(b) and 12-47-202(2)(a), C.R.S. The purpose of this regulation is to provide an intermediate step between a warning and a suspension in the discipline process for alleged violations of the Colorado Liquor Code and rules; an assurance of voluntary compliance provides a tool to gain voluntary compliance without suspending a liquor license.

Regulation 47- 601. Assurance Of Voluntary Compliance.

The Liquor Enforcement Division Director or Local Licensing Authority may accept an Assurance of Voluntary Compliance regarding any act or practice alleged to violate Articles 46, 47 or 48 of title 12, C.R.S., or the rules and regulations thereunder, by a licensee who has engaged in, is engaging in, or is about to engage in such acts or practices. The Assurance must be in writing and may include a stipulation for the voluntary payment of the costs of the investigation. An Assurance of Voluntary Compliance may not be considered an admission of a violation for any purpose by the State or Local licensing authority; however, proof of failure to comply with the Assurance of Voluntary Compliance is prima facie evidence of a violation of articles 46, 47 or 48 of title 12, C.R.S., or the rules and regulation thereunder, not to exceed nine (9) months from the date of executed agreement. The State Licensing Authority or Local Licensing Authority may approve or review an Assurance of Voluntary Compliance executed by their respective agencies.

STATEMENT OF AUTHORITY, BASIS AND PURPOSE FOR
PROPOPSED AMENDMENT TO REGULATION 47-604, 1 C.C.R. 203-2
COLORADO DEPARTMENT OF REVENUE
LIQUOR ENFORCEMENT DIVISION

Statement of Authority, Basis and Purpose:

The statutory authority for this regulation is found at subsections 12-47-202(1)(b) and 12-47-202(2)(a) C.R.S. The purpose of the changes to Regulation 47-604 is to make the regulation consistent with new Regulation 47-601 and incorporate assurance of voluntary compliance into the existing regulation concerning compliance check penalties; this regulation assists state and local licensing authorities with standard penalty guidelines for violations of compliance checks and assists the regulated community in understanding the range of penalties for compliance check violations.

Regulation 47-604. Compliance Check Penalties.

When a licensing authority finds that a licensee has sold alcohol beverages to a minor and that said violation was investigated or detected by using a person under twenty-one years of age to purchase alcohol beverages from the licensee, the licensing authority may consider the following penalties to be imposed for the violation:

A. 1. First Offense - (within one year) A written warning, Assurance of Voluntary Compliance or, up to a 15 day suspension. Accepting a fine (within the provisions of C.R.S. 12-47-601) in lieu of actual suspension is at the discretion of the licensing authority, as is holding a portion of the suspension time in abeyance for a period of time.

2. As an inducement for licensees to provide training for servers, because server training has proven
to be an aid in the reduction of violations, it is recommended that, where there are no aggravating circumstances, a licensee who has fulfilled the requirements of a Responsible Vendor pursuant to 12-47-1002, C.R.S. be issued a warning, Assurance of Voluntary Compliance, or up to five (5) days suspension on the first violation.

B. Second Offense (within one year) - A 5 to 25 day suspension. If no fine was paid or suspension served at the time of the first offense, it would be within the discretion of the licensing authority to accept a fine (within the provisions of C.R.S. 12-47-601) in lieu of actual days of suspension and/or to hold a portion of the suspension time in abeyance for a period of time.

C. Third Offense (within two years) – 15 to 40 day suspension.

E. Licensing Authorities may also consider mitigating and aggravating factors when considering the imposition of the penalty. These factors may include:

2. Licensee's past history of success or failure with compliance checks.

4. Prior violations/prior corrective action(s) and their effectiveness.

STATEMENT OF AUTHORITY, BASIS AND PURPOSE FOR
PROPOPSED AMENDMENT TO REGULATION 47-605, 1 C.C.R. 203-2
COLORADO DEPARTMENT OF REVENUE
LIQUOR ENFORCEMENT DIVISION

Statement of Authority, Basis and Purpose:

The statutory authority for this regulation is found at subsections 12-47-202(1)(b), 12-47-202(2)(a), and 12-47-1002(2), C.R.S. The purpose of this regulation is to establish record keeping requirements for program providers for the Responsible Alcohol Beverage Vendor Program.

Regulation 47-605. Responsible Alcohol Beverage Vendor and Permitted Tastings by Retail Liquor Stores and Liquor Licensed Drugstores.

F. Records Retention

The certified seller – server training program providers for the Responsible Alcohol Beverage Vendor Program must keep proof of attendance and records of successful completion of the training for a minimum of three (3) years and make the records available to the Liquor Enforcement Division upon request.

STATEMENT OF AUTHORITY, BASIS AND PURPOSE FOR
PROPOPSED AMENDMENT TO REGULATION 47-912, 1 C.C.R. 203-2
COLORADO DEPARTMENT OF REVENUE
LIQUOR ENFORCEMENT DIVISION

Statement of Authority, Basis and Purpose:

The statutory authority for this regulation is found at subsections 12-47-202(1)(b) and 12-47-202(2)(a), C.R.S. The purpose of this change to Regulation 47-912 is to add to the list of acceptable identification commonly used forms of identification that have been determined to be acceptable by the state licensing authority.

Regulation 47-912. Identification.

4. A passport, or passport identification card.

7. A valid consular identification card from any foreign country.

COLORADO
Department of Revenue
Executive Director's Office
Physical Address:
1375 Sherman Street
Denver, CO 80203

Mailing Address:
P.O. Box 17087
Denver, CO 80217-0087

Statement of Adoption

To: Ron Kammerzell, Senior Director of Enforcement

From: Barbara Brohl, Executive Director

Re: Statement of Adoption

Pursuant to the state Administrative Procedure Act, Title 24, Article 4, C.R.S. (2013), I, Barbara J. Brohl, Executive Director of the Colorado Department of Revenue and State Licensing Authority, promulgate the following additions and amendments to rules:

1 CCR 203-2, Liquor Enforcement Division Rules

Permanent Rule	Regulation 47-312	Change of Location (Amended)
Permanent Rule	Regulation 47-328	Entertainment Districts (New)
Permanent Rule	Regulation 47-506	Fees (New)
Permanent Rule	Regulation 47-601	Assurance of Voluntary Compliance (New)
Permanent Rule	Regulation 47-604	Compliance Check Penalties (Amended)
Permanent Rule	Regulation 47-605	Responsible Alcohol Beverage Vendor and Permitted Tastings by Retail Liquor Stores and Liquor Licensed Drugstores (Amended)
Permanent Rule	Regulation 47-912	Identification (Amended)

1 CCR 203-1, Cigarette Wholesalers and Tobacco Products Distributors

Permanent Rule	Regulation 28-102	Wholesaler List Requirements (Repealed)
Permanent Rule	Regulation 28.5-104	Distributor List Requirements (Repealed)

The new and amended rules are adopted this 18th day of December, 2014.

Barbara J. Brohl
Executive Director and Licensing Authority

John W. Suthers
Attorney General

Cynthia H. Coffman
Chief Deputy Attorney General

Daniel D. Domenico
Solicitor General

Ralph L. Carr
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State of Colorado
Department of Law

Office of the Attorney General

Tracking number: 2014-01113

Opinion of the Attorney General rendered in connection with the rules adopted by the
Division of Liquor Enforcement

on 12/18/2014

1 CCR 203-2

LIQUOR CODE

The above-referenced rules were submitted to this office on 12/19/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

January 02, 2015 08:38:30

John W. Suthers
Attorney General
by Daniel D. Domenico
Solicitor General

Permanent Rules Adopted

Department

Department of Transportation

Agency

Transportation Commission and Office of Transportation Safety

CCR number

2 CCR 601-3

Rule title

2 CCR 601-3 Rules Governing Outdoor Advertising in Colorado 1 - eff 02/14/2015

Effective date

02/14/2015

Colorado Department of Transportation

Executive Director

Rules Governing Outdoor Advertising in Colorado

2 CCR 601-3

Statement of Basis and Purpose and Statutory Authority

The Department of Transportation ("CDOT") is authorized to promulgate rules pursuant to § 43-1-415, C.R.S., and § 43-1-414(4), C.R.S., 23 U.S.C. 131and 23 C.F.R. 750.701 *et seq*.

The purpose of these Rules is to carry out the provisions of § 43-1-401, *et seq.,* C.R.S., and the Highway Beautification Act of 1965, 23 U.S.C. 131, 23 C.F.R. 750.705(h) by establishing a statewide uniform program controlling the use of Advertising Devices in areas adjacent to the State Highway System. The intent of these Rules is to protect and promote the health, safety, and welfare of the traveling public and the people of Colorado, and to promote the reasonable, orderly and effective display of outdoor advertising, while preserving and enhancing the natural and scenic beauty of Colorado.

These Rules are written to comply with and implement the Colorado Revised Statutes and the requirements of 23 U.S.C 131, and federal regulations related to outdoor advertising control, 23 C.F.R. Part 750. If any provision of these Rules or their application is held illegal, invalid, or unenforceable, no other provisions or applications of the Rules shall be affected and to this end the provisions of these Rules are severable. If these Rules conflict with relevant federal or state law, the federal or state law shall govern.

Application

These Rules apply to all Advertising Devices adjacent to the State Highway System, and all routes on the National Highway System ("NHS") that are Visible from the Main Traveled Way and within 660 feet of the nearest edge of the right-of-way and those additional Signs beyond 660 feet outside of Urban Areas which are Visible from the Main Traveled Way and erected with the purpose of their message being read from such Main Traveled Way. This area is collectively referred to throughout these Rules as the Control Area. [23 U.S.C. 131]. The Main Traveled Way means the Traveled way of a State Highway on which through traffic is carried. [23 U.S.C. 101; § 43-1-404(4), C.R.S.] These Rules do not apply to advertising billboards on land in Colorado held by the federal government in trust for Indian tribes. [23 U.S.C. 131]

1.00 Definitions

1.1 All definitions set forth in 23 C.F.R. 750.102, 23 C.F.R. 750.703, and § 43-1-403, C.R.S. shall apply to these Rules. If there is a conflict between the definitions in state and federal law and regulations and these Rules, the state and federal law definitions shall govern.

1.2 "Advertising Device" means any outdoor Sign, display, device, figure, painting, drawing, message, placard, poster, billboard, structure, or any other contrivance designed, intended, or used to advertise or to give information in the nature of advertising and having the capacity of being Visible from the Main Traveled Way of any State Highway, except any advertising device on a vehicle using the highway. The term "vehicle using the highway" does not include any vehicle parked near said highway for advertising purposes. [§43-1-403(1), C.R.S.]

1.3 "Applicant" means a person, entity or agency who applies for an Outdoor Advertising Permit from CDOT to maintain or erect an Advertising Device.

1.4 "Bonus Area" shall have the definition set forth in § 43-1-406(2)(b), C.R.S., and means any portion of the area within six hundred sixty (hereinafter "660 feet") feet of the nearest edge of the right-of-way of any portion of the federal interstate system of highways which is constructed upon any part of right-of-way, the entire width of which was acquired for right-of-way after July 1, 1956, or may be acquired in the future. A portion shall be deemed so constructed if, within such portion, no line normal or perpendicular to the center line of the highway and extending to both edges of the right-of-way will intersect any right-of-way acquired for right-of-way on or before July 1, 1956. Bonus areas do not include Kerr areas or Cotton areas.

1.5 "CEVMS" or "Changeable Electronic Variable Message Sign" means a self-luminous advertising Sign which emits or projects any kind of light, color, or message change which ranges from static images to image sequences to full motion video. This shall include "Variable Message Sign" which means an advertising Sign, display or device with moving parts whose message may be changed by electronic or by remote control or other process through the use of moving or intermittent light or lights. [43-1-404(1)(f)(I), C.R.S.]

1.6 "Commercial Advertising" means advertising of commercial interests which promotes or identifies goods and/or services as a result of the exposure of the business name rather than advocating a social or political cause.

1.7 "Conforming Sign" means a Sign legally erected and maintained in accordance with state, federal, and local laws.

1.8 "Comprehensive Development" shall include all land used or to be used or occupied for the activities of the development, including buildings, parking, storage and service areas, streets, driveways, and reasonably necessary landscaped areas. A Comprehensive Development includes only land that is used for a purpose reasonably related to the activities of the development other than an attempt to qualify the land for On-Premise advertising. [§ 43-1-403 (1.5)(a), C.R.S.]

1.9 "Control Area" means the area within 660 feet of the nearest edge of the State Highway right-of-way where an Advertising Device is Visible from the Main Traveled Way, and areas outside of Urban Areas that are more than 660 feet of the nearest edge of such right-of-way where an Advertising Device is Visible from the Main Traveled Way of the system, and erected with the purpose of its message being read from the Main Traveled Way.

1.10 "Controlled Route" means any route on the National Highway System, which includes the interstate system, State Highways, and any route on the former federal-aid primary system in existence on June 1, 1991.

1.11 "Department" means the Colorado Department of Transportation ("CDOT") created pursuant to § 43-1-103, C.R.S.

1.12 "Directional Sign" shall have the same meaning as § 43-1-403(4), C.R.S. (i.e., shall include but not be limited to: Advertising devices containing directional information to facilitate emergency vehicle access to remote locations or about public places owned or operated by federal, state, or local governments or their agencies; publicly or privately owned natural phenomena, historic, cultural , scientific, educational, and religious sites; and areas of natural scenic beauty or naturally suited for outdoor recreation, deemed to be in the interest of the traveling public).

1.13 "Illegal Sign" means a Sign erected or maintained in violation of state or federal law, these Rules or local law or ordinance.

1.14 "Main Traveled Way" means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separate roadways for traffic in opposite directions is a main traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas. [23 C.F.R. 750.703(h)]

1.15 "Maintain" means to allow to exist, or to preserve, keep in repair, continue or replace an Advertising Device. [§ 43-1-403(9), C.R.S. 23 C.F.R. 750.102 and 23 C.F.R. 750.153]

1.16 "Nonconforming Advertising Device" or "Nonconforming Sign" means a Sign which was lawfully erected but which fails to conform to the sizing, lighting, spacing or location requirements of law enacted at a later date or because of changed conditions, except those advertising devices allowed by § 43-1-404(1), C.R.S. [23 C.F.R. 750.707; § 43-1-413, C.R.S., § 43-1-403(12); § 43-1-404(1)(e)(I), C.R.S.]

1.17 "Notice of Noncompliance" means the notice provided to the Applicant, Permittee or property owner providing the information regarding a violation as set forth in § 43-1-412, C.R.S., and these Rules.

1.18 "Off-Premise Sign" means an Advertising Device which advertises an activity, service or

product not conducted on the Property upon which the Sign is located.

1.19 "Official Sign" shall have the same meaning as § 43-1-403(13), C.R.S. (Any advertising device erected for a public purpose authorized by law, but the term shall not include devices advertising any private business).

1.20 "On-Premise Sign" means an Advertising Device: (1) advertising the sale or lease of a Property on which it is located; (2) or advertising activities on the Property on which it is located; or (3) located within a Comprehensive Development that advertises any activity conducted within the Comprehensive Development.

1.21 "Parkland" means any publicly owned land which is designated or used as a public park, recreation area, wildlife or waterfowl refuge or historic site.

1.22 "Permit" means an official certificate or document which the Department issues or renews annually to allow an Advertising Device to display advertising.

1.23 "Permit Number Identifier" means a series of numbers assigned by the Department that is unique to the Advertising Device and identifies it for purposes of oversight. The Permit Number Identifier for Advertising Devices is different from the number identifier used for Official Signs (that do not require a Permit).

1.24 "Permittee" means a person, entity or agency that applies for and receives an Advertising Permit from the Department to maintain an Advertising Device.

1.25 "Premises" means the central, actual physical location where an activity is routinely conducted. Premises include the primary structures, parking facilities and private roadway if they are necessary to the principal activity.

1.26 "Property" means an area of land owned by one entity or person that is not severed by land owned by another, nor severed by a public roadway.

1.27 "Rest Area" means an area or site established and maintained within or adjacent to the highway right-of-way by or under public supervision or control for the convenience of the traveling public. [23 C.F.R. 750.153(l)]

1.28 "Sign" means any Advertising Device as defined in § 43-1-403(1), C.R.S. For purposes of these Rules, Sign shall have the same meaning as Advertising Device unless otherwise specified.

1.29 "State Highway System" for purposes of these Rules shall consist of the non-federal-aid system, including sections thereof within Urban Areas, the federal-aid primary and secondary system, the interstate system and freeways, including State Highways designated as scenic byways by the Colorado Transportation Commission. [23 USC 131(t); § 43-2-101(1) and § 43-1-419, C.R.S.]

1.30 "State Highway" shall have the same meaning as defined in § 43-2-101, C.R.S. and shall include freeways for purposes of these Rules.

1.31 "Urban Area" pursuant to 23 U.S.C. 101 (33) means an urbanized area designated by the Bureau of the Census having a population of 5,000 or more and not within any urbanized area (as defined by 23 U.S.C. 101 (34)), within boundaries to be fixed by responsible State and local officials.

1.32 "Visible" means capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity. [23 C.F.R. 750.153 (j)]

1.33 "Zoned for Commercial or Industrial Uses" means those districts established by the zoning authorities under authority of state law as being most appropriate for commerce, industry, or trade, regardless of how labeled. They are commonly categorized as commercial, industrial, business, manufacturing, highway service or highway business (when these latter are intended for highway-oriented business), retail, trade, warehouse, and similar classifications. [23 C.F.R. 750.703]

2.00 Permitting

2.1 Signs Requiring a CDOT Permit

A. A permit from the Department shall be required for all Signs within the Control Area as provided for in § 43-1-407 and 408, C.R.S. A permit is required for all Off-Premise Signs, including:

1. Nonconforming Advertising Devices [§ 43-1-403(12), C.R.S.];

2. Advertising Devices located in areas Zoned for Commercial or Industrial Uses by law. [§ 43-1-404(1)(d) and (e), and § 43-1-407(1)(II)(c), C.R.S.]

3. Advertising on Bus Benches and Shelters. [§ 43-1-407(2)(a)(I) through (III), C.R.S.]

4. Directional Signs not excepted under § 43-1-407(1)(b)(I) through (II), C.R.S.

2.2 Signs Not Requiring a Permit from CDOT

A. A Sign Permit is not required for:

1. On-Premise Signs;

2. Directional Signs that are:

a. No larger than 8 square feet and that advertises farms, ranches, nonprofit educational, veterans', religious, charitable, or civic organizations. §43-1-407(1)(b)(II), C.R.S.;

b. No larger than 32 square feet, the sole purpose of which is to provide direction to individual farms or ranches by way of individual Signs that are no larger than 8 square feet. [§43-1-407(1)(b)(II), C.R.S.];

c. A Sign indicating a public utility and not advertising a product, including informational Signs, notices, or markers, erected and maintained by a public or private public utility company. [23 C.F.R. 750.153(o)]

3. Official Signs. [§ 43-1-404(1)(a) and § 43-1-407, C.R.S.]

2.3 Conditions that Prohibit CDOT from Issuing or Renewing a Permit
[§ 43-1-411, and § 43-1-417(3)(a), C.R.S. and 23 C.F.R. 750.108]

A. The Department is prohibited from issuing or renewing a Permit for any Advertising Device pursuant to § 43-1-411, C.R.S. and 23 C.F.R. 750.108 if the Sign:

1. Does not conform to size, lighting, and spacing standards as prescribed by these Rules where the Rules were adopted prior to the erection of the Advertising Device;

2. Would encroach upon the right-of-way of a public highway absent prior written approval from the Department;

3. Is within 500 feet of the center point of an intersection of a Controlled Route at grade with another highway or with a railroad so as to materially obstruct or reduce the existing view of traffic on the other highway or railway trains approaching the intersection;

4. Is along a Controlled Route where it would reduce the existing view of traffic in either direction or of traffic control or official highway Signs to less than 500 feet;

5. Includes more than two advertising panels on an Advertising Device facing the same direction;

6. Required a permit prior to July 1, 1981, and no permit was obtained;

7. Simulates any official, directional, or warning Sign erected or maintained by the federal or state government or local governing body which involves light that simulates or resembles traffic signals or traffic control Signs;

8. Is nailed, tacked, posted, or attached in any manner on trees, plants, fence posts, public utility poles, rocks or other natural objects; or

9. Becomes decayed, insecure, or in danger of falling or otherwise is unsafe or unsightly due to lack of maintenance or repair, or from any other cause.

2.4 Required Permit Identification on the Sign [§ 43-1-409(4), C.R.S.]

A. The Sign must display the following information in a conspicuous location Visible from the Main Traveled Way:

1. The name of the Permittee or owner of the Permitted Sign;

2. The Permit Number Identifier assigned by the Department, which must be affixed within 30 days after the date of issuance;

B. If the name of the Permittee or owner and the Permit Identifier Number and any other required information is not conspicuous and Visible as required, the Permit for the device may be revoked pursuant to Rule 2.11.

2.5 Permit Term [§ 43-1-409(1)(a)-(b), C.R.S.]

A. The Department shall issue a Permit for up to one year from the date of issuance.

B. If the Advertising Device authorized by a Permit is not erected within 1 year from the Permit issuance date, then the Permit is void as of one year from the date it was issued [§ 43-1-409(1)(a), C.R.S.].

C. Permits shall be issued without proration for periods of less than 1 year. Permit renewals shall be received before June 1 of each year and shall be issued for a 1 year period beginning July 1 and ending June 30 the following year.

D. The permit holder may request a replacement Permit Identifier Number at no additional cost.

2.6 Permit Payment and Maintenance Requirements [§ 43-1-408 and § 43-1-409, C.R.S.]

A. All requirements set forth in § 43-1-408 and § 43-1-409, C.R.S., with respect to the Permit Application shall be met before a Permit is issued, including the fee payment for the Permit.

B. Permit Applications for Advertising Devices located in an area Zoned for Commercial or Industrial Uses must include proof of the dates of the initial and current zoning of the proposed Advertising Device's location and any information that proves that the authorized governmental entity took official action to zone the area.

C. The Applicant shall not construct the Advertising Device structure prior to obtaining a Permit.

D. The Permittee shall repair, replace, and Maintain in good condition any damaged Advertising Device structure as allowed in these Rules.

E. A Permit must be obtained from the Department prior to entering the right-of-way to perform any kind of work.

2.7 Permit Renewals [§ 43-1-409, C.R.S.]

A. Every Permit must be renewed annually and accompanied by a renewal fee pursuant to § 43-1-409, C.R.S., with the exception of Permits related to advertising devices subject to agreements of certification between CDOT and the local zoning authority.

B. The Permit holder shall, during the term of the Permit, have the right to change the advertising copy, ornamentation, or trim on the structure or Sign subject to the Permit without payment of any additional fee.

C. Renewal fees shall be assessed in accordance with § 43-1-409, C.R.S.

D. If the renewal fee is not received on or before May 31, a late fee shall be assessed. The Department shall not waive late fees.

E. If the Department does not receive a timely application for renewal, the Department shall give written notice by certified mail to the Permittee requiring him or her within 60 days of receipt of the notice to apply for a renewal permit and pay an additional late fee pursuant to § 43-1-409, C.R.S., or remove the Advertising Device by a certain date. The notice shall include the right of the Permittee to request a hearing. [§ 43-1-412(2)(b), C.R.S.]

2.8 Permit Renewals for Advertising Device subject to Agreement of Certification between Department and Local Zoning [§ 43-1-409, C.R.S.]

A. A Permit renewal is not required for an Advertising Device erected in an area Zoned for Commercial or Industrial Uses where the local zoning authority has entered into an agreement of certification with the Department, and the local zoning authority has legal requirements in place concerning the control of Advertising Devices that are at least as restrictive as these Rules as to size, lighting, spacing, use and maintenance.

B. The local zoning authority's agreement of certification must contain the terms set forth in § 43-1-409(2), C.R.S. If the Department determines after public hearing that the local zoning authority has failed to comply with its agreement of certification, the Department may rescind the agreement of certification by taking the steps set forth in §

43-1-409(2), C.R.S.

C. The Department's action resulting from this process shall constitute a final agency action.

D. In the event of rescission of the agreement of certification, the Permittee must renew the Permit.

2.9 Transfers of Permits [§ 43-1-409(7), C.R.S.]

A. A Permittee may transfer the Permit to another party.

B. The Permittee or the other party must file with the Department a transfer form signed by the Permittee and purchaser or transferee within 60 days of the transfer of legal interest in the Advertising Device.

C. The transfer form must include the name and address of the purchaser or transferee, the Permit Identifier Number, contact information for the Permittee and purchaser or transferee, and a copy of any lease or sale agreement documenting the transfer.

D. Any change in size, location, or materials of the Advertising Device shall require a new Permit application.

2.10 Permits for Bus Benches and Bus Shelters [§ 43-1-407(2)(A)(I) and (II), C.R.S.]

A. The Department shall issue a Permit to erect or Maintain an Advertising Device on a bus bench or bus shelter located within the right-of-way of any State Highway or on land adjacent to or Visible from the right-of-way of any State Highway if the local governing body having authority over the State Highway pursuant to § 43-2-135, C.R.S. has approved such Advertising Device.

B. The Department shall accept the local Permit as a state-approved Permit if the approval procedure of the local governing body included a determination that the Advertising Device does not restrict pedestrian traffic and is not a safety hazard to the motoring public. [§ 43-1-407(2)(a)(I), C.R.S.]

C. The Department shall not impose any additional or more strict requirements for Advertising Device Permits on bus benches or bus shelters than those imposed by a local governing body unless required by federal law, or based on safety requirements for bus benches or shelters.

D. If the bus bench or bus shelter is located on a Controlled Route outside of a city, city and county, or incorporated town, the Department shall have direct authority over the issuance of a permit. [§ 43-1-417, C.R.S. and 43-2-135, C.R.S.]

2.11 Permit Denial, Revocation or Denial of Renewal [23 C.F.R. 750.104; § 43-1-410, C.R.S.]

A. The Department may deny, revoke, or deny the renewal of a Permit for any violation of state or federal law or these Rules, including but not limited to:

1. False or misleading information in the Permit application or Renewal;

2. Advertisement of illegal activities;

3. Failure to maintain the Sign in good repair;

4. Failure to comply with all Permit provisions;

5. Increasing the permitted size of an Advertising Device; or

6. Any violation of federal law referenced herein, § 43-1-401, *et seq.,* C.R.S. or these Rules.

B. Pursuant to § 43-1-412(4), C.R.S., the applicant or permit holder shall have 60 days within which to provide CDOT with proof of compliance.

3.00 Notice of Noncompliance Pursuant to § 43-1-412, C.R.S.

3.1 Issuance of Written Notice

A. If the Department determines that an application for renewal should be denied, or that an existing Permit should be revoked, the Department shall give written notice by certified mail to the Applicant or Permittee.

B. If the Department revokes a Permit, the Department shall send a Notice of Noncompliance pursuant to Rule 3.00 to the Permittee.

C. In either case, the notice shall specify in what respect the Sign does not comply with relevant federal or state law and/or these Rules.

D. Pursuant to § 43-1-412(4), C.R.S., the applicant or permit holder shall have 60 within which to provide CDOT with proof of compliance.

3.2 Grounds for Noncompliance

A. Sign Lacking a CDOT Permit [§ 43-1-412(2)(a), C.R.S.]

1. If a Permit has not been obtained for the Advertising Device, the Department shall give written Notice of Noncompliance by certified mail to the owner of the Property on which the Sign is located. Such notice will:

a. Inform the Property owner that the Advertising Device is illegal;

b. Require the owner to remove the Sign within 60 days of receipt of the notice or obtain a permit; and

c. Advise the Property owner of the right to request a hearing.

B. Permit Renewal. [§ 43-1-412(2)(b), C.R.S.]

1. Permitted Signs are subject to renewal requirements.

2. If the Department does not receive a Permit renewal application as required, the Department shall give the Permittee written notice by certified mail that:

a. Requires the Permittee to apply for a renewal Permit and pay the required late fee within 60 days of receipt of the notice or remove the Sign; and

b. Advise the Permittee of the right to request a hearing.

C. Permit Application or Renewal Denied. § 43-1-412(2)(c), C.R.S.

1. If the Department determines that a renewal application should be denied or that an existing Permit should be revoked, the Department shall give the Applicant or Permittee written notice by certified mail that:

a. Specifies in what respect he or she has failed to comply with state or federal law and these Rules;

b. Requires the removal of the Advertising Device or correction of the violation, if correction is permissible, within 60 days of receipt of the notice; and

c. Advises the Applicant or Permittee of the right to request a hearing. See Rule 5.00.

4.00 Due Process and Enforcement

A. After the 60 day notice period has expired, the Department may determine with or

without a hearing whether the Advertising Device is in compliance.

B. If the Department determines the Advertising Device is not in compliance with state and federal law and these Rules, it shall issue an order that shall be served upon the party by certified mail setting forth:

1. The provisions of the law or Rules violated;

2. The facts alleged to constitute the violation;

3. The time by which the Advertising Device must be removed; and

4. That the Advertising Device will be removed at the party's expense. [§ 43-1-412(4), C.R.S.]

C If the party does not remove the Advertising Device as ordered, the Department is authorized to remove it immediately and bill the appropriate party for costs incurred. [§ 43-1-412(5), C.R.S.]

D. If the Property owner does not consent to the Department's entry upon the land to remove the Advertising Device, and no party has sought judicial review pursuant to the State Administrative Procedure Act, the Department may apply to a court of competent jurisdiction for an order allowing the Department to enter upon the land for the purpose of immediately removing the Advertising Device.

E. The court shall issue such order upon proof the Advertising Device has not been removed and judicial review has not been sought. [§ 43-1-412(5), C.R.S.]

F. Upon removal of the Advertising Device pursuant to § 43-1-412, C.R.S., neither the owner of the Property upon which it was erected nor the Department shall be liable in damages to anyone who claims to be the owner of the Advertising Device but who has failed to obtain a Permit.

G. The Department shall not be responsible for damages otherwise created by the removal of the Advertising Device or for its destruction subsequent to removal. [§ 43-1-412(6), C.R.S.]

5.00 Request for Hearing

A. A request for a hearing must be received by the Department no later than 60 days after receipt of the notice. [§ 43-1-412(3), C.R.S.]

B. The request for hearing must be made in writing, by certified mail, addressed to and

received by:

Outdoor Advertising Program
Colorado Dept. of Transportation
4201 East Arkansas Ave.
Denver, Colorado, 80222

C. Upon receipt of a request for a hearing, the Department shall arrange for and give written notice of the hearing.

D. At least 30 days prior to the hearing, the Department shall provide notice of the hearing either by personal service or certified mail to the last address furnished by the person requesting the hearing. The notice shall meet the requirements of § 24-4-105(2)(a), C.R.S.

E. Any person(s) given such notice shall file a written answer within 30 days after the service or mailing of such notice.

F. If such person fails to answer, the Department, upon motion, may enter a default. For good cause shown, the entry of default may be set aside within 10 days after the date of such entry. [§ 24-4-105(2)(b), C.R.S.]

G. A person who may be affected or aggrieved by the Department action shall be admitted as a party to the proceeding upon the person's filing with the Department a written request to be included, setting forth a brief statement of the facts which entitle the person to be admitted and the matters which should be decided. The Department may admit any person or agency as a party to the proceeding for limited purposes. [§ 24-4-105(2)(c), C.R.S.]

H. The hearing shall be presided over by an Administrative Law Judge pursuant to § 24-4-105(3), C.R.S.

6.00 Signs Allowed in Control Areas [§ 43-1-404, C.R.S., 23 USC 131, 23 C.F.R. 750.105; 23 C.F.R. 750.108]

6.01 Advertising Devices Allowed

A. The following Signs may be allowed within the Control Area adjacent to the Controlled Route:

1. On-Premise Signs;

2. Off-Premise Signs, which include:

    a. Signs in Areas Zoned for Commercial or Industrial Uses" ;

    b. Nonconforming Signs;

    c. Directional and Official Signs;

    d. Advertising Devices on Scenic Byways (See Rule 9.00);

    e. Landmark Signs;

    f. Free Coffee Signs;

    g. Tourist-Oriented Directional Signs (TODS) and Specific Information Signs (LOGO). Rules Governing TODS and LOGO Signs are addressed in a separate set of rules, 2 CCR 601-7;

    h. Changeable Electronic Variable Message Signs ("CEVMS")

6.02 On-Premise Signs

[23 U.S.C. 131(c) and (j); 23 C.F.R. 750.704(a); 23 C.F.R. 750.105, 23 C.F.R. 750.108, and 23 C.F.R. 750.709(d)]

A. Authority. This section of the Rules pertains to On-Premise Signs located outside of 50 feet from the advertised or principal activity and Visible from the Main Travelled Way of the State Highway System.

1. Size

a. On-Premise Signs which are located outside of 50 feet from the advertised or principal activity shall not exceed 20 feet in length, width or height, or 150 square feet in area, including border and trim, but excluding supports. [23 C.F.R. 750.108(g)].

b. No Sign may attempt or appear to attempt to direct the movement of traffic or interfere with, imitate or resemble any official traffic sign, signal or device.

c. No Sign may prevent the driver of a vehicle from having a clear and unobstructed view of Official Signs and approaching or merging traffic.

d. No Sign may be erected or maintained upon trees or painted or drawn upon rocks or other natural features.

e. No On-Premise Sign may be erected in an area across a public or private roadway from the Property where the business is conducted unless the purpose of the public or private roadway is for the exclusive use of a Comprehensive Development.

2. Lighting

a. On-Premise Signs shall comply with the lighting requirements of § 43-1-404(1)(f)(I), C.R.S.; however, for purposes of spacing, On-Premise Signs shall not be counted within the 1,000 feet limitation for Off-Premise Signs.

b. No Sign may contain, include, or be illuminated by any flashing, intermittent or moving light or lights.

c. No lighting may be used in any way in connection with any Sign unless it is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the Main-Traveled Way of the State Highway System or is of such low intensity or brilliance as not to cause glare or to impair the vision of the driver of any motor vehicle, or to otherwise interfere with any driver's operation of a motor vehicle.

d. No On-Premise Sign may move or have any animated or moving parts.

B. An On-Premise Sign must be located upon the same Property as the activity advertised. An On-Premise Sign may:

1. Advertise the principal or primary activities, goods or services available upon the premises;

2. Identify the property upon which the Sign is located;

3. Advertise the property upon which the Sign is located for sale or lease;

4. When located within a Comprehensive Development, advertise activities conducted within the Comprehensive Development;

5. Direct the traveling public to the closest entrance to the premises located upon the property;

6. Include non-Commercial Advertising devices (ex. religious, social or political commentaries) erected by the owner or lessee of property.

C. Where the Sign site is located at or near the end of a narrow strip contiguous to the advertised activity, the Sign site shall not be considered part of the Premises on which the activity being advertised is conducted when the purpose is clearly to circumvent 23 U.S.C. 131(j). *See* 23 C.F.R. 750.709(3).

D. An On-Premise Sign does not include:

1. A Sign that advertises activities, goods, or services not available upon the property.

2. A Sign that consists principally of brand name or trade name advertising of a product or service which is only incidental to the principal activity conducted upon the premises.

3. A Sign which brings in rental income to the premise/property and /or Sign owner. [23 C.F.R. 750.709]

E. On-Premise Signs that Identify the Property upon which They Are Located.

1. An On-Premise Sign identifying the property upon which it is located shall contain only the:

a. Name of the property,

b. Type of property,

c. Logo, and/or

d. Name of the owner of the property.

2. Such Signs may also direct the traveling public to the closest entrance to the premises.

3. On-Premise Signs directing the travelling public to the closest entrance to the

premises are limited to two Signs Visible to traffic proceeding in any one direction if the highway frontage of the property is less than one mile in length.

4. If the highway frontage of the property is more than one mile in length, one Sign Visible to traffic proceeding in any one direction per mile is allowed.

5. The purpose of such Signs shall not be to advertise specific goods or services available upon the premises.

F. On-Premise Signs that Advertise the Primary Activities, Goods or Services Conducted on the Premises which are located outside of 50 feet from the activity shall not exceed 20 feet in length, width or height, or 150 square feet in area, including border and trim, but excluding supports. [23 C.F.R. 750.108(g)]

G. On-Premise Signs that Advertise the Sale or Lease of the Property upon which the Sign is Located.

1. An On-Premise Sign that advertises the sale or lease of the property may not contain any product or service other than the logo and/or name, type of real property, address, and contact information of the party offering the property for sale or lease.

2. Real property offered for sale or lease must only be for the uses of record for zoned or platted areas.

3. On-Premise Signs advertising the sale or lease of the property are limited to one Sign Visible to traffic proceeding in any one direction less than one mile apart.

4. On-Premise Signs advertising the sale or lease of the property may be no larger than 96 square feet including border and trim, but excluding supports.

5. Not more than one such Sign advertising the sale or lease of the same property may be allowed in such manner as to be visible to traffic proceeding in any one direction on any one Interstate Highway. [23 C.F.R. 750. 105(a)].

H. On-Premise Signs – Non-Commercial.

1. Non-commercial Signs are limited to two Signs visible to traffic proceeding in any one direction if the highway frontage of the property upon which the premises is located is less than one mile in length.

2. If the highway frontage of the property upon which the premises is located is more than one mile in length, one non-commercial Sign visible to traffic proceeding in any one direction per mile is allowable.

I. A property owner who has an On-Premise Sign that was in existence upon the property on the effective date of these Rules and who could have reasonably believed such advertising device was on premise under prior rules shall be allowed one year from the effective date of the Rules to bring such advertising device into compliance with these Rules.

J. Measurement of On-Premise Signs

1. These Rules do not apply to On-Premise Signs located within 50 feet of the principal activity.

2. When the advertised activity is a business, is commercial, or concerns industrial land use, the 50-foot distance shall be measured from the regularly used buildings, parking lots, storage or processing areas, or other structures which are essential and customary to the conduct of the business. The distance shall not be measured from driveways, fences, or similar facilities.

3. When the advertised activity is a non-commercial or non-industrial land use such as a residence, farm, or orchard, the 50-foot distance shall be measured from the major structures on the Property.

4. A Sign that is located within 50 feet of the premises and advertises the primary activities, goods and services available upon the premises is an On-Premise Sign unless the land upon which the Sign is located is used for, or devoted to, a separate purpose unrelated to the principal activity advertised. For example, land adjacent to or adjoining a service station, but devoted to raising of crops, residence, or farmstead uses or other commercial or industrial uses having no direct relationship to the service station activity is a separate purpose unrelated to the principal activity advertised.

K. Obsolescence of On-Premise Signs

1. Upon the termination or cessation for one consecutive year of the activities, services or products advertised by an On-Premise Sign, the Sign advertising the activity shall no longer qualify as an On-Premise Sign and shall be deemed illegal and subject to removal by the Department at the expense of the Sign owner.

L. On-Premise Signs – Right-of-Way Encroachment

1. On-Premise Signs shall be allowed to extend over existing right-of-way and future rights-of-way of any State Highway if:

a. The Sign is attached to and extends from a building and only advertises

activities or services offered in that building;

b. The building and attached Sign is adjacent to the State Highway within a city, city and county, or incorporated town having authority over the State Highway pursuant to § 43-2-135, C.R.S.;

c. The Sign does not restrict pedestrian traffic and is not a safety hazard to the motoring public; and

d. Before erecting the Sign, the owner has obtained written permission from the city, city and county or incorporated town. [§ 43-1-421, C.R.S.]

2. No On-Premise Sign may encroach over an Interstate right-of-way nor any portion of a roadway.

M. Comprehensive Development On-Premise Signs

1. On-Premise Signs for Comprehensive Developments shall adhere to the requirements of On-Premise Signs in Rule 6.02.

2. A Comprehensive Development includes all land used or to be used or occupied for the activities of the development, including buildings, parking, storage and service areas, streets, driveways, and reasonably necessary landscaped areas.

3. A Comprehensive Development includes only land that is used for a purpose reasonably related to the activities of the development other than an attempt to qualify the land for On-Premise advertising.

4. A Comprehensive Development is a group of two or more lots or parcels of land used primarily for multiple separate commercial or industrial activities and must meet all of the following requirements pursuant to § 43-1-403 (1.5)(a) and (b), C.R.S.:

a. Is located entirely on one side of a highway;

b. Consists of lots or parcels that are contiguous except for public or private roadways or driveways that provide access to the development;

c. Has been approved by the relevant local government as a development with a common identity and plan for public and private improvements;

d. Has common areas such as parking, amenities, and landscaping; and

e. Has an approved plan of common ownership in which the owners have recorded irrevocable rights to use common areas and that provides for the management and maintenance of common areas.

6.03 Off-Premise Signs

6.03.1 General Requirements

A. Off-Premise Signs include:

1. Signs in Areas Zoned for Commercial or Industrial Uses;

2. Nonconforming Signs;

3. Directional and Official Signs;

4. Advertising Devices on Scenic Byways;

5. Landmark Signs, and

6. Free Coffee Signs

B. An Off-Premise Sign shall comply with the requirements set forth in these Rules and 23 C.F.R. 750.108. All Signs shall not:

1. Attempt to direct the movement of traffic or interfere with or resemble an official traffic sign, signal or device; [23 C.F.R. 750.108(a)]

2. Interfere with a driver's clear and unobstructed view of Official Signs and approaching, intersecting or merging traffic; [23 C.F.R. 750.108(b)]

3. Contain or be illuminated by any flashing, intermittent or moving light(s); [23 C.F.R. 750.108(c)]

4. Contain any animated parts or moving parts; [23 C.F.R. 750.108(e)]

5. Be illuminated by lights that interfere with a driver's vision or cause glare so as to impair the driver's vision, or that interfere with a driver's operating the vehicle; [23 C.F.R. 750.108(d)]

6. Be erected or displayed upon any natural feature, fence, [23 C.F.R. 750.108(f)] or utility pole. [§ 43-1-411(4), C.R.S.]

C. No Off-Premise Sign shall be erected adjacent to a Scenic Byway, except for Directional and Official Signs. [§ 43-1-419, C.R.S.]

D. An Off-Premise Sign shall be considered abandoned if it meets the requirements of Rule 6.03.3 B.

E. Measuring Distances between Off-Premise Signs [23 C.F.R. 750.103]

1. Distances from the edge of the right-of-way shall be measured horizontally along a line perpendicular to the centerline of the highway.

2. All distances shall be measured along the centerline of the highway between two vertical planes which are normal or perpendicular to and intersect the centerline of the highway, and which pass through the termini of the measured distance.

6.03.2 Nonconforming Advertising Devices

A. CDOT has authority over all Nonconforming Signs located along a Controlled Route and that are Visible from the Main Traveled Way with the purpose of their messages being read, except such Signs in Urban Areas that are more than 660 feet from the nearest edge of the Controlled Route right-of-way. [23 C.F.R. 750.704; § 43-1-406, C.R.S.]

B. Legal Requirements to Maintain and Continue Nonconforming Signs. [23 C.F.R.

750.707]

1. There must be existing Property rights in the Nonconforming Sign and the Sign owner must be able to prove the legal right to install a Sign on the Property.

2. The Nonconforming Sign must have been lawfully in place on the effective date of the state law or rule, and must have continued to be lawfully maintained following passage of the state law or rule.

3. The Nonconforming Sign may be sold, leased, or otherwise transferred without affecting its status, but its location may not be changed.

4. A Nonconforming Sign removed as a result of a right-of-way taking or for any other reason may be relocated to a conforming area but cannot be reestablished at a new location as a nonconforming use. [23 C.F.R. 750.707(d)(3)]

6.03.3 Sign Repairs [23 C.F.R. 750.707; § 43-1-413, C.R.S.]

A. Reasonable and Customary Repair of a Nonconforming Sign. This section provides guidance on what constitutes Reasonable and Customary Repair not to exceed 50% replacement cost per year. Nothing within this section allows for changing any aspect of or the character of a Nonconforming Sign. Such a change shall be considered a violation of § 43-1-413(1)(c), C.R.S.

1. The Nonconforming Sign must remain substantially the same as it was on the date it was designated as a Nonconforming Sign.

2. A Permittee is responsible for reasonable and customary repair and maintenance of the Nonconforming Sign.

3. A Permittee must notify CDOT prior to performing any customary repair or maintenance of the Nonconforming Sign if such customary repair or maintenance involves replacing the entire face or head of the Sign, or if it involves replacement of all supporting poles of the Sign.

4. Reasonable and customary repair and maintenance of the Nonconforming Sign, including a change of advertising message or design, is not a change that would terminate nonconforming rights, but such change shall be non-compensable. [§ 43-1-413(3), C.R.S.]

5. Reasonable and customary repair and maintenance of the Nonconforming Sign shall not exceed 50% of the replacement cost of the Device in any given calendar year.

6. Nonconforming Signs that require more than 50% of their replacement cost in repairs in any given calendar year to maintain minimum structural integrity and operational functionality will be determined by the Department as being obsolete (*See* Rule 6.03.3 B). Such Signs shall not be repaired, shall lose their nonconforming status and shall be removed as Illegal Signs by the Sign owner at his or her expense without compensation. [§ 43-1-412 and 413, C.R.S.; 23 C.F.R. 750.707(d)(6)]

7. Any repairs exceeding 50% of the replacement cost of the Nonconforming Sign shall constitute substantial repair in violation of § 43-1-413, C.R.S. if such customary repair or maintenance involves replacing the entire face or head of the Sign, or if it involves replacement of all supporting poles of the Sign. This shall result in termination of the right to maintain the Nonconforming Sign. (See Rule 6.03.3 C 5.)

B. Abandoned, Discontinued or Obsolete Nonconforming Signs.
[23 U.S.C. 131; 23 C.F.R. 750.707; § 43-1-413(2)(f), C.R.S.]

1. Abandoned or Discontinued Signs

a. An abandoned or discontinued Sign is one that for one year or more displays out-of-date advertising matter, or is without advertising matter, or is in need of substantial repair. Such Signs determined by the Department as abandoned or discontinued are subject to removal as Illegal Signs under § 43-1-412, C.R.S.

2. Obsolete Signs

a. For purposes of these Rules, "obsolescence" in § 43-1-413(2)(f), C.R.S. shall refer to Sign design, structure or other physical elements of the Sign, and not to displayed advertising.

b. A Nonconforming Sign will be determined obsolete and thus irreparable and illegal under § 43-1-413(2) and (4), C.R.S. if the cost to maintain and/or repair or replace the Sign exceeds 50% of the replacement cost of such device on the date that the Department determined the device is obsolete as set forth in these Rules.

C. Damage or Destruction of Nonconforming Signs.
[23 C.F.R. 750.707(d)(6); § 43-1-413(2)(e), C.R.S.]

1. A Nonconforming Sign that is damaged or destroyed from any cause except willful destruction may lose its nonconforming status and become an Illegal Sign under the law. Illegal Signs shall be removed by the owner at their own expense and without compensation, pursuant to § 43-1-412, C.R.S.

2. Signs that are damaged or destroyed to the degree that the cost to repair such damage or destruction exceeds 50% of the Sign's replacement cost on the date the damage or destruction occurred shall not be repaired or replaced, but shall lose their nonconforming status and shall be removed as Illegal Signs pursuant to § 43-1-413 and 412, C.R.S.

3. A Permittee must notify CDOT prior to performing any repair of damage to or destruction of the Nonconforming Sign if such repair involves replacing of the entire face or head of the Sign, or if it involves replacement of all supporting poles of the Sign.

4. The Department shall determine whether a Sign has been damaged or destroyed to a degree that terminates the Nonconforming Sign's nonconforming status based on the schedule of compensation referenced in § 43-1-413(2)(e), C.R.S., as follows:

a. For purposes of these Rules, the schedule of compensation referenced in § 43-1-413(2)(e), C.R.S. is referred to as the "replacement cost schedule."

b. The replacement cost schedule is used to determine whether the cost to repair damage or destruction to a Nonconforming Sign exceeds 50% of the replacement cost of the Sign, in which case the Sign is determined as "obsolete". The replacement cost is the cost of the Sign as if installed new on its existing Sign site on the date the damage or destruction occurred.

c. If the damage or destruction to the Sign is the result of willful destruction, the 50 % rule and the replacement cost schedule do not apply and the Sign may be repaired or restored to its same physical characteristics as existed on the date it became nonconforming.

d. The procedure under (1) through (5) below shall determine whether the damaged or destroyed Nonconforming Sign may be repaired or restored:

(1) The Sign owner shall obtain and pay for one but not more than three repair cost estimates of the Nonconforming Sign. The estimates must be made by an independent licensed general contractor or other licensed professional (Sign installation contractor or similar). These estimates must be provided in 7

business days from the damage or destruction of the Sign;

(2) The Department also may obtain an equal number of repair cost estimates for the Nonconforming Sign under (1) above. The estimates must be made by an independent licensed general contractor or other licensed professional (Sign installation contractor or similar). These estimates must be provided in 7 business days from the damage or destruction;

(3) The Department shall, at its discretion, either accept the single estimate or average of up to three estimates obtained in section (1) as the repair cost of the Sign or shall use the average of all of the estimates obtained in sections (1 and 2) to establish the repair cost of the Nonconforming Sign.

(4) The cost to replace the entire Nonconforming Sign shall be determined according to the replacement cost schedule that is based on the Federal Highway Administration Non-Regulatory Supplement Federal-Aid Policy Guide, Transmittal 35 Attachment: Sign and Site Valuation Formula and Schedule Guide for Controlling Outdoor Advertising Pursuant to 23 U.S.C. 131 dated February 16, 2006, NS 23 C.F.R. 750D, Parts I, II, III. The data relied upon as developed using the FHWA Guide shall be processed based on elements of the real estate appraisal methodology known as the Cost Approach. Replacement cost shall not include the cost of land, the cost of renting land, nor any factor other than the Nonconforming Sign itself.

(5) The Department shall make a determination whether the sign may be repaired or restored based on (3) and

(6) Whether the cost of repairing or restoring the Sign exceeds 50% of the replacement cost of the Nonconforming Sign on the date of damage or destruction. (Repair cost/replacement cost = percentage of repair to replacement).

5. If the Department determines that the cost to repair or restore the Sign is greater than 50% of the Sign's replacement cost, the Nonconforming Sign shall not be repaired or restored and shall lose its right to be maintained. Such determination must be made within 7 business days of the completion of the procedure in subsection 4. d. above. The Nonconforming Sign shall become illegal as described in § 43-1-413, C.R.S., the Permit shall be revoked and the Sign structure will be removed at the owner's expense without compensation, as described in § 43-1-412, C.R.S.

D. Repairs Authorized

1. No damage or destruction to the Nonconforming Sign shall be repaired without prior written Department approval, which must be given within the time set forth in subsection C.

2. Upon Department notice to the Sign owner that the repairs may be made, the repairs must be completed within 60 days from the date of such notification or the Permit shall be revoked and the Sign structure will be removed as an Illegal Sign at the Sign owner's expense and without compensation.

3. The Department may extend the 60-day repair period an additional 30 days for conditions beyond the Sign owner's control and upon written proof of good faith effort to repair the Sign.

E. Acquisition Procedures for Nonconforming Signs pursuant to § 43-1-414(1), C.R.S. This section of the Rules applies where the Department either acquires a Sign by gift, exchange or agreement, or eminent domain.

1. Eminent Domain. If the Nonconforming Sign is acquired by eminent domain, CDOT shall follow the procedures set forth in § 38-1-101, et seq. C.R.S. and § 24-56-101, et seq., C.R.S. If the acquisition is not through eminent domain, the following procedures apply.

2. Non-Eminent Domain Purchase. The Department and Nonconforming Sign owner may agree on a purchase price for CDOT to acquire the Sign for any purpose, which price may be based on an appraisal performed as described below.

a. Appraisal of Nonconforming Sign pursuant to § 43-1-414(4), C.R.S. If the Department appraises the value of the Nonconforming Sign, the appraisal shall be conducted according to the standards and practices set forth in the Uniform Standards of Professional Appraisal Practice (USPAP), 2014-2015 edition.

CDOT may compensate the owner and acquire the Nonconforming Sign at a price that is not less than the Sign's appraised market value according to such market value definition referenced in USPAP.

b. The Sign appraisal shall take into account normal depreciation of the Sign according to appraisal standards and practices set forth in the 2014-2015 USPAP.

c. Nonconforming Sign owners must obtain the Department's prior

approval if any modification is made to a Nonconforming Sign in conformance with these Rules. Nonconforming Signs that have been modified without prior approval of the Department may lose their nonconforming status.

d. Nonconforming Signs that have been modified with approval of the Department will be appraised and the owner compensated according to the Sign's original design and construction as if no design changes or modifications had been made; however, where these same changes shall have resulted in a decrease in value, the appraisal and compensation shall reflect those design changes or modifications made and any lower value resulting therefrom. [§43-1-414(2), C.R.S.]

3. Sign Site. Where CDOT acquires a Sign by gift, exchange, agreement or purchase, the Department also may appraise and compensate the owner of the underlying Sign site for any Property right extinguished as a result of the Sign acquisition.

6.03.4 Termination of Nonconforming Sign

1. The right to maintain a Nonconforming Sign shall be terminated by the Department if any of the conditions listed in § 43-1-413(2), C.R.S. occur.

2. If the right to maintain the Nonconforming Sign is terminated, it shall become illegal and be removed pursuant to § 43-1-412 C.R.S., and these Rules.

6.03.5 Tourist-Related Nonconforming Advertising Devices – Exemption

[23 C.F.R. 750.503; § 43-1-414, C.R.S.]

1. Tourist Related Nonconforming Advertising Devices which comply with state and federal requirements may be exempted from removal pursuant to § 43-1-414(5), C.R.S.

2. "Tourist Related Advertising Device" means any legally erected and maintained Advertising Device which was in existence on May 5, 1976, and which provides directional information about goods and services in the interest of the traveling public limited to the following: lodging, campsites, food service, recreational facilities, tourist attractions, educational or historical sites or features, scenic attractions, gasoline stations, or garages.

7.00 Signs in Areas Zoned by Law for Industrial or Commercial Uses

[23 C.F.R. 750.708; § 43-1-404(1)(e)(I); § 43-1-406(2)(b)(I) and (II), C.R.S.]

A. Location

1. Advertising Devices may be located in areas Zoned for Commercial or Industrial Uses as defined in section 1.33 of these Rules. Primary land use of the Sign location must be commercial or industrial and the zoning must be part of a comprehensive zoning.

2. Advertising Devices located adjacent to the Interstate Right-of-Way:

a. Cotton Area: Adjacent to right-of-way that was acquired prior to July 1, 1956 for roadway purposes and zoned as commercial or industrial prior to January 1, 1970 (Cotton Area, see § 43-1-406(2)(b)(II) C.R.S.); or

b. Kerr Area: Outside the boundaries of incorporated municipalities, as those boundaries existed on September 21, 1959 and clearly established by state law as industrial or commercial before that date and zoned for industrial or commercial uses under authority of state law prior to January 1, 1970; see § 43-1-404(1)(d) and § 43-1-406(2)(b)(I) C.R.S.; or

c. Kerr Area: Within the boundaries of incorporated municipalities, as those boundaries existed on September 21, 1959 and zoned for industrial or commercial uses before January 1, 1970 (§ 43-1-406(2)(b)(I) C.R.S.).

B. Size Requirements [§ 43-1-404(1), C.R.S.]

1. Advertising Device measurements shall be inclusive of any border and trim, but excluding the base, apron, supports, and other structural members.

2. The maximum size limitations shall apply to each side of a Sign structure. Signs may be placed back-to-back, or in V-type construction with not more than two displays to each facing.

3. In areas Zoned for Commercial or Industrial Uses by law prior to January 1, 1970, the Sign shall have:

a. A maximum area for any one Sign of 1200 square feet Visible in any

one direction of travel;

b. A maximum Sign face height of 30 feet; and

c. A maximum Sign face length of 60 feet.

4. In areas Zoned for Commercial or Industrial Uses on or after January 1, 1970, located along non-interstate Controlled Routes, the Sign shall:

a. Be no larger than 150 square feet; and

b. Be located within one thousand feet of an industrial or commercial building.

5. Requirements for Signs Erected After 1970 Advertising Necessary Goods and Services.

a. Advertising Devices located along non-interstate Controlled Routes shall be subject to the following requirements:

(1) Only inform the traveling public of necessary goods or services available within a five-mile radius of the Advertising Device. Necessary goods and services shall be limited to those set forth in § 43-1-404(1)(e)(I)(c), C.R.S.

(2) No person providing necessary goods or services shall be eligible for more than two Advertising Devices.

(3) The Advertising Device shall predominately display the name and location of the necessary goods or services advertised.

(4) If the necessary goods and services are not available 12 months out of the year, the Sign must clearly display the dates such goods and services are available.

C. Lighting

1. Advertising Devices that contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited, except those giving public service information, such as time, date, temperature, weather, or similar information.

2. Advertising Devices are prohibited that are not effectively shielded as to prevent beams or rays of light from being directed at any portion of the traveled ways of the State Highway System and which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle.

3. No Sign shall be so illuminated that it interferes with the effectiveness of, or obscures an official traffic sign, device, or signal.

4. All lighting shall be subject to any other provisions relating to lighting of Signs presently applicable to all Controlled Routes ~~highways~~ under the jurisdiction of the State.

5. CEVMS technology shall not, in itself, constitute the use of flashing, intermittent or moving light or lights.

6. An Advertising Device may contain a message center display with moveable parts and a changeable message that is changed by electronic processes or by remote control. The illumination of an Advertising Device containing a message center display is not the use of a flashing, intermittent or moving light for the purposes of these Rules. [§ 43-1-404(1)(f), C.R.S.]

D. Spacing of Signs

1. Advertising Devices on Control Routes may not be located in such a manner as to obscure, or otherwise physically interfere with the effectiveness of any official traffic sign, signal, or device, obstruct or physically interfere with the driver's view of approaching, merging or intersecting traffic.

2. Interstate Highways and Freeways:

a. No two Signs shall be spaced less than 500 feet apart.

b. Outside of incorporated villages and cities, no Advertising Device may be located adjacent to or within 500 feet of an interchange, intersection at grade, or safety Rest Area. The 500 feet is to be measured along the Interstate or Freeway from the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way.

3. All other Controlled Routes except Interstate and Freeways

a. Outside of incorporated villages and cities, no two structures shall be spaced less than 300 feet apart.

b. Within incorporated villages and cities, no two structures shall be spaced less than 100 feet apart.

4. The above provisions for spacing-between-structures do not apply to structures separated by buildings or other obstructions in such a manner that only one Sign face located within the above spacing distances is Visible from the highway at any one time.

5. The minimum distance between structures shall be measured along the nearest edge of the pavement between points directly opposite the Advertising Devices along each side of the State Highway and shall apply only to structures located on the same side of the State Highway.

6. Signs that are not lawfully maintained, and Official and On-Premise Signs as defined in 23 U.S.C. 131(c) and these Rules, shall not be counted nor shall measurements be made from them for purposes of determining compliance with spacing requirements.

7. If a Sign was erected prior to July 9, 1971 in an area Zoned for Commercial or Industrial Uses, see Rule 6.03.2 "Nonconforming Advertising Devices."

8.00 Directional and Official Signs

[§ 43-1-403(4), C.R.S.; 23 U.S.C 131(c)(1); 23 C.F.R. 750.105; 23 C.F.R. 750.153]

A. CDOT's Jurisdiction over Directional and Official Signs.

1. Directional and Official Signs under CDOT control are located within 660 feet of the right-of-way and Directional and Official Signs located beyond 660 feet of the right-of-way outside of Urban Areas, Visible from the Main Traveled Way of the system, and erected with the purpose of their message being read from such Main Traveled Way.

2. Urban Area means an area as designated by the Bureau of the Census having a population of 5,000 or more and not within any urbanized area, within boundaries to be fixed by CDOT and local officials, subject to approval by the Secretary of Transportation. Such boundaries shall, as a minimum, encompass the entire urban place designated by the Bureau of the Census. [23 C.F.R. 750.153(t)]

B. Definitions. The Definitions listed below are specific to this Rule on Directional and

Official Signs.

1. "Directional Sign" includes, but is not limited to:

    a. Signs containing directional information to facilitate emergency vehicle access to remote locations;

    b. Signs referring to public places owned or operated by federal, state, or local governments or their agencies;

    c. Publicly or privately owned natural phenomena, historic, cultural, scientific, educational, and religious sites;

    d. Areas of natural scenic beauty or naturally suited for outdoor recreation, deemed to be in the interest of the traveling public. 23 C.F.R. 750.153(r); § 43-1-403 (4) C.R.S.; or

    e. Public utility signs, service club and religious notices, and public service signs. [23 C.F.R. 750.153(m)]

2. A "Notice" for purposes of this section of the Rules is a temporary sign providing the content as stated in the "Official Sign" or "Public Utility Sign" definitions but which is posted for a limited time.

3. "Official Sign" is a Sign erected and maintained by public officers or public agencies within their territorial or zoning jurisdiction pursuant to federal, state or local law and for the purposes of carrying out an official duty or responsibility. Historical markers authorized by State law and erected by CDOT or local government agencies or nonprofit historical societies may be considered Official Signs. [23 C.F.R. 750.153 (n)] Official Signs shall not include Signs advertising any private business. [§43-1-403(13), C.R.S.]

4. "Public Service Sign" located on school bus stop shelters:

    a. Identifies the donor, sponsor, or contributor of said shelters;

    b. Contains public service messages, which shall occupy not less than 50% of the area of the Sign;

c. Contains no other message;

d. Is located on school bus shelters which are authorized or approved by city, county, or state law, regulation, or ordinance, and at places approved by the city, county, or the Department; and

e. May not exceed 32 square feet in area. Not more than one Sign on each shelter shall face in any one direction. [23 C.F.R. 750.153(q)]

5. "Public Utility Sign" means a warning sign, informational sign, notice, or marker that is customarily erected and maintained by publicly or privately owned public utilities, as essential to their operations. [23 C.F.R. 750.153(o)]

6. "Service club" or "Religious" signs or notices mean a sign or notice whose erection is authorized by law, relating to meetings of nonprofit service clubs or charitable associations, or religious services, which signs or notices do not exceed 8 square feet in area. [23 C.F.R. 750.153(p)]

C. Criteria for Directional Signs [23 C.F.R. 170.154(f)]

1. Prohibited Signs. The following Directional Sign conditions are prohibited:

a. Directional Signs advertising activities that are illegal under federal or state laws or regulations in effect at the location of those Signs or at the location of those activities.

b. Directional Signs that obscure or otherwise interfere with the effectiveness of any official traffic sign, signal or device, or obstruct or interfere with the driver's view of approaching, merging, or intersecting traffic.

c. Directional Signs erected or maintained upon trees or painted or drawn upon rocks or other natural features.

d. Directional Signs that are:

(1) Obsolete;

(2) Structurally unsafe or in disrepair;

(3) Move or have any animated or moving parts;

(4) Located in Rest Areas, Parklands or Scenic Areas.

2. Size of Directional Signs

a. No Directional Sign shall exceed the following limits, including border and trim, but exclude supports:

Maximum area - 150 square feet;

Maximum height - 20 feet;

Maximum length - 20 feet.

3. Lighting of Directional Signs

a. The following lighting conditions are prohibited:

(1) Signs that contain, include, or are illuminated by any flashing, intermittent, or moving light or lights.

(2) Signs that are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way of an Interstate or primary highway or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle.

(3) Signs that are illuminated so as to interfere with the effectiveness of or obscure an official traffic sign, device, or signal.

4. Spacing of Directional Signs

a. Each location of a Directional Sign must be approved by the Department.

b. No Directional Sign may be located within 2,000 feet of an interchange, or intersection at grade along the interstate system or other freeways (measured along the Interstate or freeway from the nearest point of the beginning or ending of pavement widening at the exit from or

entrance to the Main Traveled Way).

c. No Directional Sign may be located within 2,000 feet of a Rest Area, Parkland, or Scenic Area. A scenic area means any public park or area of particular scenic beauty or historical significance designated by or pursuant to state law as a scenic area.

d. No two Directional Signs facing the same direction of travel shall be spaced less than one (1) mile apart;

e. Not more than three Directional Signs pertaining to the same activity and facing the same direction of travel may be erected along a single route approaching the activity;

f. Directional Signs located adjacent to the interstate system shall be within 75 air miles of the activity; and

g. Directional Signs located on other than the interstate system, including adjacent to the primary system, shall be within 50 air miles of the activity.

5. Message Content

a. The message on Directional Signs shall be limited to the identification of the attraction or activity and directional information useful to the traveler in locating the attraction, such as mileage, route numbers, or exit numbers.

Descriptive words or phrases, and pictorial or photographic representations of the activity or its environs are prohibited.

D. Directional Signs Pertaining to Privately-Owned Activities
[23 C.F.R. 750.154]

1. Privately-owned activities or attractions eligible for Directional Signing must meet the requirements of these Rules and state and federal law, and must be nationally or regionally known, and of outstanding interest to the traveling public. “Outstanding interest to the travelling public” for purposes of these Rules means

for edification and enjoyment of the travelling public and not specifically to generate income for the activity. [23 C.F.R. 750.154 (f)(1) and (2)]

2. Privately owned activities or attractions eligible for Directional Signing are limited to the following: natural phenomena; scenic attractions; historic, educational, cultural, scientific, and religious sites, and outdoor recreational areas.

3. To be eligible, privately owned attractions or activities must be nationally or regionally known, and of outstanding interest to the traveling public.

9.00 Advertising Devices on Scenic Byways [§ 43-1-419, C.R.S.; 23 U.S.C. 131(s)]

A. A Scenic Byway is a road designated as such by the Colorado Transportation Commission along a Controlled Route.

B. No new Advertising Device shall be erected along a Scenic Byway that is visible from the Controlled Route with the exception of:

1. Official Signs;

2. On-Premise Signs; and

3. Directional Signs.

C. Existing Advertising Devices along Scenic Byways which are in compliance with state and federal law and these Rules may continue to be maintained; however, they will have the status of Nonconforming Signs.

D. For purposes of this section, an Advertising Device shall be considered to be Visible from a designated highway if it is plainly visible to the driver of a vehicle who is proceeding in a legally designated direction and traveling at the posted speed. [23 C.F.R. 750.153 (j); § 43-1-403(17), C.R.S.]

E. The designation of a Scenic Byway shall specify by Global Positioning System or other technology the precise location of the Scenic Byway.

10.00 Landmark Signs

A. No Landmark Signs have been established in Colorado pursuant to 23 C.F.R. 750.710 (a) and (b).

11.00 Free Coffee Signs [23 U.S.C. 131(c)]

A. Signs, displays, and devices advertising the distribution by nonprofit organizations of free coffee to individuals traveling on an interstate or primary system may be located within the Control Area. Free coffee shall include coffee for which a donation may be made but is not required.

12.00 Off-Premise CEVMS Advertising Devices

A. Authority. The Department has authority to control the brightness, intervals, spacing and location of Off-Premise CEVMS along Controlled Routes for the purpose of ensuring safety to the travelling public. [23 USC 131 (c) (3) and (j); 23 C.F.R. 750.705; § 43-1-404(1)(f), and § 43-1-415(1), C.R.S.]

B. Definitions

1. "CEVMS" or "Changeable Electronic Variable Message Sign" means a self-luminous advertising Sign which emits or projects any kind of light, color, or message change which ranges from static images to full motion video. This shall include "Variable Message Sign" which means an advertising Sign, display or device with moving parts whose message may be changed by electronic or by remote control or other process through the use of moving or intermittent light or lights. [43-1-404(1)(f)(I), C.R.S.]

2. "Footcandle" means a unit of Illuminance equivalent to the illumination produced by a source of one candle at a distance of one foot and equal to one lumen incident per square foot.

3. "Glare" means the sensation produced by Illuminance within the visual field that is sufficiently greater than the luminance to which the eyes are adapted to cause annoyance, discomfort, or loss of visual performance and visibility.

4. "Illuminance" means the amount of light that is intercepted by an object that is a distance away from the Sign measured in Footcandles. That is, the lighted Sign face illuminates objects that are away from it, and the lighting level produced by the Sign on a particular object is measured in Footcandles.

5. "Luminance" means the photometric measure of the luminous intensity per unit area of light travelling in a given direction. It describes the amount of light that passes through or is emitted from a particular area, and falls within a given solid angle. The unit for luminance is candela per square meter (cd/m2), also known as "nit".

6. "Message" means anything displayed on a Sign, including copy, art and

graphics.

7. "Multiple Message Sign" (also known as tri-vision Signs) means an outdoor advertising Sign, display or device whose message is on triangular louvered facings and are changed by electronic or other rotation of the louvers.

8. “NIT” means a unit of visible-light intensity equal to one candle per square meter, measured perpendicular to the rays of the source.

9. "Public Service Information" means a message on an electronic Sign which provides the time, date, temperature, weather, or information concerning civic or charitable activities.

10. "Segmented Message" means any message or distinct subunit of a message presented by means of at least one display change on a variable message Sign.

11. "Traveling Message" means a message which moves or appears to move across any Advertising Device.

C. General Requirements

1. The CEVMS shall comply with all applicable federal, state, and local laws, rules and regulations.

2. Location

a. No CEVMS may be placed within 1,000 feet of another CEVMS on the same side of a highway. On-Premise Signs inside 50 feet of the advertised activity are not counted for purposes of this spacing requirement. [§ 43-1-404(1)(f)(I), C.R.S.]

b. A CEVMS shall not prevent the driver of a vehicle from having a clear and unobstructed view of Official Signs and approaching or merging traffic.

c. A CEVMS shall not interfere with or direct, or attempt to direct, the movement of traffic, or resemble or simulate any warning or danger signal, or any official traffic control device, or contain wording, color, shapes or likenesses of official traffic control devices;

d. A CEVMS shall not be maintained upon trees or rocks or other natural features.

3. Mechanics

a. A CEVMS shall not move or have any animated or moving parts.

b. A CEVMS shall not contain, incorporate or use any inter-active component or medium, and shall not interact with drivers or interfaces with cell phones or any other electronic device.

c. A CEVMS shall not incorporate, use or emit any sound or noise or any electronic signals capable of being detected or emit any smoke, scent or odors.

4. Operations

a. CEVMS Advertising Devices found to be brighter than necessary for adequate visibility shall be adjusted by the person owning or controlling the Sign to conform to the requirements of state and federal laws and these Rules.

b. CEVMS must:

(1) Use sufficient safeguards to prevent unauthorized access, use or hacking of CEVMS and related technology, including infrastructure, hardware, software and networks, by unauthorized users;

(2) Include the ability to be held on a static image in the event a malfunction occurs that violates these Rules;

(3) Not contain animation, flashing, scrolling or travelling messages, or intermittent or full-motion video;

(4) Not change intensity or expose its message for less than 4 seconds.

(5) Have a transition interval of less than 1 second.

(6) The Permit holder is responsible for any changes, alterations or

modifications to the display of the CEVMS made by an unauthorized user.

5. Operational Requirements Specific to Off-Premise CEVMS

a. General Requirements.

(1) A CEVMS must include the ability to automatically or technologically modify displays and lighting levels where directed by the Department to assure safety of the motoring public.

(2) The Permit holder, Sign owner or third party must have the ability to repair and monitor the brightness.

(3) A CEVMS shall be capable of being remotely monitored to ensure conformance with these Rules and state and federal laws.

b. Brightness.

(1) A CEVMS shall adhere to the brightness standards set forth herein.

(2) CEVMS shall not exceed three-tenths (0.3) Footcandles over ambient light as measured by the distance to the Sign set forth below with a Footcandle or Illuminance meter that can measure to the 100^{th} of a Footcandle.

(3) The measurement shall be conducted at least 30 minutes after sunset or 30 minutes before sunrise.

(4) If the Footcandle reading exceeds the 0.3 Footcandles, then the nighttime luminance which shall not exceed 300 NIT (candelas per square meter) which may be measured with a nit gun or luminance meter that can read to the accuracy of 5 nits.

(5) Any measurements required pursuant to this subsection shall be taken from a point within the highway right-of-way at a safe distance outside of the Main Traveled Way and as close to perpendicular to the face of the changeable message Sign as practical.

(6) If a perpendicular measurement is not practical, a measurement shall be taken at an angle up to ten degrees (10 degrees) offset from the perpendicular center point of the Sign

face.

(7) Upon request, the Sign owner shall provide written certification from the Sign manufacturer that the light intensity has been factory pre-set not to exceed 0.3 Footcandles above ambient light as measured from the appropriate distance (see chart in Section 12.C.5.10) and the Sign is equipped with automatic dimming technology.

(8) The CEVMS shall not be of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or to otherwise interfere with any driver's operation of a motor vehicle.

(9) The CEVMS shall have the capability of adjusting brightness level in response to changes in ambient light levels so the Signs are not unreasonably bright for the safety of the motoring public.

(10) A CEVMS shall use automatic dimming technology to adjust the brightness of the Sign relative to ambient light so that at no time shall a Sign exceed a brightness level of three tenths (0.3) Footcandles above ambient light, as measured using a Footcandle meter and in conformance with the following distance table:

Brightness / Illuminance Measurements shall be taken as follows:

CEVMS Sign Illuminance Measurement Distance	
Sign Area (square feet)	Distance of Measurement (feet from Sign)
700 – 1200	350
300 – 699	250
200 – 299	150
150 – 199	135
100 – 149	110
50 – 99	90
25 – 49	55

0 – 24	45

D. Conversion from a Static Advertising Device to a CEVMS

1. A Nonconforming Sign shall not be converted to a CEVMS.

2. An existing permitted static outdoor Advertising Device may be converted to a CEVMS, provided the existing Sign:

a. Has been approved by the local government, if applicable, and the state prior to conversion;

b. Was legally erected;

c. Has had all permit fees timely paid; and

d. Is in compliance with these Rules and with federal, state and local laws.

3. The conversion of a static outdoor Advertising Device to a CEVMS must be completed within 1 year of CDOT's written approval of the CEVMS Conversion. The Applicant must reapply if not completed within 1 year.

4. Site Review. The Department may conduct a site review and inspection prior to permitting a conversion to CEVMS to ensure that the description, location and other information contained in the application for conversion is in compliance with these Rules. [43-1-421(1)(f)(I), C.R.S.]

5. Compliance Grace Period. Any CEVMS permitted prior to the effective date of these Rules shall conform with the requirements of these Rules within 180 days of the effective date of the Rules or such CEVMS shall be deemed illegal and non-compensable and subject to removal by the Department at the expense of the Sign owner.

6. Appeal Regarding a CEVMS. In the event of an appeal, a CEVMS must be maintained in a static blank Sign display until the appeal is resolved.

13.00 Materials Incorporated by Reference

A. These Rules are intended to be consistent with and not be a replacement for 23 United States Code (U.S.C.) 131 dated October 1, 2012, and its implementing regulations contained in 23 Code of Federal Regulations (C.F.R.) Part 750 in effect as of June 20, 1973, 750.705(h) (Sept. 16, 1975) which are hereby incorporated into the Rules by this

reference, and do not include any later amendments.

B. Also incorporated by reference are the following documents:

1. Federal Highway Administration (FHWA) Non-Regulatory Supplement Federal-Aid Policy Guide, Transmittal 35 Attachment: Sign and Site Valuation Formula and Schedule Guide for Controlling Outdoor Advertising Pursuant to 23 U.S.C. 131 dated February 16, 2006, NS 23 C.F.R. 750D, Parts I, II, III.

2. Uniform Standards of Professional Appraisal Practice (USPAP), 2014-2015 Edition.

C. All referenced laws and regulations shall be available for copying or public inspection during regular business hours from the Office of Policy and Government Relations, Colorado Department of Transportation, 4201 E. Arkansas Avenue, Denver, Colorado 80222.

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State of Colorado
Department of Law

Office of the Attorney General

Tracking number: 2014-01001

Opinion of the Attorney General rendered in connection with the rules adopted by the
Transportation Commission and Office of Transportation Safety

on 12/18/2014

2 CCR 601-3

RULES GOVERNING OUTDOOR ADVERTISING IN COLORADO

The above-referenced rules were submitted to this office on 12/18/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

January 02, 2015 08:38:56

John W. Suthers
Attorney General
by Daniel D. Domenico
Solicitor General

Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Public Utilities Commission

CCR number

4 CCR 723-1

Rule title

4 CCR 723-1 RULES OF PRACTICE AND PROCEDURE 1 - eff 02/14/2015

Effective date

02/14/2015

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 *CODE OF COLORADO REGULATIONS* (CCR) 723-1

PART 1
RULES OF PRACTICE AND PROCEDURE

* * *

[indicates omission of unaffected rules]

1100. Confidentiality.

(a) All documents, data, information, studies, computer programs, and other matters filed with the Commission in any form in a proceeding, or produced in response to any interrogatories or requests for information, subpoenas, depositions, or other modes of discovery, or produced in response to audit conducted by the Commission or Commission staff, and all notes taken or copies made thereof, that are claimed to be a trade secret or confidential in nature (herein referred to as "confidential information") shall be furnished under the terms of these standards of conduct. All persons afforded access to confidential information shall treat such information as confidential and shall neither use nor disclose such information except in accordance with these standards of conduct.

(b) A claim of confidentiality constitutes a representation to the Commission that the claiming party has a reasonable and good faith belief that the subject document or information is not presumed to be open for inspection, and is, in fact, confidential under applicable law, including the Colorado Open Records Act. If a claim of confidentiality is made in violation of this subparagraph (b), the Commission may impose an appropriate sanction upon the claiming party, including an order to pay to other parties the amount of reasonable expenses incurred because of the claim of confidentiality, including reasonable attorney's fees.

* * *

[indicates omission of unaffected rules]

(e) Persons shall make only general references to information claimed to be confidential or highly confidential in their public testimony, including attachments, in other public filings, and in oral presentations other than those made on a confidential or highly confidential record.

* * *

[indicates omission of unaffected rules]

1101. Procedures Relating to Confidential Information Filed with the Commission in a Proceeding.

(a) Procedure for filing information claimed to be confidential or highly confidential in a proceeding.

* * *

[indicates omission of unaffected rules]

(III) Unless filed through the E-Filings System, the original and three copies of the pages containing confidential or highly confidential information shall be filed under seal in separate, sealed envelopes numbered serially. The envelopes shall be no smaller than 9" by 12" and no larger than 10" by 13". The following information shall be written on the outside of each sealed envelope:

(A) the caption and proceeding number of the associated proceeding and the notation "CONFIDENTIAL -- SUBMITTED IN PROCEEDING NO. _____" or "HIGHLY CONFIDENTIAL – SUBMITTED IN PROCEEDING NO. _____", as applicable;

(B) the name of the filing party;

(C) the date of filing;

(D) a description of the information (e.g., testimony, including attachments of _____ (name of witness), statement of position, motion);

* * *

[indicates omission of unaffected rules]

(e) Information which is subject to highly confidential protection and that is provided in response to discovery or in response to Commission staff audit shall not be filed with the Commission. Unless the Commission orders otherwise, a complete version of the document that contains the information which is subject to highly confidential protection shall be filed with the Commission as soon as any one of the following applies:

(I) the information is used to support a motion;

(II) the information is filed as an attachment included in prefiled testimony;

* * *

[indicates omission of unaffected rules]

1104. Personal Information – Collection.

(a) A regulated entity shall collect only that personal information, including information regarding credit worthiness that is necessary to provide, bill, and collect for services. Information regarding credit worthiness may include, but is not limited to: the customer's employer; the employer's phone number; the customer's landlord's name, address, and phone number; and the customer's previous regulated service supplier. A regulated entity may request, but shall not require, a customer's Social Security Number as a prerequisite to evaluating credit worthiness or to providing regulated service.

* * *

[indicates omission of unaffected rules]

1105. Personal Information– Disclosure.

(a) A utility may only disclose personal information as permitted by Commission rule or as compelled by state or federal law.

* * *

[indicates omission of unaffected rules]

1202. Form and Content.

* * *

[indicates omission of unaffected rules]

(b) Titles and captions.

(I) The caption of an application or petition proceeding shall contain the name of the applicant or petitioner, describe the authority or decision being sought from the Commission with sufficient specificity to distinguish the application or petition from other proceedings, and briefly describe the subject matter of the proceeding. If the application or petition relates to a previous proceeding, the caption of the application or petition proceeding shall identify the previous proceeding by proceeding number.

(II) The first page of every pleading shall contain the proceeding caption, proceeding number, a heading "Before the Public Utilities Commission of the State of Colorado," and the title of the pleading.

(III) Every pleading shall include a clear and concise statement of the authority relied upon, the relief sought, and the name, including trade name, if any, of the party or the party's attorney.

* * *

[indicates omission of unaffected rules]

(e) Written testimony is not subject to paragraphs (c) and (d) of this rule. When written testimony is filed, it shall meet the following requirements:

(I) Each line shall be serially numbered in the left margin, beginning with "1" on each page.

(II) The cover sheet for written testimony shall contain the proceeding number, the caption of the proceeding, the name of the witness and the party for whom the witness is testifying, the date on which the testimony is filed, and whether it is direct, answer, cross-answer, rebuttal, surrebuttal, or other testimony.

(III) Except as required by subparagraph (IV), attachments included with written testimony shall be numbered in sequence and shall be physically contained in the same document as the testimony.

(IV) Attachments included with written testimony and submitted through the E-Filings System shall be numbered in sequence and separately uploaded as secondary documents to the primary written testimony.

(V) Each witness' attachments to testimony shall be numbered sequentially beginning with the witness' initials and followed by the number of the attachment. For example, attachments to the testimony of John Q. Public would be identified as JQP-1, JQP-2, etc., regardless of whether it is direct, answer, cross-answer, rebuttal, surrebuttal or other testimony.

(VI) The Commission may permit minor revisions to written testimony and attachments by a witness on the witness stand, and may permit more extensive revisions by allowing the filing of revised testimony and attachments using the same Arabic numeral as the original with a hyphenated designation that the testimony is revised, such as "Attachment JQP-1, 2d Rev." All revisions other than those of a minor nature shall be filed promptly with the Commission and served on all parties. Such filed revisions of testimony and/or attachments shall include a cover page that contains a list of the revisions made, as well as a complete copy, not just individual pages, of the testimony and/or attachments revised.

(f) When the E-Filings System is used to file multiple documents as a single filing (e.g., an application with a related motion, a motion with attachments, or an advice letter with related tariff pages), the primary document and each secondary document must be separately identified and separately uploaded.

(g) When multiple documents are filed as a single paper filing (e.g., an application with a related motion, a motion including attachments, or an advice letter with related tariff pages), the primary document and each secondary document must be separately identified and separated through the use of blank slip sheets.

* * *

[indicates omission of unaffected rules]

1206. Commission Notice – Generally.

* * *

[indicates omission of unaffected rules]

(b) The notice required by paragraph (a) of this rule shall state the following:

(I) the name and address of the applicant or petitioner;

(II) the caption and proceeding number of the proceeding;

(III) the date the application or petition was filed;

(IV) a brief description of the purpose and scope of the application or petition;

(V) whether the applicant has filed testimony and is seeking a Commission decision within 120 days, or has waived the time limits under § 40-6-109.5, C.R.S.;

(VI) the date by which any objection, notice of intervention as of right, motion to permissively intervene, testimony or any other document must be filed;

(VII) the date by which Commission staff must file any objection, notice of intervention, testimony, or any other document, if different from the date(s) fixed in subparagraph (b) (VI) of this rule;

(VIII) a statement that the Commission may consider the application or petition without a hearing if:

(A) no notice of intervention as of right or motion to permissively intervene is timely filed, or

(B) no notice of intervention as of right or motion to permissively intervene requests a hearing and contests or opposes the application or petition; and

(IX) a statement that any person who files an objection, notice of intervention as of right, motion to permissively intervene, testimony, or any other document shall do so in accordance with the instructions set forth in the notice; and that the Commission may dismiss or strike any such document not filed in accordance with the instructions set forth in the notice.

* * *

[indicates omission of unaffected rules]

1208. Adoptions and Adoption Notices.

When the Commission authorizes the transfer of control of one utility to another utility, or when a utility's name changes, the utility which will afterwards operate under the certificate shall file with the Commission an adoption notice, in a form available from the Commission. The adoption notice shall also adopt tariffs and price lists if applicable. The utility shall also post the adoption notice in a prominent public place in each business office of the utility, and shall make the adoption notice available for public inspection at each office.

* * *

[indicates omission of unaffected rules]

1210. Tariffs and Advice Letters.

(a) General.

(I) All utilities, unless specifically exempted by the Commission, shall have current tariffs for all jurisdictional services on file with the Commission.

(II) The utility shall have its current tariff available for public inspection at its principal place of business during normal business hours. The utility may post its tariffs on its website.

(III) The utility shall file with the Commission an advice letter, the proposed tariff pages, any supporting documentation, and any supporting testimony, including attachments. Unless such filing is made through the E-Filings System, the original and three copies must be filed.

* * *

[indicates omission of unaffected rules]

1301. Informal Complaints and Mediation.

* * *

[indicates omission of unaffected rules]

(d) If the informal complainant and the regulated entity agree, Commission staff may refer an informal complaint for mediation. If Commission staff refers the informal complaint for mediation:

(I) nothing said or offered during mediation or settlement negotiations may be used in any formal complaint proceeding against the person making the statement or offer; and

(II) the mediator shall attempt to resolve the informal complaint within ten days of the mediator's receipt of the mediation request, although the informal complainant and regulated entity may consent to additional time.

* * *

[indicates omission of unaffected rules]

1308. Responses: Generally – Complaints.

* * *

[indicates omission of unaffected rules]

(e) A respondent may file a motion to dismiss a complaint or a counterclaim prior to filing an answer. Unless the Commission orders otherwise, a motion to dismiss tolls the time to answer the complaint or counterclaim until 14 days after a decision denying the motion to dismiss. A motion to dismiss may be made on any of the following grounds: lack of jurisdiction over the subject matter; lack of jurisdiction over the person; insufficiency of process; insufficiency of service of process; insufficiency of signatures; failure to state a claim upon which relief can be granted; or failure to join a party. No motion need be entertained regarding misjoinder of claims or misjoinder or nonjoinder of parties, and no claim need be dismissed because of the absence of direct damage to a party. No defense is waived by being joined with one or more other defenses in a motion to dismiss. Unless the Commission shortens the response time, rule 1400 governs response time to a motion to dismiss.

* * *

[indicates omission of unaffected rules]

1400. Motions.

(a) Except for oral motions made during hearing, or where the Commission orders otherwise, any motion involving a contested issue of law shall be supported by a recitation of legal authority incorporated into the motion. Before filing a motion, moving counsel shall make a reasonable good faith effort to confer with all parties about the motion and report when the requested relief is unopposed. If no conference has occurred, the reason why shall be stated.

(I) Conferral is not required for motions made in accordance with rule 56 of the Colorado Rules of Civil Procedure, motions made in accordance with Commission Rule 1308(e), or motions for an attorney to withdraw from a proceeding.

(II) If a motion is unopposed, it shall be entitled “Unopposed Motion for _____.”

* * *

[indicates omission of unaffected rules]

(f) A motion for summary judgment may be filed in accordance with rule 56 of the Colorado Rules of Civil Procedure.

1401. Intervention.

* * *

[indicates omission of unaffected rules]

(c) A motion to permissively intervene shall state the specific grounds relied upon for intervention; the claim or defense within the scope of the Commission's jurisdiction on which the requested intervention is based, including the specific interest that justifies intervention; and why the filer is positioned to represent that interest in a manner that will advance the just resolution of the proceeding. The motion must demonstrate that the subject proceeding may substantially affect the pecuniary or tangible interests of the movant (or those it may represent) and that the movant's interests would not otherwise be adequately represented. If a motion to permissively intervene is filed in a natural gas, electric or telephone proceeding by a residential consumer, agricultural consumer, or small business consumer, the motion must discuss whether the distinct interest of the consumer is either not adequately represented by the OCC or inconsistent with other classes of consumers represented by the OCC. The Commission will consider these factors in determining whether permissive intervention should be granted. Subjective, policy, or academic interest in a proceeding is not a sufficient basis to intervene. Motions to intervene by permission will not be decided prior to expiration of the notice period.

* * *

[indicates omission of unaffected rules]

1405. Discovery and Disclosure of Prefiled Testimony.

(a) Incorporation by reference, exclusions, and discovery and disclosures generally.

(I) Except as provided in subparagraph (II) of this paragraph, the Commission incorporates by reference rules 26-37 of the Colorado Rules of Civil Procedure.

(II) The following rules of Chapter 4 of the Colorado Rules of Civil Procedure are not incorporated by reference: 26(a)(1)-(4); 26(b)(2); the first two sentences of 26(d); 30(a)(2)(A); 30(a)(2)(C); 33(b)(3); the first two sentences of the second paragraph of 34(b); 35; the time requirement of the second sentence of the second paragraph of 36(a); 37(c); and any reference to a case management order. In addition to the foregoing exclusions, any portion of Chapter 4 of the Colorado Rules of Civil Procedure that is inconsistent with any Commission rule shall also be excluded.

* * *

[indicates omission of unaffected rules]

(c) In adjudicatory proceedings where no statutory period for Commission decision exists and in proceedings where the applicant has waived the applicable statutory period for the Commission to issue a decision, a party shall serve discovery responses and objections, if any, within ten days from service of a request. These response times apply regardless of the number of discovery requests or subparts to discovery requests issued by parties.

(d) In proceedings where prefiled testimony is filed, the last day to propound written discovery directed solely to direct testimony shall be the deadline for filing answer testimony, the last day to propound discovery solely directed to answer testimony shall be the deadline for filing rebuttal and cross-answer testimony and the last day to propound discovery solely directed to rebuttal and cross-answer testimony shall be five business days before the first day of hearing.

* * *

[indicates omission of unaffected rules]

(g) The Commission will entertain motions to compel or for protective orders only after the movant has made a good faith effort to resolve the discovery dispute. The Commission discourages discovery disputes, and will sanction parties and attorneys that do not cooperate in good faith. Such sanctions may include, but are not limited to, payment of an opposing party's costs, expenses, and attorney's fees attributable to a lack of good faith, dismissal of a party, disallowance of witness testimony, or such other and further relief as the Commission may deem appropriate. Resolution of discovery disputes shall take precedence over other matters.

(h) Discovery requests, responses, and objections thereto shall not be filed with the Commission except as necessary to support a pleading relating to discovery, as an attachment to prefiled testimony, as a prefiled exhibit, as an exhibit offered at hearing, or as an impeachment exhibit. No discovery, discovery responses, or objections to discovery shall be submitted to or served through the Commission's E-Filings System. Paragraph 1205(f) addresses service with respect to discovery.

(i) In accelerated complaint proceedings, unless the Commission orders otherwise:

(I) Within ten days of the filing of the answer, the complainant shall file and serve on all other parties a list of witnesses, together with a brief summary of the testimony of each witness, and copies of all exhibits it intends to offer into evidence.

(II) Within ten days of service of the complainant's list of witnesses and copies of exhibits, the respondent shall file and serve on all other parties a list of witnesses, together with a brief summary of the testimony of each witness, and copies of all exhibits it intends to offer into evidence.

(III) Discovery may commence with the filing of the complaint. Unless the Commission orders otherwise, the following shall apply:

(A) each party shall be limited to taking not more than two depositions; and

(B) each party shall be limited to a total of not more than 20 interrogatories, including all discrete subparts, requests for production of documents, or requests for admission.

(IV) Responses to discovery requests, including any objections, shall be served within seven days of receipt of the request. Any motion to compel shall be filed and served within five days of receipt of any objection, and a response to such a motion shall be filed and served within seven days of receipt of the motion.

(j) In complaint proceedings that are not accelerated, application proceedings, and all rate proceedings set for hearing, all parties shall file and serve their testimony, including attachments, as ordered by the Commission.

* * *

[indicates omission of unaffected rules]

1502. Interim Decisions.

(a) Interim decisions are issued after the Commission sets a tariff for hearing or a proceeding is opened by Commission decision or otherwise, other than a decision that may become a final decision of the Commission.

(b) Interim decisions shall not be subject to exceptions or applications for RRR, except that any party or rulemaking participant aggrieved may challenge the matters determined in an interim decision in exceptions to a recommended decision or in an application for RRR of a Commission decision. A party or rulemaking participant may file a motion for modification of an interim decision issued by the Commission upon good cause shown. Such good cause may include, without limitation, establishing that the deferral of Commission reconsideration of the interim decision's rulings will result in the practical denial of a person's substantive or procedural rights or will cause unreasonable delay in the completion of the proceeding.

(c) Any person aggrieved by an interim decision may file a written motion with the presiding officer entering the decision to set aside, modify, or stay the interim decision.

(d) The Commission, hearing Commissioner or Administrative Law Judge may certify any interim decision as immediately appealable through the filing of a motion subject to review by the Commission en banc. Such motion shall be filed pursuant to rule 1400 and shall be titled "Motion Contesting Interim Decision No. [XXX-XXXX]."

(e) Nothing in this rule prohibits a motion for clarification of an interim decision or a motion to amend a procedural schedule set forth in an interim decision.

* * *

[indicates omission of unaffected rules]

1505. Exceptions.

(a) A recommended decision becomes the Commission's decision unless, within 20 days or such additional time as the Commission may allow, any party files exceptions to the recommended decision or the Commission orders the recommended decision to be stayed. A stay of a recommended decision does not automatically extend the period for filing exceptions or a motion for an extension of time to file exceptions. If exceptions are timely filed, the recommended decision is stayed until the Commission rules upon them. A motion for an extension of time to file exceptions based upon the unavailability of a transcript shall show that the transcript request was filed within seven days of the mailed date of the recommended decision. In proceedings where no statutory period for Commission decision exists and in application proceedings where the applicant has waived the applicable statutory period for the Commission to issue a decision, parties may file responses to exceptions within 14 days following service of the exceptions. In application proceedings where the applicant has not waived the applicable statutory period, parties may file responses to exceptions within seven days following service of the exceptions.

* * *

[indicates omission of unaffected rules]

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State of Colorado
Department of Law

Office of the Attorney General

Tracking number: 2014-00451

Opinion of the Attorney General rendered in connection with the rules adopted by the
Public Utilities Commission

on 12/29/2014

4 CCR 723-1

RULES OF PRACTICE AND PROCEDURE

The above-referenced rules were submitted to this office on 12/30/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

January 08, 2015 11:55:08

John W. Suthers
Attorney General
by Daniel D. Domenico
Solicitor General

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Hazardous Materials and Waste Management Division

CCR number

6 CCR 1007-1 Part 02

Rule title

6 CCR 1007-1 Part 02 RADIATION CONTROL - REGISTRATION OF RADIATION MACHINES, FACILITIES AND SERVICES 1 - eff 02/14/2015

Effective date

02/14/2015

Adopted by the Board of Health on December 17, 2014

[Publication Instructions: Replace the initial 7 lines of the rule with the following new and revised text.]

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Hazardous Materials and Waste Management Division

STATE BOARD OF HEALTH

RADIATION CONTROL - REGISTRATION OF RADIATION MACHINES, FACILITIES AND SERVICES

6 CCR 1007-1 Part 02

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

Adopted by the Board of Health December 17, 2014

*** * ***

[* * * = Indicates omission of unaffected rules]

*** * ***

[Publication Instructions: In definitions section 2.2.2, insert the following new definition for "ARRT(N)" after "ARRT" and before "ARRT(R)".]

"ARRT(N)" means an individual who is registered by the ARRT in Nuclear Medicine Technology.

*** * ***

[Publication Instructions: In definitions section 2.2.2, insert the following new definition for "ARRT(T)" after "ARRT(R)" and before "ASRT".]

"ARRT(T)" means an individual who registered by the ARRT in Radiation Therapy.

*** * ***

[Publication Instructions: In definitions section 2.2.2, insert the following new definition for "Certified Nuclear Medicine Technologist" after "Certification Evaluation" and before "Computed tomography".]

"Certified Nuclear Medicine Technologist" means an individual who is currently registered in nuclear medicine with the NMTCB or ARRT, designated CNMT or ARRT(N), respectively.

*** * ***

[Publication Instructions: In definitions section 2.2.2, insert the following revised definition for "Industrial Radiography" after "Fluoroscopy" and before "Inter-comparison", to correct a typographical error.]

"Industrial Radiography" means an examination of the structure of materials by the nondestructive method of utilizing ionizing radiation to make radiographic images.

* * *

[Publication Instructions: In definitions section 2.2.2, insert the following new definition for "NMTCB" after "NIST" and before "Operator".]

"NMTCB" means the Nuclear Medicine Technology Certification Board, Inc.

* * *

[Publication Instructions: In definitions section 2.2.2, insert the following revised definition for "Radiologic technologist" after "Qualified trainer" and before "Registered medical physicist".]

"Radiologic technologist" means an individual who is currently registered in radiography with the American Registry of Radiologic Technologists, designated ARRT(R).

* * *

[Publication Instructions: In section 2.4.5.1(2)(e)(i), replace the current text with the following revised text to correct a prior form reference error.]

(i) The Form R-90 series application shall be used to renew the registration for a Limited Scope Operator.

* * *

[Publication Instructions: Replace the current text of section 2.4.5.2 through 2.4.5.2(3) inclusive, with the following revised text.]

2.4.5.2 Computed Tomography Operator

(1) Each individual operating a computed tomography system on living humans shall hold a current, valid registry in Radiography, Nuclear Medicine, or Radiation Therapy issued by ARRT, NMTCB, or where the individual has obtained written approval from the Department, another nationally recognized registry organization not listed herein, shall:

(a) Meet the requirements of 2E.1.1, 2E.1.2, 2E.1.3, or 2E.1.4 for the applicable use specified in 2.6.1.7;

or

(b) Meet the requirements of Appendix 2E.2 and be registered with the Department as a Colorado Computed Tomography Operator;

or

(c) As a CT operator in training, be under the direct supervision of an individual who meets the requirements of 2.4.5.2(a) or 2.4.5.2(b).

(2) Registration

(a) The applicant for Colorado Computed Tomography Operator must complete the requirements of Appendix 2E, 2E.2 in a structured and documented training program.

(b) The application for registration as a Colorado Computed Tomography Operator shall contain all of the information required by the form and instructions, together with the fee required by Part 12, Category 24.

(i) The Form R-95 series shall be used to document the requirements of 2E.2.2, 2E.2.3 and 2E.2.4.

(3) After July 31, 2017, the Department will recognize Computed Tomography Operators previously registered with the Department but will cease registration of new Colorado CT Operators.

* * *

[Publication Instructions: Replace the current text of section 2.6.1.7 with the following revised text.]

2.6.1.7 For any computed tomography (CT) system used on a living human (excluding Volumetric Dental Imaging Systems) "adequately trained" shall mean that the individual operator meets the following requirements:

(1) Individuals operating a CT system for general imaging purposes shall meet the requirements of 2E.1.1, 2E.1.4, or 2E.2; or

(2) Individuals operating a CT system in conjunction with nuclear medicine Positron Emission Tomography (PET-CT) or Single Photon Emission Computed Tomography (SPECT-CT) systems (known as hybrid or fusion imaging machines) shall meet the requirements of 2E.1.1, 2E.1.2, 2E.1.4, or 2E.2; or

(3) Individuals operating a CT system used in conjunction with radiation therapy procedures (treatment simulation or tumor localization imaging) shall meet the requirements of 2E.1.1, 2E.1.3, 2E.1.4, or 2E.2.

Individuals who are in-training to become a CT operator, shall not be considered adequately trained until they have fully met the requirements of 2.6.1.7(1), or 2.6.1.7(2), or 2.6.1.7(3) and shall not operate such CT machines except under the direct supervision of an individual who meets the requirements of 2.6.1.7(1), or 2.6.1.7(2), or 2.6.1.7(3).

* * *

[Publication Instructions: Replace the current text of Appendix 2E (including header) through 2E.2 with the following revised text. Ensure each Appendix (including Appendix 2E) is separated by a page break such that it begins at the top of the page.]

PART 2, APPENDIX 2E: COMPUTED TOMOGRAPHY (CT) ADEQUATE RADIATION SAFETY TRAINING AND EXPERIENCE

Each operator of a computed tomography system shall hold a current, valid registry in Radiography, Nuclear Medicine, or Radiation Therapy issued by ARRT, NMTCB, or, where the operator has obtained written approval from the Department, another nationally recognized registry organization not listed herein, shall meet the following experience and education requirements:

2E.1 Certification:

2E.1.1 For general imaging computed tomography procedures, each operator is certified;

2E.1.1.1 By the ARRT in computed tomography, ARRT(CT); or

2E.1.1.2 By the Nuclear Medicine Technology Certification Board (NMCTB) in computed tomography, CNMT(CT);

Or

2E.1.2 For nuclear medicine (hybrid or fusion imaging) computed tomography procedures such as PET-CT or SPECT-CT, is certified;

2E.1.2.1 by the ARRT in nuclear medicine as ARRT(N) or

2E.1.2.2 by the NMTCB as CNMT; or

2E.1.2.3 in accordance with 2E.1.1.

Or

2E.1.3 For simulation or localization computed tomography procedures associated with radiation therapy, is certified;

2E.1.3.1 by the ARRT in Radiation Therapy, ARRT(T); or

2E.1.3.2 in accordance with 2E.1.1.

Or

2E.1.4 Is certified by a specialty board determined by the department to have substantially equivalent requirements for certification in computed tomography as the American Registry of Radiologic Technologists.

or

2E.2 Prior to July 31, 2017, is certified as ARRT(R) and is also registered with the Department as a Computed Tomography Operator by satisfactorily completing the requirements of 2E.2.1 through 2E.2.3, inclusive.

* * *

[Publication Instructions: Replace the current text of Appendix 2E.2.2 with the following revised text.]

2E.2.2 At least 480 hours of clinical training during which time computed tomography examinations are performed only under direct supervision of a qualified computed tomography operator or other qualified trainer who meets the requirements of 2E.1.1, 2E.1.4, or 2E.2; and

* * *

[Publication Instructions: Replace the current text of Appendix 2E.2.3 with the following revised text.]

2E.2.3 Has performed, under direct supervision, the following computed tomography imaging procedures:

2E.2.3.1 Head—10 examinations;

2E.2.3.2 Neck—10 examinations;

2E.2.3.3 Chest—10 examinations;

2E.2.3.4 Abdomen—10 examinations;

2E.2.3.5 Pelvis—10 examinations; and

2E.2.3.6 Musculo-skeletal—10 examinations

* * *

[Publication Instructions: Strike the current text of Appendix 2E.2.4 and 2E.2.5, and insert the following text as 2E.2.4.]

2E.2.4 Or, having completed didactic training in accord with Section 2E.2.1, is allowed under general supervision during the clinical training required by 2E.2.2 to perform the individual procedure(s) outlined in 2E.2.3.1 through 2E.2.3.6 for which the individual has documented the completion of the number of examinations required in 2E.2.3.

* * *

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State of Colorado
Department of Law

Office of the Attorney General

Tracking number: 2014-01151

Opinion of the Attorney General rendered in connection with the rules adopted by the
Hazardous Materials and Waste Management Division

on 12/17/2014

6 CCR 1007-1 Part 02

RADIATION CONTROL - REGISTRATION OF RADIATION MACHINES, FACILITIES AND SERVICES

The above-referenced rules were submitted to this office on 12/22/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

December 29, 2014 14:32:47

John W. Suthers
Attorney General
by Daniel D. Domenico
Solicitor General

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Health Facilities and Emergency Medical Services Division (1011, 1015 Series) - by Colo Bd of Health

CCR number

6 CCR 1011-1 Chap 11

Rule title

6 CCR 1011-1 Chap 11 CHAPTER 11 - CONVALESCENT CENTERS 1 - eff 02/14/2015

Effective date

02/14/2015

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Health Facilities and Emergency Medical Services Division

STANDARDS FOR HOSPITALS AND HEALTH FACILITIES: CHAPTER 11- CONVALESCENT CENTERS
[Publication Instructions: Insert REPEALED after heading]

6 CCR 1011-1 Chap 11

Repeal Adopted by the Board of Health on December 17, 2014.

[Publication Instructions: Strike all existing text.]

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State of Colorado
Department of Law

Office of the Attorney General

Tracking number: 2014-01150

Opinion of the Attorney General rendered in connection with the rules adopted by the
Health Facilities and Emergency Medical Services Division (1011, 1015 Series) - by Colo Bd of Health

on 12/17/2014

6 CCR 1011-1 Chap 11

CHAPTER 11 - CONVALESCENT CENTERS

The above-referenced rules were submitted to this office on 12/22/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

December 29, 2014 14:32:30

John W. Suthers
Attorney General
by Daniel D. Domenico
Solicitor General

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Health Facilities and Emergency Medical Services Division (1011, 1015 Series) - by Colo Bd of Health

CCR number

6 CCR 1011-1 Chap 20

Rule title

6 CCR 1011-1 Chap 20 CHAPTER 20 - AMBULATORY SURGICAL CENTER 1 - eff 02/14/2015

Effective date

02/14/2015

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Health Facilities and Emergency Medical Services Division

STANDARDS FOR HOSPITALS AND HEALTH FACILITIES: CHAPTER 20 - AMBULATORY SURGICAL CENTER

[Publication Instructions: Replace current existing title of Chapter with the following new title]

CHAPTER 20 - AMBULATORY SURGICAL CENTER AND AMBULATORY SURGICAL CENTER WITH A CONVALESCENT CENTER

6 CCR 1011-1 Chap 20

Adopted by the Board of Health on December 17, 2014

[Publication Instructions: Replace current existing text from Section 1 through Section 25A.5 with the following new text for Section 1 through Section 25.7(E)]

SECTION 1 - STATUTORY AUTHORITY AND APPLICABILITY

1.1 The statutory authority for the promulgation of these rules is set forth in section 25-1.5-103 and 25-3-101, *et seq.*, C.R.S.

1.2 An ambulatory surgical center, as defined herein, shall comply with all applicable federal and state statutes and regulations, including, but not limited to:

(A) This Chapter 20, Sections 1 through 24, and

(B) 6 CCR, 1011-1, Chapter 2, General Licensure Standards, unless otherwise modified herein.

1.3 An ambulatory surgical center with a convalescent center, as defined herein, shall comply with all applicable federal and state statutes and regulations, including, but not limited to:

(A) This Chapter 20, Sections 1 through 25, and

(B) 6 CCR 1011-1, Chapter 2, General Licensure Standards, unless otherwise modified herein.

1.4 These regulations incorporate by reference (as indicated within) materials originally published elsewhere. Such incorporation does not include later amendments to or editions of the referenced material. The Department of Public Health and Environment maintains copies of the complete text of the incorporated materials for public inspection during regular business hours, and shall provide certified copies of the incorporated material at cost upon request. Information regarding how the incorporated material may be obtained or examined is available from:

Division Director

Health Facilities and Emergency Medical Services Division

Colorado Department of Public Health and Environment

4300 Cherry Creek Drive South

Denver, CO 80246

Phone: 303-692-2800

Copies of the incorporated materials have been provided to the State Publications Depository and Distribution Center, and are available for interlibrary loan. Any incorporated material may be examined at any state publications depository library.

SECTION 2 – DEFINITIONS

2.1 "Administrator" means an individual who has authority over the daily operations of an ambulatory surgical center or ambulatory surgical center with convalescent center or an individual who is designated by the governing body of an ambulatory surgical center. Such individual shall have sufficient authority to interpret and implement all policies of the owner or proprietor and must be sufficiently qualified to perform those tasks.

2.2 "Ambulatory Surgical Center" means a health care entity established for the primary purpose of providing medically necessary surgery, elective surgery, or preventive diagnostic procedures that do not require hospitalization but do require post surgical or post procedural observation and monitoring that generally will not exceed 24 hours from admission to discharge. For convenience in this Chapter 20 only, an ambulatory surgical center is also referred to as a "center."

(A) Offering multiple health services in the same building does not preclude or exempt a center from meeting the requirements of Chapter 20. The other health services being offered in the same building must be physically separated from the ambulatory surgical center.

(B) A licensed ambulatory surgical center may sublease space to another licensed ambulatory surgical center for use if all of the criteria set forth below are met. If the Department finds deficient practice by either licensee, it has the discretion to assign those deficiencies to both licensees.

(1) The licensed centers shall not operate at the same time or on the same days of the week;

(2) There shall be clear public signage stating the days and times each licensed center is in operation.

(3) There shall be a written agreement between the licensed centers that establishes the responsibilities of each party regarding services, supplies and equipment use, quality assurance and infection control. All agreements must comply with this chapter and any other applicable local, state and federal law;

(4) Each licensed center shall meet all license requirements either directly or by contract; and

(5) Each licensed center shall ensure that all information regarding its patients is kept confidential and safeguarded from access by the other center.

(C) The term "ambulatory surgical center" includes a clinic or practitioner's office if:

(1) It is certified as an ambulatory surgical center by the Centers for Medicaid and Medicare Services,

(2) It is operated or used by a practitioner or entity other than the primary practitioner(s), or

(3) It holds itself out to the public or other health care providers as an ambulatory surgical center, surgical center, surgicenter or similar facility using a similar name or variation thereof.

(D) The term "ambulatory surgical center" does not include:

(1) A practitioner's private office or treatment rooms where the practitioner primarily consults with and treats patients including, but not limited to, practitioners organized as professional corporations, professional associations, professional limited liabilities companies, partnerships and sole proprietorships; or

(2) An outpatient surgery unit that is licensed as part of a hospital and located on a hospital campus as defined in 6 CCR 1011-1, Chapter 4; or

(3) An outpatient surgery center that is owned and operated by a hospital; licensed as an off campus location of the hospital; and has signage that clearly indicates the surgery center's connection with the hospital.

(a) A licensed hospital provider of ambulatory surgical services may use the term "ambulatory surgery" or a similar term to indicate that ambulatory surgical services or an ambulatory surgery or surgical department is available or housed within the hospital as part of the facility's services. Such hospital shall not indicate to the public nor hold itself out to the public as an ambulatory surgical center (free standing or otherwise) unless the hospital entity actually possesses such a license.

2.3 "Convalescent Center" means a health care entity that provides post surgical, post procedural and/or post diagnostic medical and nursing services to patients for whom an uncomplicated recovery is anticipated and for whom acute hospitalization is not required. A convalescent center shall be licensed and operated only in conjunction with a licensed ambulatory surgical center.

2.4 "Department" means the Colorado Department of Public Health and Environment.

2.5 "Medical Director" means the physician responsible for planning, organizing, conducting and directing the medical affairs of the ambulatory surgical center. The medical director shall meet one of the following requirements in order to be considered qualified:

(A) Is board eligible or board certified in at least one of the services provided at the ambulatory surgical center and has had at least 12 months of experience or training in the care of patients in a surgical environment, or

(B) Has served for at least 12 months in a leadership role at a health facility during the prior five year period.

(1) In geographical areas where a medical director meeting the above criteria is not available, another licensed and credentialed physician may fill that role if approved to do so by the Department prior to initial appointment.

2.6 "Medical Staff" means a formal organization of physicians, dentists, podiatrists or other health professionals, who are appointed by the governing body to attend to patients within the ambulatory surgical center.

2.7 "Medical Waste" means any infectious, pharmaceutical or trace chemotherapy waste generated in a health care setting in the diagnosis, treatment, immunization, or care of humans or animals; generated in autopsy or necropsy; generated during preparation of a body for final disposition such as cremation or

interment, generated in research pertaining to the production or testing of microbiologicals; generated in research using human or animal pathogens; or related to accident, suicide, or other physical trauma. Medical waste does not include fluids, tissues or body parts removed from the whole body for the purposes of donation, research or other use, or those returned to the person from whom they were removed, or their authorized representative, as long as the material is rendered safe for handling.

SECTION 3 – AMBULATORY SURGICAL CENTER CLASSIFICATIONS

3.1 An ambulatory surgical center shall be issued a license consistent with the type and extent of services provided, as outlined below.

(A) Class C Center – A Class C center shall have at least one sterile operating room with the capacity to administer general anesthesia to patients. The operating room(s), as well as the pre and post surgical areas, shall be located in a way that provides control over the movement of patients and personnel. This classification of operating room is equivalent to a Class C operating room as described in the Guidelines for Design and Construction of Health Care Facilities, (2010 Edition), Facilities Guidelines Institute, which is incorporated by reference.

(B) Class A or B Center – A Class A or B Center shall have a dedicated procedure room(s) with the capacity to provide oxygen and patient monitoring in a clean environment that supports infection control. The procedure room(s) shall only be used for endoscopic or interventional procedures or non-invasive examinations/treatments unless first terminally cleaned. Low-risk versus high-risk exposure areas shall be identified, along with the attire and personal protective equipment necessary for each area. This classification of procedure room is equivalent to Class A or B operating rooms as described in the Guidelines for Design and Construction of Health Care Facilities, (2010 Edition), Facilities Guidelines Institute, which is incorporated by reference.

SECTION 4 - GOVERNING BODY

4.1 Responsibility: The governing body shall provide facilities, personnel, and services necessary for the welfare and safety of the patients.

4.2 Duties: The governing body shall:

(A) Adopt bylaws in accordance with applicable legal requirements;

(B) Meet regularly and maintain accurate records of such meetings;

(C) Appoint committees consistent with the needs of center;

(D) Appoint and delineate clinical privileges of practitioners based upon recommendations by the medical staff and other appropriate indicators of physician and other licensed practitioner competence. Each member of the medical staff shall be granted privileges that are commensurate with the member's qualifications, experience, and present capabilities and that are within the practitioner's scope of practice;

(E) Maintain an up-to-date roster of providers credentialed by the center that specifies the approved surgical and/or procedural privileges of each provider. The roster shall be available to the nursing staff at all times;

(F) Establish a formal means of liaison with the medical staff;

(G) Approve bylaws, rules and regulations of the medical staff;

(H) Develop written policies and procedures in cooperation with the medical staff. The procedures shall address the acceptance, care, treatment, surgical and anesthesia services, discharge, referral and follow-up of all patients and all incidental operations of the center. The policies and procedures shall be available to all staff in the center and shall be followed by them at all times in the performance of their duties. The governing board shall also define the scope of services provided within the center;

(I) Conduct, with the active participation of the medical staff, an ongoing, comprehensive self-assessment of the quality of care provided, including the medical necessity of procedures performed, the appropriateness of care, and the appropriateness of utilization. This information shall provide a basis for the revision of center policies and the granting or continuation of clinical privileges;

(J) Adopt a national standard for infection control;

(K) Ensure the center maintains an adequate number of qualified personnel;

(L) Maintain effective quality control, quality improvement and data management;

(M) Appoint an administrator qualified by education and experience as defined in the job description developed by the center; and

(N) Appoint a member of the medical staff to act as medical director for the center.

SECTION 5- ADMINISTRATOR

5.1 Responsibility: The administrator shall be the official representative of the governing body and the chief executive officer of the center. The administrator shall be delegated responsibility and authority in writing by the governing body for the management of the center and shall serve as liaison among the governing body, provider staff and other departments of the center.

5.2 Duties: The administrator shall be responsible for the development, implementation and administration of center policies and procedures for employee and medical staff use. All policies and procedures shall be reviewed and approved by the governing body and/or updated as necessary but at least annually. The administrator shall designate a qualified individual to act for him or her when absent so that the ambulatory surgical center has administrative direction at all times.

SECTION 6 - MEDICAL STAFF

6.1 Organization: The ambulatory surgical center shall have an organized medical staff.

6.2 Duties: The medical staff or a delegated committee composed of members of the medical staff shall:

(A) Be responsible for the quality of all medical care provided patients in the center;

(B) Ensure professionally ethical conduct on the part of all members of the medical staff and initiate corrective measures as required;

(C) Formulate, adopt and enforce bylaws, rules, regulations and policies for the proper conduct of its activities and credentialing of its members. The practitioners applying for staff privileges shall be required to sign an agreement to abide by the medical staff bylaws, code of conduct and applicable state laws, rules and regulations;

(D) Recommend medical staff privileges to the governing body;

(E) Hold meetings regularly and maintain accurate records of such meetings;

(F) Establish a formal liaison with the governing body;

(G) Participate actively in the quality management program; and

(H) Recommend admission and procedural policies to the governing body.

SECTION 7- HEALTH INFORMATION MANAGEMENT

7.1 Facilities: The center shall develop and maintain a system for the proper collection, storage, and use of patient health information. The center shall maintain an individual record for each patient admitted.

(A) Each center shall establish processes to obtain, manage and utilize information to enhance and improve individual and organizational performance in patient care, management and support processes. Such processes shall:

(1) Be planned and designed to meet the center's internal and external information needs;

(2) Provide for confidentiality, integrity and security;

(3) Provide education and training in information management principles to decision-makers and other center personnel who generate, collect and analyze information; and

(4) Provide for information in a timely and accurate manner.

(B) The administrator shall appoint in writing a qualified person responsible for the patient information system or similarly titled unit. This person shall meet the qualifications established for this position, in writing, by the governing body.

(C) A current job description delineating duties and responsibilities shall be maintained for each medical records service position.

(D) The health information management administrator shall ensure that:

(1) Operative and procedure reports signed by the physician are recorded in the patient's health record immediately following the surgery or procedure or that a progress note is entered in the patient record to provide pertinent information;

(2) Postoperative information includes vital signs, level of consciousness, medications, blood or blood components, complications and management of those events, identification of direct providers of care, and discharge information from post-anesthesia care area; and

(3) All medical records are entered into a database and maintained on a current basis according to procedure and physician.

7.2 Security: Medical records shall be protected from loss, damage, unauthorized use and disclosure. If electronic medical records are utilized, there must be a back-up system for all data collected. An audit trail shall be maintained to track data entries and deletions, and include information regarding the data entered or deleted as well as the user responsible for the data entry or deletion.

7.3 Preservation: With the exception of medical records of minors (individuals under the age of 18 years) medical records shall be preserved as original records or on a technologically appropriate medium as administratively determined by the Department for no less than ten (10) years after the most recent

patient care usage, after which time medical records may be destroyed at the discretion of the center. Accessibility of medical records to the Department to assure compliance and to patients or their legal representatives shall be maintained.

(A) Medical records of minors shall be preserved for the period of minority plus ten (10) years (i.e., 28 years less age of minor at time of most recent patient care usage of the medical record).

(B) Centers shall establish procedures for notification to patients whose records are to be destroyed prior to the destruction of such records.

(C) Centers shall be solely responsible for the destruction of all medical records.

(D) Actual x-ray films, scans, and other imaging records shall be maintained by the center for a period of five (5) years, if services are provided directly.

7.4 Content: The medical records shall contain sufficient accurate information to justify the diagnosis and warrant the treatment and end results including, but not limited to:

(A) Complete patient identification including a unique identification number;

(B) Admission and discharge dates;

(C) Chief complaint and admission diagnosis;

(D) Medical history and physical examination completed prior to surgery;

(E) Diagnostic tests, laboratory, x-ray, scans, and other radiological imaging reports and consultative findings when appropriate;

(F) Physician progress notes if appropriate;

(G) Properly executed informed consent;

(H) A pre-anesthesia examination by a physician prior to surgery, a proper anesthesia record and a post-anesthesia evaluation;

(I) A complete detailed description of operative procedures, findings and post-operative diagnosis recorded and signed by the attending physician;

(J) A pathology report of tissue removed during surgery in accordance with center policies;

(K) All medication and treatment orders in writing and signed by the authorizing party. Telephone and verbal orders are designated as such, signed and dated by a legally designated person, and countersigned by the attending provider within a clearly designated time period established by the governing body; and

(L) Patient's condition on discharge, final diagnosis, and instructions given to patient for follow-up care.

7.5 Other records: The center shall:

(A) Maintain a register of all procedures performed by practitioner (entered daily);

(B) Maintain a master patient index file; and

(C) Collect, retrieve and annually summarize the following medical statistical information:

(1) The number of patient visits,

(2) The basis of treatment (clinical diagnosis and/or problem for which the patient was treated),

(3) The types and number of procedures performed,

(4) The age distribution of patients,

(5) All complications and emergencies, and

(6) The number of times a patient was transferred from the center to a hospital.

The information shall be used to inform the governing body and as part of the center's ongoing quality management program. The beginning and ending dates for the annual summary shall be set in policy by the governing body.

(D) Nursing Records: Standard nursing practice and procedure shall be followed in the recording of medications and treatments, including operative and post-operative notes. Nursing notes shall include notation of the instructions given patients preoperatively and at the time of discharge. All nursing notes shall be entered as part of the patient's medical record. Entries shall be appropriately signed, including name and identifying title.

(E) Entries: All orders for diagnostic procedures, treatments, and medications shall be authenticated by the physician submitting them and entered in the medical record by technologically appropriate medium as administratively determined by the Department. Authentication may be by written signature, identifiable initials, computer key or other secure electronic means.

SECTION 8- PERSONNEL

8.1 Orientation: The purpose and objectives of the center shall be explained to all personnel as part of an overall orientation program.

8.2 Policies: There shall be appropriate written personnel policies, rules and regulations governing the conditions of employment, the management of employees and the types of functions to be performed.

8.3 Job Description: There shall be written job descriptions for each position in the center including at least the title, authority, specific responsibilities and minimum qualifications. Each employee shall be provided a copy of his or her job description.

8.4 Staffing: Each service department of the center shall be under the direction of a person qualified by training, experience, and ability. Staffing levels shall be commensurate with the needs of the patients and center.

8.5 Education: All personnel shall receive at least 12 hours of continuing education annually, which must include, but not be limited to, infection control; fire, safety and emergency procedures.

8.6 Disease: Any personnel with communicable disease as defined by the Department shall return to work only after complying with the center's infection control policy.

8.7 Records: Personnel records shall be maintained for each person employed in the center and shall include, at a minimum, the following records:

(A) An employment application that contains information regarding education, experience and, if applicable, registration and/or licensure information for the applicant;

(B) Verification of references and/or credentials as required;

(C) Incident and/or accident reports;

(D) Evidence of periodic personnel performance evaluations;

(E) Results of medical examinations required as a part of employment within the center;

(F) Background checks for licensed individuals that includes verification, at the Department of Regulatory Agencies website, of an active license in good standing. Any admonishments or enforcement actions shall be reviewed by the administrator prior to hire; and

(G) Documentation of continuing education.

SECTION 9 – ADMISSIONS AND DISCHARGE

9.1 All persons admitted to the ambulatory surgical center shall be under the direct care of a member of the medical staff. The medical staff shall ensure the continuity of care for each patient including pre-operative, intra-operative, and post-operative care. All necessary instruction and education shall be provided to each patient prior to admission (for pre-surgical care) and discharge (for post-surgical care).

9.2 Restrictions:

(A) Surgical procedures shall be limited to the following:

(1) Those in which the expected combined operating and recovery time does not exceed 24 hours from the time of admission; and

(2) Those that do not generally result in extensive blood loss; require major or prolonged invasion of body cavities; directly involve major blood vessels or constitute an emergency or life-threatening procedure.

(B) There shall be no pre-planned, off-site transfers to a higher level of care and no transfers shall occur solely for the convenience of the ambulatory surgical center or its staff.

9.3 Identification: Each patient admitted to the center shall have a visible means of identification placed and maintained on his/her person until discharge. In cases of off-site pre-planned transfer such means of identification shall be maintained throughout the period of transfer and until such time as the patient becomes a patient of another licensed facility.

9.4 Admission Requirements: All admissions shall be in accordance with appropriate written policies and procedures which reflect the admission requirements established in this section, recommended by the medical staff and adopted by the governing body, specific to the ambulatory surgical center operations, that includes at least the following:

(A) The physicians performing the procedure shall document in writing that the patient is in good health or that any pre-existing health conditions are adequately controlled, require no special management and are such that performance of the procedure in a center, rather than an inpatient hospital setting, does not pose an increased risk to the patient.

(B) The patient or a responsible person acting on behalf of the patient must be able to strictly follow instructions related to ingestion of fluids or solids within the specified time frame prior to the surgery.

(C) If the patient is to receive sedation or anesthetic which will result in impaired mental status following surgery, the patient must be accompanied upon discharge by a responsible adult, unless exempted in writing by the attending physician.

(D) Patients who may require post-operative ventilation following surgery, either because of the procedure to be performed or because of a pre-existing condition, shall not be admitted for surgery.

(E) Surgery which requires the presence of special equipment, personnel, and/or facilities due to the risk of the operation involved shall not be performed in the center unless such equipment, personnel, and/or facilities are available in the center.

(F) When overnight care is provided, appropriate services shall be rendered within the defined capabilities of the organization.

9.5 Discharge: Patients shall be in a stable condition which will not endanger their continued well-being or shall be transferred to a licensed hospital, convalescent center or other treatment facility. There shall be written procedures and assigned responsibilities for implementing such procedures, including provisions for transportation. The center shall provide verbal and written patient instructions regarding post-operative or post-procedure care, physician follow-up, and physician contact information.

9.6 Off-Site Pre-Planned Transfers: Off-site pre-planned transfers of patients include those transfers of patients to other licensed health facilities, which are physically located off-site or off-campus, where it is known in advance that further post-surgical patient care will be needed. Off-site pre-planned transfers do not include discharges to the patient's place of residence where further care will be provided by home health or home care providers. Ambulatory surgical centers providing off-site pre-planned transfer service options shall adhere to the following requirements:

(A) Disclosure: Facilities offering surgical services which include an off-site pre-planned transfer to another licensed facility following post-operative recovery shall disclose in written form to the patient all the details of the transfer prior to admission to the facility. Disclosure includes, but is not limited to, the cost of the transfer, whether or not such costs shall be covered by insurance or other third party payer, and the details of the actual transfer, including, but not limited to, the mode of transport. Disclosure shall be made to the patient prior to the time for admission to the facility. The patient shall acknowledge such disclosure in writing, and the date thereof. Such disclosures on center policies regarding off-site pre-planned transfers shall be in addition to the requirements for informed consent.

(B) Off-site pre-planned transfers shall be made only to other licensed facilities that can provide the level of care necessary to meet the needs of the patient. The center shall have a written agreement with any and each licensed facility that admits patients for post-surgical care from a center. The center shall provide written discharge instructions, including patient progress information, to the receiving facility.

(1) An ambulatory surgical center shall allow preplanned transfers only with the written consent of the patient and the written authorization of the attending or operating surgeon or physician. The attending or operating surgeon or physician shall approve such a transfer if there are assurances that the continuity of care for the patient shall be maintained and contact with the patient's attending physician is continuous.

(C) All pre-planned transfers shall be by licensed ambulance. The center shall have a written agreement with the provider(s) of ambulance services. Such transfer agreements shall include the provision for an appropriate level of care commensurate with the needs of a post-surgical recovering patient. If necessary, as determined by the attending or operating physician, licensed medical staff from the ambulatory surgical center shall accompany the patient on the ambulance to provide continuity of care and a level of care that meets the peri-operative needs of the patient.

(D) Ambulatory surgical centers engaging in pre-planned transfers shall provide space at the entrance to the building to facilitate transfer. The center shall provide close-in parking that shall be accessible at all times and shall not be obstructed by other parked vehicles or any other architectural barriers. The space provided for ambulance access shall also contain adequate height clearance to accommodate a type I or a type III ambulance.

9.7 On-Site Pre-Planned Transfers: On-site pre-planned transfers of patients are also authorized where it is known in advance that further post-surgical patient care will be desired or needed. Such transfers are limited to those transfers of patients to convalescent centers licensed in accordance with section 25 or other licensed health facilities, located on-site or on campus and are physically connected to the ambulatory surgical center.

(A) The provisions of paragraph 9.6(A) and (B) shall apply to on-site pre-planned transfers. The provisions of paragraph 9.6(C) and (D) shall not apply to on-site pre-planned transfers.

SECTION 10 - LABORATORY AND RADIOLOGY

10.1 Laboratory Services: Clinical laboratory services shall be available as required by the needs of the patients as determined by the medical staff. Whether provided on-site or by contract, the laboratory shall meet the requirements of the "Clinical Laboratory Improvement Amendments of 1988," 42 USC § 263a, and the corresponding regulations at 42 CFR Part 493.

10.2 Radiological Services: Radiological services shall be provided as required by the needs of the patients as determined by the medical staff. Whether provided on-site or by contract, the radiological services shall meet Colorado rules and regulations pertaining to "Radiation Control," 6 CCR 1007-1.

(A) The radiological service shall be directed by a licensed radiologist or overseen by a qualified individual with appropriate education and experience who is appointed by the governing body.

(B) There shall be written policies governing all radiological procedures.

(C) Sufficient diagnostic and therapeutic radiological equipment shall be available to satisfy the objectives of the center.

SECTION 11 - ANESTHESIA

11.1 The use of flammable anesthetics in ambulatory surgical centers is prohibited.

11.2 The center shall provide anesthesia services commensurate with the services provided.

11.3 General or regional anesthesia or analgesia shall be administered only by a physician qualified by training, experience and ability in anesthesiology or a certified, registered nurse anesthetist who is recognized and included on the Advanced Practice Registry of the Colorado Board of Nursing. In the case of dental treatment, dentists may administer local anesthetics.

SECTION 12 - EMERGENCY SERVICES

12.1 The center shall have policies and procedures which provide for adequate care of its patients in the event of an emergency.

12.2 There shall be a policy and procedure for obtaining ambulance services when emergency services are needed, including notification of next of kin or responsible party.

12.3 In the event emergency services are necessary, the center shall have a written transfer agreement with a local hospital or ensure that every physician performing surgery at the center has admitting privileges at a local hospital.

12.4 Emergency equipment and supplies shall be readily available in the surgical and/or procedure room(s) and recovery room(s).

12.5 A center transferring a patient to a hospital on an emergency basis, shall submit to the receiving hospital at the time of transfer a copy of all medical records related to the patient's condition, including observations of the patient's signs and symptoms, preliminary diagnosis, treatment provided, results of any tests, and a copy of the informed written consent for the surgical procedure that was scheduled or performed at the center.

12.6 A center located above the ground level of a building that admits patients for which a pre-planned transfer is anticipated shall have elevators available for the transport of such patients. Elevators shall be large enough to accommodate an ambulance cot in a horizontal position and a minimum of two attendants.

SECTION 13 - NURSING SERVICES

13.1 Nursing Administration: The center shall have sufficient nursing personnel to meet the needs of the patients being served, under the supervision of a nurse manager who is currently licensed by the State of Colorado as a professional registered nurse and who is qualified by education and experience to be responsible for oversight of all nursing services.

13.2 The nurse manager shall be responsible for oversight of the following:

(A) Delivery of appropriate nursing services to patients;

(B) Development and maintenance of appropriate nursing service objectives, standards of nursing practice, nursing policy and procedure manuals, and written job descriptions for all levels of nursing personnel;

(C) Coordination of nursing services with other patient services;

(D) An adequate plan for the continuous evaluation of nursing care, along with a plan to periodically evaluate the adequacy of the center to meet the needs of its patients and the necessity for improvement or revision of the center or its services; and

(E) Staff development including orientation, in-service and continuing education which includes provisions for CPR certification or review.

13.3 Nursing Personnel: There shall be sufficient licensed and auxiliary nursing personnel on duty to meet the total nursing needs of patients.

(A) At least one registered nurse shall be in the center at all times whenever a patient is present;

(B) Nursing personnel shall be assigned duties consistent with their education and experience.

13.4 Medications and Treatments: Medications and treatments shall be administered in accordance with all applicable state and federal laws and acceptable standards of practice.

13.5 Staff Meetings: Meetings of nursing personnel shall be held regularly to discuss, review and evaluate nursing care. Written minutes of these meetings shall be maintained and distributed to personnel.

13.6 Staffing: The center shall have nursing staff in sufficient numbers to ensure that the following services are provided, depending on the procedure and method of sedation.

(A) A registered nurse, qualified by education and experience, shall be present in each operating room during operative procedures. This nurse's duties are performed outside the sterile field. This nurse is responsible for managing all nursing care within the operating room, observing the surgical team from a broad perspective, and assisting the team as necessary.

(B) A registered nurse or certified registered nurse anesthetist, qualified by education and experience in peri-operative nursing, shall be present in each operating or procedure room during the course of the procedure and be dedicated solely to monitoring the patient during the procedure.

(1) For procedures where a sterile field is not required and deep sedation is administered by a certified registered nurse anesthetist who is responsible for monitoring the patient during the procedure, either a technician or a nurse may be used to provide minor assistance to the practitioner if it is within their scope of practice and meets nationally recognized standards of practice.

(2) For procedures where no more than moderate sedation (also known as conscious sedation) is used, a technician or nurse may provide minor assistance to the practitioner if it is within their scope of practice, is conducted within nationally recognized standards of practice and the patient is appropriately monitored throughout the procedure.

(C) A registered nurse, qualified by education and experience, shall be present in the recovery area when patients are recovering.

SECTION 14 - PHARMACEUTICAL SERVICES

14.1 The ambulatory surgical center shall implement methods, procedures and controls which ensure the appropriation, acquisition, storage, dispensing and administration of drugs and biological in accordance with the Colorado Board of Pharmacy regulations at 3 CCR 719-1 and other applicable state and federal laws and regulations, whether it provides its own pharmaceutical services or makes other legal and appropriate arrangements for obtaining necessary pharmaceuticals.

14.2 Medications shall not be administered to patients unless ordered by a physician or other legally authorized practitioner. The orders shall be in writing or, if given verbally, shall be promptly reduced to writing and signed by the practitioner in accordance with center procedure.

14.3 Medications maintained in the center shall be appropriately stored and safeguarded against diversion or access by unauthorized persons. Appropriate records shall be kept regarding the disposition of all medications.

14.4 Each center shall maintain reference sources for identifying and describing medications. Sources may be in electronic format or web-based.

14.5 Medication shall be administered only by a licensed nurse or physician.

14.6 Blood, blood products and parenteral solutions shall be administered only by physicians or registered nurses.

14.7 Adverse medication reactions shall be reported immediately to the physician responsible for the patient and documented in the medical record.

SECTION 15 – SURGICAL AND PROCEDURAL SERVICES

15.1 A qualified person designated by the administrator shall be responsible for the daily functioning and maintenance of the surgical and/or procedure room(s).

15.2 Surgical Site Identification: Each center shall develop a standardized method to ensure all patients are appropriately identified, all pertinent information is obtained, the surgery and surgical site are confirmed, and a surgical team time out is conducted prior to an incision being made.

(A) At a minimum, all surgical sites involving laterality, multiple structures (i.e., fingers, toes, lesions) or multiple levels (i.e., spine) shall be marked.

(1) The marking shall be made by an individual that is familiar with the patient and is involved with the patient's procedure such as the surgeon or a licensed individual who performs duties in collaboration with the surgeon (ie, registered nurse, advance practice nurse or physician assistant).

(2) Whenever possible, the marking shall involve the patient and take place when the patient is awake and aware.

(B) The surgical time out shall include, at a minimum, unanimous confirmation by the entire surgical team of the following factors:

(1) Patient identity using two patient identifiers;

(2) Type of procedure;

(3) Identification of correct site or side.

15.3 Scrub Area: The scrub area shall be adjacent to the operating room to permit immediate access to the room after scrubbing. The scrub area shall be no more than 10 feet from the entrance to the operating room. Scrub sink(s) with electronic sensors, knee or foot controls shall be installed in the scrub area.

15.4 Clean-up Facilities: Clean and soiled utility rooms shall be arranged and provided with equipment necessary for proper patient care and for the processing of soiled equipment, including a decontamination or sterilization system that is appropriate to the procedures being performed, and storage cabinets and work counters with sinks. Equipment for sterilizing instruments and supplies shall be conveniently located and of adequate capacity for the workload. Records shall be maintained to assure quality control, including date, time and temperature of each batch of sterilized supplies and equipment.

15.5 Staff Dressing Rooms: Separate staff dressing rooms shall be provided for men and women; each containing a toilet, hand-sink, and clothing storage. For centers with five or less surgical and/or procedure rooms, unisex dressing rooms are acceptable. Showers shall be provided where there is more than minimal possibility of exposure to blood or body fluids and secretions.

15.6 Environmental Services Room: A separate room or equivalent space shall be provided exclusively for the surgical and/or procedure rooms. It shall be equipped with shelves for supplies, mop clip boards, and a wall or floor-mounted mop sink. A hand washing sink with soap and sanitary hand washing

facilities will be available nearby. There shall be room also for a waste container, drum of disinfectant detergent, mop carts and buckets, etc.

SECTION 16 – PRE AND POST PROCEDURE AREAS

16.1 The center shall be arranged and organized in a manner that ensures the comfort, safety, hygiene, privacy and dignity of its patients.

16.2 A separate area shall be provided where patients can change their clothing before and after the surgery or procedure. This area shall include holding room(s), lockers, and toilets.

16.3 Recovery Room(s): Centers that perform surgery or procedures with anesthesia, shall have post-anesthesia recovery room(s) for its patients. Beds, stretchers or recliners may be utilized if they offer the appropriate level of safety and comfort to the patient(s).

(A) The recovery room(s) shall accommodate provision of the following activities or services:

(1) Direct visual observation of all patients,

(2) Medication administration,

(3) Charting,

(4) Toileting and hand washing,

(5) Supply and equipment storage,

(6) Administration of oxygen, suction and resuscitation; and

(7) Emergency call system.

SECTION 17 - INFECTION AND DISEASE CONTROL

17.1 The ambulatory surgical center shall have a multi-disciplinary infection control committee charged with the responsibility of investigation and recommendations for the prevention and control of infection and communicable disease.

17.2 The infection control committee shall develop and implement policies and procedures related to infection and disease control including, but not limited to:

(A) The admission of patients with specific infectious diseases;

(B) Annual review of clinic policies and procedures to ensure compliance with the governing body's chosen national standard for infection control, and any specific recommendations from local or state public health agencies.

(C) Orientation and continuing education of personnel on the control of nosocomial and infectious diseases, including universal precautions;

(D) The reporting of communicable diseases as required by applicable state and federal laws and regulations;

(E) Cleaning and/or disinfection of the center and equipment; and

(F) Effective control and eradication of insects and rodents.

SECTION 18 - PATIENT CARE UNIT

18.1 An ambulatory surgical center shall maintain a distinct patient care area if the ambulatory surgical center provides surgical services for persons needing longer periods of care and/or observation beyond the recovery period and prior to discharge. Patient rooms shall have direct exit to the corridor or exit way and shall have a maximum of two beds per room.

18.2 Each patient room shall be a minimum of 100 square feet for a one-bed occupancy and 80 square feet per bed for a two-bed occupancy, exclusive of closets or lockers. In a two-bed patient room, privacy shall be provided by cubicle curtains or other appropriate partitions.

18.3 Each patient room shall contain at least one, appropriately sized patient bed equipped with a mattress protected by waterproof material and a pillow.

18.4 Each patient room shall be in an area that is visible to the staff at the nursing station and shall be equipped with a nurse call system.

18.5 A patient bathroom, with toilet and sink shall be provided in the immediate vicinity of the patient bedroom(s). Immediate vicinity means in the patient bedroom, adjacent to the patient bedroom or directly across the corridor from the patient bedroom.

18.6 Patient rooms shall be equipped with medical and personal care equipment that is necessary to meet the needs of the patient.

SECTION 19 – EQUIPMENT AND SUPPLIES

19.1 Equipment shall be in good working order and shall be available in sufficient quantity to ensure adequate patient care based upon the procedures to be performed in the center.

(A) Monitoring equipment, suction apparatus, oxygen, cardiac pulmonary resuscitation equipment and related items shall be available within the surgical, procedural and recovery areas.

(B) Sterilizing equipment of appropriate type shall be available and of sufficient capacity to adequately sterilize instruments and operating room materials as well as laboratory equipment and supplies. The sterilizing equipment shall have an approved recording thermometer and safety features. The accuracy of such instrumentation and equipment shall be checked and calibrated periodically according to the manufacturer's recommendations. The center shall have records documenting the maintenance of this equipment.

(C) Centers using laser equipment shall maintain written documentation of a safety and maintenance program related to the use of the laser equipment.

19.2 Storage, Maintenance and Distribution: There shall be safe and sanitary storage, maintenance and distribution of sterile supplies and equipment, in accordance with adequate written policies and procedures which also govern shelf life.

19.3 Segregation: Sterile supplies and equipment shall not be mixed with unsterile supplies, shall be stored in dust proof and moisture free units, and shall be properly labeled.

SECTION 20 - HOUSEKEEPING AND MAINTENANCE

20.1 Organization: Each center shall provide housekeeping services which ensure a pleasant, safe and sanitary environment. If the center contracts with an outside vendor to provide housekeeping services, there shall be a written agreement regarding the services and the center shall be ultimately responsible for quality control of the contractor.

20.2 Written Policies and Procedures: Written policies and procedures shall be established, approved by the infection control committee, and followed to ensure adequate cleaning and/or disinfection of the physical structure and equipment.

20.3 Storage: All cleaning materials, solutions, cleaning compounds, and hazardous substances, shall be properly identified and stored in accordance with the manufacturers' instructions.

20.4 Cleaning methods shall minimize the dispersion of dust particles that may contain micro-organisms in clean/sterile areas.

20.5 The center shall have and follow written policies and procedures regarding a preventive maintenance program to ensure that the physical plant and equipment are kept in good repair and to provide for the safety, welfare and comfort of the center occupants.

SECTION 21 - LAUNDRY AND LINENS

21.1 The center shall have and follow written policies and procedures regarding the handling of linens and laundry.

21.2 Outside Laundry: Laundry that is sent out shall be sent to a commercial or hospital laundry. A contract for laundry services performed by commercial laundries for ambulatory surgical centers shall include applicable standards of this Section 21.

21.3 Storage: If soiled linen is not processed on a daily basis, a separate, properly ventilated storage area shall be provided.

21.4 Processing: The laundry processing area shall be arranged to allow for an orderly, progressive flow of laundry from the soiled to the clean area.

21.5 Washing Temperatures: The water temperature and duration of washing cycle shall be consistent with the temperature and duration recommended by the manufacturers of the laundry chemicals being used.

21.6 Packaging: The linens to be returned from the outside laundry to the center shall be completely wrapped or covered to protect against contamination.

21.7 Soiled Linen Transportation: Soiled linen shall be enclosed in an impervious bag and removed from surgery units after each procedure.

21.8 Soiled Linen Carts: Carts, if used to transport soiled linen, shall be constructed of impervious materials, cleaned and disinfected after each use.

21.9 Clean Linen Storage Room: Adequate provisions shall be made for storage of clean linen.

21.10 Contaminated Linens: Contaminated linens shall be afforded appropriate special treatment by the laundry to ensure cleanliness.

21.11 Procedures: Adequate procedures for the handling of all laundry and for the positive identification, proper packaging and storage of sterile linens shall be developed and followed.

SECTION 22 - WASTE MANAGEMENT

22.1 Sewage: All sewage shall be discharged into a public sewer system.

22.2 Refuse and Rubbish:

(A) Medical waste shall be disposed of in accordance with the Department's Regulations ~~P~~ Pertaining to Solid Waste Disposal Sites and Facilities at 6 CCR 1007-2, Part 1, Section 13, Medical Waste. These regulations are incorporated by reference in accordance with Section 1.4 of this Chapter 20.

(B) All garbage and refuse not treated as sewage shall be collected in impervious containers with liners and shall be removed from the center once a day. The center shall have a paved outside area for storage of garbage and refuse containers. Refuse incinerators are prohibited.

(C) All personnel shall wash their hands after handling refuse as specified by the center's infection and disease control policies and procedures.

SECTION 23 - COMPLIANCE WITH FGI GUIDELINES

Effective July 1, 2013, all ambulatory surgical centers shall be constructed in conformity with the standards adopted by the Director of the Division of Fire Prevention and Control (DFPC) at the Colorado Department of Public Safety. For construction initiated or systems installed on or after July 1, 2013, that affect patient health and safety and for which DFPC has no applicable standards, each center shall conform to the relevant section(s) of the Guidelines for Design and Construction of Health Care Facilities, (2010 Edition), Facilities Guidelines Institute. The Guidelines for Design and Construction of Health Care Facilities, (2010 Edition), Facilities Guidelines Institute (FGI), is hereby incorporated by reference and excludes any later amendments to or editions of the Guidelines. The 2010 FGI Guidelines are available at no cost in a read only version at: HTTP://FGIGUIDELINES.ORG/DIGITALCOPY.PHP

SECTION 24 - LICENSE FEES

24.1 As part of the licensing process described at 6 CCR 1011-1, Chapter 2, sections 2.4 through 2.7, an applicant for an ambulatory surgical center license shall submit, in the form and manner specified by the Department, a license application with the corresponding nonrefundable fee as set forth below:

(A) Initial license: A license applicant shall submit with an application for licensure a nonrefundable fee of $6,600.

(B) Renewal license: A license applicant shall submit with an application for licensure a nonrefundable fee as follows: Base: $1,440; Per Operating or Procedure Room: $200. The renewal fee shall not exceed $3,000.

(C) Change of Ownership: The new owner shall submit with an application for licensure a nonrefundable fee of $4,100.

(D) Provisional License: The license applicant may be issued a provisional license upon submittal of a nonrefundable fee of $2,500. If a provisional license is issued, the provisional license fee shall be in addition to the initial or renewal license fee.

(E) Conditional License: A center that is issued a conditional license by the Department shall submit a nonrefundable fee ranging from 10 to 25 percent of its applicable renewal fee. The percentage shall be determined by the Department. If the conditional license is issued concurrent with the initial or renewal license, the conditional license fee shall be in addition to the initial or renewal license fee.

SECTION 25 – AMBULATORY SURGICAL CENTER WITH A CONVALESCENT CENTER

25.1 General: An ambulatory surgical center with a convalescent center shall comply with the preceding sections 1 through 24 which shall apply to the operation and maintenance of the ambulatory surgical

center and the convalescent center. In addition, an ambulatory surgical center with a convalescent center shall comply with this Section 25.

25.2 Patient Transfer: A licensed ambulatory surgical center with a convalescent center shall provide for the prompt and safe transfer of patients between the ambulatory surgical center and the convalescent center. Each patient transferred from the ambulatory surgical center to the convalescent center shall have a visible means of identification on his or her person.

25.3 Patient Care Services: The convalescent center shall have and follow written policies and procedures regarding the provision of direct patient care that includes, but is not limited to:

(A) The handling of medical emergencies;

(B) Coordination of care across multiple disciplines, as applicable;

(C) Initial and revised patient assessments and care plans; and

(D) Discharge planning.

25.4 Dietary Services: The convalescent center shall provide food service to admitted patients.

(A) Persons assigned to food preparation and service shall have the appropriate training necessary to store, prepare and serve food in a manner that prevents food-borne illness

(B) Meals shall be prepared, stored and served in a manner that prevents food-borne illness.

(C) The food service area shall be an area separate from the employee lounge or other areas used by facility personnel or the public.

(D) All food shall be pre-packaged and require microwave heating only and disposable products for preparation and service shall be used unless the facility develops and implements policies and procedures for the safe preparation, storage and serving of foods.

(E) Catering and alternative methods of meal provision shall be allowed if patient needs and the intent of this part of the regulations are met.

25.5 Contracted Services: All contracted services shall be documented by a written agreement. The written agreement shall include the names of the owner or corporate officers authorized to sign the agreement and the center shall be ultimately responsible for quality control of the contracted services.

25.6 Compliance with FGI Guidelines: Effective July 1, 2013, all convalescent centers shall be constructed in conformity with the standards adopted by the Director of the Division of Fire Prevention and Control (DFPC) at the Colorado Department of Public Safety. For construction initiated or systems installed on or after July 1, 2013, that affect patient health and safety and for which DFPC has no applicable standards, each center shall conform to the relevant section(s) of the Guidelines for Design and Construction of Health Care Facilities, (2010 Edition), Facilities Guidelines Institute. The Guidelines for Design and Construction of Health Care Facilities, (2010 Edition), Facilities Guidelines Institute (FGI), is hereby incorporated by reference and excludes any later amendments to or editions of the Guidelines. The 2010 FGI Guidelines are available at no cost in a read only version at:-
HTTP://FGIGUIDELINES.ORG/DIGITALCOPY.PHP

25.7 License Fees: For new license applications received or renewal licenses that expire on or after March 1, 2015, an applicant for an ambulatory surgical center with a convalescent center license shall comply with the licensing process described at 6 CCR 1011-1, Chapter 2, sections 2.4 through 2.7 and submit,

in the form and manner specified by the Department, a license application with the corresponding nonrefundable fee as set forth below:

(A) Initial license:

(1) An applicant for an initial ambulatory surgical center with convalescent center license shall submit with an application for licensure a nonrefundable fee of $6,960.

(2) A current ambulatory surgical center licensee that applies to add a convalescent center to the license prior to the expiration of the surgical center license shall submit an application for initial licensure of the convalescent center along with a nonrefundable fee of $360. Upon expiration of the existing surgical center license term, the licensee shall follow the procedure set forth below for a renewal license.

(B) Renewal license: A license applicant shall submit with an application for licensure a nonrefundable fee as follows: Base: $1,800; Per Operating or Procedure Room: $200. The renewal fee shall not exceed $3,360.

(C) Change of Ownership: The new owner shall submit with an application for licensure a nonrefundable fee of $4,460.

(D) Provisional License: The license applicant may be issued a provisional license upon submittal of a nonrefundable fee of $2,860. If a provisional license is issued, the provisional license fee shall be in addition to the initial or renewal license fee.

(E) Conditional License: A center that is issued a conditional license by the Department shall submit a nonrefundable fee ranging from 10 to 25 percent of its applicable renewal fee. The percentage shall be determined by the Department. If the conditional license is issued concurrent with the initial or renewal license, the conditional license fee shall be in addition to the initial or renewal license fee.

John W. Suthers
Attorney General

Cynthia H. Coffman
Chief Deputy Attorney General

Daniel D. Domenico
Solicitor General

Ralph L. Carr
Colorado Judicial Center
1300 Broadway, 10th floor
Denver, CO 80203
Phone 720-508-6000

State of Colorado
Department of Law

Office of the Attorney General

Tracking number: 2014-01148

Opinion of the Attorney General rendered in connection with the rules adopted by the
Health Facilities and Emergency Medical Services Division (1011, 1015 Series) - by Colo Bd of Health

on 12/17/2014

6 CCR 1011-1 Chap 20

CHAPTER 20 - AMBULATORY SURGICAL CENTER

The above-referenced rules were submitted to this office on 12/22/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

December 29, 2014 14:32:13

John W. Suthers
Attorney General
by Daniel D. Domenico
Solicitor General

Emergency Rules Adopted

Department

Department of Revenue

Agency

Division of Liquor Enforcement

CCR number

1 CCR 203-2

Rule title

1 CCR 203-2 LIQUOR CODE 1 - eff 01/01/2015

Effective date

01/01/2015

STATEMENT OF AUTHORITY, BASIS AND PURPOSE FOR
PROPOPSED REGULATION 47-506, 1 C.C.R. 203-2
COLORADO DEPARTMENT OF REVENUE
LIQUOR ENFORCEMENT DIVISION

Statement of Authority, Basis and Purpose:

The statutory authority for this regulation is found at subsection 12-47-501(1.5). The purpose of this regulation is to provide transparency in the publication of application fees and in reducing state fees identified in subsection 12-47-501(1) in order to reduce uncommitted reserves of the fund pursuant to section 24-75-402(3), C.R.S. After the uncommitted reserves of the fund are sufficiently reduced, the Executive Director may by rule or as otherwise provided by law may increase the amount of the fees as provided in section 24-75-402(4).

Regulation 47-506. Fees.

Effective January 1, 2015, below are the fees set by the State Licensing Authority pursuant to Sections 12-47-501(2) and 12-47-501(3), C.R.S.

Alternating Proprietor Licensed Premises	$ 150.00
Application for New License	$ 600.00
Application for New License with Concurrent Review	$ 700.00
Application for Transfer License	$ 600.00
Art Gallery Permit	$ 71.25
Bed & Breakfast Permit	$ 50.00
Branch Warehouse or Warehouse Storage Permit	$ 100.00
Change of Corporate or Trade Name	$ 50.00
Change of Location	$ 150.00
Corporate/LLC Change (Per Person)	$ 100.00
Duplicate Liquor License	$ 50.00
Limited Liability Change	$ 100.00
Manager Registration (Hotel/Restaurant or Tavern)	$ 75.00
Master File Background	$ 250.00
Master File Location Fee (Per Location)	$ 25.00
Modification of License Premises (City or County)	$ 150.00
New Product Registration (Per Unit)	$ 5.00
Optional Premises Added to H&R License (Per Unit)	$ 100.00
Retail Warehouse Storage Permit	$ 100.00
Wine Festival Permit	$ 25.00
Wine Direct Shipment Permit	$ 50.00
Subpoena Testimony (Per Hour)	$ 50.00

Minimum of four (4) hours of appearance or on-call or travel time to court and mileage, meals, and lodging at state employee per-diem rate. Actual hourly rate for all hours in excess of four (4) hours.

COLORADO
Department of Revenue
Executive Director's Office
Physical Address:
1375 Sherman Street
Denver, CO 80203

Mailing Address:
P.O. Box 17087
Denver, CO 80217-0087

Colorado Department of Revenue
Liquor Enforcement Division
Adoption of New Emergency Rule
Colorado Liquor Rules, 1 C.C.R. 203-2

Emergency Rule

Regulation 47-506 – Fees.

Statement of Statutory Authority

Pursuant to sections 24-4-103(6) and 12-47-501(1.5), C.R.S., I, Barbara J. Brohl, Executive Director of the Department of Revenue and State Licensing Authority, hereby adopt the aforementioned new Colorado Liquor rule which is attached hereto.

Section 24-4-103(6), C.R.S., authorizes the Executive Director to adopt a temporary or emergency rule if the Executive Director finds that the immediate adoption of the rule is imperatively necessary to comply with a state law or for the preservation of public health, safety, or welfare and compliance with the requirements of section 24-4-103, C.R.S., would be contrary to the public interest.

I find that the adoption of this new rule, to become effective January 1, 2015, is necessary to comply with section 24-75-402(3), C.R.S. in order to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees identified in 12-47-501, C.R.S. is credited. Therefore, I find that compliance with all requirements of section 24-4-103, C.R.S., would be contrary to the public interest.

Purpose

The purpose necessitating this rule on an expedited and emergency basis is to comply with state law. Specifically, to comply with the requirements of section 24-75-402(3), C.R.S., to reduce the amount of uncommitted reserves of the cash fund to which the fees under section 12-47-501, C.R.S. are credited. The State Licensing Authority is required to adjust such fees to reflect direct and indirect costs of the State Licensing Authority and to avoid exceeding the statutory limit of uncommitted reserves in administrative agency cash funds.

A permanent version of this rule was considered at a public rulemaking hearing in accordance with the State Administrative Procedure Act on December 3, 2014, but Regulation 47-506, 1 C.C.R. 203-2 would not be in effect until an undetermined date.

I find that the immediate adoption of this emergency rule to be effective January 1, 2015, is imperatively necessary for the reasons set forth above.

Adoption

For the reasons set forth above, I hereby adopt on an emergency basis effective January 1, 2015, 1 C.C.R. 203-2, Regulation 47-506, which is attached hereto and which shall be effective on the date of its adoption. This emergency rule shall be in force and effect for a period of one hundred and twenty days from the date of this notice, unless sooner terminated or replaced by the permanent rule adopted in accordance with section 24-4-103, C.R.S.

Adopted this 18th day of December, 2014.

Barbara J. Brohl
Executive Director
Colorado Department of Revenue
State Licensing Authority

12/18/14
Date

STATEMENT OF AUTHORITY, BASIS AND PURPOSE FOR
PROPOPSED REGULATION 47-506, 1 C.C.R. 203-2
COLORADO DEPARTMENT OF REVENUE
LIQUOR ENFORCEMENT DIVISION

Statement of Authority, Basis and Purpose:

The statutory authority for this regulation is found at subsection 12-47-501(1.5). The purpose of this regulation is to provide transparency in the publication of application fees and in reducing state fees identified in subsection 12-47-501(1) in order to reduce uncommitted reserves of the fund pursuant to section 24-75-402(3), C.R.S. After the uncommitted reserves of the fund are sufficiently reduced, the Executive Director may by rule or as otherwise provided by law may increase the amount of the fees as provided in section 24-75-402(4).

Regulation 47-506. Fees.

Effective January 1, 2015, below are the fees set by the State Licensing Authority pursuant to Sections 12-47-501(2) and 12-47-501(3), C.R.S.

Alternating Proprietor Licensed Premises	$ 150.00
Application for New License	$ 600.00
Application for New License with Concurrent Review	$ 700.00
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Art Gallery Permit	$ 71.25
Bed & Breakfast Permit	$ 50.00
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Corporate/LLC Change (Per Person)	$ 100.00
Duplicate Liquor License	$ 50.00
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Manager Registration (Hotel/Restaurant or Tavern)	$ 75.00
Master File Background	$ 250.00
Master File Location Fee (Per Location)	$ 25.00
Modification of License Premises (City or County)	$ 150.00
New Product Registration (Per Unit)	$ 5.00
Optional Premises Added to H&R License (Per Unit)	$ 100.00
Retail Warehouse Storage Permit	$ 100.00
Wine Festival Permit	$ 25.00
Wine Direct Shipment Permit	$ 50.00
Subpoena Testimony (Per Hour)	$ 50.00

Minimum of four (4) hours of appearance or on-call or travel time to court and mileage, meals, and lodging at state employee per-diem rate. Actual hourly rate for all hours in excess of four (4) hours.

John W. Suthers
Attorney General

Cynthia H. Coffman
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Solicitor General

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State of Colorado
Department of Law

Office of the Attorney General

Tracking number: 2014-01267

Opinion of the Attorney General rendered in connection with the rules adopted by the
Division of Liquor Enforcement

on 12/18/2014

1 CCR 203-2

LIQUOR CODE

The above-referenced rules were submitted to this office on 12/19/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

January 02, 2015 08:35:52

John W. Suthers
Attorney General
by Daniel D. Domenico
Solicitor General

Terminated Rulemaking

Department

Department of Revenue

Agency

Division of Motor Vehicles

CCR number

1 CCR 204-17

Tracking number

2014-00524

Termination date

01/08/2015

Reason for termination

Substantive charges are required.

Terminated Rulemaking

Department

Department of Regulatory Agencies

Agency

Division of Securities

CCR number

3 CCR 704-1

Tracking number

2014-01133

Termination date

01/09/2015

Reason for termination

The Division experienced technical difficulties.

Terminated Rulemaking

Department

Department of Public Health and Environment

Agency

Hazardous Materials and Waste Management Division

CCR number

6 CCR 1007-1 Part 02

Tracking number

2014-01286

Termination date

01/14/2015

Reason for termination

The documents attached when filing this notice were incorect. This notice has been re-filed; please reference tracking # 2015-0036.

Terminated Rulemaking

Department

Department of Public Health and Environment

Agency

Hazardous Materials and Waste Management Division

CCR number

6 CCR 1007-1 Part 12

Tracking number

2014-01287

Termination date

01/12/2015

Reason for termination

At the time of the orginal filing incorrect documents were attached. On January 12 a new notice, tracking # 2015-00033, was filed with the correct documents.

Nonrulemaking Public Notices and other Miscellaneous Rulemaking Notices

Department

Department of Natural Resources

Agency

Division of Water Resources

COLORADO
Division of Water Resources
Department of Natural Resources

Ground Water Commission
1313 Sherman Street, Room 821
Denver, CO 80203

January 8, 2015

NOTICE OF PUBLIC RULEMAKING HEARING

The Rulemaking Hearing associated with the amendments to the ***RULES AND REGULATIONS GOVERNING THE MEASUREMENT OF GROUND WATER DIVERSIONS LOCATED IN THE REPUBLICAN RIVER BASIN WITHIN WATER DIVISION NO. 1*** has been rescheduled by the Hearing Officer. The Hearing will begin at **10:00AM on March 31, 2015** in Burlington, CO at the Burlington Community Center (340 S. 14th St.) and continue through April 1, 2015 if necessary.

For additional information, please contact Chris Grimes at 303-866-3581 ext. 8253, or visit the Division of Water Resources website:

http://water.state.co.us/groundwater/GWAdmin/UseAndMeasurement/Pages/RepublicanRBRules.aspx

Nonrulemaking Public Notices and other Miscellaneous Rulemaking Notices

Department

Department of Public Health and Environment

Agency

Water Quality Control Commission (1002 Series)

COLORADO
Water Quality
Control Commission
Department of Public Health & Environment

NOTICE OF PUBLIC ADMINISTRATIVE ACTION HEARING
BEFORE THE
COLORADO WATER QUALITY CONTROL COMMISSION

SUBJECT:

At the date, time and location listed below, the Water Quality Control Commission will hold a public Administrative Action Hearing to consider approval of the Water Quality Control Division's proposed submittal of projects for FY15 Section 319 nonpoint source funds.

The initial list of recommended project proposals for Section 319 funding will be available by about February 10, 2015 from the commission office and on the commission's web site at https://www.colorado.gov/pacific/cdphe/wqcc-administrative-action-hearings. A final list of recommended project proposals will be available by about February 25, 2015.

HEARING SCHEDULE:

DATE:	Tuesday, March 10, 2015
TIME:	9:00 a.m.
PLACE:	Florence Sabin Conference Room Department of Public Health and Environment 4300 Cherry Creek Drive South Denver, Colorado

PUBLIC PARTICIPATION ENCOURAGED:

The commission encourages all interested persons to provide their opinions or recommendations orally or in writing as to whether the proposed list should be approved by the commission and forwarded to EPA.

The hearing may be reconvened at such times and places as the commission may announce.

AUTHORITY FOR PUBLIC HEARING:

The provisions of 25-8-202(1)(h), (i) and (2) C.R.S. and Section 21.5 B of the "Procedural Rules", Regulation #21 (5 CCR 1002-21) provide the authority for this hearing.

PARTY STATUS:

This is not a rulemaking hearing; therefore, party status provisions of 25-8-101 et. seq., and 24-4-101 et. seq., C.R.S. do not apply. Party status requests shall not be considered by the Commission.

PROCEDURAL MATTERS:

Oral or written comments will be accepted at the hearing. The commission encourages the submission of written comments that should be received at the commission office by February 25, 2015 if feasible, so that they can be distributed to the commission for review prior to the hearing. The commission requests that fifteen (15) copies of all written statements be submitted and suggests that additional copies be made available at the hearing for attendees. Anyone for whom the expense of providing these copies presents an economic hardship should contact the commission Office to make alternative arrangements. In addition, **if feasible, please submit an electronic version of any comments** to cdphe.wqcc@state.co.us, so that comments can be posted on the commission's web site for general review.

Dated this 13th day of January 2015 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION

Nancy Horan

Digitally signed by Nancy Horan
DN: dc=local, dc=dphe, ou=Divisions, ou=AFS, ou=Users, cn=Nancy Horan, email=nancy.horan@state.co.us
Date: 2015.01.13 13:16:11 -07'00'

Nancy Horan, Program Assistant

Nonrulemaking Public Notices and other Miscellaneous Rulemaking Notices

Department

Department of Health Care Policy and Financing

Agency

Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)

COLORADO
Department of Health Care Policy & Financing

PUBLIC NOTICE

January 25, 2015

1915 (b) Waiver Renewal for the Community Behavioral Health Services Program and The Special Connections Substance Abuse Treatment Program Postpartum Months Three through Twelve

Effective March 31, 2015, it is the intent of the Department of Health Care Policy and Financing (the Department) to request a two year renewal of the current Section 1915 (b) waiver, authorized under Section 1915(b) of Title XIX of the Social Security Act for the Community Behavioral Health Services Program and Special Connections Substance Abuse Treatment Program Postpartum Months Three to Twelve.

The Community Behavioral Health Services Program is a statewide managed care program that provides comprehensive mental health and substance use disorder services to Medicaid clients. The Department has provided behavioral health services under a 1915 (b) waiver since 1993. The 1915 (b) waiver allows the Department to use the cost savings resulting from a cost-effective managed care delivery system to provide additional services – known as "1915 (b)(3)" or "Alternative" services including:

- Vocational Services
- Assertive Community Treatment (ACT)
- Intensive Care Management
- Clubhouse and Drop-In Center Services
- Recovery Services
- Residential Services
- Prevention/Early Intervention Services
- Respite Care

The Special Connections Program is a substance use disorder treatment program for pregnant women funded by Medicaid and jointly managed by the Department of Health Care Policy and Financing and the Department of Human Services, Office of Behavioral Health. Since 1992, the Special Connections Substance Abuse Treatment Program has provided substance use disorder treatment and case management services to pregnant and postpartum women with substance use disorder issues. OBH contracts with licensed women's treatment programs to provide Medicaid-paid services through an Interagency Agreement (IA). Services provided through Special Connections include:

- Risk Assessment

- Case Management
- Counseling (individual and group)
- Outpatient and Residential Treatment
- Health education during pregnancy and one year post-partum

The Special Connections Substance Abuse Treatment Program portion of the waiver provides an additional period of substance use disorder treatment to ensure that the mother remains drug free and able to care for her new infant during postpartum months three to twelve.

The Department does not anticipate significant changes to either program over the course of the new waiver period.

The Department must submit its request for renewal to the Centers for Medicare and Medicaid Services (CMS) by **March 31, 2015.** Upon CMS approval, the new waiver will be effective from July 1, 2015 to June 30, 2017.

General Information

A link to this notice will be posted on the Department's website starting on January 25, 2014. Written comments may be addressed to: Director, Health Programs Office, Department of Health Care Policy and Financing, 1570 Grant Street, Denver, CO 80203.

Calendar of Hearings

Hearing Date/Time	Agency	Location
02/10/2015 09:30 AM	Colorado Racing Commission	1881 Pierce Street, Suite 110, Lakewood, CO 80214
02/10/2015 09:30 AM	Colorado Racing Commission	1881 Pierce Street, Suite 110, Lakewood, CO 80214
02/13/2015 09:00 AM	Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)	303 East 17th Avenue, 7th Floor Conference Room, Denver, CO 80203
02/17/2015 09:30 AM	Water Quality Control Commission (1003 Series)	Colorado Department of Public Health and Environment Bldg. A, Sabin Conference Room, 4300 Cherry Creek Drive South, Denver, CO 80246
02/17/2015 09:30 AM	Hazardous Materials and Waste Management Division	Colorado Department of Public Health and Environment Bldg. A, Sabin Conference Room, 4300 Cherry Creek Drive South, Denver, CO 80246
02/17/2015 11:00 AM	Division of Insurance	1560 Broadway, Ste 850, Denver CO 80202
02/18/2015 10:00 AM	Hazardous Materials and Waste Management Division	Sabin-Cleere Conference Room, Colorado Department of Public Health and Environment, Bldg. A, 4300 Cherry Creek Drive, South, Denver, CO. 80246
02/18/2015 10:00 AM	Hazardous Materials and Waste Management Division	Sabin-Cleere Conference Room, Colorado Department of Public Health and Environment, Bldg. A, 4300 Cherry Creek Drive, South, Denver, CO. 80246
02/18/2015 10:00 AM	Hazardous Materials and Waste Management Division	Sabin-Cleere Conference Room, Colorado Department of Public Health and Environment, Bldg. A, 4300 Cherry Creek Drive, South, Denver, CO. 80246
02/18/2015 10:00 AM	Hazardous Materials and Waste Management Division	Sabin-Cleere Conference Room, Colorado Department of Public Health and Environment, Bldg. A, 4300 Cherry Creek Drive, South, Denver, CO. 80246
02/18/2015 10:00 AM	Division of Environmental Health and Sustainability - promulgated by Colorado Board of Health	Sabin-Cleere Conference Room, Colorado Department of Public Health and Environment, Bldg. A, 4300 Cherry Creek Drive, South, Denver, CO. 80246
02/19/2015 09:00 AM	Air Quality Control Commission	Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Sabin Conference Room, Denver, CO 80246
02/19/2015 09:00 AM	Air Quality Control Commission	Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Sabin Conference Room, Denver, CO 80246
02/19/2015 09:00 AM	Air Quality Control Commission	Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Sabin Conference Room, Denver, CO 80246
02/19/2015 09:30 AM	Division of Gaming - Rules promulgated by Gaming Commission	17301 W. Colfax Ave., Suite 135, Golden, CO 80401
02/26/2015 09:00 AM	Passenger Tramway Safety Board	1560 Broadway, Conference Room 1250-C Denver CO 80202
03/02/2015 09:00 AM	Oil and Gas Conservation Commission	1120 Lincoln Street, Suite 801, Denver, CO 80203
03/04/2015 10:00 AM	Division of Real Estate	Ralph L. Carr Colorado Judicial Center, 2 East 14th Avenue, Room 1B, Denver, CO 80203
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03/04/2015 10:00 AM	Division of Real Estate	Ralph L. Carr Colorado Judicial Center, 2 East 14th Avenue, Room 1B, Denver, CO 80203
03/10/2015 09:30 AM	Water Quality Control Commission (1002 Series)	Sabin Conference Room, CDPHE, 4300 Cherry Creek Drive South, Denver, CO 80246
03/11/2015 10:00 AM	Colorado State Board of Education	Colorado State Department of Education, State Board Room; 201 E. Colfax Avenue; Denver, CO 80203
03/11/2015 02:00 PM	Colorado State Board of Education	Colorado Department of Education, State Board Room; 201 E. Colfax Ave., Denver, CO 80203
04/13/2015 09:30 AM	Water Quality Control Commission (1002 Series)	Sabin Conference Room, CDPHE, 4300 Cherry Creek Drive South, Denver, CO 80246
04/13/2015 09:30 AM	Water Quality Control Commission (1002 Series)	Sabin Conference Room, CDPHE, 4300 Cherry Creek Drive South, Denver, CO 80246
04/13/2015 01:30 PM	Water Quality Control Commission (1002 Series)	Sabin Conference Room, CDPHE, 4300 Cherry Creek Drive South, Denver, CO 80246