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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 Proposed Rulemaking

Tracking number

2016-00034

Department

200 - Department of Revenue

Agency

205 - Motor Vehicle Dealer Board

CCR number

1 CCR 205-1

Rule title

DEALING IN MOTOR VEHICLES

Rulemaking Hearing

Date

02/25/2016

Time

09:00 AM

Location

Department of Revenue offices, Entrance B, Room 110, Board Commission Meeting Room, 1881 Pierce Street, Lakewood, Colorado.

Subjects and issues involved

Regulation to clarify the meaning of the term, material particulars in the sale of a motor vehicle by a dealer to a buyer, the relationship of material damage to material particulars, and the process of disclosure of material particulars by the dealer.

Statutory authority

Colorado Revised Statutes, Sections 12-6-101, 12-6-102, 12-6-103, 12-6-104, 12-6-118, and, 12-6-118(3)(i).

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Proposed Revised Regulation 12-6-118(3)(i)
Statement of Authority, Basis and Purpose

Statutory Authority: Colorado Revised Statutes, Sections 12-6-101, 12-6-102, 12-6-103, 12-6-104, 12-6-118, and, 12-6-118(3)(i).

Basis and Purpose: Consumer protection, improved compliance, and improved enforcement by means of:

1) clarification of the following: a) the term, "material particulars"; b) the relationship of the term, "material damage," to the term, "material particulars"; c) the process required for disclosure by the seller to the consumer; and, d) the relationship of the term, "as is," in the required disclosure process; and,

2) listing, without limitation, the following: a) examples of what would be considered material particulars; and, b) examples of what would not be considered material particulars.

PROPOSED REVISED REGULATION:

Regulation 12-6-118 (3) (i)

A. DEFINITIONS FOR PURPOSES OF THIS REGULATION

1. **"Contract" means any written agreement, such as a purchase agreement, buyer order or invoice, between a dealer and a buyer for the sale of a vehicle, excluding the Retail Installment Sales Contract ("RISC").**

2. **"Dealer" means a motor vehicle dealer, used motor vehicle dealer, wholesaler, wholesale motor vehicle auction dealer, motor vehicle auctioneer, or a representative of the dealership.**

3. **"Seller" means Dealer.**

4. **"Material Particulars" means those details concerning a vehicle for sale that are essential or necessary for a reasonable prospective buyer to know prior to making the decision to buy or not to buy a vehicle on specific terms.**

B. NON-EXCLUSIVE LIST OF "MATERIAL PARTICULARS"

Material Particulars includes but is not limited to the following:

1. **The vehicle is a "Salvage vehicle" as that term is defined in the "Colorado Certificate of Title Act," part 1 of article 6 of title 42, C.R.S.**

2. **The vehicle has sustained damage, whether repaired or not repaired, of the following types:**

    a. **Frame or unibody damage, of any grade or type.**

    b. **Flood, fire or hail damage.**

    c. **Accident or collision damage.**

3. **The vehicle has been modified in a way that impacts warranty coverage.**

4. **The vehicle had been declared a "total loss" by an insurance company.**

5. **The vehicle had been stolen.**

6. **The vehicle had been used as a police vehicle, vehicle for hire, rental vehicle, or a loaner or courtesy vehicle, if such use is clearly ascertainable from a title brand, from information obtained from a prior owner, or from a Vehicle Identification Number (VIN).**

7. **The vehicle had been put to a use or had sustained damage that a reasonable person would consider highly unusual or extraordinary, such as use as a racing vehicle.**

C. MATTERS GENERALLY NOT CONSIDERED "MATERIAL PARTICULARS"

Material Particulars does not generally include the items on the following list. This list is not intended to be all-inclusive.

1. **Normal wear and tear.**

2. **Completed or prior mechanical repair.**

3. **General maintenance.**

4. **Repair or replacement of tires, wheels, glass, handlebars, moldings, radios, in-dash audio equipment, or the like, provided that the repair or replacement was completed in a manner reasonably comparable to manufacturer's specifications and provided that any repaired or replaced item is functioning at the time of sale in the manner that a reasonable person would expect.**

5. **Touch-up paint for minor scratches, dents, or dings.**

6. **Completed recall repair, provided the repair was done by a dealer authorized by the manufacturer to perform such repairs.**

D. "AS IS" STATEMENT

A statement by the Seller to the buyer that a vehicle is sold "as-is" does not relieve the Seller of the disclosure obligations imposed by this regulation nor relieve the Seller of any other disclosure obligations otherwise required by state or federal law. An "as-is" statement solely disclaims implied warranties under provisions of the "Colorado Uniform Commercial Code," Title 4, C.R.S.

E. DISCLOSURE PROCESS

Prior to the signing of the Contract, the Seller shall produce a written document disclosing all known Material Particulars. Both the Seller and buyer must sign the document. The document is deemed to be part of the Contract. A signed copy of the Contract and the disclosure document shall be provided to the buyer immediately. The Seller shall retain a copy of the Contract and the disclosure document.

REDLINE

Proposed Revised Regulation 12-6-118(3)(i)
Statement of Authority, Basis and Purpose

Statutory Authority: Colorado Revised Statutes, Sections 12-6-101, 12-6-102, 12-6-103, 12-6-104, 12-6-118, and, 12-6-118(3)(i).

Basis and Purpose: Consumer protection, improved compliance, and improved enforcement by means of:

1) clarification of the following: a) the term, "material particulars"; b) the relationship of the term, "material damage," to the term, "material particulars"; c) the process required for disclosure by the seller to the consumer; and, d) the relationship of the term, "as is," in the required disclosure process; and,

2) listing, without limitation, the following: a) examples of what would be considered material particulars; and, b) examples of what would not be considered material particulars.

PROPOSED REVISED REGULATION:

Regulation 12-6-118 (3) (i)

~~**A copy of the completed contract form shall be given to the purchaser when signed by both parties.**~~

~~**A dealer, wholesaler, or auction dealer shall disclose on the contract form when a motor vehicle is known by the dealer, wholesaler or auction dealer to be a salvage vehicle as defined in C.R.S. 42-6-102(10.6), or when a motor vehicle is known to have sustained material damage at any one time from any one incident.**~~

A. DEFINITIONS FOR PURPOSES OF THIS REGULATION

1. **"CONTRACT" MEANS ANY WRITTEN AGREEMENT, SUCH AS A PURCHASE AGREEMENT, BUYER ORDER OR INVOICE, BETWEEN A DEALER AND A BUYER FOR THE SALE OF A VEHICLE, EXCLUDING THE RETAIL INSTALLMENT SALES CONTRACT ("RISC").**

2. **"DEALER" MEANS A MOTOR VEHICLE DEALER, USED MOTOR VEHICLE DEALER, WHOLESALER, WHOLESALE MOTOR VEHICLE AUCTION DEALER, MOTOR VEHICLE AUCTIONEER, OR A REPRESENTATIVE OF THE DEALERSHIP.**

3. **"SELLER" MEANS DEALER.**

4. **"MATERIAL PARTICULARS" MEANS THOSE DETAILS CONCERNING A VEHICLE FOR SALE THAT ARE ESSENTIAL OR NECESSARY FOR A REASONABLE PROSPECTIVE BUYER TO KNOW PRIOR TO MAKING THE DECISION TO BUY OR NOT TO BUY A VEHICLE ON SPECIFIC TERMS.**

B. <u>NON-EXCLUSIVE LIST OF "MATERIAL PARTICULARS"</u>

MATERIAL PARTICULARS INCLUDES BUT IS NOT LIMITED TO THE FOLLOWING:

1. **THE VEHICLE IS A "SALVAGE VEHICLE" AS THAT TERM IS DEFINED IN THE "COLORADO CERTIFICATE OF TITLE ACT," PART 1 OF ARTICLE 6 OF TITLE 42, C.R.S.**

2. **THE VEHICLE HAS SUSTAINED DAMAGE, WHETHER REPAIRED OR NOT REPAIRED, OF THE FOLLOWING TYPES:**

   A. **FRAME OR UNIBODY DAMAGE, OF ANY GRADE OR TYPE.**

   B. **FLOOD, FIRE OR HAIL DAMAGE.**

   C. **ACCIDENT OR COLLISION DAMAGE.**

3. **THE VEHICLE HAS BEEN MODIFIED IN A WAY THAT IMPACTS WARRANTY COVERAGE.**

4. **THE VEHICLE HAD BEEN DECLARED A "TOTAL LOSS" BY AN INSURANCE COMPANY.**

5. **THE VEHICLE HAD BEEN STOLEN.**

6. **THE VEHICLE HAD BEEN USED AS A POLICE VEHICLE, VEHICLE FOR HIRE, RENTAL VEHICLE, OR A LOANER OR COURTESY VEHICLE, IF SUCH USE IS CLEARLY ASCERTAINABLE FROM A TITLE BRAND, FROM INFORMATION OBTAINED FROM A PRIOR OWNER, OR FROM A**

VEHICLE IDENTIFICATION NUMBER (VIN).

7. **THE VEHICLE HAD BEEN PUT TO A USE OR HAD SUSTAINED DAMAGE THAT A REASONABLE PERSON WOULD CONSIDER HIGHLY UNUSUAL OR EXTRAORDINARY, SUCH AS USE AS A RACING VEHICLE.**

C. MATTERS GENERALLY NOT CONSIDERED "MATERIAL PARTICULARS"

MATERIAL PARTICULARS DOES NOT GENERALLY INCLUDE THE ITEMS ON THE FOLLOWING LIST. THIS LIST IS NOT INTENDED TO BE ALL-INCLUSIVE.

1. **NORMAL WEAR AND TEAR.**

2. **COMPLETED OR PRIOR MECHANICAL REPAIR.**

3. **GENERAL MAINTENANCE.**

4. **REPAIR OR REPLACEMENT OF TIRES, WHEELS, GLASS, HANDLEBARS, MOLDINGS, RADIOS, IN-DASH AUDIO EQUIPMENT, OR THE LIKE, PROVIDED THAT THE REPAIR OR REPLACEMENT WAS COMPLETED IN A MANNER REASONABLY COMPARABLE TO MANUFACTURER'S SPECIFICATIONS AND PROVIDED THAT ANY REPAIRED OR REPLACED ITEM IS FUNCTIONING AT THE TIME OF SALE IN THE MANNER THAT A REASONABLE PERSON WOULD EXPECT.**

5. **TOUCH-UP PAINT FOR MINOR SCRATCHES, DENTS, OR DINGS.**

6. **COMPLETED RECALL REPAIR, PROVIDED THE REPAIR WAS DONE BY A DEALER AUTHORIZED BY THE MANUFACTURER TO PERFORM SUCH REPAIRS.**

D. "AS IS" STATEMENT

A STATEMENT BY THE SELLER TO THE BUYER THAT A VEHICLE IS SOLD "AS-IS" DOES NOT RELIEVE THE SELLER OF THE DISCLOSURE OBLIGATIONS IMPOSED BY THIS REGULATION NOR RELIEVE THE SELLER OF ANY OTHER DISCLOSURE OBLIGATIONS OTHERWISE

REQUIRED BY STATE OR FEDERAL LAW. AN "AS-IS" STATEMENT SOLELY DISCLAIMS IMPLIED WARRANTIES UNDER PROVISIONS OF THE "COLORADO UNIFORM COMMERCIAL CODE," TITLE 4, C.R.S.

E. DISCLOSURE PROCESS

PRIOR TO THE SIGNING OF THE CONTRACT, THE SELLER SHALL PRODUCE A WRITTEN DOCUMENT DISCLOSING ALL KNOWN MATERIAL PARTICULARS. BOTH THE SELLER AND BUYER MUST SIGN THE DOCUMENT. THE DOCUMENT IS DEEMED TO BE PART OF THE CONTRACT. A SIGNED COPY OF THE CONTRACT AND THE DISCLOSURE DOCUMENT SHALL BE PROVIDED TO THE BUYER IMMEDIATELY. THE SELLER SHALL RETAIN A COPY OF THE CONTRACT AND THE DISCLOSURE DOCUMENT.

Notice of Proposed Rulemaking

Tracking number

2016-00035

Department

200 - Department of Revenue

Agency

205 - Motor Vehicle Dealer Board

CCR number

1 CCR 205-2

Rule title

DEALING IN POWERSPORTS VEHICLES

Rulemaking Hearing

Date

02/25/2016

Time

09:00 AM

Location

Department of Revenue offices, Entrance B, Room 110, Board Commission Meeting Room, 1881 Pierce Street, Lakewood, Colorado.

Subjects and issues involved

Regulation to clarify the meaning of the term, material particulars in the sale of a power sports vehicle by a dealer to a buyer, the relationship of material damage to material particulars, and the process of disclosure of material particulars by the dealer.

Statutory authority

Colorado Revised Statutes, Sections 12-6-102, 12-6-103, 12-6-104, 12-6-501, 12-6-502, 12-6-503, 12-6-504, 12-6-520, and 12-6-520 (3) (h), C.R.S.

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Notice of Proposed Rulemaking

Tracking number

2016-00033

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

02/18/2016

Time

09:30 AM

Location

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

Subjects and issues involved

Amendments to Rule 47.1-1244 to clarify banking requirements for manufacturers who have placed multi-link progressive awards in casinos, and amendments to Rule 47.1-1279 to clarify the requirements regarding wireless applications and supporting wireless local area networks.

Statutory authority

Sections 12-47.1-201, C.R.S., 12-47.1-203, C.R.S., 12-47.1-302, C.R.S., and 12-47.1-806, C.R.S.

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BASIS AND PURPOSE FOR RULE 12

The purpose of Rule 12 is to establish a procedure for the testing and approval by the Commission of gaming devices and equipment, to establish requirements for the gaming devices and equipment to be used in limited gaming in Colorado, and to establish procedures for the storage of gaming devices and equipment in compliance with section 12-47.1-302 (2), C.R.S. The statutory basis for Rule 12 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 12-47.1-806, C.R.S.

RULE 12 GAMING DEVICES AND EQUIPMENT

47.1-1244 Progressive slot machine games defined.

(13) Cash requirements. Unless the Commission has approved the payment of prizes by annuity and except for the cash requirements for multi-link systems as defined in Section 16, a licensee who offers a progressive slot machine game for play must maintain a minimum cash reserve as prescribed in the Internal Control Minimum Procedures established by the Division to ensure the licensee has cash available to pay all progressive liabilities. Manufacturers who enter into an agreement to place non multi-link progressive awards in casinos must maintain funds in a bank, or other financial institution IN COLORADO, WHICH IS chartered by the State of Colorado OR ANY OTHER STATE OR THE UNITED STATES GOVERNMENT, equal to the amount of these awards. *Amended 11/30/14*

(16) Cash requirements for multi-link systems:

(a) Definitions:

(i) "Discount rate" means the current prime rate as published in the *Wall Street Journal.*

(ii) "Periodic payments" means progressive jackpot awards paid in a series of annual payments.

(iii) "Present value" means the current value of a future payment or series of payments, discounted using the discount rate.

(b) The person authorized to operate a multi-link system must maintain funds in a bank, or other financial institution IN COLORADO, WHICH IS chartered by the State of Colorado OR ANY OTHER STATE OR THE UNITED STATES GOVERNMENT, equal to:

(i) The first payment of a progressive jackpot award(s) paid in periodic payments, plus

(ii) The present value of the aggregate remaining balance of the periodic payments owed on all jackpots won by patrons on the multi-link system(s). with commission approval, persons authorized to operate a multi-link system can purchase U.S. Government backed fixed-income instruments (i.e., "treasury strips") or U.S. Agency Securities to fund the jackpots paid over multiple years.

These amounts must be maintained for each multi-link progressive jackpot.

(c) For progressive jackpot awards that are paid in a single payment, the person authorized to operate a multi-link system must maintain funds in a bank, or other financial institution IN COLORADO, WHICH IS chartered by the State of Colorado OR ANY OTHER STATE OR THE UNITED STATES GOVERNMENT, equal to:

(i) The current progressive liability as reflected on the progressive jackpot meter(s), plus

(ii) The present value of one additional multi-link progressive jackpot reset amount.

These amounts must be maintained for each multi-link progressive jackpot.

(d) On a quarterly basis, the person authorized to operate a Colorado multi-link system must provide to the division a report detailing the required funds.

47.1-1279 Wireless ~~handheld validation unit~~APPLICATIONS and the supporting wireless local area network.

(1) Wireless handheld validation units may be used with a supporting wireless local area network (WLAN) for activities that impact gaming transactions provided the following security precautions are observed:

(~~1~~A) The wireless local area network must comply with industry standards, defined in the Internal Control Minimum Procedures;

(~~2~~B) An authentication process must comply with industry standards, defined in the Internal Control Minimum Procedures, to maintain network security;

(~~3~~C) Licensees will provide an encryption/decryption process which complies with industry standards, defined in the Internal Control Minimum Procedures, to maintain network security;

(~~4~~D) Each unit and user must be authenticated to the gaming system before transactions can proceed. Users must be authorized and registered in the gaming system to perform transactions; *Amended 11/30/14*

(~~5~~E) All wireless access points and units must be controlled to prevent unauthorized physical and virtual access;

(~~6~~F) Each wireless access point must communicate through a firewall. The firewall must reside between the WLAN and the Local Area Network (LAN);

(~~7~~G) An Intrusion Detection System (IDS) and an Intrusion Protection System (IPS) must be used to identify and prevent attacks from unauthorized users and devices. The IDS/IPS must have a system produced audit trail, and must be provided to the Division upon request;

(~~8~~H) Each wireless access point and device must be configured so that the settings are different from the default values and must not identify the casino, Service Set Identifier (SSID) or domain name;

(~~9~~I) The licensee must perform periodic review and testing of the unit and the supporting WLAN as defined in the Internal Control Minimum Procedures;

(~~10~~J) The licensee will be held responsible for proper use of the unit and the supporting WLAN as defined in the Internal Control Minimum Procedures; and

(~~11~~K) Wireless handheld transactions cannot occur outside the licensed premises.

(2) OTHER WIRELESS APPLICATIONS THAT DO NOT IMPACT GAMING TRANSACTIONS, MUST BE REVIEWED AND APPROVED BY THE DIVISION.

Notice of Proposed Rulemaking

Tracking number

2016-00032

Department

1000 - Department of Public Health and Environment

Agency

1007 - Hazardous Materials and Waste Management Division

CCR number

6 CCR 1007-3

Rule title

HAZARDOUS WASTE

Rulemaking Hearing

Date

02/16/2016

Time

09:30 AM

Location

CDPHE, Bldg. A, Sabin Conference Room, 4300 Cherry Creek Drive South, Denver, Co 80246

Subjects and issues involved

These amendments modify Parts 261, 262, 264, 265, 99 and 100 of the Colorado Hazardous Waste Regulations (6 CCR 1007-3) to: 1) require generators and any other party engaged in any operation or activity which results in a spill or discharge of characteristic or listed hazardous waste subject to the regulations to notify the Division of such discharge or disposal; and 2) to clarify that Corrective Action Plans (CAPs) are permits and can serve in place of traditional RCRA permits for corrective action and closure activities.

Statutory authority

§ 25-15-302(2), C.R.S.

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DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

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

6 CCR 1007-3

HAZARDOUS WASTE

Proposed Spill Notification Requirements

1) Section 261.5 is amended by adding paragraph (b)(6) to read as follows:

§ 261.5 Special requirements for hazardous waste generated by conditionally exempt small quantity generators.

****

(b) *******

(5) Conditionally exempt small quantity generators shall comply with § 265.31(a) relating to maintaining and operating their facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents.

(6) A conditionally exempt small quantity generator engaged in any operation or activity which results in a spill or discharge of characteristic or listed hazardous waste subject to these regulations which either may, or has subsequently been determined, to have entered the environment via emission into the air, discharge onto the land or discharge into any surface water or ground water contrary to the provisions of these regulations, shall notify the Department of such discharge or disposal. The requirement to notify applies in all instances where a facility discovers a discharge has entered the environment, regardless of when the discharge is discovered in relation to the actual release date, and regardless of whether the discharge warrants a response under an emergency contingency plan. This requirement to report potential or known releases to the environment shall be conducted pursuant to § 262.43(c) of these regulations.

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2) Section 262.43 is amended by adding paragraphs (c) – (c)(10) to read as follows:

§ 262.43 Additional reporting.

****

(c) A generator engaged in any operation or activity which results in a spill or discharge of characteristic or listed hazardous waste subject to these regulations which either may, or has subsequently been determined to, have entered the environment via emission into the air, discharge onto the land or discharge into any surface water or ground water contrary to the provisions of these regulations, shall notify the Department of such discharge or disposal. The requirement to notify applies in all instances where a facility discovers a discharge has entered the environment, regardless of when the discharge is discovered in relation to the actual release date, and regardless of whether the discharge warrants a response under an emergency contingency plan. Within 15 days after the incident or discovery, the generator must submit a written report on the incident or discovery to the Department. The report must include:

(1) Name, address, and telephone number of the owner or operator;

(2) Name, address, and telephone number of the facility;

(3) Date, time, and type of incident (e.g., spill, fire, explosion) or discovery of a release in soil, surface water or ground water;

(4) Name and quantity of material(s) involved;

(5) Any data documenting the presence of hazardous waste or hazardous constituents in soil, surface water or ground water;

(6) The extent of injuries or the potential for people to be exposed, if any;

(7) An assessment of actual or potential hazards to human health or the environment, where this is applicable;

(8) Estimated quantity and disposition of recovered material that resulted from the incident;

(9) Any data that might characterize the extent and magnitude of the release following the initial discovery, if available; and

(10) For those releases that cannot be fully cleaned up within 15 days after the incident or discovery, the report should describe how the release will be characterized and remediated pursuant to § 100.10(a)(8).

3) Section 264.1 is amended by revising paragraph (g)(8)(iii) to read as follows:

§ 264.1 Purpose, scope and applicability.

****

(g) The requirements of this part do not apply to:

****

(8)(i) Except as provided in paragraph (g)(8)(ii) of this section, a person engaged in treatment or containment activities during immediate response to any of the following situations:

(A) A discharge of a hazardous waste;

(B) An imminent and substantial threat of a discharge of hazardous waste;

(C) A discharge of a material which, when discharged, becomes a hazardous waste.

(ii) An owner or operator of a facility otherwise regulated by this part must comply with all applicable requirements of Subparts C and D.

(iii) Any person who is covered by paragraph (g)(8)(i) of this section and who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this part~~.~~ **, unless the activities are conducted under a Division-approved Corrective Action Plan prepared in accordance with § 100.26 authorizing corrective action or closure activities at a non-permitted facility.**

(iv) In the case of emergencies involving military munitions, the responding military emergency response specialist's organizational unit must retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

****

4) Section 265.1 is amended by revising paragraph (c)(11)(iii) to read as follows:

§ 265.1 Purpose, scope, and applicability.

****

(c) The requirements of this part do not apply to:

****

(11)(i) Except as provided in paragraph (c)(11)(ii) of this section, a person engaged in treatment or containment activities during immediate response to any of the following situations:

(A) A discharge of a hazardous waste;

(B) An imminent and substantial threat of a discharge of a hazardous waste;

(C) A discharge of a material which, when discharged, becomes a hazardous waste.

(ii) An owner or operator of a facility otherwise regulated by this part must comply with all applicable requirements of Subparts C and D.

(iii) Any person who is covered by paragraph (c)(11)(i) of this section and who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this Part~~.~~ **, unless the activities are conducted under a Division-approved Corrective Action Plan prepared in accordance with § 100.26 authorizing corrective action or closure activities at a non-permitted facility.**

(iv) In the case of emergencies involving military munitions, the responding military emergency response specialist's organizational unit must retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

****

5) Part 99 is amended by adding paragraph (f) to read as follows:

PART 99 - NOTIFICATION

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(f) Any person engaged in any operation or activity which results in a spill or discharge of characteristic or listed hazardous waste subject to these regulations which may enter the environment via emission into the air, discharge onto the land or discharge into any surface water or ground water contrary to the provisions of these regulations, as soon as the person has knowledge thereof, shall notify the Department of such discharge or disposal.

6) Section 100.10 is amended by revising paragraph (a)(8) to read as follows:

§ 100.10 SCOPE OF THE RCRA PERMIT REQUIREMENT. Who must apply?

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(a) Specific exclusions from the RCRA permit requirement:

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(8) Persons who carry out activities to immediately contain or treat a discharge, or an imminent and substantial threat of a discharge, of hazardous waste or material which, when discharged, becomes a hazardous waste. After the immediate response activities are completed, any treatment, storage, or disposal of discharged material or discharge residue or debris that is undertaken must be covered by a RCRA permit, an emergency RCRA permit or ~~or~~ **an** interim status **corrective action order pursuant to § 265.5. Facilities subject only to the corrective action or closure requirements of Part 264 or Part 265 may alternatively use an enforceable document pursuant to § 100.10(d), or a Corrective Action Plan pursuant to § 100.26**. In the case of emergency responses involving military munitions, the responding military emergency response specialist's organizational unit must retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

****

7) Section 100.10 is amended by adding paragraph (e) to read as follows:

§ 100.10 SCOPE OF THE RCRA PERMIT REQUIREMENT. Who must apply?

****

(e) Corrective Action Plans. At the Department's discretion, an owner or operator may obtain a Corrective Action Plan in accordance with § 100.26 authorizing corrective action or closure activities at a non-permitted facility to satisfy the permitting requirements of this Part 100.

8) Section 100.26 is amended by adding paragraph (e) to read as follows:

§ 100.26 Corrective Action Plan.

(a) The owner or operator of a hazardous waste facility that is subject to the corrective action or closure requirements of Part 264 or Part 265, but that does not currently have a treatment, storage or disposal permit, may submit an application for a Corrective Action Plan to conduct corrective action or closure. Applications for such plans may be for entire facilities or portions thereof. **An approved Corrective Action Plan serves as a permit for the facility.**

****

9) Section 8.85 {Statement of Basis and Purpose for the Rulemaking Hearing of February 16, 2016} is added to Part 8 of the Regulations to read as follows:

Statement of Basis and Purpose
Rulemaking Hearing of February 16, 2016

8.85 Basis and Purpose.

These amendments to 6 CCR 1007-3, Parts 261, 262, 264, 265, 99 and 100 are made pursuant to the authority granted to the Solid and Hazardous Waste Commission in § 25-15-302(2), C.R.S.

These amendments modify Parts 261, 262, 264, 265, 99 and 100 of the Colorado Hazardous Waste Regulations (6 CCR 1007-3) to: 1) require generators and any other party engaged in any operation or activity which results in a spill or discharge of characteristic or listed hazardous waste subject to the regulations to notify the Division of such discharge or disposal; and 2) to clarify that Corrective Action Plans (CAPs) are permits and can serve in place of traditional RCRA permits for corrective action and closure activities.

Proposed Spill Notification Requirements

The requirement to notify applies in all instances where a facility discovers a discharge has entered the

environment, regardless of when the discharge is discovered in relation to the actual release date, and regardless of whether the discharge warrants a response under an emergency contingency plan.

In accordance with additional reporting requirements of § 262.43(c), a generator must submit a written report on the incident or discovery to the Department with 15 days after the incident or discovery of the incident. The report must include the following information:

(1) Name, address, and telephone number of the owner or operator;

(2) Name, address, and telephone number of the facility;

(3) Date, time, and type of incident (e.g., spill, fire, explosion) or discovery of a release in soil, surface water or ground water;

(4) Name and quantity of material(s) involved;

(5) Any data documenting the presence of hazardous waste or hazardous constituents in soil, surface water or ground water;

(6) The extent of injuries or the potential for people to be exposed, if any;

(7) An assessment of actual or potential hazards to human health or the environment, where this is applicable;

(8) Estimated quantity and disposition of recovered material that resulted from the incident;

(9) Any data that might characterize the extent and magnitude of the release following the initial discovery, if available; and

(10) For those releases that cannot be fully cleaned up within 15 days after the incident or discovery, the report should describe how the release will be characterized and remediated pursuant to § 100.10(a)(8).

Currently there is no requirement in the Colorado Hazardous Waste Regulations to notify the Department of such releases or to clean up releases in a timely manner. By requiring this notification, the Department will have the opportunity to work with the facility owner/operator sooner so as to quickly respond to the releases of chemical contamination in an effort to minimize or eliminate long-term impacts to environmental media. Responding to these discoveries sooner has several advantages: a) minimizing the quantity and extent of the contaminated area; b) expediting remedial activities; c) reducing expenses by limiting the impacted area from a quicker response; and d) increasing the overall likelihood of successful remediation. The Department is presently notified of releases at one to two dozen sites per year, primarily as a result of Phase II due diligence investigations conducted in advance of a property sale or refinancing. The Department does not anticipate these rule changes will significantly increase this reporting rate. Rather, it should prompt timely reporting of spills, leaks and other non-emergency incidents.

The adopted amendments regarding additional notification requirements are:

1) Addition of paragraph (b)(6) to § 261.5 (Special requirements for hazardous waste generated by conditionally exempt small quantity generators (CESQGs)). CESQGs are presently not required to report releases to the Department even though many of the reported releases originate at this category of site.

2) Addition of paragraph (c) to § 262.43 (Additional reporting for Generators of Hazardous Waste). Presently both large and small quantity generators are required to comply with Part 265, Subpart D contingency plan requirements. This includes immediately notifying the National Response

Center, followed by the Department within 15 days of implementing their contingency plan in response to a fire, explosion, or any unplanned sudden or nonsudden release of hazardous waste or hazardous constituents to air, soil, surface or ground water at the facility. However, this requirement does not apply to sudden and nonsudden spill incidents of products becoming hazardous waste upon contact with environmental media. Nor does this requirement apply to ongoing, nonsudden releases that don't necessarily trigger implementation of a contingency plan. Nonsudden releases are often overlooked by the regulated community as emergency incidents requiring immediate action, prolonging notification of the facilities' release discovery to the Department for months and, in some cases, years. This new paragraph (c) establishes an affirmative duty on all generators to report any release of hazardous waste or hazardous materials contaminating environmental media which, in turn, will facilitate prompt corrective action. As noted previously, this should not necessarily increase the number of incidents reported, just the speed with which the Department learns of the events.

3) Addition of paragraph (f) to Part 99 (Notification). Part 99 prohibits hazardous waste subject to the regulations from being generated, transported, treated, stored, or disposed unless prior notification has been given as required under this part. The addition of paragraph (f) to Part 99 is meant to broaden that notification requirement to include new and historic releases that constitute disposal under the Colorado Hazardous Waste Act, the contamination from which, unlike the other cited activities, can have significant and long lasting consequences.

Clarifying Corrective Action Plans are Permits

In 1999, the Commission adopted § 100.26 to the Regulations establishing the Corrective Action Plan (CAP) as an alternative to a formal RCRA permit. At that time, the Commission expressly stated its intent was to "create a streamlined *permit* authorizing corrective action or closure at non-permitted facilities." *Statement of Basis and Purpose for Rulemaking Hearing of April 20, 1999, 6 CCR 1007-3 §8.38*. Nonetheless, confusion evolved within the regulated community regarding whether a CAP is in fact a permit subject to Department enforcement authority pursuant to § 25-15-308, C.R.S. The following amendments clarify CAPS are Permits:

1) Addition of paragraph (e) to § 100.10 (Scope of the RCRA Permit Requirement). Section 100.10 of the regulations identifies enforceable mechanisms an operator of a facility and the Department can use to either close or conduct post-closure care for a hazardous waste management unit in lieu of a formal RCRA permit. Paragraph (e) specifies CAPS are included as an alternative to a formal RCRA permit. Pursuant to § 100.26, CAPS provide operators with a streamlined process to obtain an enforceable mechanism governing remedial activities. The CAP provisions are far less onerous compared to the process for obtaining a formal RCRA permit outlined in the remainder of Part 100.

2) Amendment of paragraph (a) of § 100.26 (Corrective Action Plan). The amendment to § 100.26 explicitly states an approved CAP serves as a permit for a facility engaging in corrective action activities. In a number of instances, facility operators were not aware of this distinction, and mistakenly perceived activities pursuant to CAPs as "voluntary" in nature. Despite this misperception, the Department consistently requires facilities to complete CAP obligations, and on multiple occasions was forced to utilize significant state resources pursuing formal enforcement actions to gain CAP compliance. The added language clarifies CAPS are formal permits and eliminates the notion that activities specified in CAPS are voluntary.

3) Amendment of § 264.1(g)(8)(iii) and § 265.1(c)(11)(iii). Section 264.1(g)(8)(iii) and § 265.1(c)(11)(iii) of the regulations presently state that hazardous waste treatment or containment activities conducted after the immediate response to a release are subject to all applicable permitting requirements. Amending 264.1(g)(8)(iii) and 265.1(c)(11)(iii) is

meant to give operators yet another enforceable mechanism that they can use to complete remedial activities in lieu of a formal RCRA permit.

These amendments are more stringent than the federal regulations. The Commission has evaluated the information presented at the rulemaking hearing, as well as the information in the Statement of Basis and Purpose. The Commission considers this information sufficient to justify adopting the proposed rule. The Commission finds that this rule is necessary to protect public health and the environment.

Notice of Proposed Rulemaking

Tracking number

2016-00031

Department

1000 - Department of Public Health and Environment

Agency

1007 - Hazardous Materials and Waste Management Division

CCR number

6 CCR 1007-3

Rule title

HAZARDOUS WASTE

Rulemaking Hearing

Date

02/16/2016

Time

09:30 AM

Location

CDPHE, Bldg. A, Sabin Conference Room, 4300 Cherry Creek Drive South, Denver, CO 80246

Subjects and issues involved

These amendments to Parts 260 and 261 of the Colorado Hazardous Waste Regulations (6 CCR 1007-3) adopt states analogs to the federal provisions of the January 2015 DSW rule that are considered to be more stringent than the current federal requirements, including: 1) the prohibition of sham recycling and the definition of legitimate recycling (including the definition of contained); 2) accumulation date tracking requirements for speculative accumulation provisions; and 3) changes to the standards and criteria for the solid waste variance and non-waste determinations.

Statutory authority

§ 25-15-302(2), C.R.S.

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DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

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

6 CCR 1007-3

HAZARDOUS WASTE

Definition of Solid Waste Amendments

1) Section 260.10 is amended by adding the definitions of "Contained" and "Hazardous secondary material" in alphabetical order to read as follows:

§ 260.10 Definitions

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"Contained" means held in a unit (including a land-based unit as defined in this subpart) that meets the following criteria:

(1) The unit is in good condition, with no leaks or other continuing or intermittent unpermitted releases of the hazardous secondary materials to the environment, and is designed, as appropriate for the hazardous secondary materials, to prevent releases of hazardous secondary materials to the environment. Unpermitted releases are releases that are not covered by a permit (such as a permit to discharge to water or air) and may include, but are not limited to, releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures;

(2) The unit is properly labeled or otherwise has a system (such as a log) to immediately identify the hazardous secondary materials in the unit; and

(3) The unit holds hazardous secondary materials that are compatible with other hazardous secondary materials placed in the unit and is compatible with the materials used to construct the unit and addresses any potential risks of fires or explosions.

(4) Hazardous secondary materials in units that meet the applicable requirements of 40 CFR parts 264 or 265 are presumptively contained.

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"Hazardous secondary material" means a secondary material (e.g., spent material, by-product, or sludge) that, when discarded, would be identified as hazardous waste under Part 261 of these regulations.

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2) Section 260.30 is amended by revising the section heading; revising paragraph (a);

and adding paragraphs (d) and (e) to read as follows:

§ 260.30 Non-Waste determinations and ~~V~~variances from classification as a solid waste.

In accordance with the standards and criteria in § 260.31 **and § 260.34** and the procedures in § 260.33, the Department may determine on a case by case basis that the following recycled materials are not solid wastes:

(a) Materials that are accumulated speculatively without sufficient amounts being recycled (as defined in § 261.1~~(c)~~**(d)**(8) of these regulations);

(b) *******

(c) *******

(d) Hazardous secondary materials that are reclaimed in a continuous industrial process; and

(e) Hazardous secondary materials that are indistinguishable in all relevant aspects from a product or intermediate.

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3) Section 260.31 is amended by revising paragraph (c) to read as follows:

§ 260.31 Standards and criteria for variances from classification as a solid waste.

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(c) The Department may grant requests for a variance from classifying as a solid waste those **hazardous secondary** materials that have been **partially** reclaimed**,** but must be reclaimed further before recovery is completed**,** if~~, after initial reclamation, and resulting material is commodity-like (even though it is not yet a commercial product, and has to be reclaimed further). This determination will be based on the following factors:~~ **the partial reclamation has produced a commodity-like material. A determination that a partially-reclaimed material for which the variance is sought is commodity-like will be based on whether the hazardous secondary material is legitimately recycled as specified in § 260.43 of this part and on whether all of the following decision criteria are satisfied:**

(1) ~~The degree of processing the materials had undergone and the degree of further processing that is required;~~ **Whether the degree of partial reclamation the material has undergone is substantial as demonstrated by using a partial reclamation process other than the process that generated the hazardous waste;**

(2) ~~The value of the material after it has been reclaimed;~~ **Whether the partially-reclaimed material has sufficient economic value that it will be purchased for further reclamation;**

(3) ~~The degree to which the reclaimed material is like an analogous raw material;~~ **Whether the partially-reclaimed material is a viable substitute for a product or intermediate produced from virgin or raw materials which is used in subsequent production steps;**

(4) ~~The extent to which an end market for the reclaimed material is guaranteed;~~ **Whether there is a market for the partially-reclaimed material as demonstrated by known customer(s) who are further reclaiming the material (e.g., records of sales and/or contracts and evidence of subsequent use, such as bills of lading); and**

(5) ~~The extent to which the reclaimed material is handled to minimize loss;~~ **Whether the partially-reclaimed material is handled to minimize loss.**

~~(6) Other relevant factors.~~

4) Section 260.33 is amended by revising the section heading and paragraph (a), and adding paragraphs (c), (d) and (e) to read as follows:

§ 260.33 Procedures for variances from classification as a solid waste, for variances ~~or~~ to be classified as a boiler, or for non-waste determinations.

The Department will use the following procedures in evaluating applications for variances from classification as a solid waste or applications to classify particular enclosed controlled flame combustion devices as boilers:

(a) The applicant must apply to the Department for the variance **or non-waste determination**. The application must address the relevant criteria contained in § 260.31**, ~~or~~** § 260.32**, or § 260.34** of this Part**, as applicable**.

(b) *******

(c) In the event of a change in circumstances that affect how a hazardous secondary material meets the relevant criteria contained in § 260.31, § 260.32, or § 260.34 upon which a variance or non-waste determination has been based, the applicant must send a description of the change in circumstances to the Department. The Department may issue a determination that the hazardous secondary material continues to meet the relevant criteria of the variance or non-waste determination or may require the facility to re-apply for the variance or non-waste determination.

(d) Variances and non-waste determinations shall be effective for a fixed term not to exceed ten years. No later than six months prior to the end of this term, facilities must re-apply for a variance or non-waste determination. If a facility re-applies for a variance or non-waste determination within six months, the facility may continue to operate under an expired variance or non-waste determination until receiving a decision on their re-application from the Department.

(e) Facilities receiving a variance or non-waste determination must provide notification as required by § 260.42 of these regulations.

5) The existing Section 260.34 (Standards and Criteria for Non-waste Confirmations) is being deleted in its entirety and replaced with a new Section 260.34 (Standards and criteria for non-waste determinations) to read as follows:

§ 260.34 Standards and criteria for non-waste determinations.

(a) An applicant may apply to the Department for a formal determination that a hazardous secondary material is not discarded and therefore not a solid waste. The determinations will be based on the criteria contained in paragraphs (b) or (c) of this section, as applicable. If an application is denied, the hazardous secondary material might still be eligible for a solid waste variance or exclusion (for example, one of the solid waste variances under § 260.31).

(b) The Department may grant a non-waste determination for hazardous secondary material which

is reclaimed in a continuous industrial process if the applicant demonstrates that the hazardous secondary material is a part of the production process and is not discarded. The determination will be based on whether the hazardous secondary material is legitimately recycled as specified in § 260.43 and on the following criteria:

(1) The extent that the management of the hazardous secondary material is part of the continuous primary production process and is not waste treatment;

(2) Whether the capacity of the production process would use the hazardous secondary material in a reasonable time frame and ensure that the hazardous secondary material will not be abandoned (for example, based on past practices, market factors, the nature of the hazardous secondary material, or any contractual arrangements);

(3) Whether the hazardous constituents in the hazardous secondary material are reclaimed rather than released to the air, water or land at significantly higher levels from either a statistical or from a health and environmental risk perspective than would otherwise be released by the production process; and

(4) Other relevant factors that demonstrate the hazardous secondary material is not discarded, including why the hazardous secondary material cannot meet, or should not have to meet, the conditions of an exclusion under § 261.2 or § 261.4 of these regulations.

(c) The Department may grant a non-waste determination for hazardous secondary material which is indistinguishable in all relevant aspects from a product or intermediate if the applicant demonstrates that the hazardous secondary material is comparable to a product or intermediate and is not discarded. The determination will be based on whether the hazardous secondary material is legitimately recycled as specified in § 260.43 and on the following criteria:

(1) Whether market participants treat the hazardous secondary material as a product or intermediate rather than a waste (for example, based on the current positive value of the hazardous secondary material, stability of demand, or any contractual arrangements);

(2) Whether the chemical and physical identity of the hazardous secondary material is comparable to commercial products or intermediates;

(3) Whether the capacity of the market would use the hazardous secondary material in a reasonable time frame and ensure that the hazardous secondary material will not be abandoned (for example, based on past practices, market factors, the nature of the hazardous secondary material, or any contractual arrangements);

(4) Whether the hazardous constituents in the hazardous secondary material are reclaimed rather than released to the air, water or land at significantly higher levels from either a statistical or from a health and environmental risk perspective than would otherwise be released by the production process; and

(5) Other relevant factors that demonstrate the hazardous secondary material is not discarded, including why the hazardous secondary material cannot meet, or should not have to meet, the conditions of an exclusion under § 261.2 or § 261.4 of these regulations.

6) Part 260 is amended by adding Section 260.42 (Notification requirement for hazardous secondary materials) to read as follows:

§ 260.42 Notification requirement for hazardous secondary materials.

(a) Facilities managing hazardous secondary materials under § 260.30 must send a notification prior to operating under the regulatory provision and by March 1 of each even-numbered year

thereafter to the Department using the Colorado Hazardous Waste Notification Form that includes the following information:

(1) The name, address, and EPA ID number (if applicable) of the facility;

(2) The name and telephone number of a contact person;

(3) The NAICS code of the facility;

(4) The regulation under which the hazardous secondary materials will be managed;

(5) When the facility began or expects to begin managing the hazardous secondary materials in accordance with the regulation;

(6) A list of hazardous secondary materials that will be managed according to the regulation (reported as the EPA hazardous waste numbers that would apply if the hazardous secondary materials were managed as hazardous wastes);

(7) For each hazardous secondary material, whether the hazardous secondary material, or any portion thereof, will be managed in a land-based unit;

(8) The quantity of each hazardous secondary material to be managed annually; and

(9) The certification (included in the Colorado Hazardous Waste Notification Form) signed and dated by an authorized representative of the facility.

(b) If a facility managing hazardous secondary materials has submitted a notification, but then subsequently stops managing hazardous secondary materials in accordance with the regulation(s) listed above, the facility must notify the Department within thirty (30) days using the Colorado Hazardous Waste Notification Form. For purposes of this section, a facility has stopped managing hazardous secondary materials if the facility no longer generates, manages and/or reclaims hazardous secondary materials under the regulation(s) above and does not expect to manage any amount of hazardous secondary materials for at least 1 year.

7) Part 260 is amended by adding Section 260.43 (Legitimate recycling of hazardous secondary materials) to read as follows:

§ 260.43 Legitimate recycling of hazardous secondary materials.

(a) Recycling of hazardous secondary materials for the purpose of the exclusions or exemptions from the hazardous waste regulations must be legitimate. Hazardous secondary material that is not legitimately recycled is discarded material and is a solid waste. In determining if their recycling is legitimate, persons must address all the requirements of this paragraph.

(1) Legitimate recycling must involve a hazardous secondary material that provides a useful contribution to the recycling process or to a product or intermediate of the recycling process. The hazardous secondary material provides a useful contribution if it:

(i) Contributes valuable ingredients to a product or intermediate; or

(ii) Replaces a catalyst or carrier in the recycling process; or

(iii) Is the source of a valuable constituent recovered in the recycling process; or

(iv) Is recovered or regenerated by the recycling process; or

(v) Is used as an effective substitute for a commercial product.

(2) The recycling process must produce a valuable product or intermediate. The product or intermediate is valuable if it is:

(i) Sold to a third party; or

(ii) Used by the recycler or the generator as an effective substitute for a commercial product or as an ingredient or intermediate in an industrial process.

(3) The generator and the recycler must manage the hazardous secondary material as a valuable commodity when it is under their control. Where there is an analogous raw material, the hazardous secondary material must be managed, at a minimum, in a manner consistent with the management of the raw material or in an equally protective manner. Where there is no analogous raw material, the hazardous secondary material must be contained. Hazardous secondary materials that are released to the environment and are not recovered immediately are discarded.

(4) The product of the recycling process must be comparable to a legitimate product or intermediate:

(i) Where there is an analogous product or intermediate, the product of the recycling process is comparable to a legitimate product or intermediate if:

(A) The product of the recycling process does not exhibit a hazardous characteristic (as defined in Part 261 Subpart C) that analogous products do not exhibit, and

(B) The concentrations of any hazardous constituents found in Appendix VIII of Part 261 of these regulations that are in the product or intermediate are at levels that are comparable to or lower than those found in analogous products or at levels that meet widely-recognized commodity standards and specifications, in the case where the commodity standards and specifications include levels that specifically address those hazardous constituents.

(ii) Where there is no analogous product, the product of the recycling process is comparable to a legitimate product or intermediate if:

(A) The product of the recycling process is a commodity that meets widely recognized commodity standards and specifications (e.g., commodity specification grades for common metals), or

(B) The hazardous secondary materials being recycled are returned to the original process or processes from which they were generated to be reused (e.g., closed loop recycling).

(iii) If the product of the recycling process has levels of hazardous constituents that are not comparable to or unable to be compared to a legitimate product or intermediate per paragraph (a)(4)(i) or (ii) of this section, the recycling still may be shown to be legitimate, if it meets the following specified requirements. The person performing the recycling must conduct the necessary assessment and prepare documentation showing why the recycling is, in fact, still legitimate. The recycling can be shown to be legitimate based on lack of exposure from toxics in the product, lack of the bioavailability of the toxics in the product, or other relevant considerations which show that the recycled product does not

contain levels of hazardous constituents that pose a significant human health or environmental risk. The documentation must include a certification statement that the recycling is legitimate and must be maintained on-site for three years after the recycling operation has ceased. The person performing the recycling must notify the Department of this activity using the Colorado Hazardous Waste Notification Form.

(b)-(c) [Reserved]

8) Section 261.1 is amended by revising paragraphs (d)(8) to read as follows:

§ 261.1 Purpose and scope.

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(d) For the purposes of §§ 261.2 and 261.6:

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(8) A material is "accumulated speculatively" if it is accumulated before recycled. A material is not accumulated speculatively, however, if the person accumulating it can show that the material is potentially recyclable and has a feasible means of being recycled; and that–during the calendar year (commencing on January 1)–the amount of material that is recycled, or transferred to a different site for recycling, equals at least 75% by weight or volume of the amount of that material accumulated at the beginning of the period. **Materials must be placed in a storage unit with a label indicating the first date that the material began to be accumulated. If placing a label on the storage unit is not practicable, the accumulation period must be documented through an inventory log or other appropriate method.** In calculating the percentage of turnover, the 75% requirement is to be applied to each material of the same type (e.g., slags from a single smelting process) that is recycled in the same way (i.e., from which the same material is recovered or that is used in the same way). Materials accumulating in units that would be exempt from regulation under § 261.4(c) are not to be included in making the calculation. ~~(~~Materials that are already defined as solid wastes also are not to be included in making the calculation.~~)~~ Materials are no longer in this category once they are removed from accumulation for recycling, however.

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9) Section 261.2 is amended by revising paragraph (b)(3); adding paragraph (b)(4); revising paragraph (c)(3); and revising table 1 in paragraph (c)(4) to read as follows:

§ 261.2 Definition of solid waste.

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(b) Materials are solid waste if they are abandoned by being:

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(3) Accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated~~.~~**;or**

(4) Sham recycled, as explained in paragraph (g) of this section.

(c) Materials are solid wastes if they are recycled or accumulated, stored, or treated before recycling as specified in paragraphs (c)(1) through (c)(4) of this section.

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(3) **Reclaimed**. **Materials noted with a "---" in column 3 of Table 1 are not solid wastes when reclaimed**. Materials noted with a "*" in column 3 of Table 1 are solid wastes when reclaimed **unless they meet the requirements of** ~~(except as provided under~~ §**§** 261.4(a)(17)**, or 261.4(a)(23), 261.4(a)(24), or 261.4(a)(27).** ~~of these regulations). Materials noted with a "---" in column 3 of Table 1 are not solid wastes when reclaimed.~~

(4) **Accumulated speculatively**. Materials noted with a "*" in column 4 of Table 1 are solid wastes when accumulated speculatively.

Table 1

	Use constituting disposal (§ 261.2(c)(1))	Energy recovery/fuel (§ 261.2(c)(2))	Reclamation (§ 261.2(c)(3)) (except as provided in § 261.4(a)(17) for mineral processing secondary materials)	Speculative accumulation (§ 261.2(c)(4))
	(1)	(2)	(3)	(4)
Spent Materials	(*)	(*)	(*)	(*)
Sludges (listed in § 261.31 or § 261.32)	(*)	(*)	(*)	(*)

Sludges exhibiting a characteristic of hazardous waste	(*)	(*)	(---)	(*)
By-products (listed in § 261.31 or § 261.32)	(*)	(*)	(*)	(*)
By-products exhibiting a characteristic of hazardous waste	(*)	(*)	(---)	(*)
Commercial chemical products listed in § 261.33	(*)	(*)	(---)	(---)
Scrap metal ~~other than~~ **that is not** excluded **under § 261.4(a)(14)** ~~scrap metal (see § 261.1(d)(9))~~	(*)	(*)	(*)	(*)

Note: The terms "spent materials", "sludges", "by-products", "scrap metal", and "processed scrap metal" are defined in ' 261.1.

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10) Section 261.2 is amended by deleting and reserving paragraph (f)(2) and adding paragraph (g) to read as follows:

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(f)(1) **Documentation of claims that materials are not solid wastes or are conditionally exempt from regulation**. In order to claim that a certain material is not a solid waste or is conditionally exempt from regulation, owners or operators must demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so. Materials that are not legitimately recycled are discarded and are solid waste. In determining whether their recycling is legitimate, owners or operators must address the requirements below.

(2) **Reserved.** ~~Legitimate recycling must involve a material that provides a useful contribution to the recycling process or to a product or intermediate of the recycling process, and the recycling process must produce a valuable product or intermediate.~~

~~i. The material provides a useful contribution if it:~~

~~A. Contributes valuable ingredients to a product or intermediate; or~~

~~B. Replaces a catalyst or carrier in the recycling process; or~~

~~C. Is the source of a valuable constituent recovered in the recycling process; or~~

~~D. Is recovered or regenerated by the recycling process; or~~

~~E. Is used as an effective substitute for a commercial product.~~

~~ii. The product or intermediate is valuable if it is:~~

~~A. Sold to a third party; or~~

~~B. Used by the recycler or the generator as an effective substitute for a commercial product or as an ingredient or intermediate in an industrial process.~~

~~iii. The generator and the recycler must manage the material as a valuable commodity. Where there is an analogous raw material, the material must be managed, at a minimum, in a manner consistent with the management of the raw material. Where there is no analogous raw material, the material must be contained. Materials that are released to the environment and are not recovered immediately are discarded.~~

~~iv. The product of the recycling process must not:~~

~~A. Contain significant concentrations of any hazardous constituents found in Appendix VIII of Part 261 that are not found in analogous products; or~~

~~B. Contain concentrations of any hazardous constituents found in Appendix VIII of Part 261 at levels that are significantly elevated from those found in analogous products; or~~

~~C. Exhibit a hazardous characteristic (as defined in Part 261 Subpart C) that analogous products do not exhibit.~~

(g) Sham recycling. A hazardous secondary material found to be sham recycled is considered discarded and a solid waste. Sham recycling is recycling that is not legitimate recycling as defined in § 260.43.

11) Section 8.85 {Statement of Basis and Purpose for the Rulemaking Hearing of February 16, 2016} is added to Part 8 of the Regulations to read as follows:

Statement of Basis and Purpose
Rulemaking Hearing of February 16, 2016

8.85 Basis and Purpose.

These amendments to 6 CCR 1007-3, Parts 260 and 261 are made pursuant to the authority granted to the Solid and Hazardous Waste Commission in § 25-15-302(2), C.R.S.

Definition of Solid Waste Amendments

On January 13, 2015, the Environmental Protection Agency published a final rule in the Federal Register {80 FR 1694-1814} that revised several recycling-related provisions associated with the definition of solid waste (DSW) used to determine hazardous waste regulation under Subtitle C of the Resource Conservation and Recovery Act (RCRA). The 2015 DSW rule revised the previous 2008 DSW rule to provide additional oversight and minimize potential risk of releases to surrounding communities. The rule establishes a clear, uniform legitimate recycling standard for all hazardous secondary materials recycling to improve compliance and help ensure that the hazardous secondary materials are in fact legitimately recycled, rather than illegally disposed of. Establishing standards in the regulations for legitimate recycling makes it substantially harder for facilities who are illegally disposing under the guise of recycling to continue to operate in the marketplace. The intent of these revisions is to ensure that the hazardous secondary materials recycling regulations, as implemented, encourage reclamation in a way that does not result in the increased risk to human health and the environment from discarded hazardous secondary material.

Today's amendments to Parts 260 and 261 of the Colorado Hazardous Waste Regulations (6 CCR 1007-3) adopt states analogs to the federal provisions of the January 2015 DSW rule that are considered to be more stringent than the current federal requirements, including: 1) the prohibition of sham recycling and the definition of legitimate recycling (including the definition of "contained"); 2) accumulation date tracking requirements for speculative accumulation provisions; and 3) changes to the standards and criteria for the solid waste variance and non-waste determinations.

The specific amendments being adopted at this time include the following:

1) Addition of definition of "Contained" in § 260.10 – As defined in § 260.10, "*Contained*" means held in a unit (including a land-based unit as defined in this subpart) that meets the following criteria:

(i) The unit is in good condition, with no leaks or other continuing or intermittent unpermitted releases of the hazardous secondary materials to the environment, and is designed, as appropriate for the hazardous secondary materials, to prevent releases of hazardous secondary materials to the environment. Unpermitted releases are releases that are not covered by a permit (such as a permit to discharge to water or air) and may include, but are not limited to, releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures;

(ii) The unit is properly labeled or otherwise has a system (such as a log) to immediately identify the hazardous secondary materials in the unit; and

(iii) The unit holds hazardous secondary materials that are compatible with other hazardous secondary materials placed in the unit and is compatible with the materials used to construct the unit and addresses any potential risks of fires or explosions.

(iv) Hazardous secondary materials in units that meet the applicable requirements of Parts 264 or 265 are presumptively contained.

2) Addition of definition of "Hazardous secondary material" in § 260.10 – As defined in § 260.10, "*Hazardous secondary material*" means a secondary material (e.g., spent material, by-product, or sludge) that, when discarded, would be identified as hazardous waste under Part 261 of these regulations.

3) Amendment of § 260.31 Standards and criteria for variances from classification as a solid waste – Section 260.31(c) provides the specific standards that a partially-reclaimed material must meet in order to be eligible for a variance from classification from solid waste. The criteria for the partial

reclamation variance in § 260.31(c) clarifies when the variance applies and requires, among other things, that such reclamation meet the § 260.43 legitimacy criteria.

4) Amendment of § 260.33 Procedures for variances from classification as a solid waste, for variances to be classified as a boiler, or for non-waste determinations. – Section 260.33(c) requires facilities to send a notice to the Director and potentially re-apply for a variance in the event of a change in circumstances that affects how a hazardous secondary material meets the criteria upon which a solid waste variance or non-waste determination has been based. Section 260.33(d) establishes a fixed term limit of ten years for variance and non-waste determinations, unless the petitioner re-applies to the Department to have variance or non-waste determination renewed. Section 260.33(e) requires facilities to re-notify every two years under § 260.42 with updated information.

5) Amendment of § 260.34 Standards and criteria for non-waste determinations. – The existing Section 260.34 (Standards and Criteria for Non-waste Confirmations) is being deleted in its entirety and replaced with a new Section 260.34 (Standards and criteria for non-waste determinations) to match the federal language. The criteria for non-waste determinations in § 260.34(b)(4) and § 260.34(c)(5) require that petitioners for a non-waste determination explain or demonstrate why their hazardous secondary materials cannot meet, or should not have to meet, the conditions for a solid waste exclusion under § 261.2 or § 261.4.

6) Addition of § 260.42 Notification requirement for hazardous secondary materials. – Section 260.42 specifies the requirements that a facility managing hazardous secondary materials under § 260.30 must comply with. Facilities receiving variances or non-waste determinations must send a notification of this activity prior to operating under this regulatory provision and by March 1 of each even-numbered year thereafter to the Department. Additionally, these facilities must notify within 30 days of stopping management of hazardous secondary materials under the variance or non-waste determination.

7) Addition of § 260.43 Legitimate recycling of hazardous secondary materials. – The provisions of § 260.43 are designed to distinguish between real recycling activities(i.e., legitimate recycling) and "sham" recycling, and specifies the four mandatory factors that must be met for recycling to be legitimate. The four legitimacy factors are: 1) the hazardous secondary material must provide a useful contribution to the recycling process or product; 2) the recycling process must produce a valuable product or intermediate; 3) the hazardous secondary material must be managed as a valuable commodity; and 4) the recycled product must be comparable to a legitimate product or intermediate. **Note**: As part of this amendment, the existing legitimate recycling criteria currently found at § 261.2(f) are being deleted.

8) Amendment of § 261.1(d)(8) – Pursuant to the speculative accumulation requirements at § 261.1(d)(8), all persons subject to § 261.1(d)(8) must place materials subject to those requirements in a storage unit with a label indicating the first date that the material began to be accumulated. If placing a label on the storage unit is not practicable, the accumulation period must be documented through an inventory log or other appropriate method.

9) Amendment of § 261.2 – Section 261.2 is being amended to add materials that are "sham recycled" as the fourth type of abandoned materials that are solid waste under § 261.2(b), and adding a prohibition on sham recycling at § 261.2(g). A hazardous secondary material found to be sham recycled is considered discarded and a solid waste. Sham recycling is recycling that is not legitimate recycling as defined in § 260.43 of the Regulations.

This Basis and Purpose incorporates by reference the applicable portions of the preamble language for the EPA regulations as published in the Federal Register at 80 FR 1694-1814, January 13, 2015.

Notice of Proposed Rulemaking

Tracking number

2016-00030

Department

1000 - Department of Public Health and Environment

Agency

1007 - Hazardous Materials and Waste Management Division

CCR number

6 CCR 1007-3 Part 261

Rule title

HAZARDOUS WASTE - IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

Rulemaking Hearing

Date

02/16/2016

Time

09:30 AM

Location

CDPHE, Bldg. A, Sabin Conference Room, 4300 Cherry Creek Drive South, Denver, CO 80246

Subjects and issues involved

This amendment corrects an inconsistency in paragraph (b) of § 261.5 of the Colorado Hazardous Waste Regulations (6 CCR 1007-3) to specify that transfer facilities handling hazardous waste from conditionally exempt small quantity generators (CESQGs) are subject to the requirements of Subparts A, C, D &* E of Part 263 of the Colorado Hazardous Waste Regulations (6 CCR 1007-3).

Pursuant to the current wording § 261.5(b), CESQG waste would not be subject to the Part 263 regulations. This amendment corrects this unintended omission in the regulations and provides consistency with the Part 263 requirements.

Statutory authority

§ 25-15-302(2), C.R.S.

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DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

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

6 CCR 1007-3

HAZARDOUS WASTE

Proposed Amendment of § 261.5 (Special requirements for hazardous waste generated by conditionally exempt small quantity generators).

1) Paragraph (b) of § 261.5 is revised to read as follows:

§ 261.5 Special requirements for hazardous waste generated by conditionally exempt small quantity generators.

(a) *******

(b)(1) Except as provided in paragraph (b)(2), (b)(4), and (b)(5) of this section, a conditionally exempt small quantity generator's hazardous wastes are not subject to regulation under Part~~s~~ 262 **AND PARTS 264** through 268 and Part 100, and the notification requirements of Part 99 of these regulations, provided the generator complies with the requirements of paragraphs (e), (f), (g), and (j) of this section. **TRANSFER FACILITIES HANDLING CESQG WASTE ARE SUBJECT TO THE REQUIREMENTS OF SUBPARTS A, C, D & E OF PART 263 OF THESE REGULATIONS.**

****

2) Section 8.85 {Statement of Basis and Purpose for the Rulemaking Hearing of February 16, 2016} is added to Part 8 of the Regulations to read as follows:

Statement of Basis and Purpose
Rulemaking Hearing of February 16, 2016

8.85 Basis and Purpose.

This amendment to 6 CCR 1007-3, Part 261 is made pursuant to the authority granted to the Solid and Hazardous Waste Commission in § 25-15-302(2), C.R.S.

Amendment of § 261.5 Special requirements for hazardous waste generated by conditionally exempt small quantity generators.

This amendment corrects an inconsistency in paragraph (b) of § 261.5 of the Colorado Hazardous Waste Regulations (6 CCR 1007-3) that was created when amendments to the Part 263 Transfer Facility regulations were adopted by the Solid and Hazardous Waste Commission on May 18, 2010. As part of the Part 263 amendments, a new paragraph (b) was added to § 263.10, which specifies that transfer facilities handling only conditionally exempt small quantity generator (CESQG) waste are subject to the requirements of Subparts A (General Requirements), C (Hazardous Waste Discharges), D (Spills at Transfer Facilities) and E (Closure of a Transfer Facility). Transfer facilities handling only CESQG waste are not subject to the manifest requirements in Subpart B.

As documented in the Statement of Basis and Purpose from the May 18, 2010 Hearing (See § 8.73 of the Regulations), the Part 263 amendments were developed as part of a review of the Part 263 regulations conducted by the Hazardous Materials and Waste Management Division (the "Division"). This was done for the purpose of updating and improving the existing regulations that apply to transfer facilities in Colorado in order to ensure protection of public health and safety and the environment. Input from key stakeholders, including eight transfer facilities and representatives of the Colorado Emergency Planning Commission and the South Metro Fire Rescue Authority, was also incorporated into the development of these regulations.

The Division's review of the Part 263 regulations was initiated by a request from the Solid and Hazardous Waste Commission following a February 2009 briefing regarding a fire that occurred on October 5, 2006 at the Environmental Quality Co. (EQ) hazardous waste transfer facility in Apex, North Carolina. Mr. William Wright of the United States Chemical Safety and Hazard Investigation Board (CSB) provided a presentation on the North Carolina Apex Incident at the February 17, 2009 Commission hearing. The CSB conducted a formal investigation into the fire, and published a case study, Fire and Community Evacuation in Apex, North Carolina (2007-01-I-NC, April 16, 2008, which is available online at http://www.csb.gov/). The amendments in the May 2010 rulemaking upgraded the transfer facility requirements so as to prevent, or enable more effective response, to a similar incident in Colorado.

In general, transfer facilities are lightly regulated under the hazardous waste regulations. The May 2010 amendments required certain operational improvements at transfer facilities without creating an undue regulatory burden.

Pursuant to the current wording § 261.5(b), CESQG waste would not be subject to the Part 263 regulations. This amendment corrects this unintended omission in the regulations and provides consistency with the Part 263 requirements.

This amendment is more stringent than the federal regulations. The Commission has evaluated the information presented at the rulemaking hearing, as well as the information in the Statement of Basis and Purpose. The Commission considers this information sufficient to justify adopting the proposed rule. The Commission finds that this rule is necessary to protect public health and the environment.

Notice of Proposed Rulemaking

Tracking number

2016-00014

Department

1100 - Department of Labor and Employment

Agency

1101 - Division of Workers' Compensation

CCR number

7 CCR 1101-3

Rule title

WORKERS' COMPENSATION RULES OF PROCEDURE WITH TREATMENT GUIDELINES

Rulemaking Hearing

Date

02/17/2016

Time

10:00 AM

Location

633 17th Street, Denver, CO 80202

Subjects and issues involved

Rule 7: Life Expectancy Table and Settlement Procedures

Statutory authority

8-47-107

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DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Workers' Compensation
7 CCR 1101-3
WORKERS' COMPENSATION RULES OF PROCEDURE

Rule 7 Closure of Claims, Approval of Settlement Agreements and Petitions to Reopen

7-1 CLOSURE OF CLAIMS

(A) A claim may be closed by order, final admission, or pursuant to paragraph (C) of this section.

(B) A Final Admission of Liability may be filed based on abandonment of the claim if the claimant:

(1) Is not receiving temporary disability benefits; and

(2) has not attended two or more consecutive scheduled medical appointments; and

(3) has failed to respond within 30 days to a letter from the insurer or the insured asking if the claimant requires additional medical treatment or is claiming permanent impairment. The letter shall be sent after the second missed medical appointment to the claimant and the claimant's attorney if the claimant is represented. The letter must advise the claimant in bold type and capital letters that failure to respond to the letter within 30 days will result in a final admission being filed. If the claimant timely responds to the letter and objects to closure the insurer may not file a Final Admission of Liability pursuant to this rule.

A If a claim is abandoned and a Final Admission of Liability is filed pursuant to this rule date of maximum medical improvement should not be included.

B. A copy of the letter sent to the claimant as well as documentation of the missed appointments must be attached to the final admission of liability.

C. If the claimant timely objects to a final admission of liability filed pursuant to this rule the insurer must withdraw the final admission and provide an opportunity for the claimant to attend a medical appointment(s).

(C) When no activity in furtherance of prosecution has occurred in a claim for a period of at least 6 months, a party may request the claim be closed.

(1) The request to close the claim shall include a separate, properly captioned proposed order to show cause and prepared certificate of mailing, along with addressed, stamped envelopes for the claimant, insurer and each attorney of record who has entered an appearance in the case.

(2) Following receipt of a request to close a claim, the Director may issue the order to show cause why the claim should not be closed. If no response is mailed or delivered within 30 days of the date the order was mailed, the claim shall be closed automatically, subject to the reopening provisions of § 8- 43-303, C.R.S. If

a response is timely received, the Director may determine whether the claim should remain open. An application for hearing or for a division independent medical examination without further action (i.e., setting and attending a hearing or a division independent medical examination) does not automatically constitute prosecution.

(3) the director may issue an extension of time to show cause to allow a party an opportunity to prosecute the claim. Any such extension of time to show cause shall not be reconsidered.

(D) Closure of a claim pursuant to 7-1(c) does not terminate entitlement to any of the following:

(1) maintenance medical benefits previously admitted and/or ordered.

(2) permanent medical impairment benefits previously admitted and/or ordered which have not yet been paid.

(E) A final admission of liability may be filed based on the claimant's voluntary abandonment upon written notice that the claimant no longer wishes to pursue the claim if the claimant:

(1) is no longer receiving temporary disability benefits; and

(2) acknowledges in the written notice upon a form prescribed by the division that the claimant is abandoning current and future medical care related to the claim; and

(3) receives written notification of the reopening provisions of §8-43-303, c.r.s.

(F) The claimant may object to a final admission of liability filed pursuant to 7-1(e).

~~7-2 CONTENT AND APPROVAL OF SETTLEMENT AGREEMENTS~~

~~(A) When the parties enter into a full and final settlement of a claim, they shall use the appropriate form settlement agreement prescribed by the Division of Workers' Compensation. The parties shall not alter the prescribed form, except as set out in subparagraphs (1) and (2) below. Parties who are settling a claim for a fatality are not required to use the Division's prescribed form settlement agreement.~~

~~(1) When the claimant is represented by counsel the parties shall use the "Workers' Compensation Claim(s) Settlement Agreement: Represented Claimant. " The parties may include terms in Paragraph 9(A) that are both specific to that agreement and involve an issue or matter that falls within the Workers' Compensation Act. The parties may attach other written agreements to the prescribed form and may refer to these agreements in Paragraph 9(B) of the settlement agreement. These other written agreements may include a Workers' Compensation Medicare Set-Aside Arrangement (WCMSA), an agreement involving employment, or a waiver of bad faith. These other written agreements attached to a settlement agreement shall not be reviewed and approval of the settlement agreement does not constitute approval of any written agreement attached to the settlement agreement. If a represented claimant does not wish to waive the right to an appearance before the Director to review the terms of the agreement, a settlement proceeding shall be scheduled with the Division's Pre-Hearing Unit.~~

~~(2) When the claimant is unrepresented the parties shall use the "Pro Se (Unrepresented) Workers' Compensation Claim(s) Settlement Agreement." The parties may include terms in Paragraph 9(A) that are both specific to that agreement and involve an issue or matter that falls within the Workers' Compensation Act. The parties may attach a Workers' Compensation Medicare Set-Aside Arrangement (WCMSA) to the prescribed form and may refer to the WCMSA in Paragraph 9(B) of the settlement agreement. The parties shall not attach any other written agreement to the settlement agreement. A settlement proceeding shall be scheduled with the Division's Pre-Hearing Unit to consider approval of this agreement.~~

~~(B) The parties shall file the settlement agreement and a completed settlement routing sheet with a proposed order in the form prescribed by the division. The settlement agreement must be signed by all parties with the claimant's signature verified by a Notary Public consistent with the Notaries Public Act. The filed copy of the agreement will be retained by the division. The parties will be responsible for retaining a copy for their records. The completed order will be distributed in accordance with the attached certificate of service. If the parties request the order be returned via mail, self addressed stamped envelopes must be supplied.~~

~~(C) Parties requesting approval of a stipulation resolving one or more issues in dispute shall submit a motion for approval of joint stipulation to the Director or an ALJ and should not use the Division's prescribed form settlement agreement.~~

7-~~3~~ **2** PETITIONS TO REOPEN

(A) A claimant or insurer may request to reopen a claim, pursuant to §8-43-303, C.R.S. by submitting a request to reopen on the Division prescribed form. The request must be provided to the other party and all attorneys of record. The request shall state the basis for reopening, and supporting documentation must accompany the request.

(1) If the other party agrees to reopen the claim the Division shall be notified by the insurer by the filing of an admission.

(2) The requesting party may file an Application for Hearing on the issue of reopening with the Office of Administrative Courts pursuant to §8-43-303, c.r.s.

(3) If the claim is reopened pursuant to an order, the insurer shall file an admission consistent with the order within 30 days of the order becoming final.

(B) For those injuries arising after July 2, 1987 at 4:16 p.m. and prior to July 1, 1991, a Petition to Reopen shall be filed when a claimant is requesting a redetermination of the original permanent partial disability award pursuant to Section §8-42-110(3), C.R.S., (repealed 7/1/91). The petition shall be filed with a statement outlining the circumstances of termination from employment.

7-4 **3** SINGLE LIFE EXPECTANCY TABLE

Age	Life Expectancy	Age	Life Expectancy
0	82.4	39	44.6
1	81.6	40	43.6
2	80.6	41	42.7
3	79.7	42	41.7
4	78.7	43	40.7
5	77.7	44	39.8

6	76.7	45	38.8
7	75.8	46	37.9
8	74.8	47	37.0
9	73.8	48	36.0
10	72.8	49	35.1
11	71.8	50	34.2
12	70.8	51	33.3
13	69.9	52	32.3
14	68.9	53	31.4
15	67.9	54	30.5
16	66.9	55	29.6
17	66.0	56	28.7
18	65.0	57	27.9
19	64.0	58	27.0
20	63.0	59	26.1
21	62.1	60	25.2
22	61.1	61	24.4
23	60.1	62	23.5
24	59.1	63	22.7
25	58.2	64	21.8
26	57.2	65	21.0
27	56.2	66	20.2
28	55.3	67	19.4
29	54.3	68	18.6
30	53.3	69	17.8
31	52.4	70	17.0
32	51.4	71	16.3
33	50.4	72	15.5
34	49.4	73	14.8
35	48.5	74	14.1
36	47.5	75	13.4
37	46.5	76	12.7
38	45.6	77	12.1

Age	Life Expectancy	Age	Life Expectancy
78	11.4	98	3.4
79	10.8	99	3.1
80	10.2	100	2.9
81	9.7	101	2.7
82	9.1	102	2.5
83	8.6	103	2.3
84	8.1	104	2.1
85	7.6	105	1.9
86	7.1	106	1.7
87	6.7	107	1.5
88	6.3	108	1.4
89	5.9	109	1.2
90	5.5	110	1.1
91	5.2	111	1.0
92	4.9		
93	4.6		
94	4.3		
95	4.1		
96	3.8		
97	3.6		

Notice of Proposed Rulemaking

Tracking number

2016-00013

Department

1100 - Department of Labor and Employment

Agency

1101 - Division of Workers' Compensation

CCR number

7 CCR 1101-3

Rule title

WORKERS' COMPENSATION RULES OF PROCEDURE WITH TREATMENT GUIDELINES

Rulemaking Hearing

Date

02/17/2016

Time

10:00 AM

Location

633 17th Street, Denver, CO 80202

Subjects and issues involved

Rule 9: Dispute Resolution Procedures

Statutory authority

8-47-107

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DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Workers' Compensation
7 CCR 1101-3
WORKERS' COMPENSATION RULES OF PROCEDURE

Rule 9 Division of Workers' Compensation Dispute Resolution

9-1 DISCOVERY

One of the goals of the workers' compensation system is to minimize litigation, but disputes do arise and a system for resolution is necessary. One of the underlying premises of an administrative adjudication system is that parties should be able to resolve disputes in, as much as possible, a quick, inexpensive and simple manner. Therefore, when discovery is authorized and appropriate, the following apply:

(A) UPON AGREEMENT OF THE PARTIES OR FOR GOOD CAUSE SHOWN, AN ADMINISTRATIVE LAW JUDGE MAY ALLOW ADDITIONAL DISCOVERY, MAY LIMIT DISCOVERY OR MAY MODIFY THE TIME LIMITS SET FORTH IN THIS RULE. SETTING OF A FORMAL HEARING ON AN EXPEDITED SCHEDULE SHALL CONSTITUTE GOOD CAUSE. GOOD CAUSE SHALL INCLUDE BUT NOT BE LIMITED TO AN AGREEMENT OF THE PARTIES.

(B~~A~~) Interrogatories **AND REQUESTS FOR PRODUCTION**

(1) ~~One set of~~ Written interrogatories and requests for production of documents may be served upon each adverse party. The number of interrogatories, including the requests for production of documents, to any one party shall not exceed 20.~~, each of which shall consist of a single question or request.~~

(2) The responses to the interrogatories and production of documents shall be provided to all opposing parties within 20 days of mailing of the interrogatories and requests.

(3) The interrogatories and the requests for production of documents may not be submitted later than **60** days prior to hearing, except for expedited hearings.

(C~~B~~) Depositions

(1) Depositions ~~of a party~~ may be taken upon written motion and order, **OR BY WRITTEN CONSENT OF THE PARTIES**. Permission to take a deposition of a party will be granted only when there is a specific showing:

(a) That a party who has been served with written interrogatories has failed to respond to the interrogatories; or

(b) That the responses to the written set of interrogatories are insufficient; or

(c) All parties agree to the taking of a deposition.

(2) **A NON-PARTY WITNESS MAY OBJECT TO BEING DEPOSED IN WRITING TO THE REQUESTING PARTY WITHIN FIVE (5) DAYS OF SERVICE OF THE SUBPOENA.**

(a) **THE SUBPOENA MUST BE ACCOMPANIED BY NOTICE TO THE NON-PARTY DEPONENT OF THE RIGHT TO OBJECT IN WRITING.**

(b) **IF THE NON-PARTY DEPONENT OBJECTS, THE REQUESTING PARTY MAY SCHEDULE A PREHEARING CONFERENCE TO REQUEST AN ORDER COMPELLING THE DEPOSITION.** ~~Depositions of other witnesses may be taken upon written motion, order, and written notice to all parties.~~

(D~~C~~) Each party is under a continuing duty to timely supplement or amend responses to discovery up to the date of the hearing.

(E~~D~~) Discovery, other than evidentiary depositions, shall be completed no later than 20 days prior to the hearing date, except for expedited hearings.

(F~~E~~) If any party fails to comply with the provisions of this rule and any action governed by it, an administrative law judge may impose sanctions upon such party pursuant to statute and rule. However, attorney fees may be imposed only for violation of a discovery order.

~~(F) All asserted privileges shall be accompanied by a privilege log with sufficient description to allow the other parties to assess the applicability of the privilege claims.~~

(G) Once an order to compel has been issued and properly served upon the parties, failure to comply with the order to compel shall be presumed willful.

~~(H) Upon agreement of the parties or for good cause shown, an administrative law judge may allow additional discovery, may limit discovery or may modify the time limits set forth in this rule. Setting of a formal hearing on an expedited schedule shall constitute good cause. Good cause shall include but not be limited to an agreement of the parties.~~

9-2 MEDIATION, SETTLEMENT CONFERENCES, PREHEARING CONFERENCES AND ARBITRATION

(A) Mediation. Parties to a dispute may consent to submit any dispute to mediation. A request for mediation may be presented to either the Division of Workers' Compensation or the Office of Administrative Courts. If all parties agree a conference will be scheduled.

(B) Settlement Conferences. Parties to a dispute may request a settlement conference subject to the limitations set forth in § 8-43-206, C.R.S.

(C) Prehearing Conferences. The Director, administrative law judges in the Office of Administrative Courts, or any party to a claim may request a prehearing conference before a prehearing administrative law judge. Prehearing administrative law judges may order any party to a claim to participate in a prehearing conference.

(1) ~~The issues raised for consideration may be raised by motion, either written or oral.At least five days prior to the prehearing conference, the parties shall notify each other of the issues they intend to present to the prehearing administrative law judge.~~**AT LEAST FIVE (5) CALENDAR DAYS PRIOR TO THE PREHEARING CONFERENCE, THE PARTY SETTING THE CONFERENCE SHALL NOTIFY THE PREHEARING CONFERENCE UNIT AND ALL OTHER PARTIES OF THE ISSUES TO BE HEARD.**

(2) WITHIN TWO (2) BUSINESS DAYS OF THE SETTING, THE NON-SETTING PARTY MAY ADD ISSUES TO BE HEARD BY PROVIDING WRITTEN NOTICE TO THE PREHEARING CONFERENCE UNIT AND ALL OTHER PARTIES.

(3) Additional time to respond to an issue raised at the prehearing conference may be requested by any party. It shall be within the discretion of the prehearing administrative law judge to determine if such additional time is necessary to protect the rights of the parties.

(~~2~~**4**) Once a prehearing conference has been requested by a party to a claim, it shall be set. If any party objects to the prehearing conference as set, the following procedures shall apply:

(a) A party objecting to the setting of a prehearing conference or refusing to participate in the conference shall **E-MAIL,** fax or hand-deliver any objections to the prehearing unit within 2 **BUSINESS** days ~~after~~ **OF** the date the prehearing conference is set. If the prehearing administrative law judge orders that the prehearing conference proceed as set, the requesting party shall send written notice of the time and place of the prehearing conference to all other parties.

(~~3~~**5**) At the time of the prehearing conference, each party may submit a prehearing statement setting forth a brief summary of the issues in dispute, the names of all witnesses each party intends to call, the estimated time each party will require to present testimony and evidence, and the status of settlement discussions. Each party may also submit any discovery or pre-trial motion.

(~~4~~**6**) Any party to a claim may request, either in advance or on the date of the prehearing conference, that the prehearing conference be recorded electronically ~~or by court reporter.~~ If a request for electronic recording is made, a party shall have until the date of the merit hearing, if such hearing date is pending at the time of the prehearing conference, or 100 days following the prehearing conference, whichever is shorter, within which to request that the prehearing conference unit **PROVIDE A COPY OF THE ELECTRONIC RECORDING.** ~~prepare a transcript. The cost of preparing such transcripts shall be paid by the requesting party directly to the vendor providing the service.~~

(~~5~~ **7**) The prehearing administrative law judge may require a party to provide available vocational, medical, hospital and employment records, or reports to the other parties.

(D) Arbitration. Parties to a dispute may consent to submit any dispute to binding arbitration by written agreement. Binding arbitration shall be conducted by an **ELIGIBLE PREHEARING** administrative law judge of the parties' mutual choice ~~from the Office of Administrative Courts~~, or pursuant to arbitration procedures as provided by the Colorado Rules of Civil Procedure. Unless otherwise provided by the administrative law judge or upon mutual consent of the parties and/or upon the order of the arbitrator(s), proceedings in any such arbitration shall be conducted in a manner consistent with the Colorado Rules of Civil Procedure.

9-3 ~~PLACE OF FILING~~ **MOTIONS**

(A) All matters for the Director's determination shall be filed with the Division of Workers' Compensation, **TO THE ATTENTION OF THE DIRECTOR** ~~Customer Service Uni~~t. Matters for the Director's determination include **BUT ARE NOT LIMITED TO**:

(1) Requests for penalties for consideration by the Director;

(2) Requests for attorney fee determinations made by the Director;

(3) Matters regarding claims handling or administration, for example, benefit distribution, petitions to modify, terminate or suspend temporary benefits, lump sum requests;

(4) Requests for payment of costs of a transcript due to indigence pursuant to §8-43-213 (3), C.R.S.;

(5) Closure orders;

(6) Matters involving uninsured employers;

(7) Utilization reviews, unless the Director has referred the matter on appeal;

(8) Applications for admission to the major medical or medical disaster funds;

(9) Settlement documents in which all parties are represented by counsel, unless settlement was finalized before an administrative law judge, in which case an administrative law judge may approve the settlement documents.

(10) DISPUTES REGARDING MEDICAL PAYMENTS

~~(B) To avoid duplication, and unnecessary expense to all parties and the Division of Workers' Compensation and the Office of Administrative Courts, copies of matters for the determination of the Director shall not be filed with the Office of Administrative Courts. However, copies of these documents may be filed if required as attachments, evidence submissions, and other instances to complete the record at the Office of Administrative Courts.~~

(~~C~~) ~~All other motions and responses shall be filed, unless otherwise specifically ordered, with the Office of Administrative Courts office closest to the claimant's residence~~.

(~~D~~ **B**) **MOTIONS SHALL BE FILED EXCLUSIVELY WITH EITHER THE DIVISION OF WORKERS' COMPENSATION OR THE OFFICE OF ADMINISTRATIVE COURTS. DUPLICATE COPIES OF MOTIONS SHALL NOT BE FILED.** ~~To avoid duplication, and unnecessary expense to all parties and the Division of Workers' Compensation and the Office of Administrative Courts, copies of these motions and responses shall not be filed with the Division of Workers' Compensation.~~ However, copies of these documents may be filed if required as attachments, evidence submissions, and other instances to complete the record for determination of a matter before the Director.

(C) EVERY MOTION MUST INCLUDE A CERTIFICATION BY THE PARTY OR COUNSEL FILING THE MOTION THAT HE OR SHE HAS CONFERRED, OR MADE A GOOD FAITH EFFORT TO CONFER, WITH OPPOSING COUNSEL AND UNREPRESENTED PARTIES. IF NO CONFERENCE HAS OCCURRED, AN EXPLANATION MUST BE INCLUDED IN THE MOTION.

(D) THE MOTION SHALL CONSPICUOUSLY STATE IN THE CAPTION IF THE MOTION IS CONTESTED, UNCONTESTED OR STIPULATED. IF A MOTION IS STIPULATED, OR UNCONTESTED, THE MOTION MAY BE GRANTED IMMEDIATELY.

(E) ANY RESPONSE OR OBJECTION SHALL BE FILED WITHIN 10 DAYS FROM THE

DATE THE INITIAL MOTION WAS FILED. A RESPONSE OR OBJECTION MUST BE SIMULTANEOUSLY SERVED ON THE OPPOSING PARTIES. THE CERTIFICATE OF SERVICE MUST INDICATE THAT SERVICE WAS EXECUTED ON THE DATE OF FILING AND INDICATE THE METHOD OF SERVICE.

(F) THE PARTIES SHALL SUBMIT A PROPOSED ORDER WITH EACH MOTION AND RESPONSE. THE PROPOSED ORDER SHALL INCLUDE A CERTIFICATE OF SERVICE. THE ORDER SHALL BE SENT TO THE MOVING OR PREVAILING PARTY WHO IS RESPONSIBLE FOR DISTRIBUTION OF TRUE AND CORRECT COPIES OF THE ORDER TO ALL REMAINING PARTIES PROMPTLY, AND IN ANY EVENT NO LATER THAN FIVE CALENDAR DAYS AFTER THE DATE THE ORDER IS RECEIVED.

9-4 ~~CLAIM FILES~~ **PRIVILEGES AND PRIVILEGE LOGS**

IN ALL CIRCUMSTANCES IN WHICH A PRIVILEGE IS BEING ASSERTED (INCLUDING BUT NOT LIMITED TO DISCOVERY AND REQUESTS FOR CLAIM FILES PURSUANT TO §8-43-203) THE PARTY ASSERTING THE PRIVILEGE SHALL PREPARE A PRIVILEGE LOG WITH SUFFICIENT DESCRIPTION TO ALLOW THE OTHER PARTIES TO ASSESS THE APPLICABILITY OF THE PRIVILEGE CLAIMS. THE PRIVILEGE LOG SHALL CONTAIN, AT A MINIMUM:

1. **THE DATE OF THE DOCUMENT FOR WHICH THE PRIVILEGE IS BEING ASSERTED;**
2. **THE AUTHOR AND RECIPIENT OF THE DOCUMENT;**
3. **A DESCRIPTION OF THE SUBJECT MATTER SUFFICIENT TO EXPLAIN, WITHOUT DISCLOSING THE SUBSTANCE OF THE ALLEGEDLY PRIVILEGED MATERIAL, WHY THE DOCUMENT QUALIFIES FOR THE ASSERTED PRIVILEGE;**
4. **THE LEGAL AND FACTUAL BASIS FOR THE CLAIM OF PRIVILEGE;**
5. **IF THE PRIVILEGED DOCUMENT CONTAINS A COMMUNICATION, THE NAMES AND TITLES OF THE PARTIES TO THAT COMMUNICATION;**

~~The file at the Division of Workers' Compensation will be retained at the Division and is not subject to subpoena for administrative hearings. Certified copies of any documents in the Division file can be tendered by a party to the Office of Administrative Courts and should be considered self-authenticating. Parties may obtain certified copies of documents in the Division file by contacting the Division of Workers' Compensation, Customer Service Section. Absent extraordinary circumstances, no employee of the Division of Workers' Compensation should be expected or required to testify at a hearing.~~

9-5 TRUST DEPOSITS AND SURETY BONDS

(A) The Subsequent Injury Fund Unit of the Division of Workers' Compensation is designated as trustee for purposes of §8-43-408(2). C.R.S. When the provisions of §8-43-408, C.R.S. apply, an administrative law judge or the Director shall compute, using the best information available, the present value of the total indemnity and medical benefits estimated to be due on the claim. The employer shall provide the funds so ordered by check within ten days of the order. The trustee shall pay an amount to bring the claim current, and continue to pay the claimant benefits on a regular basis in an interval and amount ordered by an administrative law judge or the Director. The trustee shall also make payments for medical services consistent with the order of an administrative law judge or the Director. Any interest earned shall accrue to the benefit of the trust. The amount ordered to be placed in trust can be amended from time to time, and any excess amount shall be returned to the employer. The trustee shall make such disbursements as appropriate so long as funds are available, and shall not be subject to penalties or any other actions based on administration of the trust.

(B) In the alternative to the establishment of a trust, the employer shall provide a bond as set forth in §8-43-408(2), C.R.S. In the event that the employer fails to bring the claimant current with medical and indemnity benefits owed, or fails to continue to pay the claimant such benefits on a regular basis in an interval and amount ordered by an administrative law judge or the director, the surety will be obliged to do so. The surety's liability to fulfill such obligation shall extend to the amount fixed, which can be amended by order, and exist in the form prescribed by the Director.

(C) Any disputes about the proper disbursement of funds in the trust shall be made to the Director or an administrative law judge for determination.

9-6 CONSOLIDATION **AND MERGER OF CLAIMS**

(A) Two or more claims or applications may be consolidated for hearing or other purposes upon the order of a judge or the Director for good cause shown.

(B) DUPLICATE CLAIMS MAY BE MERGED INTO ONE FILE WITH ONE WORKERS COMPENSATION NUMBER UPON THE ORDER OF AN ADMINISTRATIVE LAW JUDGE OR THE DIRECTOR. MERGER OF FILES SHALL BE REQUESTED VIA MOTION SPECIFYING THE SURVIVING WORKERS COMPENSATION NUMBER AND ANY OTHER IDENTIFYING INFORMATION REQUESTED BY THE DIVISION.

(C) IN INSTANCES WHERE A DUPLICATE CLAIM HAS BEEN CREATED AS THE RESULT OF A TYPOGRAPHICAL ERROR IN THE CLAIMANT'S SOCIAL SECURITY NUMBER, THE CLAIMS MAY BE MERGED UPON WRITTEN REQUEST TO THE DIVISION WITH COPIES TO ALL PARTIES IDENTIFYING THE TYPOGRAPHICAL ERROR AND SUPPLYING THE CORRECT INFORMATION.

9-7 PENALTY PROCEDURES

A party requesting that the Director assess penalties shall file a motion with the Division of Workers' Compensation directed to the attention of the Director **WHICH STATES WITH SPECIFICITY THE GROUNDS UPON WHICH PENALTIES ARE BEING SOUGHT AND INCLUDES ALL EVIDENCE UPON WHICH THE REQUESTING PARTY IS BASING THE REQUEST.** If no response to the motion is filed the Director ~~will~~ **MAY** issue an order to show cause **WHY PENALTIES SHOULD NOT BE IMPOSED**. **FAILURE TO RESPOND TO THE ORDER TO SHOW CAUSE MAY BE DEEMED A CONFESSION OF THE FACTS ALLEGED IN THE MOTION AND A WAIVER OF THE RIGHT TO BE HEARD IN RESPONSE TO THE REQUEST FOR PENALTIES.** ~~If necessary the Director may hold a hearing or may refer the matter for a hearing.~~

9-8 ATTORNEY REPRESENTATION

(A) To represent a party in a claim at the Division of Workers' Compensation, an attorney shall file an entry of appearance with the Division. ~~Any application for hearing, response, or other pleading filed at the Office of Administrative Courts by an attorney on behalf of a party shall be considered to be an entry of appearance at the Office of Administrative Courts.~~

(B) When a claim has closed, an attorney may withdraw by filing a substitution of counsel signed by both attorneys and sent to all parties, or by filing a notice of withdrawal sent to the client and all parties.

(C) When a claim is not closed, an attorney may withdraw by filing a substitution of counsel signed by both **THE ATTORNEY WITHDRAWING AND THE ATTORNEY ENTERING**

THE CLAIM~~attorneys~~ and sent to all parties. Otherwise, an attorney must request an order allowing withdrawal from the claim by filing a motion **TO WITHDRAW** ~~with the Office of Administrative Courts~~ and including the required notice. The motion must be sent to the client and all parties. The notice must contain all the following:

(1) A statement that the attorney wishes to withdraw;

(2) A statement that the client is responsible for keeping the Division of Workers' Compensation and the other parties informed of the client's current address and telephone number;

(3) A statement that the claim may be closed if ~~it is not pursued~~ **NO FURTHER ACTION IS TAKEN**;

(4) The date scheduled for any future hearings, the dates by which any pleadings or briefs are to be filed **(INCLUDING, IF APPLICABLE, THE DATE BY WHICH ANY OBJECTION TO AN ADMISSION MUST BE FILED)**; and notice that these dates will not be affected by the withdrawal of counsel;

(5) A statement that the client may object to the withdrawal by filing a written objection within 10 days of the date on the certificate of mailing of the notice, and mailing a copy of the objection to the attorney.

9-9 SETTLEMENT PROCEDURES

(A) WHEN THE PARTIES ENTER INTO A FULL AND FINAL SETTLEMENT OF A CLAIM, THEY SHALL USE THE APPROPRIATE FORM SETTLEMENT AGREEMENT PRESCRIBED BY THE DIVISION OF WORKERS' COMPENSATION. THE PARTIES SHALL NOT ALTER THE PRESCRIBED FORM, EXCEPT AS SET OUT IN THIS RULE. PARTIES WHO ARE SETTLING A CLAIM FOR A FATALITY ARE NOT REQUIRED TO USE THE DIVISION'S PRESCRIBED FORM SETTLEMENT AGREEMENT.

(B) THE PARTIES MAY INCLUDE TERMS IN PARAGRAPH 9(A) THAT ARE BOTH SPECIFIC TO THAT AGREEMENT AND INVOLVE AN ISSUE OR MATTER THAT FALLS WITHIN THE WORKERS' COMPENSATION ACT.

(C) THE PARTIES MAY REFERENCE EXHIBITS ATTACHED TO THE AGREEMENT IN PARAGRAPH 9(B) OF THE SETTLEMENT AGREEMENT. THESE EXHIBITS MAY INCLUDE A WORKERS' COMPENSATION MEDICARE SET-ASIDE ARRANGEMENT (WCMSA) OR OTHER INFORMATION RELEVANT TO THE WORKERS' COMPENSATION CLAIM.

(D) THE PARTIES MAY ATTACH OTHER WRITTEN AGREEMENTS TO THE PRESCRIBED FORM AND MAY REFER TO THESE AGREEMENTS IN PARAGRAPH 9(C) OF THE SETTLEMENT AGREEMENT. THESE OTHER WRITTEN AGREEMENTS MAY INCLUDE AN AGREEMENT INVOLVING EMPLOYMENT, OR A WAIVER OF A CLAIM FOR BAD FAITH.

(E) ANY EXHIBITS AND/OR AGREEMENTS ATTACHED TO A SETTLEMENT AGREEMENT PURSUANT TO SUBSECTIONS (C) AND (D) ABOVE ARE INCLUDED FOR THE CONVENIENCE OF THE PARTIES AND SHALL NOT BE REVIEWED BY THE DIVISION. APPROVAL OF THE SETTLEMENT AGREEMENT DOES NOT CONSTITUTE APPROVAL OF ANY ATTACHMENTS TO THE SETTLEMENT AGREEMENT.

(F) **THE MONETARY AMOUNT OF THE SETTLEMENT AS REFLECTED IN THE WRITTEN AGREEMENT SHALL NOT INCLUDE ANY CONSIDERATION FOR THE EXHIBITS ATTACHED UNDER SUBSECTIONS (C) AND (D) ABOVE, NOR FOR ANY OTHER AGREEMENT(S) WHICH DOES NOT FALL WITHIN THE WORKERS' COMPENSATION ACT.**

(G) **THE PARTIES SHALL FILE THE SETTLEMENT AGREEMENT AND A COMPLETED SETTLEMENT ROUTING SHEET WITH A PROPOSED ORDER IN THE FORM PRESCRIBED BY THE DIVISION. THE SETTLEMENT AGREEMENT MUST BE SIGNED BY ALL PARTIES WITH THE CLAIMANT'S SIGNATURE VERIFIED BY A NOTARY PUBLIC CONSISTENT WITH THE NOTARIES PUBLIC ACT. THE FILED COPY OF THE AGREEMENT WILL BE RETAINED BY THE DIVISION. THE PARTIES WILL BE RESPONSIBLE FOR RETAINING A COPY FOR THEIR RECORDS. THE COMPLETED ORDER WILL BE DISTRIBUTED IN ACCORDANCE WITH THE ATTACHED CERTIFICATE OF SERVICE. IF THE PARTIES REQUEST THE ORDER BE RETURNED VIA MAIL, SELF ADDRESSED STAMPED ENVELOPES MUST BE SUPPLIED.**

(H) **PARTIES REQUESTING APPROVAL OF A STIPULATION RESOLVING ONE OR MORE ISSUES IN DISPUTE SHALL SUBMIT A MOTION FOR APPROVAL OF JOINT STIPULATION TO THE DIRECTOR OR AN ALJ AND SHOULD NOT USE THE DIVISION'S PRESCRIBED FORM SETTLEMENT AGREEMENT.**

(I) **THE SETTLEMENT AGREEMENT MUST BE ACCOMPANIED BY A STATEMENT FROM THE CLAIMANT INDICATING IF AN APPROPRIATE IN-PERSON ADVISEMENT HAS OCCURRED, IF THE RIGHT TO AN IN-PERSON ADVISEMENT IS WAIVED AND/OR IF A TELEPHONE OR ONLINE ADVISEMENT BY DIVISION STAFF IS REQUESTED.**

9-10 CLAIM FILES

THE FILE AT THE DIVISION OF WORKERS' COMPENSATION WILL BE RETAINED IN ITS ORIGINAL FORM AT THE DIVISION UNTIL THE CLAIM IS CLOSED AND IS NOT SUBJECT TO SUBPOENA FOR ADMINISTRATIVE HEARINGS. A SCANNED ELECTRONIC VERSION OF THE FILE WILL BE RETAINED FOR AT LEAST SEVEN YEARS FROM THE DATE OF CLOSURE. CERTIFIED COPIES OF ANY DOCUMENTS IN THE DIVISION FILE CAN BE TENDERED BY A PARTY TO THE OFFICE OF ADMINISTRATIVE COURTS AND SHOULD BE CONSIDERED SELF-AUTHENTICATING. PARTIES MAY OBTAIN CERTIFIED COPIES OF DOCUMENTS IN THE DIVISION FILE BY CONTACTING THE DIVISION OF WORKERS' COMPENSATION, CUSTOMER SERVICE SECTION. ABSENT EXTRAORDINARY CIRCUMSTANCES, NO EMPLOYEE OF THE DIVISION OF WORKERS' COMPENSATION SHOULD BE EXPECTED OR REQUIRED TO TESTIFY AT A HEARING.

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 02/14/2016

Effective date

02/14/2016

COLORADO DEPARTMENT OF REVENUE
LIQUOR ENFORCEMENT DIVISION
NEW RULES AND/OR CHANGES TO EXISTING RULES

(Adopted)

1 C.C.R. 203-2

2015

Regulation 47-100. Definitions.

B. "Manufacturer" means a Colorado licensed brewery, winery, limited winery, distillery, vintner's restaurant, distillery pub or brewpub as defined by C.R.S. 12-46-104 and 12-47-103.

F. "Supplier" means a Colorado licensed manufacturer, brewpub, distillery pub, vintners restaurant, limited winery, non-resident manufacturer, wholesaler or importer of alcohol beverages.

Regulation 47-302. Changing, Altering, or Modifying Licensed Premises.

D. This regulation shall be applicable to the holder of a manufacturer's license as specifically defined in Section 12-47-402, C.R.S., or a limited winery defined in section 12-47-403, C.R.S, only if the physical change, alteration, or modification involves any increase or decrease in the total size of the licensed premises or sales room locations. Neither the state or local licensing authority shall impose any additional fees for the processing or review of an application for a modification of premises for the holder of a manufacturer's license.

Regulation 47-303. License Renewal.

F. Pursuant to section 12-47-302(2), C.R.S, any licensee whose license has been expired more than ninety (90) but less than one hundred eighty (180) days, may submit to the local licensing authority, or state licensing authority (for state-only issued licenses) an application for a reissued license, subject to section 12-47-302, C.R.S.

G. Any licensee whose license has been expired for more than one hundred eighty (180) days must apply for a new license pursuant to section 12-47-311, C.R.S. and shall not purchase or sell any alcohol beverage until all required licenses have been obtained, unless otherwise authorized under these regulations.

Regulation 47-304. Transfer of Ownership and Changes in Licensed Entities.

E. For all applicants for the issuance of a license by reason of a transfer of possession of the licensed premises by methods to include operation of law, a petition in bankruptcy

pursuant to federal bankruptcy law, the appointment of a receiver, a foreclosure action by a secured party, or a court order dispossessing the prior licensee of all rights of possession pursuant to article 40 of title 13, C.R.S., the licensing authorities shall consider only the requirements of C.R.S. 12-47-307. The loss of possession of the licensed premises by the licensee does not in itself automatically invalidate, cancel or terminate the underlying license. An applicant who otherwise comes into possession of the licensed premises by operation of law, may apply for a transfer of the underlying license as provided by law pursuant to C.R.S. 12-47-303. However, this provision does not prohibit a licensing authority from initiating any action as provided by law to suspend or revoke a license for loss of possession of the licensed premises.

Regulation 47-316. Advertising Practices

C. Media Advertising

1. Except as provided in Regulations 47-322(B) and 47-322(C) for on-site sales promotions and Sponsored Events, no supplier shall directly or indirectly furnish or pay for any advertising for or with respect to any one or more retail licensee by means of the internet, device applications (apps), radio or television broadcast, magazines, newspapers, pamphlets, or similar media, or by means of any sign not located on or in the licensed premises of the retailer which is advertised.

2. Except as provided in Regulations 47-322(B) and 47-322(C) for on-site sales promotions and Sponsored Events, suppliers that purchase internet, device applications (apps), radio or television advertising packages from third party advertising agencies:

    a. May not authorize the advertising agency to apply any value attributable to the supplier’s advertising package toward the advertising or promotion of any licensed retailer or their location.

    b. May not authorize the advertising agency to combine supplier-purchased advertising packages with those purchased by licensed retailers, for the purpose and benefit of cooperative advertising.

3. For purposes of this paragraph C, a supplier’s internet websites (including forums such as a supplier’s Facebook page, blog or device applications (apps)) and electronic advertising messages delivered directly to consumers’ private electronic devices, shall not be construed as "similar media."

Regulation 47-322. Unfair Trade Practices and Competition

Definitions: For purposes of this regulation:

"Supplier" means a Colorado-licensed wholesaler, manufacturer, limited winery, importer, non-resident manufacturer, brewpub, distillery pub, or vintner's restaurant.

"Retailer" means those persons licensed pursuant to sections 12-47-401(h) – (t) and (v), and 12-46-104(c), C.R.S. to sell alcohol beverages to the end consumer.

"Wholesaler" means those entities authorized to sell alcohol beverages at wholesale to licensed retailers, including wholesalers of malt liquors and fermented malt beverages, wholesalers of vinous and spirituous liquors, limited wineries, brewpubs, distillery pubs, and vintner's restaurants.

A. Sales of alcohol beverages.

5. Certain sales of alcohol beverages below cost are not designed or intended to influence or control a retailer's product selection. The following exceptions to below cost product sales are therefore permitted:

c. Products for use, but not for resale by the drink, by a non-profit organization or similar group, on a retailer's licensed premises, may be invoiced to a retailer at no cost. The invoice for said products must detail the products provided and the group for whose benefit it is provided. At the conclusion of the organization's event any unused product must be returned to the manufacturer, wholesaler, brewpub, distillery pub, or vintner's restaurant, or invoiced at a minimum of cost to the retailer.

F. Consignment Sales and Lawful Product Returns

3. Wholesalers are permitted to accept a return of alcohol beverages previously sold to retailers for ordinary and usual commercial reasons and to provide account credit or product exchange. Such commercial reasons for return shall be limited to the following:

f. Manufacturer's quality standards: To ensure freshness standards for malt liquor and fermented malt beverages, wholesalers may withdraw product from the retailer's inventory and replace it with new product, without additional charge, under the following conditions:

i. Out of freshness standard is defined as: a product that has a pre-printed freshness date on the alcohol beverage container that is no more than thirty (30) days away from the current date.

ii. The product to be withdrawn is undamaged and in its original packaging.

iii. The retailer purchased the original product from the wholesaler providing the replacement, or the current wholesaler is acting as an authorized successor wholesaler.

iv. The wholesaler replaces the product with the identical product SKU, the identical quantity, and the identical package.

v. If the wholesaler can substantiate that repeated replacement of the identical

type and brand is ineffective (e.g. the wholesaler has replaced the same product at least twice), the wholesaler may instead substitute a product from the same brand family that is equal in value to the original purchase.

vi. If a seasonal product is out of the freshness standard, out of season and not available for replacement, a wholesaler may pick up the product from a retailer and replace it with a product from the same brand family that is equal or lessor in value to the original purchase.

vii. A wholesaler may sell a product to another retailer that was picked up because it was within thirty (30) days prior to the freshness date. The sale of this replaced product to another retailer can only be done once.

Regulation 47-323. Lawful Extension of Credit

2. "Retailer" means those persons licensed pursuant to Sections 12-47-401(1)(h) – (t) and (v) and 12-46-104(1)(c) to sell alcohol beverages to the end consumer.

Regulation 47-400. Licensed Breweries.

All brewers who are licensed pursuant to 12-47-402 C.R.S. and who sell their manufactured product directly to consumers for consumption of the product for either on-premises or off-premises consumption, must also obtain a wholesale license, pursuant to 12-47-406, C.R.S.

Regulation 47-408. Purchases by Retailers.

B. All alcohol beverages possessed or maintained on the retail-licensed premises shall be only such alcohol beverages acquired as set forth in this regulation, or as may have come into possession upon the issuance of a license or temporary permit pursuant to section 12-47-303, C.R.S.

C. Nothing herein shall authorize a retailer to purchase alcohol beverage stock for its licensed operations from any public or private auction.

D. Records maintained by the licensee in compliance with 12-47-701, C.R.S., shall include all records of purchases of alcohol beverages.

Regulation 47-412. Wholesale Warehouse or Branch Houses.

E. Any wholesaler licensed to distribute malt, vinous and/or spirituous liquors may establish and operate as many warehouses or branch houses as it sees fit for the sole purpose of storing, handling, distributing or dealing in such liquors. Malt liquor wholesalers may establish one salesroom for the purpose of selling malt liquor within the wholesale licensed premises.

Regulation 47-418. Restaurants.

D. Restaurants must be maintained in a clean and sanitary condition, and shall maintain such food service license issued by the Colorado Department of Public Health and Environment in full force and effect at all times while selling alcohol beverages for consumption therein.

E. Establishments operating as a "temporary retail establishment," "mobile retail establishment," or "pushcart" as defined in section 1-202, of 6 C.C.R. 1010-2, shall be considered not to have the necessary equipment or premises to qualify for a hotel and restaurant license.

Regulation 47-424. Engaging in Business.

No person, firm, corporation or association shall engage in the business of selling, offering to sell, using or soliciting orders for alcohol beverages from any Colorado licensed wholesaler or retailer except and unless said person, firm, corporation or association shall be a duly licensed brew pub, distillery pub, vintner's restaurant, manufacturer, wholesaler or importer as required by the laws of the State of Colorado.

Regulation 47-426. Delivery of Alcohol Beverages.

B. Delivery Permitted.

4. Have a licensed premises with the following conditions:

   A. Open to the public a minimum of three (3) days a week; and

   B. Open to the public a minimum of five (5) hours each day the business is open; and

   C. Have signage viewable from a public road

Regulation 47-428. Manufacturer Sales Rooms.

A. Any manufacturer of vinous or spirituous liquor, licensed pursuant to 12-47-402 C.R.S., a limited winery license issued pursuant to section 12-47-403, C.R.S., or beer (malt liquor) wholesaler licensed pursuant to section 12-47-406(1)(b), C.R.S., applying to operate a sales room as defined by section 12-47-103(31.5), shall submit an application for sales room to the state licensing authority.

B. The applicant must send a copy of the application for the sales room concurrently to the state licensing authority and to the local licensing authority in the jurisdiction in which such sales room is proposed. All applications for sales rooms to be operated for no more than three (3) consecutive days shall be filed with both the local and state licensing authorities not less than ten (10) business days prior to the proposed opening date.

C. The sales room application submitted to the state licensing authority and copies of the

sales room application submitted to the local licensing authority shall be done in a manner that provides proof of date of delivery. This includes, but not limited to, email, facsimile, or certified mail.

D. The local licensing authority may submit a response to the application to the state licensing authority including its determination whether or not the approval of the proposed sales room will impact traffic, noise, or other neighborhood concerns in a manner that is inconsistent with local regulations or ordinances, which may be determined by the local licensing authority without requiring a public hearing, or that the applicant cannot sufficiently mitigate any potential impacts identified by the local licensing authority. the local licensing authority submission to the state licensing authority shall be done in a manner that provides proof of date of delivery. This includes, but not limited to, email, facsimile, or certified mail.

E. For proposed sales rooms operating more than three (3) consecutive days, the local licensing authority must submit its response to the state licensing authority within forty-five (45) days from the date of application to the state licensing authority.

F. For proposed sales rooms operating not more than three (3) consecutive days, the local licensing authority must submit its response to the state licensing authority within eight (8) business days from the date of application to the state licensing authority.

G. If the state licensing authority does not receive a response from the local licensing authority within the time frame as stated in paragraph E or F, the state licensing authority shall deem that the local licensing authority does not object to the sales room according to paragraph D.

H. For additional sales rooms for vinous or spirituous liquor, the applicant must affirm to the state licensing authority that the applicant has complied with local zoning restrictions.

I. The local licensing authority can request the state licensing authority take action in accordance with section 12-47-601, C.R.S. against a licensee who operates an approved sales room if the local licensing authority:

    1. Demonstrates that the licensee has engaged in an unlawful action set forth in section 12-47-901, et seq, C.R.S.
    2. Shows good cause as specified in section 12-47-103(9)(a), (9)(b) or (9)(d).

J. Neither the state or local licensing authority shall impose any additional fees for the processing or review of an application for a sales room

K. If a licensee that has a salesroom within its main licensed premises changes its location pursuant to Regulation 47-312, 1 C.C.R. 203-2, the licensee must apply for a new sales room license at its new location in accordance to this Regulation.

L. Sales rooms that do not sell and serve alcohol for consumption on the licensed premises are exempt from local licensing review in accordance with paragraphs B, D, E, F, and G.

Regulation 47-500. Excise Tax Audits.

The Department of Revenue shall cause each original monthly summary report to be audited.

A. If the audit reveals that the reporting brewpub, distillery pub, manufacturer or wholesaler shall have paid more tax, penalty, or interest than was actually due, the Department of Revenue shall issue to that brewpub, distillery pub, manufacturer or wholesaler a tax credit form reflecting the amount of overpayment. The brewpub, distillery pub, manufacturer or wholesaler may deduct the tax credit from any succeeding monthly report by attaching tax credit forms to the report.

B. If such audit reveals that the reporting brewpub, distillery pub, manufacturer or wholesaler shall have paid less tax, penalty, or interest than was actually due, the Department of Revenue shall issue to that brewpub, distillery pub, manufacturer or wholesaler a notice of assessment form reflecting the amount of underpayment. The brewpub, distillery pub, manufacturer or wholesaler must return the assessment form, along with the remittance, payable to the Department of Revenue.

Regulation 47-902. Sanitary Requirements.

Each retail licensee selling alcohol beverages for consumption on the premises, shall maintain its establishment in clean and sanitary condition and if the licensed establishment is a restaurant licensed by the Colorado Department of Public Health and Environment , it shall maintain such license in full force and effect at all times while selling such beverages for consumption therein.

Regulation 47-904. Product Labeling, Substitution, Sampling and Analysis.

C. Except manufacturers or malt liquor manufacturers with an onsite wholesale sales room, no licensee shall refill or permit the refilling of any alcohol beverage container with alcohol beverage or reuse any such container by adding distilled spirits or any substance, including water, to the original contents or any portion of such original contents. There shall be no prohibition against the use of carafes, pitchers or similar serving containers.

F. The manufacturer or importer of any alcohol beverage product sold in Colorado must register said product with the Liquor Enforcement Division prior to the date of the product's initial intended date of sale. If required by applicable Federal laws or regulations, alcohol beverages sold in Colorado must have obtained either a "Certificate of Label Approval" or a "Certificate of Exemption" from the Alcohol and Tobacco Tax and Trade Bureau ("TTB").

Regulation 47-906. Container Size

B. No Colorado licensed retailer licensed under Article 47 for the sale of alcohol beverages

for the consumption on the premises shall purchase or have in its possession upon or about the licensed premises spirituous liquor of over fourteen (14) percent alcohol by volume in any container of less than 375 milliliters, or vinous liquors of over fourteen (14) percent alcohol by volume in any container of less than 375 milliliters, and no vinous or spirituous liquors, regardless of alcohol content, shall be purchased or possessed on the licensed premises in any flat or flask-shaped container of less than twenty-four (24) ounce capacity. The provisions of this subsection B, shall not apply to an aggregate package of alcohol beverages that are, upon manufactured packaging and sale to a retailer, at least 375 milliliters in aggregate, and provided that the individual containers within the aggregate package are opened by the licensee prior to serving consumers, and that neither the seal nor any other device that can be used to seal the container is provided by the licensee to the consumer.

Regulation 47-908. Automatic and Electronic Dispensing Systems.

The installation of automatic and electronic dispensing systems by on-premises consumption licensees is authorized provided that the following requirements are complied with:

C. Such equipment shall not be coin operated nor be able to accept other payment methods and shall be operated personally and directly only by the licensee or employees thereof. Provided, however, this subsection (C) does not apply to a dispensing system that is located at a licensed premises where the regular consumption of malt liquors, fermented malt beverages, vinous liquor or spirituous liquor by persons over the age of twenty-one is authorized under the following conditions:

1. Prior to activation of such device, the licensee or their employee has determined the patron is (1) twenty-one (21) years of age or older, and (2) is otherwise legally able to be served an alcohol beverage; and

2. Such activation of the device is conducted by the licensee or employee thereof; and

3. Such activation provides the ability to dispense no more than thirty-two (32) ounces of malt liquor or fermented malt beverage; or fourteen (14) ounces of vinous liquor; or two (2) ounces of spirituous liquor, per person, before reactivation is allowed; and

4. The licensee or their employees shall monitor the sale, service, and consumption of any alcohol beverages from the dispensing system to ensure compliance with the Colorado Liquor Code and Rules.

5. No alcohol shall be dispensed past the time in accordance to sections 12-47-901(5) or 12-47-301(10)(f), C.R.S. and any un-dispensed alcohol after such time will be forfeited and not be able to be dispensed at a later time. this paragraph (5) does not prohibit a refund of unused credit to a consumer.

Any dispensing device used solely by the licensee or their employees is not subject to paragraph C.

REGULATION 47-942. POWDERED ALCOHOL REGULATION.

Pursuant to section 12-47-401(2), C.R.S., "if the federal alcohol and tobacco tax and trade bureau [(the "TTB")] approves the purchase, sale, possession, or manufacturing of powdered alcohol in the United States, the State Licensing Authority shall adopt rules establishing a mechanism for regulating the manufacture, purchase, sale, possession and use of powdered alcohol." The TTB has granted label approval for powdered alcohol products in the United States. The State Licensing Authority will engage in a process and adopt rules in order to establish a comprehensive mechanism to regulate the manufacture, purchase, sale, possession and use of powdered alcohol in Colorado by January 1, 2017. Until such mechanism is established and rules are adopted by the State Licensing Authority, the manufacture, purchase, sale, possession, and use of powdered alcohol is prohibited.

Regulation 47-1016. Special Event Permittee - Purchase and Storage of Alcohol Beverages.

Special event permittees may purchase the kinds of alcohol beverages they are authorized by such permits to sell from a licensed wholesaler, brewpub, distillery pub, limited winery, vintner's restaurant, retail liquor store, or liquor-licensed drugstore.

F. A licensed wholesaler may deliver alcohol beverages purchased by a special event permittee to the storage location in accordance to paragraphs A, B, C and D, but such storage cannot be more than two (2) business days prior to the date for the special event. If a licensed wholesaler donates alcohol to the special event permittee, the wholesaler may pick up such unused donated alcohol beverage products from the storage area in accordance to paragraphs A, B, C and D. Such removal of unused donated alcohol beverage products must occur within two (2) business days after the end of the special event permit.

Regulation 47-1020. Alcohol Beverage Donations.

A. For purposes of this regulation, "wholesaler" means an entity licensed to sell alcohol beverages at wholesale to special event permit holders, including wholesalers of malt liquor and fermented malt beverages, wholesalers of vinous and spirituous liquors, limited wineries, brewpubs, distillery pubs and vintner's restaurants.

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Statement of Adoption

To: Patrick Maroney, Director of Liquor Enforcement Division

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 47-100	Definitions
Permanent Rule	Regulation 47-302	Changing, Altering, or Modifying Licensed Premises
Permanent Rule	Regulation 47-303	License Renewal
Permanent Rule	Regulation 47-304	Transfer of Ownership and Changes in Licensed Entities
Permanent Rule	Regulation 47-316	Advertising Practices
Permanent Rule	Regulation 47-322	Unfair Trade Practices and Competition
Permanent Rule	Regulation 47-323	Lawful Extension of Credit
Permanent Rule	Regulation 47-400	Licensed Breweries
Permanent Rule	Regulation 47-408	Purchases by Retailers
Permanent Rule	Regulation 47-412	Wholesale Warehouse or Branch Houses
Permanent Rule	Regulation 47-418	Restaurants
Permanent Rule	Regulation 47-424	Engaging in Business
Permanent Rule	Regulation 47-426	Delivery of Alcohol Beverages
Permanent Rule	Regulation 47-428	Manufacturer Sales Rooms
Permanent Rule	Regulation 47-500	Excise Tax Audits
Permanent Rule	Regulation 47-902	Sanitary Requirements
Permanent Rule	Regulation 47-904	Product Labeling, Substitution, Sampling and Analysis
Permanent Rule	Regulation 47-906	Container Size
Permanent Rule	Regulation 47-908	Automatic and Electronic Dispensing Systems
Permanent Rule	Regulation 47-942	Powdered Alcohol Regulation

Permanent Rule	Regulation 47-1016	Special Event Permittee – Purchase and Storage of Alcohol Beverages
Permanent Rule	Regulation 47-1020	Alcohol Beverage Donations

The new and amended rules are adopted this 23rd day of December, 2015.

Barbara J. Brohl
Executive Director
State Licensing Authority

CYNTHIA H. COFFMAN
Attorney General

DAVID C. BLAKE
Chief Deputy Attorney General

MELANIE J. SNYDER
Chief of Staff

FREDERICK R. YARGER
Solicitor General

STATE OF COLORADO
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Office of the Attorney General

Tracking number: 2015-00739

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Liquor Enforcement

on 12/23/2015

1 CCR 203-2

LIQUOR CODE

The above-referenced rules were submitted to this office on 12/24/2015 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, 2016 10:46:04

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Revenue

Agency

Division of Gaming - Rules promulgated by Gaming Commission

CCR number

1 CCR 207-1

Rule title

1 CCR 207-1 GAMING REGULATIONS 1 - eff 02/14/2016

Effective date

02/14/2016

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

47.1-834.15 The Play – Dead Man's Hand Blackjack.

(9) Pay table:
Note to publisher: add this new pay table after the existing pay table in the current rule.

	Pay table 6	**Pay table 7**
4 – Sets of A-8's		500 to 1
3 – Sets of A-8's		250 to 1
2 – Sets of A-8's	100 to 1	100 to 1
1 – Set of A-8's	4 to 1	4 to 1
A-A or 8-8 with only A-8 after split	20 to 1	20 to 1
A-A or 8-8 no split	4 to 1	4 to 1
Any A or 8 (first 2 cards)	2 to 1	2 to 1
Pair of Aces or Pair of 8's AND Dealer Blackjack	50 to 1	50 to 1

BASIS AND PURPOSE FOR RULE 21

The purpose of Rule 21 is to establish playing rules for authorized types of games which combine the play of blackjack with the play of poker, and management procedures for conducting blackjack-poker combination games in compliance with section 12-47.1-302 (2). The statutory basis for Rule 21 is found in sections 12-47.1-201, C.R.S., 12-47.1-302, C.R.S, and 12-47.1-818, C.R.S.

RULE 21 RULES FOR BLACKJACK-POKER COMBINATION GAMES Effective 9/14/2012

47.1-2111 The Play – 3 Card 21 "N" Done.

3 Card 21 "N" Done is a blackjack and poker variation game, the rights to which are owned by Score Gaming, LLC of Henderson, Nevada and which may be transferred or assigned. 3 Card 21 "N" Done shall be dealt and played following the standard rules of blackjack except as described below:

(1) 3 Card 21 "N" Done must be played only on tables utilizing the 3 Card 21 "N" Done styled layout. The game shall be played using six or eight standard 52 card decks and is dealt from a dealing shoe or a continuous shuffler.

(2) To start the game, players must place two wagers, the Three Card 21 wager and the Three Card Bonus wager. Both wagers will be in an equal amount and the minimum and maximum amounts of these wagers will be posted at the table.

(3) The players will each receive three cards, face up, to start the game. The dealer will receive two cards, one face up and one face down. The first two cards for the player and the dealer are dealt according to the standard rules of blackjack. After the dealer has received his/her second card, each player will receive his/her third card.

(4) The dealer will then resolve the 3 Card Bonus Wager. The player will win the 3 Card Bonus wager if his/her cards total 21 or create a poker hand. The dealer shall collect all losing wagers and pay all winning wagers according to the posted pay table.

(5) 3 Card Bonus Pay Tables:

	Pay Table 1
THREE CARD BONUS	**PAYOUT**
Mini Royal	50 to 1
Straight Flush	15 to 1
3 of a Kind	5 to 1
Straight	2 to 1
Flush	3 to 2
Pair	1 to 1
21 Total	1 to 1

	Pay Table 2	
THREE CARD BONUS	**PAYOUT**	
Diamond Royal	100 to 1	
Mini Royal	50 to 1	
Straight Flush	15 to 1	
3 of a Kind	5 to 1	6 Deck Only
Straight	2 to 1	6 Deck Only
Flush	3 to 2	
Pair	1 to 1	
21 Total	1 to 1	

	Pay Table 3
THREE CARD BONUS	**PAYOUT**
Diamond Royal	100 to 1
Mini Royal	25 to 1
Straight Flush	15 to 1
3 of a Kind	5 to 1
Straight	2 to 1
Flush	3 to 2
Pair	1 to 1
21 Total	1 to 1

	Pay Table 4
THREE CARD BONUS	**PAYOUT**
Diamond Royal	100 to 1
Mini Royal	40 to 1
Straight Flush	12 to 1
3 of a Kind	5 to 1
Straight	2 to 1
Flush	3 to 2
Pair	1 to 1
21 Total	1 to 1

	Pay Table 5
THREE CARD BONUS	**PAYOUT**
Diamond Royal	250 to 1
Mini Royal	50 to 1
Straight Flush	10 to 1
3 of a Kind	5 to 1
Straight	2 to 1
Flush	3 to 2
Pair	1 to 1
21 Total	1 to 1

Pay table note: If a player hand qualifies for more than one pay out, only the highest hand is paid.

(6) The dealer will check the 3 Card 21 main wager and pay all totals of 21 at 1 to 1 and the player's cards will be removed. The player may elect to decline the automatic pay and keep his or her cards as described below in "Player Rule" 2B and 4A.

(7) Dealer will then check his/her hand for a blackjack when his/her face up card is a 10. The dealer will offer insurance per the standard rules of blackjack. Insurance will be paid at 2 to 1 for winning insurance wagers.

Player rules – Original 3 Card 21 Hand:

(1) If the player's first three cards equal 21, the player will be paid 1 to 1 on his/her 3 Card 21 wager and his/her cards will be removed.

(2) If the player's first three cards equal less than 21, the player will keep these three cards together and play one hand of blackjack per the standard rules of blackjack.

(a) However, if the player's hand is less than 21 but contains a pair, he or she has the option of placing two additional wagers equal to their original wager and splitting the cards into three separate hands. Standard rules of blackjack would then be followed for each hand with the one exception being that pairs received on any of these three hands cannot be re-split.

(b) Player may split a 21 (if hand contains a pair) and elect not to accept the automatic pay of 1 to 1.

(3) If the player's first three cards equal greater than 21, the player can either:

(a) Surrender and forfeit half of the original 3 Card 21 wager, or;

(b) Place two additional wagers equal to their original wager and split the three cards into three separate hands. Standard rules of blackjack would then be followed for each hand with the one exception being that pairs received on any of these three hands cannot be re-split.

(4) Depending on player preference, an Ace can be counted as an 11, to put the total over 21 or as a 1 to keep it under 21.

(a) Player may split a 21 (counting an ace as an 11) and elect not to accept the automatic pay of 1 to 1.)

(5) All totals of 21 after a hit, double, or split win 1 to 1 automatically.

(6) After all players have acted on their hand(s), the dealer will complete his/her hand and complete the game following house procedures for blackjack.

BASIS AND PURPOSE FOR RULE 23

The purpose of Rule 23 is to establish playing rules for craps and procedures for conducting craps games in compliance with section 12-47.1-302 (2). The statutory basis for Rule 23 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., and 12-47.1-818, C.R.S.

RULE 23 RULES OF CRAPS

47.1-2317.04 The Play – Craps with Ride The Line.

Ride The Line is a craps variation game, the rights to which are owned by Score Gaming, LLC of Henderson, Nevada and which may be transferred or assigned. Craps with Ride The Line must be played according to the following rules.

(1) Ride The Line may be played only on tables displaying the Ride The Line layout.

(2) Ride The Line shall be played using all standard craps equipment, including two die, a point marker, and all standard equipment used to play the traditional game of craps.

(3) No changes will be made to the standard play, procedures or payouts of craps except where described below for the outcome of the Ride The Line wager.

(4) The Play of the Ride The Line wager requires at least one shooter/player to make a Pass Bet or Don't Pass Bet per House minimums and maximums and a Ride The Line wager per house minimums and maximums.

(a) Table signage will be present depicting the house minimums and maximums for all wagers including the Ride The Line wager.

(5) All players who have bet the Pass Bet and/or the Don't Pass Bet may also bet the Ride The Line wager. Players who have not bet the Pass Bet or Don't Pass Bet will not be eligible to play the Ride The Line wager.

(6) The Ride The Line wager must be placed in the designated spot on the craps table marked for the Ride The Line wager. The wager may be placed at any time during the shooter/player's roll,

provided the shooter/player has not yet rolled a seven or eleven on the come out roll(s) or after a point has been established.

(a) Once the shooter/player has rolled a seven or eleven on the come out roll(s), or when an established point has been made, the designated casino staff will announce the Ride The Line wager is now closed for the entirety of the current shooter/player's complete round of craps defined as when the shooter/player sevens-out.

(7) Once placed, the shooter/player cannot take down, increase, or decrease the amount of the Ride The Line wager. The wager must be played until it is resolved by winning, losing, or pushing as described below.

(8) At the discretion of the retail licensee, the shooter/player that has placed the Ride The Line wager may be permitted to place tip wagers for the dealer on the Ride The Line wager. If such tip wagers are accepted, winning wagers must be paid at the same odds as the shooter/player's winning wager. The retail licensee may require tip wagers to be in an even dollar amount, and may limit the maximum amount of such tip wagers.

(9) The object of the Ride The Line wager is for the shooter/player to roll as many sevens or elevens on the come out roll(s) and/or make as many points as possible during a shooter/player's complete round of craps.

(a) A shooter/player's complete round of craps is defined as the period between the shooter/player's first come out roll and the shooter/player sevening out.

(b) The seven which results in a seven-out is not counted in determining the total number of "points" the shooter/player rolls in their complete round of craps. The count is determined by the amount of come out rolls of seven and/or elevens and/or points made prior to the seven-out.

(c) All further rules will apply to a shooter/player's complete round of craps.

(10) Rolling three (3) sevens and/or elevens on the come out roll(s) and/or points made, provides the minimum payout per the established pay table.

(a) However, the casino may select a pay table where the Ride The Line wager may be returned to the shooter/player, i.e. treated as a push, instead of losing if the shooter/player rolls two (2) sevens and/or elevens on the come out roll(s) and/or points made.

(11) Rolling eleven (11) sevens and/or elevens on the come out roll(s) and/or points made, provides the maximum payout per the established pay table. Additional sevens and/or elevens that are rolled after the shooter/player reaches the maximum of eleven (11) do not affect the outcome of the Ride The Line wager.

(12) Per pay table 1: If the shooter/player rolls less than two (2) sevens and/or elevens on the come out roll(s) and/or points made during their complete round of craps, the Ride The Line wager will lose and will be collected by the appropriate casino staff.

(13) All winning Ride The Line wagers are paid at the end of the shooter/player's complete round of craps.

(14) The Stickman or Boxman will use a single lammer, proprietary to Score Gaming, to keep track of the number of sevens and/or elevens rolled on the come out roll(s) and/or points made every time

a new shooter/player begins the round of craps, even if there are no Ride The Line wagers active on the table.

(15) The lammers, by definition, have no monetary value.

(16) The lammers will not have any identifying number on them.

(17) The lammers will be kept on the table.

(18) If/when the first come out roll of seven and/or eleven is rolled, or when the first point is made, the stickman or boxman will place the lammer on the designated spot on the table representing the first come out roll of seven or eleven or point has been rolled and announce the Ride The Line wager is closed. No more wagers can be placed until the shooter/player finishes their complete round of craps.

(19) If/when the second come out roll of seven and/or eleven is rolled or when the second point is made, the stickman or boxman will place the lammer on the designated spot on the table representing the second come out roll of seven or eleven or point has been rolled.

(20) If/when the third come out roll of seven and/or eleven is rolled or when the third point is made, the stickman or boxman will place the lammer on the designated spot on the table representing the third come out roll of seven or eleven or point has been rolled.

(21) If/when the fourth come out roll of seven and/or eleven is rolled or when the fourth point is made, the stickman or boxman will place the lammer on the designated spot on the table representing the fourth come out roll of seven or eleven or point has been rolled.

(22) If/when the fifth come out roll of seven and/or eleven is rolled or when the fifth point is made, the stickman or boxman will place the lammer on the designated spot on the table representing the fifth come out roll of seven or eleven or point has been rolled.

(23) If/when the sixth come out roll of seven and/or eleven is rolled or when the sixth point is made, the stickman or boxman will place the lammer on the designated spot on the table representing the sixth come out roll of seven or eleven or point has been rolled.

(24) If/when the seventh come out roll of seven and/or eleven is rolled or when the seventh point is made, the stickman or boxman will place the lammer on the designated spot on the table representing the seventh come out roll of seven or eleven or point has been rolled.

(25) If/when the eighth come out roll of seven and/or eleven is rolled or when the eighth point is made, the stickman or boxman will place the lammer on the designated spot on the table representing the eighth come out roll of seven or eleven or point has been rolled.

(26) If/when the ninth come out roll of seven and/or eleven is rolled or when the ninth point is made, the stickman or boxman will place the lammer on the designated spot on the table representing the ninth come out roll of seven or eleven or point has been rolled.

(27) If/when the tenth come out roll of seven and/or eleven is rolled or when the tenth point is made, the stickman or boxman will place the lammer on the designated spot on the table representing the tenth come out roll of seven or eleven or point has been rolled.

(28) If/when the eleventh come out roll of seven and/or eleven is rolled or when the eleventh point is made, the stickman or boxman will place the lammer on the designated spot on the table representing the eleventh come out roll of seven or eleven or point has been rolled. The lammer will stay on this designated spot until the shooter/player sevens out.

(29) Winning Ride The Line wagers will be paid per the established pay table and losing Ride The Line wagers will be collected by the appropriate casino staff/dealer at the end of the shooter/player's complete round of craps. The Ride The Line wager will always be resolved before the dice are rolled by the new shooter/player.

(30) After the shooter/player sevens-out and the roll is over for that shooter/player, the Ride The Line wager may be played again at any amount from the posted house minimum and maximum, and must be placed before the new shooter/player's first come out roll.

Pay tables for Ride The Line Wager:

Sevens, elevens or points rolled	**1**	**2**	**3**	**4**	**5**	**6**	**7**
1	Loss	Loss	Loss	Loss	Loss	Loss	Loss
2	Push	Loss	Loss	Loss	Loss	Loss	Loss
3	1:1	1:1	1:1	1:1	1:1	Push	Push
4	2:1	2:1	2:1	2:1	2:1	3:1	2:1
5	4:1	4:1	3:1	3:1	5:1	5:1	4:1
6	6:1	6:1	6:1	4:1	8:1	7:1	7:1
7	8:1	12:1	10:1	10:1	10:1	12:1	10:1
8	15:1	20:1	20:1	15:1	20:1	20:1	15:1
9	20:1	30:1	30:1	20:1	30:1	25:1	25:1
10	25:1	40:1	40:1	30:1	40:1	30:1	40:1
11 or more	50:1	75:1	100:1	150:1	50:1	100:1	150:1

CYNTHIA H. COFFMAN
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Office of the Attorney General

Tracking number: 2015-00755

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Gaming - Rules promulgated by Gaming Commission

on 12/17/2015

1 CCR 207-1

GAMING REGULATIONS

The above-referenced rules were submitted to this office on 12/17/2015 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 30, 2015 16:07:06

Frederick R. Yarger

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
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 01

Rule title

6 CCR 1007-1 Part 01 RADIATION CONTROL - GENERAL PROVISIONS 1 - eff 02/14/2016

Effective date

02/14/2016

[* * * = Indicates omission of unaffected rules]

[Publication Instructions: Replace the initial 6 lines of the rule with the following new and revised text.]

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Hazardous Materials and Waste Management Division

RADIATION CONTROL - GENERAL PROVISIONS

6 CCR 1007-1 Part 01

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

Adopted by the Board of Health on December 16, 2015.

*** * ***

[Publication Instructions: In Section 1.2.2, strike the definition for "Byproduct material" and replace with the following new and revised text/definition.]

"Byproduct material" means:

(1) Any radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or using special nuclear material;

(2) The tailings or wastes produced by the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium or thorium solution extraction processes (underground ore bodies depleted by these solution extraction operations do not constitute "byproduct material" within this definition);

(3) (a) Any discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; or

(b) Any material that:

(i) Has been made radioactive by use of a particle accelerator; and

(ii) Is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; and

(4) Any discrete source of naturally occurring radioactive material, other than source material, that:

(a) The NRC, in consultation with the administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety; and

(b) Before, on, or after August 8, 2005, is extracted, or converted after extraction, for use for a commercial, medical, or research activity;

* * *

[Publication Instructions: In Section 1.2.2, after the definition of "Calibration" and before the definition for "CCR", insert the new definition for "Carrier".]

"Carrier" means a person engaged in the transportation of passengers or property by land or water as a common, contract, or private carrier, or by civil aircraft.

* * *

[Publication Instructions: In Section 1.2.2, strike the definition for "Classified material" in its entirety.]

* * *

[Publication Instructions: In Section 1.2.2, strike the definition for "Commencement of construction" and replace with the following new and revised text/definition.]

"Commencement of construction" means taking any action defined as "construction" or any other activity at the site of a facility subject to the regulations that has a reasonable nexus to radiologic health and safety.

* * *

[Publication Instructions: In Section 1.2.2, after the definition of "Constraint" and before the definition of "Contact hour", insert the following definition for "Construction".]

"Construction" means the installation of wells associated with radiological operations (e.g., production, injection, or monitoring well networks associated with in-situ recovery or other facilities), the installation of foundations, or in-place assembly, erection, fabrication, or testing for any structure, system, or component of a facility or activity subject to the regulations in Parts 3, 18, and 19 that are related to radiological safety or security. The term "construction" does not include:

(1) Changes for temporary use of the land for public recreational purposes;

(2) Site exploration, including necessary borings to determine foundation conditions or other preconstruction monitoring to establish background information related to the suitability of the site, the environmental impacts of construction or operation, or the protection of environmental values;

(3) Preparation of the site for construction of the facility, including clearing of the site, grading, installation of drainage, erosion and other environmental mitigation measures, and construction of temporary roads and borrow areas;

(4) Erection of fences and other access control measures that are not related to the safe use of, or security of, radiological materials subject to Parts 3, 18, and 19;

(5) Excavation;

(6) Erection of support buildings (e.g., construction equipment storage sheds, warehouse and shop facilities, utilities, concrete mixing plants, docking and unloading facilities, and office buildings) for use in connection with the construction of the facility;

(7) Building of service facilities (e.g., paved roads, parking lots, railroad spurs, exterior utility and lighting systems, sanitary sewerage treatment facilities, and transmission lines);

(8) Procurement or fabrication of components or portions of the proposed facility occurring at other than the final, in-place location at the facility; or

(9) Taking any other action that has no reasonable nexus to radiological health and safety.

* * *

[Publication Instructions: In Section 1.2.2, strike the current definition for “Naturally occurring radioactive material” and replace with the following revised text/definition.]

"Naturally occurring radioactive material" (NORM) means any nuclide that is radioactive in its natural physical state and is not manufactured. “Naturally occurring radioactive material” does not include source material, special nuclear material, byproduct material, or by-products of fossil-fuel combustion, including bottom ash, fly ash, and flue-gas emission by-products.

* * *

[Publication Instructions: In Section 1.2.2, strike the definition for “Non-11 e (2) material” in its entirety.]

* * *

[Publication Instructions: In Section 1.2.2, strike the current definition for “Regulations of the DOT” and replace with the following revised text/definition.]

“Regulations of the DOT” means the regulations in 49 CFR Parts 100-189 and Parts 390-397 (October 1, 2014).

* * *

[Publication Instructions: In Section 1.2.2, strike the current definition for "Regulations of the NRC" and replace with the following revised text/definition.]

Regulations of the NRC" means the regulations in 10 CFR Parts 1-50 and Parts 51-199 (January 1, 2015).

* * *

[Publication Instructions: In Section 1.2.2, strike the current definition for "Source material" and replace with the following revised text/definition.]

"Source material" means uranium or thorium, or any combination of uranium or thorium, in any physical or chemical form, including ores that contain, by weight, one-twentieth of 1 percent (0.05 percent) or more, of uranium, thorium or any combination thereof. Source material does not include special nuclear material.

* * *

[Publication Instructions: In Section 1.2.2, strike the current definition for "Unrefined and unprocessed ore" and replace with the following revised text/definition.]

"Unrefined and unprocessed ore" means ore in its natural form prior to any processing, such as grinding, roasting or beneficiating, or refining. Processing does not include sieving or encapsulation of ore or preparation of samples for laboratory analysis.

* * *

[Publication Instructions: In Section 1.4.4, strike the current text and replace with the following revised text to remove unneeded spaces and add dashes for formatting purposes.]

1.4.4 In accordance with Section 24-4-103(12.5)(c)(ii)(C), CRS, copies of any material that has been incorporated by reference have been provided to the State Publications Depository Library and Distribution Center and are available for interlibrary loan. The incorporated materials may be examined at any state publications depository library.

* * *

CYNTHIA H. COFFMAN
Attorney General

DAVID C. BLAKE
Chief Deputy Attorney General

MELANIE J. SNYDER
Chief of Staff

FREDERICK R. YARGER
Solicitor General

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Office of the Attorney General

Tracking number: 2015-00731

Opinion of the Attorney General rendered in connection with the rules adopted by the

Hazardous Materials and Waste Management Division

on 12/16/2015

6 CCR 1007-1 Part 01

RADIATION CONTROL - GENERAL PROVISIONS

The above-referenced rules were submitted to this office on 12/23/2015 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 30, 2015 16:07:21

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
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 03

Rule title

6 CCR 1007-1 Part 03 RADIATION CONTROL - LICENSING OF RADIOACTIVE MATERIAL 1 - eff 02/14/2016

Effective date

02/14/2016

[* * * = Indicates omission of unaffected rules]

[Publication Instructions: Replace the initial 6 lines of the rule with the following new and revised text.]

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Hazardous Materials and Waste Management Division

RADIATION CONTROL - LICENSING OF RADIOACTIVE MATERIAL

6 CCR 1007-1 PART 03

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

Adopted by the Board of Health on December 16, 2015.

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[Publication Instructions: Strike the current Section 3.1.2, and 3.1.2.1, and replace with the following reformatted text.]

3.1.2 Basis and Purpose.

3.1.2.1 A statement of basis and purpose of these regulations is incorporated as part of these regulations; a copy may be obtained from the Department.

*** * ***

[Publication Instructions: Strike the current Section 3.2.3, and replace with the following revised text.]

3.2.3 Any person is exempt from this part to the extent that such person receives, possesses, uses, or transfers an item containing uranium or thorium listed in Schedule 3C, Sections 3C.1 through 3C.10.

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[Publication Instructions: Strike the current Section 3.3.1.1(1), and replace with the following revised text to correct a spelling error.]

(1) A manufacturer, processor, or producer that transfers a product or material is exempt so long as concentrations less than those listed in schedule 3A were introduced under an NRC license so authorizing.

* * *

[Publication Instructions: In current Section 3.3.2.4, and replace with the following revised text to update the date.]

3.3.2.4 No person may, for purposes of commercial distribution, transfer radioactive material in the individual quantities set forth in Schedule 3B, knowing or having reason to believe that such quantities of radioactive material will be transferred to persons exempt under 3.3.2 or equivalent regulations of NRC or any Agreement State except in accordance with a specific license issued by NRC pursuant to Section 32.18 of 10 CFR Part 32 (January 1, 2015), which license states that the radioactive material may be transferred by the licensee to persons exempt under 3.3.2 or the equivalent regulations of NRC or an Agreement State. [1]

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[Publication Instructions: Strike the current Section 3.3.3.1, and replace with the following revised text to update the cross-referenced sections.]

3.3.3.1 Any person is exempt from this part to the extent that such person receives, possesses, uses, or transfers an item containing radioactive material which is listed in Schedule 3C, Sections 3C.11 through 3C.14.

* * *

[Publication Instructions: Strike the current Section 3.5 through 3.6.2 (inclusive) and replace with the following revised text.]

3.5 General Licenses – Small Quantities Of Source Material.

3.5.1 A general license is hereby issued authorizing commercial and industrial firms; research, educational and medical institutions; and Federal, State and local government agencies to receive, possess, use and transfer uranium and thorium, in their natural isotopic concentrations and in the form of depleted uranium, for research, development, educational, commercial, or operational purposes in the following forms and quantities:

3.5.1.1 No more than 1.5 kg (3.3 lb) of uranium and thorium in dispersible forms (e.g., gaseous, liquid, powder, etc.) at any one time. Any material processed by the general licensee that alters the chemical or physical form of the material containing source material must be accounted for as a dispersible form. A person authorized to possess, use, and transfer source material under 3.5.1.1 may not receive more than a total of 7 kg (15.4 lb) of uranium and thorium in any one calendar year. Persons possessing source material in excess of these limits as of August 27, 2016, may continue to possess up to 7 kg (15.4 lb) of uranium and thorium at any one time for one year beyond this date, or until the Department takes final action on a pending application submitted on or before August 27, 2017, for a specific license for such material; and receive up to 70 kg (154 lb) of uranium or thorium in any one calendar year until December 31, 2017, or until the Department

takes final action on a pending application submitted on or before August 27, 2017, for a specific license for such material; and

3.5.1.2 No more than a total of 7 kg (15.4 lb) of uranium and thorium at any one time. A person authorized to possess, use, and transfer source material under 3.5.1.2 may not receive more than a total of 70 kg (154 lb) of uranium and thorium in any one calendar year. A person may not alter the chemical or physical form of the source material possessed under 3.5.1.2 unless it is accounted for under the limits of 3.5.1.1; or

3.5.1.3 No more than 7 kg (15.4 lb) of uranium, removed during the treatment of drinking water, at any one time. A person may not remove more than 70 kg (154 lb) of uranium from drinking water during a calendar year under 3.5.1.3; or

3.5.1.4 No more than 7 kg (15.4 lb) of uranium and thorium at laboratories for the purpose of determining the concentration of uranium and thorium contained within the material being analyzed at any one time. A person authorized to possess, use, and transfer source material under 3.5.1.4 may not receive more than a total of 70 kg (154 lb) of source material in any one calendar year.

3.5.2 Any person who receives, possesses, uses or transfers source material in accordance with the general license in 3.5.1:

3.5.2.1 Is prohibited from administering source material, or the radiation therefrom, either externally or internally, to human beings except as may be authorized by the NRC in a specific license.

3.5.2.2 Shall not abandon such source material. Source material may be disposed of as follows:

(1) A cumulative total of 0.5 kg (1.1 lb) of source material in a solid, non-dispersible form may be transferred each calendar year, by a person authorized to receive, possess, use, and transfer source material under this general license to persons receiving the material for permanent disposal. The recipient of source material transferred under the provisions of this paragraph is exempt from the requirements to obtain a license under this part to the extent the source material is permanently disposed. This provision does not apply to any person who is in possession of source material under a specific license issued under this chapter; or

(2) In accordance with 4.33.

3.5.2.3 Is subject to the provisions in 3.1, 3.14.2, 3.15.1 through 3.15.3, 3.15.2.1, 3.15.4.2, through 3.15.4.4, 3.22, 3.23, 4.40, 4.50, 4.52, and 10.5.1.

3.5.2.4 Shall respond to written requests from the Department to provide information relating to the general licensee within 30 calendar days of the date of the request, or other time specified in the request. If the person cannot provide the requested information within the allotted time, the person shall, within that same time period, request a longer period to supply the information by providing the Department a written justification for the request;

3.5.2.5 Shall not export such source material except in accordance with a license issued by NRC pursuant to 10 CFR Part 110.

3.5.3 Any person who receives, possesses, uses, or transfers source material in accordance with 3.5.1 shall conduct activities so as to minimize contamination of the facility and the environment. When activities involving such source material are permanently ceased at any site, if evidence of significant contamination is identified, the general licensee shall notify the Department about such

contamination and may consult with the Department as to the appropriateness of sampling and restoration activities to ensure that any contamination or residual source material remaining at the site where source material was used under this general license is not likely to result in exposures that exceed the limits in 4.61.2.

3.5.4 Any person who receives, possesses, uses, or transfers source material in accordance with the general license granted in 3.5.1 is exempt from the provisions of Parts 4 and 10 to the extent that such receipt, possession, use, and transfer are within the terms of such general license, except that such person shall comply with the provisions of 4.61.2 and 4.33 to the extent necessary to meet the provisions of 3.5.2.2 and 3.5.3 . However, this exemption does not apply to any person who also holds a specific license issued under Part 3.

3.5.5 No person may initially transfer or distribute source material to persons generally licensed under 3.5.1.1 or 3.5.1.2, or equivalent regulations of an Agreement State or NRC, unless authorized by a specific license issued in accordance with 3.22.6 or equivalent provisions of an Agreement State or NRC. This prohibition does not apply to analytical laboratories returning processed samples to the client who initially provided the sample. Initial distribution of source material to persons generally licensed under 3.5.1 before August 27, 2016, without specific authorization may continue for 1 year beyond this date. Distribution may also be continued until the Department takes final action on a pending application for license or license amendment to specifically authorize distribution submitted on or before August 27, 2017.

3.5.6 A general license is hereby issued authorizing the receipt of title to source material without regard to quantity.

3.5.6.1 This general license does not authorize any person to receive, possess, use, or transfer source material.

3.5.7 A general license is hereby issued authorizing the possession of source material involved in mining operations provided such operations meet the regulatory requirements of the Division of Reclamation, Mining and Safety, Colorado Department of Natural Resources, or any successor thereto, and, except as authorized in a specific license, such mining operations shall not refine or process such ore.

3.5.8 Depleted Uranium in Industrial Products and Devices.

3.5.8.1 A general license is hereby issued to receive, acquire, possess, use, or transfer, in accordance with the provisions of 3.5.8.2, 3.5.8.3, and 3.5.8.4, depleted uranium contained in industrial products or devices for the purpose of providing a concentrated mass in a small volume of the product or device.

3.5.8.2 The general license in 3.5.8.1 applies only to industrial products or devices which have been manufactured either in accordance with a specific license issued to the manufacturer of the products or devices pursuant to 3.12.13 or in accordance with a specific license issued to the manufacturer by NRC or an Agreement State which authorizes manufacture of the products or devices for distribution to persons generally licensed by NRC or an Agreement State.

(1) Persons who receive, acquire, possess, or use depleted uranium pursuant to the general license established by 3.5.8.1 shall file Department Form R-52, "Registration Certificate - Use of Depleted Uranium Under General License", with the Department.

(a) The form shall be submitted within 30 days after the first receipt or acquisition of such depleted uranium.

(b) The general licensee shall furnish on Department Form R-52 the following information and such other information as may be required by that form:

(i) Name and address of the general licensee;

(ii) A statement that the general licensee has developed and will maintain procedures designed to establish physical control over the depleted uranium described in 3.5.8.1 and designed to prevent transfer of such depleted uranium in any form, including metal scrap, to persons not authorized to receive the depleted uranium; and

(iii) Name and title, address, and telephone number of the individual duly authorized to act for and on behalf of the general licensee in supervising the procedures identified in 3.5.8.2(1)(b)(ii).

(2) The general licensee possessing or using depleted uranium under the general license established by 3.5.8.1 shall report in writing to the Department any changes in information furnished by him in Department Form R-52, "Registration Certificate - Use of Depleted Uranium Under General License". The report shall be submitted within 30 days after the effective date of such change.

3.5.8.3 A person who receives, acquires, possesses, or uses depleted uranium pursuant to the general license established by 3.5.8.1:

(1) Shall not introduce such depleted uranium, in any form, into a chemical, physical, or metallurgical treatment or process, except a treatment or process for repair or restoration of any plating or other covering of the depleted uranium;

(2) Shall not abandon such depleted uranium;

(3) Shall transfer or dispose of such depleted uranium only by transfer in accordance with the provisions of 3.22.

(a) In the case where the transferee receives the depleted uranium pursuant to the general license established by 3.5.8.1, the transferor shall furnish the transferee a copy of this regulation and a copy of Department Form R-52.

(b) In the case where the transferee receives the depleted uranium pursuant to a general license contained in NRC's or Agreement State's regulation equivalent to 3.5.8.1, the transferor shall furnish the transferee a copy of this regulation and a copy of Department Form R-52 accompanied by a note explaining that use of the product or device is regulated by NRC or Agreement State under requirements substantially the same as those in this regulation;

(4) Within 30 days of any transfer, shall report in writing to the Department the name and address of the person receiving the depleted uranium pursuant to such transfer, and

(5) Shall not export such depleted uranium except in accordance with a license issued by NRC pursuant to 10 CFR Part 110 (January 1, 2015).

3.5.8.4 Any person receiving, acquiring, possessing, using, or transferring depleted uranium pursuant to the general license established by 3.5.8.1 is exempt from the requirements of Parts 4 and 10 with respect to the depleted uranium covered by that general license.

3.6 General Licenses [2] - Radioactive Material Other Than Source Material.

2 Different general licenses are issued in this section, each of which has its own specific conditions and requirements.

3.6.1 Reserved.

3 Reserved

3.6.2 Reserved.

* * *

[Publication Instructions: In current Section 3.6.4.3(7), and replace with the following revised text to update the date.]

(7) Shall not export the device except in accordance with 10 CFR Part 110 (January 1, 2015) and shall obtain written approval from NRC before transferring the device to any other specific licensee not specifically identified in 3.6.4.3(8);

* * *

[Publication Instructions: Strike the current Section 3.6.4.3(8)(c), and replace with the following revised text.]

(c) Shall obtain written Department approval before transferring the device to any other specific licensee not specifically identified in 3.6.4.3(8). However, a holder of a specific license may transfer a device for possession and use under its own specific license without prior approval, if, the holder:

(i) Verifies that the specific license authorizes the possession and use, or applies for and obtains an amendment to the license authorizing the possession and use;

(ii) Removes, alters, covers, or clearly and unambiguously augments the existing label (otherwise required by 3.6.4.3(1) of this part) so that the device is labeled in compliance with Part 4, Section 4.30; however the manufacturer, model number, and serial number must be retained;

(iii) Obtains the manufacturer's or initial transferor's information concerning maintenance that would be applicable under the specific license (such as leak testing procedures); and

(iv) Reports the transfer under 3.6.4.3(8)(b).

* * *

[Publication Instructions: Strike the current Section 3.6.5.1(2), and replace with the following revised text.]

(2) Each device has been manufactured, assembled or imported in accordance with a specific license issued by NRC or each device has been manufactured or assembled in accordance with the specifications contained in a specific license issued by the Department or any Agreement State to the manufacturer or assembler of such device pursuant to licensing requirements equivalent to those in Section 32.53 of 10 CFR Part 32 (January 1, 2015).

* * *

[Publication Instructions: Strike the current Section 3.6.7.4, and replace with the following revised text.]

3.6.7.4 The general licenses in 3.6.7.1, 3.6.7.2, and 3.6.7.3 apply only to calibration or reference sources which have been manufactured in accordance with the specifications contained in a specific license issued to the manufacturer or importer of the sources by NRC pursuant to Section 32.57 of 10 CFR Part 32 or Section 70.39 of 10 CFR Part 70 (January 1, 2015) or which have been manufactured in accordance with the specifications contained in a specific license issued to the manufacturer by the Department or any Agreement State pursuant to licensing requirements equivalent to those contained in Section 32.57 of 10 CFR Part 32 or Section 70.39 of 10 CFR Part 70 (January 1, 2015).

* * *

[Publication Instructions: Strike Section 3.6.10.1 and insert the following revised text.]

3.6.10.1 A general license is hereby issued to receive, acquire, possess, use, and transfer strontium-90 contained in ice detection devices, provided each device contains not more than 1.85 MBq (50 µCi) of strontium-90 and each device has been manufactured or imported in accordance with a specific license issued by NRC or each device has been manufactured in accordance with the specifications contained in a specific license issued by the Department or an Agreement State to the manufacturer of such device pursuant to licensing requirements equivalent to those in Section 32.61 of 10 CFR Part 32 (January 1, 2015).

* * *

[Publication Instructions: Immediately following current Section 3.6.10.4 insert the following unnumbered new section header.]

ADDITIONAL EXEMPTIONS

[Publication Instructions: Replace current Section 3.7 with the following revised text.]

3.7 Carriers

Common and contract carriers, freight forwarders, warehousemen, and the U.S. Postal Service are exempt from the regulations in this Part and Parts 5, 7, 16, 19, and 22 and the requirements for a license set forth in section 81 of the Atomic Energy Act to the extent that they transport or store radioactive material in the regular course of carriage for another or storage incident thereto.

* * *

[Publication Instructions: Strike the current Section 3.8.7 through 3.8.9.3 (including subsections), and replace with the following revised and added text.]

3.8.7 Pre-licensing Construction

3.8.7.1 An application for a license, or to amend or renew an existing license, for (1) source material milling, (2) commercial waste storage, treatment or disposal by incineration, (3) transfer for disposal of wastes from treatment or incineration, (4) commercial waste disposal by land burial or by underground injection, or the (5) conduct of any other activity within the licensing authority of the Department which the Department determines will significantly affect the radiological quality of the human environment, shall be filed with the Department at least nine (9) months prior to the anticipated commencement of construction of the plant or facility in which the activity will be conducted or in accordance with the requirements of Part 18 if applicable, and shall be accompanied by the environmental assessment required by 3.8.8, unless an exemption from the requirement of furnishing such assessment has been obtained from the Department.

3.8.7.2 No construction shall be commenced until the license has been issued.

3.8.7.3 For the purpose of 3.8.7 the terms “construction” and "commencement of construction", are defined in Part 1, 1.2.

3.8.8 Environmental Assessment.

3.8.8.1 In the case of an application for a license, or to amend or renew an existing license, for (1) source material milling, (2) commercial waste storage, treatment or disposal by incineration, (3) transfer for disposal of waste from incineration, (4) commercial waste disposal by land burial or by underground injection, or for (5) the conduct of any other activity which will affect the quality of the human environment by reason of exposure to radiation, before "commencement of construction", as defined in 3.8.7.3, of the plant or facility in or at which the activity will be conducted, or in case of a renewal of such a license, the applicant shall submit all information required under these regulations and such other material as the Department may deem necessary.

(1) Such information shall include the environmental assessment and other information required by 3.8.8.2 to be submitted to assist the Department in the evaluation of the short-term and long-range environmental impact of the project and activity so that the Department may weigh environmental, economic, technical, and other benefits against environmental costs, while considering available alternatives.

(2) In the event that an environmental assessment acceptable to the Department is on file with the Department in regard to the specific licensed activity authorized under an existing license, and upon request of the applicant to amend or renew an existing license or at the initiation of the Department, the Department may grant an exemption of the requirement to submit an additional environmental assessment or require such amendment of the existing environmental assessment as will demonstrate the environmental impact to result from the proposed activity.

(3) The request for exemption shall provide the Department with such information as the Department requires of the applicant to demonstrate that no significant environmental impact will result from the licensed activity.

3.8.8.2 An environmental assessment shall be required of the applicant and shall contain all information deemed necessary by the Department as required by the Act.

(1) Upon receipt of the environmental assessment or any amendment thereto, and of any other documents required, the Department shall determine the necessity to transmit and, if appropriate, shall transmit the same for review and comment to Federal, State, and local agencies having expertise in and jurisdiction over the proposed project and activity.

(2) Written comments and reports of reviewing agencies shall be considered by the Department in its decision-making review process on the license application request.

(3) If an environmental impact statement (EIS) is required of a Federal agency pursuant to the National Environment Policy Act of 1969 (NEPA) and is provided by such Federal agency, it shall be used by the Department in its decision-making review process on the license application request.

(4) The Department shall consider applicable regulations of Federal, State, and local regulatory agencies and permit requirements thereof.

3.8.9 Except as provided in 3.8.9.3, 3.8.9.4, and 3.8.9.5, an application for a specific license to use radioactive material in the form of a sealed source or in a device that contains the sealed source must either:

3.8.9.1 Identify the source or device by manufacturer and model number as registered with the NRC under 10 CFR 32.210 or with an Agreement State, or for a source or a device containing radium-226 or accelerator produced radioactive material with an Agreement State under provisions comparable to 10 CFR 32.210; or

3.8.9.2 Contain the information identified in 3.12.14.3; or

3.8.9.3 For sources or devices manufactured before October 23, 2012 that are not registered with the NRC under 10 CFR 32.210 or with an Agreement State, and for which the applicant is unable to provide all categories of information specified in 3.12.14.3, the application must include:

(1) All available information identified in 3.12.14.3 concerning the source, and, if applicable, the device; and

(2) Sufficient additional information to demonstrate that there is reasonable assurance that the radiation safety properties of the source or device are adequate to protect health and minimize danger to life and property. Such information must include a description of the source or device, a description of radiation safety features, the intended use and associated operating experience, and the results of a recent leak test.

3.8.9.4 For sealed sources and devices allowed to be distributed without registration of safety information in accordance with 3.12.14.7(1), the applicant may supply only the manufacturer, model number, and radionuclide and quantity.

3.8.9.5 If it is not feasible to identify each sealed source and device individually, the applicant may propose constraints on the number and type of sealed sources and devices to be used and the conditions under which they will be used, in lieu of identifying each sealed source and device.

* * *

[Publication Instructions: Strike the current Section 3.9 and subsections, and replace with the following revised text.]

3.9 General Requirements for the Issuance of Specific Licenses.

A license application for a specific license will be approved if the Department determines that:

3.9.1 The applicant is qualified by reason of training and experience to use the material in question for the purpose requested in accordance with these regulations in such a manner as to minimize danger to public health and safety or property;

3.9.2 The applicant's proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property and the applicant's facilities are permanently located in Colorado;

3.9.3 The issuance of the license will not be inimical to the health and safety of the public;

3.9.4 The applicant satisfies any applicable special requirements in parts 3, 5, 7, 16, 19, and 22; and

3.9.5 The applicant has established Department-approved financial assurance warranties in accordance with the following requirements.

3.9.5.1 A signed executed original copy of each warranty required by this part shall be furnished to and approved by the Department prior to the issuance of a new license, or any amendment or renewal of an existing license.

* * *

[Publication Instructions: Immediately following Section 3.9.5.1 insert the following unnumbered section header.]

DECOMMISSIONING WARRANTY

* * *

[Publication Instructions: Strike the current Section 3.9.5.8 through 3.9.5.10(4)(c)(iii) – including subsections - and replace with the following revised and added text.]

3.9.5.8 The Department will determine if the licensee must adjust the amount of the warranty to account for increases or decreases in cost estimates resulting from:

(1) Inflation or deflation;

(2) Changes in engineering plans;

(3) Activities performed;

(4) Spills, leakage or migration of radioactive material producing additional contamination in onsite subsurface material that must be remediated to meet applicable remediation criteria;

(5) Waste inventory increasing above the amount previously estimated;

(6) Waste disposal costs increasing above the amount previously estimated;

(7) Facility modifications;

(8) Changes in authorized possession limits;

(9) Actual remediation costs that exceed the previous cost estimate;

(10) Onsite disposal; and

(11) Changes in any other conditions affecting disposal, decontamination, and decommissioning costs.

3.9.5.9 Regardless of whether reclamation (disposal, decontamination and decommissioning) is phased through the life of the licensed operations or takes place at the end of operations, an appropriate portion of surety liability must be retained until final compliance with the reclamation plan is determined by the Department.

3.9.5.10 The appropriate portion of surety liability retained until final compliance with the reclamation plan is determined will be at least sufficient at all times to cover the costs of decommissioning and reclamation of the areas that are expected to be disturbed before the next license renewal. The term of the surety mechanism must be open ended, unless it can be demonstrated that another arrangement would provide an equivalent level of assurance. This assurance would be provided with a surety instrument which is written for a specified time (e.g., 5 years) and which must be automatically renewed unless the surety notifies the beneficiary (the NRC or the Department) and the principal (the licensee) with reasonable time (e.g., 90 days) before the renewal date of their intention not to renew. In such a situation the surety requirement still exists and the licensee would be required to submit an acceptable replacement surety within a brief time to allow at least 60 days for the regulatory agency to collect.

3.9.5.11 Proof of forfeiture must not be necessary to collect the surety. In the event the licensee can not provide an acceptable replacement surety within the required time, the surety shall be automatically collected before its expiration. The surety instrument must provide for collection of the full face amount immediately on demand without reduction for any reason, except for trustee fees and expenses provided for in a trust agreement, and that the surety will not refuse to make full payment. The conditions described previously would have to be clearly stated on any surety instrument which is not open ended, and must be agreed to by all parties. Financial surety arrangements generally acceptable to the Department are:

(1) Trust funds;

(2) Surety bonds;

(3) Irrevocable letters of credit; and

(4) Combinations of the financial surety arrangements or other types of arrangements as may be approved by the Department. If a trust is not used, then a standby trust must be set up to receive funds in the event the NRC or Department exercises its right to collect the surety. The surety arrangement and the surety or trustee, as applicable, must be acceptable to the Department. Self insurance, or any arrangement which essentially constitutes self insurance (e.g., a contract with a State

or Federal agency), will not satisfy the surety requirement because this provides no additional assurance other than that which already exists through license requirements.

3.9.5.12 With the approval of the Department, a licensee may reduce the amount of a decommissioning warranty as decommissioning activities are completed in accordance with an approved decommissioning plan and/or to reflect current site conditions and license authorizations.

3.9.5.13 The licensee shall have sixty days after the date of written notification by the Department of a required adjustment to establish a warranty fulfilling all new requirements unless granted an extension by the Department. If the licensee disputes the amount of the required financial assurance warranties, the licensee may request a hearing to be conducted in accordance with section 24-4-105, CRS.

3.9.5.14 If the licensee requests a hearing, no new material ore or other radioactive material may be brought on site for processing or disposal and no new radioactive material may be processed until the licensee's dispute over the financial assurance warranty is resolved, unless the licensee posts a bond in a form approved by the Department equal to the amount in dispute.

LONG-TERM CARE WARRANTY

3.9.5.15 In addition to the decommissioning warranty required by 3.9.5.2, the Department may require any licensee to provide a long-term care warranty if the licensed facility will remain a disposal site for radioactive materials subsequent to the termination of the license, or the license will be terminated using criteria in 4.61.3 or 4.61.4.

(1) Except as provided in 3.9.5.15(2), the following specific licensees are required to provide long-term care warranties:

(a) Radioactive waste disposal licensees;

(b) Commercial radioactive waste handling and/or packaging licensees;

(c) Source material milling licensees; and

(d) Formerly U.S. Atomic Energy Commission or U.S. Nuclear Regulatory Commission-licensed facilities;

(2) A long-term care warranty is not required for a licensee identified in 3.9.5.15(1) if the disposition of radioactive materials by the licensee is made in such a manner as the Department determines does not require long-term monitoring and maintenance of the site.

(3) The long-term care warranty shall be in a form as described in 3.9.5.4.

(4) The amount of funds to be provided by such long-term care warranties shall be based on Department-approved cost estimates and must be enough that with an assumed one percent annual real interest rate, the annual interest earnings will be sufficient to cover the annual costs of site surveillance, including reasonable administrative costs incurred, in perpetuity, subsequent to the termination of the license.

(a) For each source material mill licensee, the long-term care warranty must have a minimum value equivalent to $250,000 in 1978 dollars.

(i) The value of the long-term care warranty shall be adjusted annually to recognize inflation.

(ii) The inflation rate to be used for this adjustment is that indicated by the change in the consumer price index published by the U.S. Department of Labor, Bureau of Labor Statistics.

(iii) The Department may use other indicators of the inflation rate if reasonable; provided, however, that the license shall not terminate unless the amount of the long-term care warranty is acceptable to the licensing agency and site caretaker.

(b) Cost estimates for facilities and sites requiring long-term care subsequent to license termination are to be based on the final disposition of wastes such that ongoing active maintenance is not necessary to preserve isolation.

(i) It is expected that, as a minimum, annual site inspections shall be conducted to confirm the integrity of the stabilized waste systems and to determine the need, if any, for maintenance and/or monitoring.

(ii) Cost estimates shall be adjusted if more frequent site inspections are required based on an evaluation of a particular site.

(c) For sites decommissioned in accordance with the provisions of 4.61.3 or 4.61.4, cost estimates for long-term care subsequent to license termination must be sufficient to enable the Department, a responsible government agency, or an independent third party to:

(i) Perform periodic site inspections no less frequently than each five years;

(ii) Assure the continuation of institutional controls; and

(iii) Assume responsibilities and carry out any necessary control and maintenance of the site. Cost estimates shall be adjusted if more frequent site inspections are required based on an evaluation of a particular site and the institutional controls established for that site.

* * *

[Publication Instructions: Strike the current Section 3.9.6.1, and replace with the following reformatted text.]

3.9.6.1 Each applicant for and holder of a license authorizing the possession and use unsealed radioactive materials with half-life greater than 120 days and in quantities greater than 10

^{5} times the applicable quantity of Schedule 3B, shall establish a Department-approved decommissioning funding plan to assure the availability of funds for decommissioning activities conducted over the life of the licensed facility. 370 Bq (0.01 µCi) shall be used as the Schedule 3B value for any alpha emitting radionuclide not listed in Schedule 3B, or mixtures of alpha emitters of unknown composition. A decommissioning funding plan is also required for licensees authorized a combination of isotopes if R divided by 10^{5} is greater than 1 (unity rule), where R is defined in 3.9.5.3(2)(a).

* * *

[Publication Instructions: Strike the current Section 3.9.7 and 3.9.8, and replace with the following revised text.]

3.9.7 In the case of an application for a license for (1) source material milling, (2) commercial waste storage, treatment or disposal by incineration, (3) transfer for disposal of waste from incineration, (4) commercial waste disposal by land burial or by underground injection, or for (5) the conduct of any other activity which the Department determines will significantly affect the quality of the human environment, the Department, before commencement of construction, on the basis of information filed and evaluations made, has concluded, after weighing the environmental, economic, technical and other benefits against environmental costs and considering available alternatives, that the action called for is the issuance of the proposed license with any appropriate conditions to protect environmental values.

3.9.7.1 Commencement of construction prior to this conclusion is grounds for denial of a license to possess and use source and byproduct material in the plant or facility.

3.9.8 Commencement of construction prior to the issuance of a license, or of an amendment or renewal thereof, or of an exemption under the requirements of 3.8.7, may be grounds for denial of such license, amendment or renewal.

* * *

[Publication Instructions: Strike the current Section 3.9.10.1(2) and replace with the following revised text.]

(2) For each proposed license, five-year license renewal, or license amendment pertaining to a uranium recovery facility's receipt of material as specified in Part 18 of these regulations.

* * *

[Publication Instructions: Strike the current Section 3.9.11.4 through 3.10.1 (inclusive), and replace with the following revised text.]

3.9.11.4 The licensee shall allow the offsite response organizations expected to respond in case of an accident 60 days to comment on the licensee's emergency plan before submitting it to the Department.

(1) The licensee shall provide any comments received within 60 days to the Department with the emergency plan.

3.10 Additional Requirements for Issuance of Specific Licenses for Use of Unsealed Radioactive Material.

3.10.1 In addition to the requirements set forth in 3.9, applicants for licenses authorizing the possession and use of unsealed radioactive materials shall include in the application a description of the facility and procedures for operation which

* * *

[Publication Instructions: Strike the current Section 3.12.4.1, and replace with the following revised text. All subsections retained as is.]

3.12.4.1 An application for a specific license to manufacture, or initially transfer devices containing radioactive material, excluding special nuclear material, to persons generally licensed under 3.6.4 or equivalent regulations of NRC or an Agreement State will be approved if:

* * *

[Publication Instructions: Following the current Section 3.12.4.1(4), insert new provision 3.12.4.1(5) as specified below.]

(5) The device has been registered in the Sealed Source and Device Registry.

* * *

[Publication Instructions: Strike the current Section 3.12.4.4, and replace with the following revised text for formatting purposes. Subsection (1) of this provision remains as is.]

3.12.4.4 In the event the applicant desires that the general licensee under 3.6.4, or under equivalent regulations of NRC or an Agreement State, be authorized to install the device, collect the sample to be analyzed by a specific licensee for leakage of radioactive material, service the device, test the "on-off" mechanism and indicator, or remove the device from installation, the applicant shall include in the application written instructions to be followed by the general licensee, estimated calendar quarter doses associated with such activity or activities, and bases for such estimates.

* * *

[Publication Instructions: Strike the current Section 3.12.4.5, and replace with the following revised text. Subsections of this provision remains as is.]

3.12.4.5 Each person licensed under 3.12.4 to distribute devices to generally licensed person shall:

* * *

[Publication Instructions: Strike the current Section 3.12.4.5(3)(a), and replace with the following revised text.]

(a) Report the information specified in 3.12.4.5(2) to NRC for all transfers of such devices to persons for use under NRC general license in Section 31.5 of 10 CFR Part 31 (January 1, 2015).

* * *

[Publication Instructions: Strike the current Section 3.12.5 through 3.12.6.1(2) (inclusive), and replace with the following revised text.]

3.12.5 Special Requirements for the Manufacture, Assembly, Repair or Initial Transfer of Luminous Safety Devices for Use in Aircraft.

3.12.5.1 An application for a specific license to manufacture, assemble, repair or initially transfer luminous safety devices containing tritium or promethium-147 for use in aircraft, for distribution to persons generally licensed under 3.6.5 will be approved if:

(1) The applicant satisfies the general requirements specified in 3.9; and

(2) The applicant satisfies the requirements of Sections 32.53, 32.54, 32.55, and 32.56 of 10 CFR Part 32 (January 1, 2015), or their equivalent.

(3) The device has been registered in the Sealed Source and Device Registry.

3.12.6 Special Requirements for License to Manufacture or initially transfer Calibration Sources Containing Americium–241, Plutonium or Radium-226 for Distribution to Persons Generally Licensed Under 3.6.7.

3.12.6.1 An application for a specific license to manufacture calibration and reference sources containing americium-241, plutonium or radium-226 to persons generally licensed under 3.6.7 will be approved if:

(1) The applicant satisfies the general requirement of 3.9; and

(2) The applicant satisfies the requirements of Sections 32.57, 32.58, and 32.59 of 10 CFR Part 32 and Section 70.39 of 10 CFR Part 70 (January 1, 2015) or their equivalent.

* * *

[Publication Instructions: Strike the current Section 3.12.9 (including subsections), and replace with the following revised text.]

3.12.9 Licensing the Manufacture or initial transfer of Ice Detection Devices.

3.12.9.1 An application for a specific license to manufacture and distribute ice detection devices to persons generally licensed under 3.6.10 will be approved if:

(1) The applicant satisfies the general requirements of 3.9; and

(2) The criteria of Sections 32.61, and 32.62 of 10 CFR Part 32 (January 1, 2015) are met.

(3) The device has been registered in the Sealed Source and Device Registry.

* * *

[Publication Instructions: Following the current Section 3.12.12.1(3), insert the following new subsection text.]

(4) The source or device has been registered in the Sealed Source and Device Registry.

* * *

[Publication Instructions: Strike the current Section 3.12.14 (including subsections), and replace with the following revised and new/added text. Note – this change includes the addition of new section 3.12.15.]

3.12.14 Registration of Product Information.

3.12.14.1 Any manufacturer or initial distributor of a sealed source or device containing a sealed source may submit a request to the Department for evaluation of radiation safety information about its product and for the product registration.

3.12.14.2 The request for review must be sent to the Radiation Program Manager, Hazardous Materials and Waste Management Division, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530.

3.12.14.3 The request for review of a sealed source or device must include sufficient information about the design, manufacture, prototype testing, quality control program, labeling, proposed uses and leak testing and, for a device, the request must also include sufficient information about installation, service and maintenance, operating and safety instructions, and its potential hazards, to provide reasonable assurance that the radiation safety properties of the source or device are adequate to protect health and minimize danger to life and property.

3.12.14.4 The Department normally evaluates a sealed source or device using radiation safety criteria in accepted industry standards.

(1) If these standards and criteria do not readily apply to a particular case, the Department formulates reasonable standards and criteria with the help of the manufacturer or distributor.

(2) The Department shall use criteria and standards sufficient to ensure that the radiation safety properties of the device or sealed source are adequate to protect health and minimize danger to life and property. Subpart A of 10 CFR Part 32 includes specific criteria that apply to certain exempt products and 3.12.4, 3.12.5, 3.12.6, 3.12.8, and 3.12.9 of this part includes specific criteria applicable to certain generally licensed devices. Sections 3.12.10 and 3.12.12 include specific provisions that apply to certain specifically licensed items.

3.12.14.5 After completion of the evaluation, the Department issues a certificate of registration to the person making the request. The certificate of registration acknowledges the availability of the submitted information for inclusion in an application for specific license proposing use of the product or concerning use under an exemption from licensing or general license as applicable for the category of certificate.

3.12.14.6 The person submitting the request for evaluation and registration of safety information about the product shall manufacture and distribute the product in accordance with:

(1) The statements and representations, including quality control program, contained in the request; and

(2) The provisions of the certificate of registration.

3.12.14.7 Authority to manufacture or initially distribute a sealed source or device to specific licensees may be provided in the license without the issuance of a certificate of registration in the following cases:

(1) Calibration and reference sources containing no more than:

(a) 37 MBq (1 mCi), for beta and/or gamma emitting radionuclides; or

(b) 0.37 MBq (10 μCi), for alpha emitting radionuclides; or

(2) The intended recipients are qualified by training and experience and have sufficient facilities and equipment to safely use and handle the requested quantity of radioactive material in any form in the case of unregistered sources or, for registered sealed sources contained in unregistered devices, are qualified by training and experience and have sufficient facilities and equipment to safely use and handle the requested quantity of radioactive material in unshielded form, as specified in their licenses; and

(a) The intended recipients are licensed under 3.11 or comparable provisions of NRC or an Agreement State; or

(b) The recipients are authorized for research and development; or

(c) The sources and devices are to be built to the unique specifications of the particular recipient and contain no more than 740 GBq (20 Ci) of tritium or 7.4 GBq (200 mCi) of any other radionuclide.

3.12.14.8 After the certificate is issued, the Department may conduct an additional review as it determines is necessary to ensure compliance with current regulatory standards. In conducting its review, the Department will complete its evaluation in accordance with criteria specified in this section. The Department may request such additional information as it considers necessary to conduct its review and the certificate holder shall provide the information as requested.

3.12.15 Inactivation of certificates of registration of sealed sources and devices

3.12.15.1 A certificate holder who no longer manufactures or initially transfers any of the sealed source(s) or device(s) covered by a particular certificate issued by the Department shall request inactivation of the registration certificate. Such a request must be made to the Department and must normally be made no later than two years after initial distribution of all of the source(s) or device(s) covered by the certificate has ceased. However, if the certificate holder determines that an initial transfer was in fact the last initial transfer more than two years after that transfer, the certificate holder shall

request inactivation of the certificate within 90 days of this determination and briefly describe the circumstances of the delay.

3.12.15.2 If a distribution license is to be terminated in accordance with 3.16 the licensee shall request inactivation of its registration certificates associated with that distribution license before the Department will terminate the license. Such a request for inactivation of certificate(s) must indicate that the license is being terminated and include the associated specific license number.

3.12.15.3 A specific license to manufacture or initially transfer a source or device covered only by an inactivated certificate no longer authorizes the licensee to initially transfer such sources or devices for use. Servicing of devices must be in accordance with any conditions in the certificate, including in the case of an inactive certificate.

* * *

[Publication Instructions: Strike the current Section 3.15.2, and replace with the following revised text for formatting purposes.]

3.15.2 Inalienability of Licenses.

* * *

[Publication Instructions: Strike the current Section 3.15.3, and replace with the following revised text.]

3.15.3 Each person licensed by the Department pursuant to this part shall confine use and possession of the material licensed to the locations and purposes authorized in the license. Except as otherwise provided in the license, a license issued pursuant to Part 3 shall carry with it the right to receive, possess, and use source or byproduct material. Preparation for shipment and transport of source or radioactive material shall be in accordance with the provisions of Part 17.

* * *

[Publication Instructions: Strike the current Section 3.16.4.6, and replace with the following revised text.]

3.16.4.6 The proposed decommissioning plan will be approved by the Department if the information therein demonstrates that the decommissioning will be in accordance with the requirements of 3.9.5.15, 3.16, and 4.61 (the exemption of 4.61.1.1 applies), completed as soon as practicable, and that the health and safety of workers and the public will be adequately protected.

* * *

[Publication Instructions: Strike the current Section 3.16.6.4, and replace with the following revised text to update cross-references.]

3.16.6.4 The licensee's report required by 3.16.6.3 shall specify, as appropriate:

* * *

[Publication Instructions: Strike the current Sections 3.16.7 and 3.16.7.1, and replace with the following revised text.]

3.16.7 License Termination.

3.16.7.1 Specific licenses, including expired licenses, will be terminated by written notice to the licensee when the Department determines that:

(1) Radioactive materials have been properly disposed and records of disposal required by 4.48 to be maintained and retained have been forwarded to the Department as required by 3.15.4;

(2) Reasonable effort has been made to eliminate residual radioactive contamination, if present;

(3) The licensee has demonstrated, by radiation survey results and/or other appropriate methods, that the license termination will be in compliance with these regulations;

(4) The licensee has established a Department approved long term care warranty, if required;

(5) Department approved institutional controls have been implemented to limit public doses, if required; and

(6) All records required by 3.16.5 have been transferred to the Department.

* * *

[Publication Instructions: After the current Section 3.22.5, insert the following new text.]

REQUIREMENTS FOR LICENSE TO INITIALLY TRANSFER SOURCE MATERIAL FOR USE UNDER THE SMALL QUANTITIES OF SOURCE MATERIAL GENERAL LICENSE

3.22.6 An application for a specific license to initially transfer source material for use under 3.5.1, or equivalent regulations of the NRC or an Agreement State, will be approved if:

3.22.6.1 The applicant satisfies the general requirements specified in 3.9; and

3.22.6.2 The applicant submits adequate information on, and the Department approves the methods to be used for quality control, labeling, and providing safety instructions to recipients.

3.22.7 License Conditions for Initial Transfer of Source Material

Conditions of licenses to initially transfer source material for use under the ‘small quantities of source material’ general license: Quality control, labeling, safety instructions, and records and reports.

3.22.7.1 Each person licensed under 3.22.6 shall label the immediate container of each quantity of source material with the type of source material and quantity of material and the words, “radioactive material.”

3.22.7.2 Each person licensed under 3.22.6 shall ensure that the quantities and concentrations of source material are as labeled and indicated in any transfer records.

3.22.7.3 Each person licensed under 3.22.6 shall provide the information specified in 3.22.7 to each person to whom source material is transferred for use under 3.5.1 or equivalent provisions in NRC or Agreement State regulations. This information must be transferred before the source material is transferred for the first time in each calendar year to the particular recipient. The required information includes:

(1) A copy of 3.5.1 and 3.22, or relevant equivalent regulations of the NRC or an Agreement State.

(2) Appropriate radiation safety precautions and instructions relating to handling, use, storage, and disposal of the material.

3.22.7.4 Each person licensed under 3.22.6 shall report transfers as follows:

(1) File a report with the Department. The report shall include the following information:

(a) The name, address, and license number of the person who transferred the source material;

(b) For each general licensee under 3.5.1 or equivalent NRC or Agreement State provisions to whom greater than 50 grams (0.11 lb) of source material has been transferred in a single calendar quarter, the name and address of the general licensee to whom source material is distributed; a responsible agent, by name and/or position and phone number, of the general licensee to whom the material was sent; and the type, physical form, and quantity of source material transferred; and

(c) The total quantity of each type and physical form of source material transferred in the reporting period to all such generally licensed recipients.

(2) File a report with the NRC and each responsible Agreement State agency that identifies all persons, operating under provisions equivalent to 3.5.1, to whom greater than 50 grams (0.11 lb) of source material has been transferred within a single calendar quarter. The report shall include the following information specific to those transfers made to the NRC or Agreement State being reported to:

(a) The name, address, and license number of the person who transferred the source material; and

(b) The name and address of the general licensee to whom source material was distributed; a responsible agent, by name and/or position and phone number, of the general licensee to whom the material was sent; and the type, physical form, and quantity of source material transferred.

(c) The total quantity of each type and physical form of source material transferred in the reporting period to all such generally licensed recipients within the Agreement State or under NRC jurisdiction, as appropriate.

(3) Submit each report by January 31 of each year covering all transfers for the previous calendar year. If no transfers were made to persons generally licensed under 3.5.1 or equivalent NRC or Agreement State provisions during the current period, a report shall be submitted to the Department indicating so. If no transfers have been made to general licensees under NRC jurisdiction or in a particular Agreement State during the reporting period, this information shall be reported to the NRC or the responsible Agreement State agency upon request of the agency.

3.22.7.5 Each person licensed under 3.22.6 shall maintain all information that supports the reports required by this section concerning each transfer to a general licensee for a period of 1 year after the event is included in a report to the Department, an Agreement State agency, or the NRC.

* * *

[Publication Instructions: Insert a page break at the top of the Schedule 3A page to ensure the header and table begins at the top of the page.]

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[Publication Instructions: Strike the current Schedule 3C, and replace with the following revised and added text.]

PART 3, SCHEDULE 3C: UNIMPORTANT QUANTITIES OF SOURCE MATERIAL AND EXEMPT ITEMS (3.2)

3C Any person is exempt from the requirements for a license set forth in section 62 of the Atomic Energy Act and from the regulations in this part 3, and parts 4 and 10, to the extent that such person receives, possesses, uses, or transfers:

3C.1 Any quantities of thorium contained in:

3C.1.1 Incandescent gas mantles;

3C.1.2 Vacuum tubes;

3C.1.3 Welding rods;

3C.1.4 Electric lamps for illuminating purposes provided that each lamp does not contain more than 50 milligrams of thorium;

3C.1.5 Germicidal lamps, sunlamps, and lamps for outdoors or industrial lighting provided that each lamp does not contain more than 2 grams of thorium;

3C.1.6 Rare earth metals and compounds, mixtures, and products containing not more than 0.25 percent by weight thorium, uranium, or any combination of these; or

3C.1.7 Personnel neutron dosimeters provided that each dosimeter does not contain more than 50 milligrams of thorium.

3C.2 Source material contained in the following products:

3C.2.1 Glazed ceramic tableware manufactured before August 27, 2013, provided that the glaze contains not more than 20 percent by weight source material;

3C.2.2 Glassware containing not more than 2 percent by weight source material or, for glassware manufactured before August 27, 2013, 10 percent by weight source material, but not including commercially manufactured glass brick, pane glass, ceramic tile or other glass or ceramic used in construction;

3C.2.3 Glass enamel or glass enamel frit containing not more than 10 percent by weight source material imported or ordered for importation into the United States, or initially distributed by manufacturers in the United States, before July 25, 1983; or

3C.2.4 Piezoelectric ceramic containing not more than 2 percent by weight source material.

3C.3 Photographic film, negatives, and prints containing uranium or thorium.

3C.4 Any finished product or part fabricated of, or containing, tungsten-thorium or magnesium-thorium alloys, provided that the thorium content of the alloy does not exceed 4 percent by weight and that this exemption shall not be deemed to authorize the chemical, physical, or metallurgical treatment or processing of any such product or part.

3C.5 Uranium contained in counterweights installed in aircraft, rockets, projectiles, and missiles, or stored or handled in connection with installation or removal of such counterweights, provided that:

3C.5.1 Each counterweight has been impressed with the following legend clearly legible through any plating or other covering: "Depleted Uranium"; [14]

14 The requirement specified in 3C.5.1 need not be met by counterweights manufactured prior to December 31, 1969; provided, that such counterweights were manufactured under a specific license issued by the Atomic Energy Commission and were impressed with the legend, "CAUTION – RADIOACTIVE MATERIAL – URANIUM", as previously required by the regulations.

3C.5.2 Each counterweight is durably and legibly labeled or marked with the identification of the manufacturer and the statement: “Unauthorized Alterations Prohibited” [15] ; and

15 The requirement specified in 3C.5.2 need not be met by counterweights manufactured prior to December 31, 1969; provided, that such counterweights were manufactured under a specific license issued by the Atomic Energy Commission and were impressed with the legend, “CAUTION – RADIOACTIVE MATERIAL – URANIUM", as previously required by the regulations.

3C.5.3 This exemption shall not be deemed to authorize the chemical, physical, or metallurgical treatment or processing of any such counterweights other than repair or restoration of any plating or other covering.

3C.6 Natural or depleted uranium used as shielding constituting part of any shipping container, provided that:

3C.6.1 The shipping container is conspicuously and legibly impressed with the legend "Caution - Radioactive Shielding - Uranium"; and

3C.6.2 The uranium metal is encased in mild steel or equally fire resistant metal of minimum wall thickness of 1/8 inch (3.2 mm).

3C.7 Thorium or uranium contained in or on finished optical lenses and mirrors, provided that each lens or mirror does not contain more than 10 percent by weight thorium or uranium or, for lenses manufactured before August 27, 2013, 30 percent by weight of thorium; and that the exemption contained in 3C.7 shall not be deemed to authorize either:

3C.7.1 The shaping, grinding, or polishing of such lens or manufacturing processes other than the assembly of such lens or mirror into optical systems and devices without any alteration of the lens or mirror; or

3C.7.2 The receipt, possession, use, or transfer of uranium or thorium contained in contact lenses, or in spectacles, or in eyepieces in binoculars or other optical instruments.

3C.8 Reserved

3C.9 Thorium contained in any finished aircraft engine part containing nickel-thoria alloy, provided that

3C.9.1 The thorium is dispersed in the nickel-thoria alloy in the form of finely divided thoria (thorium dioxide); and

3C.9.2 The thorium content in the nickel-thoria alloy does not exceed 4 percent by weight.

3C.10 No person may initially transfer for sale or distribution a product containing source material to persons exempt under 3C.1 through 3C.10, or equivalent regulations of the NRC or an Agreement State, unless authorized by a license issued by NRC under 10 CFR Part 40.52 to initially transfer such products for sale or distribution.

3C.10.1 Persons authorized to manufacture, process, or produce these materials or products containing source material by an Agreement State, and persons who import finished products or parts, for sale or distribution are exempt from the requirements of parts 4, and 10, and 3.9.1 and 3.9.2.

3C.11 Except for persons who apply radioactive material to, or persons who incorporate radioactive material into, the following products, any person is exempt from these regulations to the extent that the person receives, possesses, uses, transfers, owns, or acquires the following products [16] :

16 Authority to transfer possession or control by the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing byproduct material whose subsequent possession, use, transfer, and disposal by all other persons are exempted from regulatory requirements may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

3C.11.1 Timepieces or hands or dials containing not more than the following specified quantities of radioactive material and not exceeding the following specified radiation dose rate:

3C.11.1.1 925 MBq (25 mCi) of tritium per timepiece.

3C.11.1.2 185 MBq (5 mCi) of tritium per hand.

3C.11.1.3 555 MBq (15 mCi) of tritium per dial (bezels when used shall be considered as part of the dial).

3C.11.1.4 3.7 MBq (100 µCi) of promethium-147 per watch or 7.4 MBq (200 µCi) of promethium-147 per any other timepiece.

3C.11.1.5 0.74 MBq (20 µCi) of promethium-147 per watch hand or 1.48 MBq (40 µCi of promethium-147 per other timepiece hand.

3C.11.1.6 2.22 MBq (60 µCi) of promethium-147 per watch dial or 4.44 MBq (120 µCi) of promethium-147 per other timepiece dial (bezels when used shall be considered as part of the dial).

3C.11.1.7 The radiation dose rate from hands and dials containing promethium-147 will not exceed, when measured through 50 milligrams per square centimeter of absorber:

(1) For wristwatches, 1 µGy (0.1 mrad) per hour at 10 centimeters from any surface.

(2) For pocket watches, 1 µGy (0.1 mrad) per hour at 1 centimeter from any surface.

(3) For any other timepiece, 2 µGy (0.2 mrad) per hour at 10 centimeters from any surface.

3C.11.1.8 37 kBq (1 µCi) of radium-226 per timepiece in timepieces acquired prior to the effective date of this regulation;

3C.11.2 Static elimination devices and Ion generating tubes

3C.11.2.1 Static elimination devices which contain, as a sealed source or sources, byproduct material consisting of a total of not more than 18.5 MBq (500 uCi) of polonium-210 per device.

3C.11.2.2 Ion generating tubes designed for ionization of air that contain, as a sealed source or sources, byproduct material consisting of a total of not more than 18.5 MBq (500 uCi) of polonium-210 per device or of a total of not more than 1.85 GBq (50 mCi) of hydrogen-3 (tritium) per device.

3C.11.2.3 Such devices authorized before October 23, 2012 for use under the general license then provided in 3.6 and equivalent regulations of the NRC and Agreement States and manufactured, tested, and labeled by the manufacturer in accordance with the specifications contained in a specific license issued by the NRC.

3C.11.3 Precision balances containing not more than 37 MBq (1 mCi) of tritium per balance or not more than 18.5 MBq (0.5 mCi) of tritium per balance part manufactured before December 17, 2007;

3C.11.4 Marine compasses containing not more than 27.8 GBq (750 mCi) of tritium gas and other marine navigational instruments manufactured before December 17, 2007 containing not more than 9.25 GBq (250 mCi) of tritium gas;

3C.11.5 Ionization chamber smoke detectors containing not more than 1 microcurie (µCi) of americium-241 per detector in the form of a foil and designed to protect life and property from fires.

3C.11.6 Electron tubes, provided that:

3C.11.6.1 Each tube does not contain more than one of the following specified quantities of radioactive material:

(1) 0.55 GBq (150 mCi) of tritium per microwave receiver protector tube or 370 MBq (10 mCi) of tritium per any other electron tube;

(2) 37 kBq (1 µCi) of cobalt-60;

(3) 185 kBq (5 µCi) of nickel-63;

(4) 1.11 MBq (30 µCi) of krypton-85;

(5) 185 kBq (5 µCi) of cesium-137;

(6) 1.11 MBq (30 µCi) of promethium-147; and further

3C.11.6.2 The radiation dose rate from each electron tube containing radioactive material will not exceed 10 µGy (1 mrad) per hour at 1 centimeter from any surface when measured through 7 milligrams per square centimeter of absorber; [17]

17 For purposes of 3C.11.6, "electron tubes" include spark gap tubes, power tubes, gas tubes including glow lamps, receiving tubes, microwave tubes, indicator tubes, pick up tubes, radiation detection tubes, and any other completely sealed tube that is designed to conduct or control electrical currents.

3C.11.7 Ionizing radiation measuring instruments containing, for purposes of internal calibration or standardization, one or more sources of radioactive material, provided that:

3C.11.7.1 Each source contains no more than one exempt quantity set forth in Schedule 3B of this part; and

3C.11.7.2 Each instrument contains no more than 10 exempt quantities. For purposes of this requirement, an instrument's source(s) may contain either one or different types of radionuclides and an individual exempt quantity may be composed of fractional parts of one or more of the exempt quantities in Schedule 3B of this part, provided that the sum of such fractions shall not exceed unity.

3C.11.7.3 For americium-241, 1.85 kBq (0.05 µCi) is considered an exempt quantity under 3C.11.7;

3C.12 Self-luminous products containing radioactive material containing tritium, krypton-85, or promethium-147.

3C.12.1 Except for persons who manufacture, process, or produce self-luminous products containing tritium, krypton-85, or promethium-147, any person is exempt from these regulations to the extent that such person receives, possesses, uses, transfers, owns, or acquires tritium, krypton-85 or promethium-147 in self-luminous products manufactured, processed, produced, imported, or transferred in accordance with a specific license issued by NRC pursuant to section 32.22 of 10 CFR Part 32 (January 1, 2015), which license authorizes the transfer of the product to persons who are exempt from regulatory requirements.

3C.12.2 Any person who desires to manufacture, process, or produce, or initially transfer for sale or distribution self-luminous products containing tritium, krypton-85, or

promethium-147 for use under 3C.12.1, should apply for a license under 32.22 of 10 CFR Part 32 and for a certificate of registration in accordance with 32.210 of 10 CFR Part 32.

3C.12.3 The exemption in this section does not apply to tritium, krypton-85, or promethium-147 used in products for frivolous purposes or in toys or adornments.

3C.13 Gas and aerosol detectors containing radioactive material.

3C.13.1 Except for persons who manufacture, process, produce, or initially transfer for sale or distribution gas and aerosol detectors containing radioactive material, any person is exempt from the requirements for a license set forth in the Act and from the regulations in 3, 4, 5, 7, 10, 16, and 19 to the extent that such person receives, possesses, uses, transfers, owns, or acquires radioactive material in gas and aerosol detectors designed to protect health, safety, or property and manufactured, processed, produced, or initially transferred in accordance with a specific license issued by NRC [18] pursuant to section 32.26 of 10 CFR Part 32(January 1, 2015), which license authorizes the initial transfer of the detectors to persons who are exempt from regulatory requirements. This exemption also covers gas and aerosol detectors manufactured or distributed before November 30, 2007, in accordance with a specific license issued by NRC or an Agreement State under comparable provisions to 10 CFR Part 32.26 authorizing distribution to persons exempt from regulatory requirements.

18 Authority to transfer possession or control by the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing byproduct material whose subsequent possession, use, transfer, and disposal by all other persons are exempted from regulatory requirements may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

3C.13.2 Any person who desires to manufacture, process, or produce gas and aerosol detectors containing byproduct material, or to initially transfer such products for use under 3C.13.1, should apply for a license under paragraph 32.26 of 10 CFR Part 32 and for a certificate of registration in accordance with 32.210 of 10 CFR Part 32.

3C.13.3 Gas and aerosol detectors previously manufactured and distributed to general licensees in accordance with a specific license issued by a state shall be considered exempt under 3C.13.1, provided that the device is labeled in accordance with the specific license authorizing distribution of the generally licensed device, and provided further that they meet the requirements of 3.12.4.

3C.14 Radioactive drug capsules containing carbon-14 urea for "in vivo" diagnostic use for humans.

3C.14.1 Except as provided in paragraphs 3C.14.2 and 3C.14.3 , any person is exempt from the regulations in this part provided that such person receives, possesses, uses, transfers, owns, or acquires capsules containing 37 kBq (1 µCi) carbon-14 urea (allowing for nominal variation that may occur during the manufacturing process) each, for "in vivo" diagnostic use for humans.

3C.14.2 Any person who desires to use the capsules for research involving human subjects shall apply for and receive a specific license pursuant to Part 7.

3C.14.3 Nothing in this section relieves persons from complying with applicable FDA, federal, and state requirements governing receipt, administration, and use of drugs.

3C.15 Certain industrial devices

3C.15.1 Except for persons who manufacture, process, produce, or initially transfer for sale or distribution industrial devices containing byproduct material designed and manufactured for the purpose of detecting, measuring, gauging or controlling thickness, density, level, interface location, radiation, leakage, or qualitative or quantitative chemical composition, or for producing an ionized atmosphere, any person is exempt from the requirements for a license set forth in the Act and from the regulations in parts 3, 4, 5, 7, 10, 16, and 19 to the extent that such person receives, possesses, uses, transfers, owns, or acquires byproduct material, in these certain detecting, measuring, gauging, or controlling devices and certain devices for producing an ionized atmosphere, and manufactured, processed, produced, or initially transferred in accordance with a specific license issued by NRC under 10 CFR 32.30, which license authorizes the initial transfer of the device for use under this section. This exemption does not cover sources not incorporated into a device, such as calibration and reference sources.

3C.15.2 Any person who desires to manufacture, process, produce, or initially transfer for sale or distribution industrial devices containing byproduct material for use under 3C.15.1, should apply for an NRC license under 10 CFR 32.30 and for a certificate of registration in accordance with 10 CFR 32.210.

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Opinion of the Attorney General rendered in connection with the rules adopted by the

Hazardous Materials and Waste Management Division

on 12/16/2015

6 CCR 1007-1 Part 03

RADIATION CONTROL - LICENSING OF RADIOACTIVE MATERIAL

The above-referenced rules were submitted to this office on 12/23/2015 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.

Frederick R. Yarger

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

December 30, 2015 16:07:32

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

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6 CCR 1007-1 Part 18 RADIATION CONTROL - LICENSING REQUIREMENTS FOR URANIUM AND THORIUM PROCESSING 1 - eff 02/14/2016

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DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Hazardous Materials and Waste Management Division

RADIATION CONTROL - LICENSING REQUIREMENTS FOR URANIUM AND THORIUM PROCESSING

6 CCR 1007-1 Part 18

Adopted by the Board of Health December 16, 2015

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

PART 18: LICENSING REQUIREMENTS FOR URANIUM AND THORIUM PROCESSING

18.1 Purpose and Scope.

18.1.1 The regulations in this part establish criteria, terms and conditions upon which the Department issues licenses to receive title to, receive, possess, use, transfer, or deliver source and byproduct materials as defined in this part, to operate uranium and thorium processing facilities and for the disposition of the resulting byproduct material. The requirements of this part are in addition to, and not in substitution for, other applicable requirements of these regulations.

18.1.2 This part establishes performance objectives and procedural requirements applicable to any uranium or thorium material processing operation, to waste systems for byproduct material as defined in this part and to related activities concerning uranium-bearing and thorium-bearing materials. It establishes specific technical and financial requirements for siting, construction, operation, and decontamination, reclamation and ultimate stabilization, as well as requirements for license transfer and termination, long-term site monitoring and surveillance, and ownership and ultimate custody of source material milling facilities and byproduct material impoundments.

18.1.3 The requirements of this part apply to byproduct material as defined in this part, that is located at a site where milling operations are no longer active, if such site is not covered by the remedial action program of Title I of the Uranium Mill Tailings Radiation Control Act (UMTRCA) OF 1978 (92 STAT. 3021; 42 U.S.C. 7901). The regulations in this part do not establish procedures and criteria for the issuance of licenses for materials covered under Title I of the Uranium Mill Tailings Radiation Control Act of 1978 (92 Stat. 3021). Disposal at a uranium or thorium processing site of radioactive material which is not type 2 byproduct material must not inhibit reclamation of the tailings impoundment or the ability of the U.S. Government to take title to the impoundment as long-term custodian.

18.1.4 Nothing in this Part applies to, includes, or affects the following naturally occurring radioactive materials (NORM) or technologically enhanced naturally occurring radioactive materials (TENORM):

18.1.4.1 Residuals or sludges from the treatment of drinking water by aluminum, ferric chloride, or similar processes; except that the material may not contain hazardous substances that otherwise would preclude receipt;

18.1.4.2 Sludges, soils, or pipe scale in or on equipment from oil and gas exploration, production, or development operations or drinking water or wastewater treatment operations; except that the material may not contain hazardous substances that otherwise would preclude receipt;

18.1.4.3 Materials from or activities related to construction material mining regulated under article 32.5 of title 34, CRS.

18.1.4.4 The treatment, storage, management, processing, or disposal of solid waste, which may include NORM and TENORM, either pursuant to issuance of a certificate of designation or considered approved or otherwise deemed to satisfy the requirement for a certificate of designation.

18.1.5 The regulation of uranium in situ leach mining (in situ recovery), as defined in Section 34-32-103, CRS., involves the Department of Natural Resources, Division of Reclamation, Mining and Safety or their successor. The requirements of that agency may, due to the use of terms-of-art and other technical words, phrases and definitions, be interpreted inconsistently or be held in conflict with the Department's requirements. The Department will coordinate with that agency to the maximum extent practicable to resolve any such conflicts or inconsistencies. An applicant or licensee that identifies such inconsistency or conflict shall provide that information to both agencies for resolution. The Department of Natural Resources, Division of Reclamation, Mining and Safety or their successor, is not implementing any Atomic Energy Act regulatory authority under the Articles of Agreement, Section 274, of the Atomic Energy Act of 1954, as amended.

18.1.6 License amendments for the receipt of radioactive material at a facility are subject to sections 18.3 and 18.4 except when the material is from an approved source and the amendment would not result in a change in ownership, design, or operation of the facility. License amendments not subject to 18.3 and 18.4 of this part are subject to 18.5 of this section.

18.1.7 A person subject to the regulations in this Part may not receive title to, own, receive, possess, use, transfer, provide for long-term care, deliver or dispose of byproduct material as defined in this Part, or any source material after removal from its place of deposit in nature, unless authorized in a specific license issued by the Department under the regulations in this Part or general license issued by the Department under Part 3, Section 3.5 of these regulations.

18.2 As used in this regulation:

"Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of ground water to wells or springs. Any saturated zone created by uranium or thorium operations would not be considered an aquifer unless the zone is or potentially is:

(1) hydraulically interconnected to a natural aquifer;

(2) capable of discharge to surface water; or

(3) reasonably accessible because of migration beyond the vertical projection of the boundary of the land transferred for long-term government ownership and care in accordance with Criterion 9 of Appendix A to this Part 18.

"As expeditiously as practicable considering technological feasibility", for the purposes of Criterion 6A, means as quickly as possible considering: the physical characteristics of the tailings and the site; the limits of available technology; the need for consistency with mandatory requirements of other regulatory programs; and factors beyond the control of the licensee. The phrase permits consideration of the cost of compliance only to the extent specifically provided for by use of the term available technology.

"Available technology" means technologies and methods for emplacing a final radon barrier on uranium mill tailings piles or impoundments. This term shall not be construed to include extraordinary measures or techniques that would impose costs that are grossly excessive as measured by practice within the industry (or one that is reasonably analogous), (such as, by way of illustration only, unreasonable overtime, staffing, or transportation requirements, etc., considering normal practice in the industry; laser fusion of soils, etc.), provided there is reasonable progress toward emplacement of the final radon barrier. To determine grossly excessive costs, the relevant baseline against which cost shall be compared is the cost estimate for tailings impoundment closure contained in the licensee's approved reclamation plan, but costs beyond these estimates shall not automatically be considered grossly excessive.

“Byproduct Material” is the same as in definition (2) of 1.2.2 and means the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes. Underground ore bodies depleted by such solution extraction operations do not constitute “byproduct material” within this definition.

"Certificate of designation" means the approval pursuant to article 20 of title 30, CRS., or section 25-15-204 (6).

"Closure" means the activities following operations to decontaminate and decommission the buildings and site used to produce byproduct materials and reclaim the tailings and/or waste disposal area.

"Closure plan" means the Department approved plan to accomplish closure.

"Compliance period" begins when the Department sets secondary ground-water protection standards and ends when the owner or operator's license is terminated and the site is transferred to the State or Federal agency for long-term care.

"Dike" means an embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

"Disposal area" means the area containing byproduct materials to which the requirements of Criterion 6 of Appendix A to this Part 18 apply.

"Disposal site" means all land that is subject to transfer to a government agency after termination of the license.

"Existing portion" means that land surface area of an existing surface impoundment on which significant quantities of uranium or thorium byproduct materials had been placed prior to September 30, 1983.

"Facility" in this part means the physical location at one site or address and under the same administrative control at which:

(1) the possession, use, processing or storage of uranium-bearing and thorium-bearing radioactive material is or was authorized by license pursuant to this part; or

(2) uranium and thorium is milled, or otherwise processed and the resulting byproduct material is dispositioned.

"Factors beyond the control of the licensee" means factors proximately causing delay in meeting the schedule in the applicable reclamation plan for the timely emplacement of the final radon barrier notwithstanding the good faith efforts of the licensee to complete the barrier in compliance with paragraph (1) of Criterion 6A. These factors may include, but are not limited to:

(1) physical conditions at the site;

(2) inclement weather or climatic conditions;

(3) an act of god;

(4) an act of war;

(5) a judicial or administrative order or decision, or change to the statutory, regulatory, or other legal requirements applicable to the licensee's facility that would preclude or delay the performance of activities required for compliance;

(6) labor disturbances;

(7) any modifications, cessation or delay ordered by state, federal, or local agencies;

(8) delays beyond the time reasonably required in obtaining necessary government permits, licenses, approvals, or consent for activities described in the reclamation plan proposed by the licensee that result from agency failure to take final action after the licensee has made a good faith, timely effort to submit legally sufficient applications, responses to requests (including relevant data requested by the agencies), or other information, including approval of the reclamation plan; and

(9) an act or omission of any third party over whom the licensee has no control.

"Final radon barrier" means the earthen cover (or approved alternative cover) over tailings or waste constructed to comply with Criterion 6 of this Appendix (excluding erosion protection features).

"Ground water" means water below the land surface in a zone of saturation. For purposes of Appendix A to this Part 18, ground water is the water contained within an aquifer as defined above.

"Leachate" means any liquid, including any suspended or dissolved components in the liquid that has percolated through or drained from the byproduct material.

"Licensed site" means the area contained within the boundary of a location under the control of persons generating or storing radioactive materials under a Department license.

"Liner" means a continuous layer of natural or man-made materials, beneath or on the sides of a surface impoundment, which restricts the downward or lateral escape of byproduct material, hazardous constituents, or leachate.

"Milestone" means an action or event that is required to occur by an enforceable date.

"Monitoring" means observing and making measurements to provide data to evaluate the performance and characteristics of a site.

"Operation" means that a uranium or thorium mill tailings pile or impoundment is being used for the continued placement of byproduct material or is in standby status for such placement. A pile or impoundment is in operation from the day that byproduct material is first placed in the pile or impoundment until the day final closure begins.

"Point of compliance" is the site specific location in the uppermost aquifer where the ground-water protection standard must be met.

"Reclamation plan", for the purposes of Criterion 6A of Appendix A of this Part 18, means the plan detailing activities to accomplish reclamation of the tailings or waste disposal area in accordance with the technical criteria of Appendix A of this Part. The reclamation plan must include a schedule for reclamation milestones that are key to the completion of the final radon barrier including as appropriate, but not limited to, windblown tailings retrieval and placement on the pile, interim stabilization (including dewatering or the removal of freestanding liquids and recontouring), and final radon barrier construction. (Reclamation of tailings must also be addressed in the closure plan; the detailed reclamation plan may be incorporated into the closure plan.)

“Residual radioactive material” means:

(1) Waste (which the Secretary of Energy determines to be radioactive) in the form of tailings resulting from the processing of ores for the extraction of uranium and other valuable constituents of the ores; and

(2) Other waste (which the Secretary of Energy determines to be radioactive) at a processing site which relates to such processing, including any residual stock of unprocessed ores or low-grade materials.

The term residual radioactive material is used only with respect to materials at sites subject to remediation under title I of the Uranium Mill Tailings Radiation control Act of 1978, as amended.

"Surface impoundment" means a natural topographic depression, man-made excavation, or diked area, which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well.

"Third-party contractor" or "Third-party agreement" means a legal or contractual mechanism whereby an applicant or licensee voluntarily agrees to pay for the services, solely selected and supervised by the Department, of qualified persons not Department staff nor under contract directly to the Department.

"Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

“Uranium milling” means any activity that results in the production of byproduct material as defined in Part 18.

18.3 Special Requirements for Issuance of Specific Licenses For Source Material Milling.

In addition to the requirements set forth in Part 3, a specific license for source material milling will be issued if the applicant submits to the Department a complete and accurate written application that clearly demonstrates how objectives and requirements of this Part are met. Failure to clearly so demonstrate shall be grounds for refusing to accept an application. Any person desiring to have a facility or site referred to in this Part shall apply to the Department for approval of such facility or site. The application shall contain such information as the Department requires and shall be accompanied by an application fee determined by the Board pursuant to the provisions of Part 12 of these regulations.

18.3.1 An application for a license or to amend or renew an existing license to receive, possess, and use source material for milling or byproduct material shall include all information required under these regulations and such other information as the Department may deem necessary, and shall address the following:

18.3.1.1 Description of the proposed project or action;

18.3.1.2 Area/site characteristics including geology, topography, hydrology and meteorology;

18.3.1.3 Radiological and nonradiological impacts of the proposed project or action, including waterway and groundwater impacts;

18.3.1.4 Environmental effects of accidents;

18.3.1.5 Tailings disposal and decommissioning;

18.3.1.6 Site and project alternatives.

18.3.2 The applicant shall provide procedures describing the means employed to meet the following requirements during the operational phase of any project.

18.3.2.1 Milling operations shall be conducted so that all releases are reduced to as low as is reasonably achievable below the limits of Part 4.

18.3.2.2 The mill operator shall conduct at least daily inspection of any tailings or waste retention systems. The inspection shall be performed by a person who is qualified and approved by the Department. Records of such inspections shall be maintained for review by the Department.

18.3.2.3 The mill operator shall immediately notify the Department of the following:

18.3.2.3.1 Any failure in a tailings or waste retention system which results in a release of tailings or waste into uncontrolled areas; and

18.3.2.3.2 Any unusual conditions which are not contemplated in the design of the retention system and which if not corrected could lead to failure of the system and result in a release of tailings or waste into uncontrolled areas.

18.3.3 During any one full year prior to submittal of a new application or amendment expanding the facility the applicant/licensee shall conduct a preoperational monitoring program to provide complete baseline data on a milling site and its environs. Throughout the construction and operating phases of the mill, the applicant/licensee shall conduct an operational monitoring program to measure or evaluate compliance with applicable standards and regulations, to evaluate performance of control systems and procedures, to evaluate environmental impacts of operation, and to detect potential long-term effects.

18.3.4 The environmental assessment required by 3.8.8 shall contain all information deemed necessary by the agency to assist the agency in the evaluation of the short-term and long-range environmental impact of the project and activity so that the agency may weigh environmental, economic, technical, and other benefits against environmental costs, while considering available alternatives. The environmental assessment shall be submitted with the license application or amendment request, unless an exemption as provided by 3.8.7.1 has been obtained from the Department.

18.3.5 The following types of actions require an applicant's environmental assessment:

18.3.5.1 Issuance of a new or renewal source material milling license;

18.3.5.2 Each new, renewal or amendment application pertaining to the facility’s receipt of material;

18.3.5.3 Issuance of an amendment that would authorize or result in:

(1) A significant expansion of a site;

(2) A significant change in the types of effluents;

(3) A significant increase in the amounts of effluents;

(4) A significant increase in individual or cumulative occupational radiation exposure; or

(5) A significant increase in the potential for or consequences from radiological accidents.

18.3.5.4. The environmental assessment shall contain all information deemed necessary by the department, and shall include, at a minimum:

(1) The identification of the types of material to be received, stored, processed, or disposed of;

(2) A representative presentation of the physical, chemical, and radiological properties of the type of material to be received, stored, processed, or disposed of;

(3) An evaluation of the short-term and long-range environmental impacts of such receipt, storage, processing, or disposal;

(4) An assessment of the radiological and nonradiological impacts to the public health from the proposed activities;

(5) Any facility-related impact on any waterway and ground water from the proposed activities;

(6) An analysis of the environmental, economic, social, technical, and other benefits of the proposed activities against environmental costs and social effects while considering available alternatives;

(7) A list of all material violations of local, state, or federal law at the facility since the submittal date of the previous license application or license renewal application;

(8) For an application for a license or license amendment pertaining to the facility's receipt of material for storage, processing, or disposal at the facility, a demonstration that:

(a) There are no outstanding material violations of any state or federal statutes, compliance orders, or court orders applicable to the facility, and any releases giving rise to any such violation have been remediated;

(b) The operator, after a good faith review of the facility and its operations, is not aware of any current license violation at the facility;

(c) There are no current releases to the air, ground, surface water, or groundwater that exceed permitted limits; and

(d) No conditions exist at the facility that would prevent the Department of Energy's receipt of title to the facility pursuant to the federal "Atomic Energy Act of 1954",42 U.S.C. sec. 2113;

(9) A list of all necessary permits and any changes to local land use ordinances that are needed to construct or operate the facility; and

(10) For sites or facilities placed on the National Priority List pursuant to the federal "Comprehensive Environmental Response, Compensation, and Liability Act", 42 U.S.C. sec. 9605, a copy of the most recent five-year review and any associated updates that have been issued by the United States Environmental Protection Agency.

18.3.6 An application for a license to receive, possess and use source material for milling or byproduct material shall contain proposed specifications relating to the milling operations and the disposition of tailings or wastes resulting from such milling activities to achieve the requirements and objectives set forth in the criteria listed in Appendix A to this Part 18. Each application for a new license or for license renewal must clearly demonstrate how the requirements and objectives set forth in Appendix A to this Part 18 have been addressed. Failure to clearly demonstrate how the requirements and objectives in Appendix A to this Part 18 have been addressed shall be grounds for refusing to accept an application.

A facility shall not dispose of or receive for storage incident to disposal or processing at the facility radioactive material, except for nonprocessing operational purposes such as radioactive standards, samples for analysis, or materials contained in fixed or portable gauges, unless the facility has received a license, a five-year license renewal, or license amendment pertaining to the facilities receipt of radioactive material, in accordance with the Administrative Procedures Act, for such receipt, storage, processing, or disposal of radioactive material and the license, license renewal, or license amendment approves the type of activity.

18.3.7 Nothing in section 18.3 applies to a contract for the storage, processing, or disposal of less than the sum of one hundred ten (110) tons of radioactive material per source or to a contract for a bench-scale or a pilot-scale testing project or a contract for less than a de minimis amount of radioactive material as determined by the department for storage, processing, or disposal.

18.3.8 In addition to the requirements in this Section 18.3, the following requirements apply to each proposed new license, five-year license renewal, or license amendment pertaining to the facility’s receipt of radioactive material.

18.3.8.1 Within forty-five (45) days after receipt of an application, the Department shall publish a determination as to whether the application submitted is substantially complete.

18.3.8.2 Within forty-five (45) days after publication its determination that the application required by 18.3.8.1 is substantially complete, an initial public meeting shall be convened. The meeting shall, at a minimum require:

(1) At least two weeks' written notice before the meeting;

(2) The meeting to be hosted and presided over by a person selected upon agreement by the Department, the local Board of County Commissioners and the applicant;

(3) The licensee or applicant to provide a summary of the facility's application to receive, store, process, or dispose of material and the nature of the material;

(4) An opportunity for the public to comment and be heard;

(5) The licensee or applicant to provide transcripts of the meeting, which:

(a) Allows the public to make copies of a transcript of the meeting; and

(b) Shall be provided to the Department in an electronic format in a manner that allows posting on the Department's website within ten (10) days after receipt from the transcription service.

18.3.8.3 Within ninety (90) days of the initial public meeting required by 18.3.8.2, a response, if any, written by the local Board of County Commissioners to the applicant's environmental assessment is to be provided to the applicant.

Upon request of and documentation of the expenditure by such Board, the applicant shall provide the Board with up to fifty thousand dollars, as adjusted for inflation since 2003, which is available to assist the Board in responding to the application, including an independent environmental analysis and identification of any substantial adverse impact upon the safety or maintenance of transportation infrastructure or transportation facilities within the county.

18.3.8.4 Upon completion of the Department's review of the application, the Department shall provide notice to the public of issuance of an initial draft decision where the license application is approved, approved with conditions, or is denied.

(1) The initial draft decision shall be posted on the Department's website at the time of notice and shall include:

(a) A decision analysis;

(b) The final technical and environmental impact analysis conducted by the Department as specified in 18.4;

(c) All requests from the Department seeking information from the applicant and all of the applicant's responses;

(d) All public comments;

(e) Any additional information that may assist the public review of the Department's draft decision; and

(f) A draft license for any proposed approval.

(2) Upon issuance of the initial draft decision in 18.3.8.4, the Department shall initiate a final public comment process which shall include:

(a) A public comment period that shall be noticed at the time the initial draft decision is published; and

(b) A public meeting, held within thirty (30) days after giving public notice of the initial draft decision. Such meeting shall, at a minimum require:

(i) At least two weeks' written notice before the meeting;

(ii) The meeting to be hosted and presided over by a person selected upon agreement by the Department, the local Board of County Commissioners and the applicant;

(iii) The summary of the facilities' license to receive, store, process, or dispose of radioactive material and the nature of the radioactive material;

(iv) The opportunity for cross-examination;

(v) An opportunity for the public to comment and be heard;

(vi) The licensee or applicant to provide transcripts of the meeting, which:

(a) Allows the public access to make copies of a transcript of the meeting; and

(b) Shall be provided to the Department in an electronic format in a manner that allows posting on the Department's website within ten (10) days after receipt from the transcription service.

(3) For applications which are denied, the Department shall issue a decision document summarizing the basis for denial.

18.3.8.5 The expense of public notice, public comment periods, or public meetings required by Section 18.3 shall be at the expense of the applicant or licensee.

18.3.8.6 Following the public comment period specified in 18.3.8.4(2), the Department shall:

(1) After review of all final public comments, issue a final draft decision; and

(2) Provide affected parties, including the applicant in the case of approval with conditions or denial, an opportunity to request an adjudicatory hearing in accordance with Section 24-4-105, C.R.S.

18.3.8.7 If none of the parties specified in 18.3.8.6(2) seeks an adjudicatory hearing, the final draft decision becomes final agency action.

18.3.8.8 If any party specified in 18.3.8.6(2) seeks an adjudicatory hearing, resolution of all material issues of fact, law, or discretion presented by the record and the appropriate order, sanction, relief, or denial of the material issues must be through an initial decision of a hearing officer or administrative law judge.

18.3.8.9 Upon issuance of the initial decision of the hearing officer or administrative law judge, and after any allowable appeal to the executive director of the Department, the Department shall issue within a reasonable time a final decision to approve, approve with conditions, or deny the application.

18.3.8.10 The final decision in 18.3.8.9 is subject to judicial review pursuant to Section 24-4-106, C.R.S.

18.3.8.11 The applicant shall pay all reasonable, necessary, and documented expenses of the hearing held in accordance with 18.3.8.8.

18.3.9 Upon receipt of an application or notice as provided in Section 18.3, the Department shall notify the public and forward a copy of the application or notice to the Governor and the General Assembly, as appropriate. The Department will take no further formal action on notices that are not accompanied by the proper application and application fee.

18.4 Department Environmental Impact Analysis

18.4.1 The Department shall prepare a written Environmental Impact Analysis (EIA) of the impact of the licensed activity on the environment for each license application or application to amend or renew an existing license to receive, possess, or use source material for uranium or thorium milling or byproduct material which will have a significant impact on the environment. The written EIA shall be made available for review by the public and the NRC at the time of public notice in 18.3.8.4. The EIA analysis shall include:

18.4.1.1 An assessment of the radiological and nonradiological impacts to the public health;

18.4.1.2 An assessment of any impact on any waterway and ground water;

18.4.1.3 Consideration of alternatives to the activities to be conducted; and

18.4.1.4 Consideration of the long-term impacts of the licensed activities.

18.4.2 In preparing the EIA, the Department may use and incorporate by reference the environmental assessment prepared by the applicant and environmental analysis prepared by Federal, State or local agencies.

18.4.3 The EIA, or any part thereof, shall be prepared directly by the Department or the Department shall utilize the third party method set forth in 3.13.

18.5 Requirements Pertaining to Materials Not Subject to 18.3 and 18.4

18.5.1 At least ninety (90) days before a facility proposes to receive, store, process, or dispose of radioactive material in a license application or amendment that is not subject to 18.3 and 18.4, and for which a material acceptance report has not already been filed with the Department, the facility shall notify the Department in writing, and the Department shall notify the public and the board of county commissioners of the county in which the facility is located, of the specific radioactive material to be received, stored, processed, or disposed of. The notice must include:

18.5.1.1 A representative analysis of the physical, chemical, and radiological properties of the radioactive material;

18.5.1.2 The material acceptance report that demonstrates that the radioactive material does not contain hazardous waste characteristics not found in uranium ore;

18.5.1.3 A detailed plan for transport, acceptance, storage, handling, processing, and disposal of the material;

18.5.1.4 A demonstration that the material contains technically and economically recoverable uranium, without taking into account its value as disposal material;

18.5.1.5 The existing location of the radioactive material;

18.5.1.6 The history of the radioactive material;

18.5.1.7 A written statement by the applicant describing any pre-existing regulatory classification of the radioactive material in the state of origin that describes all steps taken by the applicant to identify the classification;

18.5.1.8 A written statement from the United States Department of Energy or successor agency that the receipt, storage, processing, or disposal of the radioactive material at the facility will not adversely affect the Department of Energy's receipt of title to the facility pursuant to the federal "Atomic Energy Act of 1954", 42 U.S.C. Sec. 2113;

18.5.1.9 Documentation showing any necessary approvals of the United States Environmental Protection Agency; and

18.5.1.10 An environmental assessment containing the information required by 18.3.5.4, and which may incorporate by reference relevant information contained in an environmental assessment previously submitted for the facility.

18.5.2 Within thirty (30) days after the department's receipt of notice pursuant to 18.5.1, the Department shall determine whether the notice is complete.

18.5.3 Once the department determines that the notice pursuant to 18.5.1 is complete, the Department shall:

18.5.3.1 Publish the notice of the specific material to be received, stored, processed, or disposed of, to:

(1) The public, through publishing on the Department’s web site; and

(2) The county commissioners of the county in which the facility is located.

18.5.3.2 The notice required in 18.5.3.1 shall include the information contained in 18.5.1.1 through 18.5.1.10.

18.5.3.3 Provide a sixty (60) day public comment period for the receipt of written comments concerning the notice. A public hearing may be held, at the Department's discretion, at the operator's expense.

18.5.4 Within thirty (30) days after the close of the written public comment period held pursuant to 18.5.3, the Department shall approve, approve with conditions, or deny the receipt, storage, processing, or disposal as described in the notice based on whether the material proposed for receipt, storage, processing, or disposal complies with the facility's license and:

18.5.4.1 Be conducted such that the exposures to workers and the public are within the dose limits of part 4 of the department's rules pertaining to radiation control for workers and the public;

18.5.4.2 Not cause releases to the air, ground, or surface or ground water that exceed permitted limits; and

18.5.4.3 Not prevent transfer of the facility to the United States in accordance with 42 U.S.C. sec. 2113 upon completion of decontamination, decommissioning, and reclamation of the facility.

18.6 Financial Assurance

18.6.1 Prior to issuance of the license, the applicant shall:

18.6.1.1 Establish separate financial assurance arrangements, as provided by 3.9.5, to ensure decontamination and decommissioning of the facility; and

18.6.1.2 Provide a fund adequate to cover the payment of the cost for long-term care and monitoring as provided by 3.9.5.15.

(1) Such fund shall be sufficient to meet the requirements of 3.9.5.15(4).

(2) The Department will consider proposals to combine the two types of financial assurance.

(3) Financial assurance shall be provided prior to commencement of construction or operation.

18.6.2 Financial surety arrangements must be established by each mill operator before the commencement of operations to assure that sufficient funds will be available to carry out the decontamination and decommissioning of the mill and site and for the reclamation of any tailings or waste disposal areas. The amount of funds to be ensured by such surety arrangements must be based on Department-approved cost estimates in a Department-approved plan, or a proposed revision to the plan submitted to the Department for approval, if the proposed revision contains a higher cost estimate for:

18.6.2.1 Decontamination and decommissioning of mill buildings and the milling site to levels which allow unrestricted use of these areas upon decommissioning, and

18.6.2.2 The reclamation of tailings and/or waste areas in accordance with technical criteria delineated in Criterion 1 through 8 of Appendix A.

18.6.3 To avoid unnecessary duplication and expense, the Department may accept financial sureties that have been consolidated with financial or surety arrangements established to meet requirements of other Federal or state agencies and/or local governing bodies for decommissioning, decontamination, reclamation, and long-term site surveillance and control, provided such arrangements are considered adequate to satisfy these requirements and that the portion of the surety which covers the decommissioning and reclamation of the mill, mill tailings site and associated areas, and the long-term funding charge is clearly identified and committed for use in accomplishing these activities.

18.7 License Hearings

18.7.1 There shall be an opportunity for public hearings to be held in accordance with the procedures in Sections 24-4-104 and 24-4-105, CRS., and 18.7, prior to the granting, denial or renewal of a specific license permitting the receipt, possession or use of source material for milling or byproduct material as defined in this part, provided, however, in the event of a conflict between the provisions of 18.7 and the hearing provisions of any applicable administrative hearing forum, including the Office of Administrative Courts, the latter shall apply.

18.7.2 Notice of Hearing

18.7.2.1 All hearings shall be preceded by written notice containing:

18.7.2.1.1 The nature of the hearing and its time and place;

18.7.2.1.2 The legal authority and jurisdiction under which the hearing is to be held;

18.7.2.1.3 The matters of fact and law asserted or to be considered;

18.7.2.1.4 A description of the proposed licensing action and a statement of the availability of its text from the Department;

18.7.2.1.5 A description of the right of any interested person to make written comments to the Department or present oral comments at the hearing;

18.7.2.1.6 The procedure for applying to become a party to the hearing; and

18.7.2.1.7 A description of the procedures to be followed at the hearing and at a prehearing conference if required.

18.7.2.2 The notice of the hearing shall be mailed by the Department to the licensee or applicant and to each person who has filed a written request to receive notice of such proceedings. The licensee or applicant shall cause the notice to be published for three (3) days in a newspaper of statewide circulation and in local newspapers designated by the Department in the area to be affected by the proposed action. The notice shall be mailed and published not less than ninety (90) days prior to the hearing.

18.7.2.3 The time and place of hearing will be fixed with due regard for the convenience of the parties or their representatives, and the public interest. The hearing will be held in the locale of the site to be licensed.

18.7.2.4 The cost of any licensing action hearing shall be at the expense of the applicant. These costs shall include, but not be limited to, the hearing officer, the meeting room, the court reporter and transcript copies, and the required notices. The costs shall not include the expenses of other parties to the hearing.

18.7.3 Party Status

18.7.3.1 A person who may be affected or aggrieved by Department action may apply for party status not less than twenty (20) days prior to the hearing. Thereafter, application to be made a party shall not be considered except upon motion for good cause shown.

18.7.3.2 Application for party status must identify the individual or group applying, including the address or phone number where they may be contacted, state the nature of their interest in the hearing and the specific ground on which they claim to be affected or aggrieved, and the specific aspects of the hearing which they wish to address.

18.7.3.3 The Department, or the hearing officer, will grant or deny party status within five (5) days after receipt of the request for party status based on the nature and extent of the person's property, financial or other interest in the hearing and the possible effect of any order which may be entered as a result of the hearing on the person's interest. Any person applying for or granted party status may, by motion to the hearing officer or Department, as appropriate, challenge the right of any other person to be a party.

18.7.3.4 Parties shall have the right to initiate discovery. Parties shall have the right to make motions or objections, present evidence, cross-examine witnesses, and appeal from the decision of the hearing as provided by the Colorado Administrative Procedure Act, Section 24-4-101 et seq., CRS.

18.7.3.5 A person who is not a party will be permitted to submit written comments to the Department and may be permitted to make an oral presentation at the hearing, but will not have the other rights of a party.

18.7.4 Prehearing Conference

18.7.4.1 The Department or hearing officer, on its own motion or at the request of any party or any person who has applied to become a party, may direct the parties to appear at a specific time and place for a conference to consider:

18.7.4.1.1 The simplification and clarification of the issues;

18.7.4.1.2 The obtaining of stipulations and admissions of fact and of the contents and authenticity of documents to avoid unnecessary proof;

18.7.4.1.3 Identification of witnesses and the limitation of the number of expert witnesses, and other steps to expedite the presentation of evidence;

18.7.4.1.4 The setting of a hearing schedule;

18.7.4.1.5 Granting or denying requests for party status, if such decisions have not previously been made;

18.7.4.1.6 Such other matters as may aid in the orderly disposition of the hearing.

18.7.4.2 At such conference each party or person who has applied to become a party shall present to every other person, party, and the Department a prehearing statement containing the following:

18.7.4.2.1 A brief summary of the nature of the claim of the party and the basis therefore;

18.7.4.2.2 A copy of all exhibits proposed to be introduced; and

18.7.4.2.3 A list of all witnesses who may be called and a brief description of their testimony.

18.7.4.3 Except for good cause shown or for evidence or testimony accepted as rebuttal, no witness may testify nor may any exhibits be introduced on behalf of a party who had notice of the prehearing conference unless such witness has been previously listed and/or his written testimony and related exhibits have been presented to opposing parties at the prehearing conference.

18.7.4.4 The Department or hearing officer shall issue a written summary of the action taken at the conference and agreements by the parties, which limits the issues or defines the matters in controversy to be determined in the hearing.

18.7.5 Discovery

18.7.5.1 Any party may initiate discovery in the form of interrogatories to another party, requests for admission to another party, requests for production of documents to another party, or depositions of any persons, or any combination thereof. The Colorado Rules of Civil Procedure, to the extent not inconsistent with the Colorado Administrative Procedure Act, shall apply. Such discovery may be modified by a motion for protective order filed with the Department or hearing officer within seven (7) days of receipt of the notice or request for discovery. Motions for protective order shall set forth the grounds in support thereof and shall be ruled upon immediately. Discovery shall be completed no later than ten (10) days preceding the hearing date, except as otherwise ordered by the Department or hearing officer.

18.7.6 Conduct of Hearings

18.7.6.1 Hearing presentations will proceed in the following order unless otherwise directed by the Department or hearing officer.

18.7.6.1.1 Call to order, introductory remarks, and action on applications for party status, if not already decided.

18.7.6.1.2 Presentation of any stipulations or agreements of the parties, and any other matters which were required to be dealt with at the prehearing conference, if held.

18.7.6.1.3 Opening statement by the party upon whom the burden of proof rests.

18.7.6.1.4 Opening statements by all other parties.

18.7.6.1.5 Presentation of case by party upon whom burden of proof rests.

18.7.6.1.6 Presentation by all other persons wishing to offer evidence in the order to be determined by the Department or hearing officer.

18.7.6.1.7 Rebuttal by the party upon whom the burden of proof rests, followed by rebuttal of other parties.

18.7.6.1.8 Closing statements by party upon whom the burden of proof rests, followed by closing statements of all other parties.

18.7.6.2 Public participation as provided for in these rules shall be allowed at that time or times during the hearing as determined by the Department or hearing officer in their discretion to be appropriate.

18.7.6.3 At the conclusion of any witness's testimony, or at the conclusion of the party's entire presentation, as may be determined by the Department or hearing officer, all parties may then cross-examine such witness or witnesses. The Department or hearing officer may examine and cross-examine any witness. A person who is not a party shall not have the right to cross-examine.

18.7.6.4 Any person, not a party to the proceeding, wishing to present testimony may do so by indicating his desire in writing. A form will be available prior to and during the hearing. This form will request the person's name, address, whom he represents, the general nature of his testimony, and the time required for his presentation. This form is to be presented to a representative of the Department during the hearing. Voluntary testimony not specifically requested on or by the written form may also be allowed. Any person presenting testimony shall be under oath and be subject to cross examination.

18.7.6.5 The proponent of any motion, order, or license issuance bears the burden of proof.

18.7.6.6 No interested person, party, or applicant for party status outside the Department will have any oral or written communication with any Department personnel or hearing officer relevant to the merits of a hearing pending before the Department unless reasonable prior notice is given to all participants in the hearing. This prohibition shall apply after the hearing is noticed. Any Department employee or hearing officer who is involved in such a prohibited communication shall make a written record of it and transmit it to all the parties to the hearing.

18.7.7 Department Decision

18.7.7.1 Any party to a hearing may, or if so directed by the Department or the hearing officer shall, file proposed findings of fact and conclusions of law and a proposed form of order or decision within twenty (20) days after the record is closed. A party who has the burden of proof may reply within ten (10) days after service of proposed findings of fact and conclusions of law.

18.7.7.2 After due consideration of the hearing record, the Department or hearing officer shall issue its findings of fact, conclusions of law, and decision and order.

18.8 Operational Requirements.

Each licensee authorized to receive, possess or use source material for milling or byproduct material shall:

18.8.1 Operate in accordance with the requirements of this Part 18, in particular the procedures required by 18.3.2, monitoring required by 18.3.3, and the requirements and objectives of Appendix A to this Part 18.

18.8.2 Submit a report to the Department within sixty (60) days after January 1 and July 1 of each year, specifying the quantity of each of the radioactive materials released to unrestricted areas in liquid and in gaseous effluents during the previous six months of operation, and such other information as the Department may require to estimate maximum potential annual radiation doses to the public resulting from effluent releases. If quantities of radioactive materials released during the reporting period are significantly above the licensee's design objectives previously reviewed as part of the licensing action, the report shall cover this specifically. On the basis of such reports and any additional information the Department may obtain from the licensee or others, the Department may from time to time require the licensee to take such action as the Department deems appropriate.

18.8.3 For any licensed site or facility determined by the Department to have caused a release to the groundwater that exceeds the basic standards for groundwater as established by the water quality control commission, until remediation has been completed, the licensee shall provide annual written notice of the status of the release and any remediation activities associated with the release, by certified or registered mail, return receipt requested, to the current address for each registered groundwater well within one mile of the release as identified in the corrective action monitoring program. Documentation of this activity will be retained and made available to the Department upon request.

18.8.3.1 Under no circumstances shall remediation be deemed complete until all groundwater wells affected by any release associated with the site or facility are restored to at least the numeric groundwater standards as established by the water quality control commission that apply to the historic uses of the wells. The licensee shall remediate any release affecting groundwater wells in the most expedited manner reasonably possible using best available active restoration and groundwater monitoring technologies.

18.8.3.2 Prior to the application of any numeric groundwater standard different from the baseline standard contained in 10 CFR Part 40, the standard must have been approved by the United States Nuclear Regulatory Commission in accordance with section 274o of the federal “Atomic Energy Act of 1954”, 42 U.S.C. sec 2021(o).

18.8.4 For any facility licensed under Part 18, in addition to any reporting requirements provided in the license or rules, the license shall provide notice to the Department as soon as practicable upon discovery of any spill or release involving toxic or radioactive materials and shall provide an initial written report within seven (7) days after any discovery. The department shall post all such written reports on the Department’s web site as soon as practicable, and in no case later than seven (7) days after receipt by the Department.

18.9 Decommissioning Requirements.

18.9.1 In addition to the information required under 3.16, each licensee authorized to receive, possess or use source material for milling or byproduct material shall submit a plan for completion of decommissioning if the procedures necessary to carry out decommissioning:

18.9.1.1 Have not been previously approved by the Department; and

18.9.1.2 Could increase potential health and safety impacts to workers or to the public, such as in any of the following cases:

18.9.1.2.1 Procedures would involve techniques not applied routinely during cleanup or maintenance operations; or

18.9.1.2.2 Workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation; or

18.9.1.2.3 Procedures could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

18.9.1.2.4 Procedures could result in significantly greater releases of radioactive material to the environment than those associated with operation.

18.9.2 Procedures withpotential health and safety impacts may not be carried out prior to approval of the decommissioning plan.

18.9.3 The proposed decommissioning plan, if required by 18.9.1 or by license condition, must include:

18.9.3.1 Description of planned decommissioning activities;

18.9.3.2 Description of methods used to assure protection of workers and the environment against radiation hazards during decommissioning;

18.9.3.3 A description of the planned final radiation survey; and

18.9.3.4 An updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and plan for assuring the availability of adequate funds for completion of decommissioning.

18.9.4 The proposed decommissioning plan will be approved by the Department if the information therein demonstrates that the decommissioning will be completed as soon as is reasonable and that the health and safety of workers and the public will be adequately protected.

18.9.5 Upon approval of the decommissioning plan by the Department, the licensee shall complete decommissioning in accordance with the approved plan.

18.9.6 As a final step in decommissioning, the licensee shall:

18.9.6.1 Certify the disposition of all licensed material, including accumulated wastes, by submitting a completed NRC Form 314 or equivalent information; and

18.9.6.2 Conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey, unless the licensee demonstrates in some other manner that the premises are suitable for release in accordance with the criteria for decommissioning in Part 4 of these regulations, or for uranium milling (uranium and thorium recovery) facilities, Criterion 6(6) of Appendix A of this Part. The licensee shall, as appropriate, report the information specified in 3.16.6.4.

18.9.7 If the information submitted under 3.16.6.4 or 18.9 does not adequately demonstrate that the premises are suitable for release for unrestricted use, the Department will inform the licensee of the appropriate further actions required for termination of license.

PART 18, APPENDIX A CRITERIA RELATING TO THE OPERATION OF MILLS AND THE DISPOSITION OF THE TAILINGS OR WASTES FROM THESE OPERATIONS

Introduction: Every applicant for a license to possess and use radioactive material in conjunction with uranium or thorium milling, or byproduct material at sites formerly associated with such milling, is required by the provisions of 18.3 to include in a license application proposed specifications relating to milling operations and the disposition of tailings or wastes resulting from such milling activities. This appendix establishes technical, ownership, and long-term site surveillance criteria relating to the siting, operation, decontamination, decommissioning, and reclamation of mills and tailings or waste systems and sites at which such mills and systems are located.

As used in this appendix, the term "as low as is reasonably achievable" has the same meaning as in 1.2.2.

In many cases, flexibility is provided in the criteria to allow achieving an optimum tailings disposal program on a site-specific basis. However, in such cases the objectives, technical alternatives and concerns which must be taken into account in developing a tailings program are identified. As provided by the provisions of 18.3, applications for licenses must clearly demonstrate how the criteria have been addressed.

The specifications shall be developed considering the expected full capacity of tailings or waste systems and the lifetime of mill operations. Where later expansions of systems or operations may be likely (for example, where large quantities of ore now marginally uneconomical may be stockpiled), the amenability of the disposal system to accommodate increased capacities without degradation in long-term stability and other performance factors shall be evaluated.

Licensees or applicants may propose to the Department alternatives to meet the specific requirements in this Appendix. The alternative proposals may take into account local or regional conditions, including geology, topography, hydrology, and meteorology. The Department may find that the proposed alternatives meet the Department's requirements if the alternatives will achieve a level of stabilization and containment of the sites concerned and a level of protection for public health, safety, and the environment from radiological and nonradiological hazards associated with the site, which is equivalent to, to the extent practicable, or more stringent than the level which would be achieved by the requirements of this Appendix and the standards promulgated by the Environmental Protection Agency in 40 CFR Part 192, Subparts D and E. Proposed alternatives to specific regulations in this Part 18 require notice and opportunity for hearing before the NRC.

All site-specific licensing decisions based on the criteria in this Appendix or alternatives proposed by licensees or applicants will take into account the risk to the public health and safety and the environment with due consideration to the economic costs involved and any other factors the Department determines to be appropriate. In implementing this Appendix, the Department will consider "practicable" and "reasonably achievable" as equivalent terms. Decisions involving these terms will take into account the state of technology and the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to the utilization of atomic energy in the public interest.

Criterion 1.

Criterion 1A. The general goal or broad objective in siting and design decisions is permanent isolation of tailings and associated contaminants by minimizing disturbance and dispersion by natural forces, and to do so without ongoing maintenance. For practical reasons, specific siting decisions and design standards must involve finite times (e.g., the longevity design standard in Criterion 6). The following site features which will contribute to such a goal or objective must be considered in selecting among alternative tailings disposal sites or judging the adequacy of existing tailings sites:

(1) Remoteness from populated areas;

(2) Hydrologic and other natural conditions as they contribute to continued immobilization and isolation of contaminants from ground-water sources; and

(3) Potential for minimizing erosion, disturbance, and dispersion by natural forces over the long-term.

Criterion 1B. The site selection process must be an optimization to the maximum extent reasonably achievable in terms of the features in Criterion 1A.

Criterion 1C. In the selection of disposal sites, primary emphasis must be given to isolation of tailings or wastes, a matter having long-term impacts, as opposed to consideration only of short-term convenience or benefits, such as minimization of transportation or land acquisition costs. While isolation of tailings will be a function of both site and engineering design, overriding consideration must be given to siting features given the long-term nature of the tailings hazards.

Criterion 1D. Tailings should be disposed of in a manner that no active maintenance is required to preserve conditions of the site.

Criterion 2.

To avoid proliferation of small waste disposal sites and thereby reduce perpetual surveillance obligations, byproduct material, from in situ extraction operations, such as residues from solution evaporation or contaminated control processes, and wastes from small remote above ground extraction operations shall be disposed of at existing large mill tailings disposal sites; unless considering the nature of the wastes, such as their volume and specific activity and the costs and environmental impacts of transporting the wastes to a large disposal site, such offsite disposal is demonstrated to be impracticable or the advantages of onsite burial clearly outweigh the benefits of reducing the perpetual surveillance obligations.

Criterion 3.

The "prime option" for disposal of tailings is placement below grade, either in mines or specially excavated pits (that is, where the need for any specially constructed retention structure is eliminated). The evaluation of alternative sites and disposal methods performed by mill operators in support of their proposed tailings disposal program (provided in applicants' environmental assessment) must reflect serious consideration of this disposal mode. In some instances, below grade disposal may not be the most environmentally sound approach, such as might be the case if a ground-water formation is relatively close to the surface or not very well isolated by overlying soils and rock. Also, geologic and topographic conditions might make full below grade burial impracticable: For example, bedrock may be sufficiently near the surface that blasting would be required to excavate a disposal pit at excessive cost, and more suitable alternative sites are not available. Where full below grade burial is not practicable, the size of retention structures, and size and steepness of slopes associated with exposed embankments must be minimized by excavation to the maximum extent reasonably achievable or appropriate given the geologic and hydrologic conditions at a site. In these cases, it must be demonstrated that an above grade disposal program will provide reasonably equivalent isolation of the tailings from natural erosional forces.

Criterion 4.

The following site and design criteria must be adhered to whether tailings or wastes are disposed of above or below grade.

Criterion 4A. Upstream rainfall catchment areas must be minimized to decrease erosion potential and the size of the floods, which could erode or wash out sections of the tailings disposal area.

Criterion 4B. Topographic features should provide good wind protection.

Criterion 4C. Embankment and cover slopes must be relatively flat after final stabilization to minimize erosion potential and to provide conservative factors of safety assuring long-term stability. The broad objective should be to contour final slopes to grades which are as close as possible to those which would be provided if tailings were disposed of below grade: this could, for example, lead to slopes of about 10 horizontal to 1 vertical (10h:1v) or less steep. In general, slopes should not be steeper than about 5h:1v. Where steeper slopes are proposed, reasons why a slope less steep than 5h:1v would be impracticable should be provided and compensating factors and conditions, which make such slopes acceptable, should be identified.

Criterion 4D. A full self-sustaining vegetative cover must be established or rock cover employed to reduce wind and water erosion to negligible levels.

(1) Where a full vegetative cover is not likely to be self-sustaining due to climatic or other conditions, such as in semi-arid and arid regions, rock cover must be employed on slopes of the impoundment system. The Department will consider relaxing this requirement for extremely gentle slopes such as those, which may exist on the top of the pile.

(2) The following factors must be considered in establishing the final rock cover design to avoid displacement of rock particles by human and animal traffic or by natural process, and to preclude undercutting and piping:

(a) Shape, size, composition, and gradation of rock particles (excepting bedding material average particles size must be at least cobble size or greater);

(b) Rock cover thickness and zoning of particles by size; and

(c) Steepness of underlying slopes.

(3) Individual rock fragments must be dense, sound, and resistant to abrasion, and must be free from cracks, seams, and other defects that would tend to unduly increase their destruction by water and frost actions. Weak, friable, or laminated aggregate may not be used.

(4) Rock covering of slopes may be unnecessary where top covers are very thick (on the order of 10m or greater); impoundment slopes are very gentle (on the order of 10h:1v or less); bulk cover materials have inherently favorable erosion resistance characteristics; and, there is negligible drainage catchment area upstream of the pile and good wind protection as described in Criteria 4A and 4B.

(5) Furthermore, all impoundment surfaces must be contoured to avoid areas of concentrated surface runoff or abrupt or sharp changes in slope gradient. In addition to rock cover on slopes, areas toward which surface runoff might be directed must be well protected with substantial rock cover (rip rap). In addition to providing for stability of the impoundment system itself, overall stability, erosion potential, and geomorphology of surrounding terrain must be evaluated to assure that there are not ongoing or potential processes, such as gully erosion, which would lead to impoundment instability.

Criterion 4E. The impoundment may not be located near a capable fault that could cause a maximum credible earthquake larger than that which the impoundment could reasonably be expected to withstand. As used in this criterion, the term "capable fault" has the same meaning as defined in section III(g) of Appendix A of 10 CFR Part 100. The term "maximum credible earthquake" means that earthquake which would cause the maximum vibratory ground motion based upon an evaluation of earthquake potential considering the regional and local geology and seismology and specific characteristics of local subsurface material.

Criterion 4F. The impoundment, where feasible, should be designed to incorporate features, which will promote deposition. For example, design features, which promote deposition of sediment suspended in any runoff, which flows into the impoundment area, might be utilized; the object of such a design feature would be to enhance the thickness of cover over time.

Criterion 5.

Criteria 5A-5D and Criterion 10 incorporate the basic ground-water protection standards imposed by the Environmental Protection Agency in 40 CFR Part 192, Subparts D and E (48 FR 45926; October 7, 1983) which apply during operations and prior to the end of closure. Groundwater monitoring to comply with these standards is required by Criterion 7.

Criterion 5A.

(1) The primary ground-water protection standard is a design standard for surface impoundments used to manage byproduct material. Unless exempted under paragraph 5A(3) of this criterion, surface impoundments (except for an existing portion) shall have a liner that is designed, constructed, and installed to prevent any migration of wastes out of the impoundment to the adjacent subsurface soil, ground water, or surface water at any time during the active life (including the closure period) of the impoundment. The liner may be constructed of materials that may allow wastes to migrate into the liner (but not into the adjacent subsurface soil, ground water, or surface water) during the active life of the facility, provided that impoundment closure includes removal or decontamination of all waste residues, contaminated containment system components (liners, etc.) contaminated subsoils, and structures and equipment contaminated with waste and leachate. For impoundments that will be closed with the liner material left in place, the liner must be constructed of materials that can prevent wastes from migrating into the liner during the active life of the facility.

(2) The liner required by paragraph 5A(1) above shall be:

(a) Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(b) Placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(c) Installed to cover all surrounding earth likely to be in contact with the wastes or leachate.

(3) The applicant or licensee will be exempted from the requirements of paragraph 5A(1) of this criterion if the Department finds, based on a demonstration by the applicant or licensee, that alternate design and operating practices, including the closure plan, together with site characteristics will prevent the migration of any hazardous constituents into ground water or surface water at any future time.

In deciding whether to grant an exemption, the Department will consider:

(a) The nature and quantity of the wastes;

(b) The proposed alternate design and operation;

(c) The hydrogeologic setting of the facility, including the attenuative capacity and thickness of the liners and soils present between the impoundment and ground water or surface water; and

(d) All other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to ground water or surface water.

(4) A surface impoundment must be designed, constructed, maintained, and operated to prevent overtopping resulting from normal or abnormal operations, overfilling, wind and wave actions, rainfall, or run-on; from malfunctions of level controllers, alarms, and other equipment; and from human error.

(5) When dikes are used to form the surface impoundment, the dikes must be designed, constructed, and maintained with sufficient structural integrity to prevent massive failure of the dikes. In ensuring structural integrity, it must not be presumed that the liner system will function without leakage during the active life of the impoundment.

Criterion 5B.

(1) Uranium and thorium byproduct material shall be managed to conform to the following secondary ground-water protection standard: hazardous constituents entering the ground water from a licensed site must not exceed the specified concentration limits in the uppermost aquifer beyond the point of compliance during the compliance period. Hazardous constituents are those constituents identified by the Department pursuant to paragraph 5B(2) of this criterion. Specified concentration limits are those limits established by the Department as indicated in paragraph 5B(5) of this criterion. The Department will also establish the point of compliance and compliance period on a site-specific basis through license conditions and orders. The objective in selecting the point of compliance is to provide the earliest practicable warning that the impoundment is releasing hazardous constituents to the ground water. The point of compliance must be selected to provide prompt indication of ground-water contamination on the hydraulically downgradient edge of the disposal area. The Department shall identify hazardous constituents, establish concentration limits, set the compliance period, and may adjust the point of compliance if needed to accord with developed data and site information as to the flow of ground water or contaminants, when the detection monitoring established under Criterion 7 indicates leakage of hazardous constituents from the disposal area.

(2) A constituent becomes a hazardous constituent subject to paragraph 5B(5) only when the constituent meets all three of the following tests:

(a) The constituent is reasonably expected to be in or derived from the uranium and thorium byproduct material in the disposal area;

(b) The constituent has been detected in the ground water in the uppermost aquifer; and

(c) The constituent is listed in Criterion 10 of this appendix.

(3) Even when constituents meet all three tests in paragraph 5B(2) of this criterion, the Department may exclude a detected constituent from the set of hazardous constituents on a site-specific basis if it finds that the constituent is not capable of posing a substantial present or potential hazard to human health or the environment. In deciding whether to exclude constituents, the Department will consider the following:

(a) Potential adverse effects on ground-water quality, considering

(i) The physical and chemical characteristics of the waste in the licensed site, including its potential for migration;

(ii) The hydrogeological characteristics of the facility and surrounding land;

(iii) The quantity of ground water and the direction of ground water flow;

(iv) The proximity and withdrawal rates of ground-water users;

(v) The current and future uses of ground water in the area;

(vi) The existing quality of ground water, including other sources of contamination and their cumulative impact on the ground water quality;

(vii) The potential for health risks caused by human exposure to waste constituents;

(viii) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

(ix) The persistence and permanence of the potential adverse effects.

(b) Potential adverse effects on hydraulically-connected surface water quality, considering

(i) The volume and physical and chemical characteristics of the waste in the licensed site;

(ii) The hydrogeological characteristics of the facility and surrounding land;

(iii) The quantity and quality of ground water and the direction of ground water flow;

(iv) The patterns of rainfall in the region;

(v) The proximity of the licensed site to surface waters;

(vi) The current and future uses of surface waters in the area and any water quality standards established for those surface waters;

(vii) The existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality;

(viii) The potential for health risks caused by human exposure to waste constituents;

(ix) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

(x) The persistence and permanence of the potential adverse effects.

(4) In making any determinations under paragraphs 5B(3) and 5B(6) of this criterion about the use of ground water in the area around the facility, the Department will consider any identification of underground sources of drinking water and exempted aquifers made by the Colorado Water Quality Control Commission, as in 5 CCR 1002-8, or other agency having jurisdiction.

(5) At the point of compliance, the concentration of a hazardous constituent must not exceed:

(a) The Department-approved background concentration of that constituent in the ground water;

(b) The respective value given in the table in paragraph 5C if the constituent is listed in the table and if the background level of the constituent is below the value listed; or

(c) An alternate concentration limit established by the Department.

(6) Conceptually, background concentrations pose no incremental hazards and the drinking water limits in Criterion 5C state acceptable hazards but these two options may not be practically achievable at a specific site. Alternate concentration limits that present no significant hazard may be proposed by licensees for Department consideration. Licensees must provide the basis for any proposed limits including consideration of practicable corrective actions, that limits are as low as reasonably achievable, and information on the factors the Department must consider. The Department will establish a site specific alternate concentration limit for a hazardous constituent as provided in paragraph 5B(5) of this criterion if it finds that the proposed limit is as low as reasonably achievable after considering practicable corrective actions, and that the constituent will not pose a substantial present or potential hazard to human health or the environment as long as the alternate concentration limit is not exceeded. In making the present and potential hazard finding, the Department will consider the following factors:

(a) Potential adverse effects on ground water quality, considering:

(i) The physical and chemical characteristics of the waste in the licensed site including its potential for migration;

(ii) The hydrogeological characteristics of the facility and surrounding land;

(iii) The quantity of ground water and the direction of ground water flow;

(iv) The proximity and withdrawal rates of ground water users;

(v) The current and future uses of ground water in the area;

(vi) The existing quality of ground water, including other sources of contamination and their cumulative impact on the ground water quality;

(vii) The potential for health risks caused by human exposure to waste constituents;

(viii) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

(ix) The persistence and permanence of the potential adverse effects.

(b) Potential adverse effects on hydraulically-connected surface water quality, considering:

(i) The volume and physical and chemical characteristics of the waste in the licensed site;

(ii) The hydrogeological characteristics of the facility and surrounding land;

(iii) The quantity and quality of ground water, and the direction of ground water flow;

(iv) The patterns of rainfall in the region;

(v) The proximity of the licensed site to surface waters;

(vi) The current and future uses of surface waters in the area and any water quality standards established for those surface waters;

(vii) The existing quality of surface water including other sources of contamination and the cumulative impact on surface water quality;

(viii) The potential for health risks caused by human exposure to waste constituents;

(ix) The potential damage to wildlife, crops, vegetations, and physical structures caused by exposure to waste constituents; and

(x) The persistence and permanence of the potential adverse effects.

Criterion 5C.

Maximum Values for Ground Water Protection

Constituent or property	**Maximum Concentration (Milligrams per liter):**
Arsenic	0.05
Barium	1.0
Cadmium	0.01
Chromium	0.05
Lead	0.05
Mercury	0.002
Selenium	0.01
Silver	0.05
Endrin (1,2,3,4,10, 10-hexachloro-1,7-expoxy-1,4,4a,5,6,7,8, 9a-octahydro-1, 4-endo, endo-5, 8-dimethano naphthalene)	0.0002
Lindane (1,2,3,4,5,6-hexachloro-cyclohexane, gamma isomer)	0.004
Methoxychlor (1,1,1-Trichloro-2, 2-bis, p-methoxyphenylethane)	0.1
Toxaphene (C 10 H 10 Cl 6 , Technical chlorinated camphene, 67–69 percent chlorine)	0.005
2,4-D (2,4-Dichlorophenoxyacetic acid)	0.1

2,4,5-TP Silvex (2,4,5-Trichloro-phenoxypropionic acid)	0.01

.	**Becquerels per liter**	**PicoCuries per liter**
Combined radium-226 and radium-228	0.185	5
Gross alpha-particle activity (excluding radon and uranium when producing uranium byproduct material or radon and thorium when producing thorium byproduct material)	0.555	15

Criterion 5D. If the ground water protection standards established under paragraph 5B(1) of this criterion are exceeded at a licensed site, a corrective action program must be put into operation as soon as is practicable, and in no event later than eighteen (18) months after the Department finds that the standards have been exceeded. The licensee shall submit the proposed corrective action program and supporting rationale for Department approval prior to putting the program into operation, unless otherwise directed by the Department. The objective of the program is to return hazardous constituent concentration levels in ground water to the concentration limits set as standards. The licensee's proposed program shall address removing the hazardous constituents that have entered the ground water at the point of compliance or treating then in place. The program shall also address removing or treating in place any hazardous constituents that exceed concentration limits in ground water between the point of compliance and the down gradient facility property boundary. The licensee shall continue corrective action measures to the extent necessary to achieve and maintain compliance with the ground water protection standard. The Department will determine when the licensee may terminate corrective action measures based on data from the ground water monitoring program and other information that provide reasonable assurance that the ground water protection standard will not be exceeded.

Criterion 5E. In developing and conducting ground water protection programs, applicants and licensees shall also consider the following:

(1) Installation of bottom liners (Where synthetic liners are used, a leakage detection system must be installed immediately below the liner to ensure major failures are detected if they occur. This is in addition to the ground water monitoring program conducted as provided in 18.3.3. Where clay liners are proposed or relatively thin, in situ clay soils are to be relied upon for seepage control, tests must be conducted with representative tailings solutions and clay materials to confirm that no significant deterioration of permeability or stability properties will occur with continuous exposure of clay to tailings solutions. Tests must be run for a sufficient period of time to reveal any effects if they are going to occur (in some cases deterioration has been observed to occur rather rapidly after about nine months of exposure)).

(2) Mill process designs which provide the maximum practicable recycle of solutions and conservation of water to reduce the net input of liquid to the tailings impoundment.

(3) Dewatering of tailings by process devices and/or in situ drainage systems (At new sites, tailings must be dewatered by a drainage system installed at the bottom of the impoundment to lower the phreatic surface and reduce the driving head of seepage, unless tests show tailings are not amenable to such a system. Where in situ dewatering is to be conducted, the impoundment bottom must be graded to assure that the drains are at a low point. The drains must be protected by suitable filter materials to assure that drains remain free running. The drainage system must also be adequately sized to assure good drainage).

(4) Neutralization to promote immobilization of hazardous constituents.

Criterion 5F. Where ground water impacts are occurring at an existing site due to seepage, action must be taken to alleviate conditions that lead to excessive seepage impacts and restore ground water quality. The specific seepage control and ground water protection method, or combination of methods, to be used must be worked out on a site-specific basis. Technical specifications must be prepared to control installation of seepage control systems. A quality assurance, testing, and inspection program, which includes supervision by a qualified engineer or scientist, must be established to assure the specifications are met.

Criterion 5G. In support of a tailings disposal system proposal, the applicant/operator shall supply information concerning the following:

(1) The chemical and radioactive characteristics of the waste solutions.

(2) The characteristics of the underlying soil and geologic formations particularly as they will control transport of contaminants and solutions. This includes detailed information concerning extent, thickness, uniformity, shape, and orientation of underlying strata. Hydraulic gradients and conductivities of the various formations must be determined. This information must be gathered from borings and field survey methods taken within the proposed impoundment area and in surrounding areas where contaminants might migrate to ground water. The information gathered on boreholes must include both geological and geophysical logs in sufficient number and degree of sophistication to allow determining significant discontinuities, fractures, and channeled deposits of high hydraulic conductivity. If field survey methods are used, they should be in addition to and calibrated with borehole logging. Hydrologic parameters such as permeability may not be determined on the basis of laboratory analysis of samples alone; a sufficient amount of field testing (e.g., pump tests) must be conducted to assure actual field properties are adequately understood. Testing must be conducted to allow estimating chemi-sorption attenuation properties of underlying soil and rock.

(3) Location, extent, quality, capacity and current uses of any ground water at and near the site.

Criterion 5H. Steps must be taken during stockpiling of ore to minimize penetration of radionuclides into underlying soils; suitable methods include lining and/or compaction of ore storage areas.

Criterion 6.

(1) In disposing of waste byproduct material, licensees shall place an earthen cover (or approved alternative) over tailings or wastes at the end of milling operations and shall close the waste disposal area in accordance with a design[1] which provides reasonable assurance of control of radiological hazards to (i) be effective for 1,000 years, to the extent reasonably achievable, and, in any case, for at least 200 years, and (ii) limit releases of radon-222 from uranium byproduct materials, and radon-220 from thorium byproduct materials, to the atmosphere so as not to exceed an average[2] release rate of 0.74 Becquerel per square meter per second (Bq/m^2 s), or 20 picocuries per square meter per second (pCi/m^2 s), to the extent practicable throughout the effective design life determined pursuant to (1)(i) of this criterion. In computing required tailings cover thicknesses, moisture in soils in excess of amounts found normally in similar soils in similar circumstances may not be considered. Direct gamma exposure from the tailings or wastes should be reduced to background levels. The effects of any thin synthetic layer may not be taken into account in determining the calculated radon exhalation level. If non-soil materials are proposed as cover materials, it must be demonstrated that these materials will not crack or degrade by differential settlement, weathering, or other mechanism, over long-term intervals.

1 In the case of thorium byproduct materials, the standard applies only to design. Monitoring for radon emissions from thorium byproduct materials after installation of an appropriately designed cover is not required.

2 This average applies to the entire surface of each disposal area over a period of a least one year, but a period short compared to 100 years. Radon will come from both byproduct materials and from covering materials. Radon emissions from covering materials should be estimated as part of developing a closure plan for each site. The standard, however, applies only to the emissions from byproduct materials to the atmosphere.

(2) As soon as reasonably achievable after emplacement of the final cover to limit releases of radon-222 from uranium byproduct material and prior to placement of erosion protection barriers or other features necessary for long-term control of the tailings, the licensee shall verify through appropriate testing and analysis that the design and construction of the final radon barrier is effective in limiting releases of radon-222 to a level not exceeding 0.74 Bq/m^2 s (20 pCi/m^2 s) averaged over the entire pile or impoundment using the procedures described in 40 CFR Part 61, Appendix B, Method 115, or another method of verification approved by the Department as being at least as effective in demonstrating the effectiveness of the final radon barrier.

(3) When phased emplacement of the final radon barrier is included in the applicable reclamation plan, the verification of radon-222 release rates required in paragraph (2) of this Criterion must be

conducted for each portion of the pile or impoundment as the final radon barrier for that portion is emplaced.

(4) Within ninety days of the completion of all testing and analysis relevant to the required verification in paragraphs (2) and (3) of this Criterion, the uranium mill licensee shall report to the Department the results detailing the actions taken to verify that levels of release of radon-222 do not exceed 0.74 Bq/m^2 s (20 pCi/m^2 s) when averaged over the entire pile or impoundment. The licensee shall maintain records until termination of the license documenting the source of input parameters including the results of all measurements on which they are based, the calculations and/or analytical methods used to derive values for input parameters, and the procedure used to determine compliance. These records shall be kept in a form suitable for transfer to the custodial agency at the time of transfer of the site to the U.S. Department of Energy or State for long-term care if requested.

(5) Near surface cover materials, i.e., within the top three meters (10 feet), may not include waste or rock that contains elevated levels of radium; soils used for near surface cover must be essentially the same, as far as radioactivity is concerned, as that of surrounding surface soils. This is to ensure that surface radon exhalation is not significantly above background because of the cover material itself.

(6) The design requirements in this Criterion for longevity and control of radon releases apply to any portion of a licensed and/or disposal site unless such portion contains a concentration of radium in land, averaged over areas of 100 square meters, which as a result of byproduct material, does not exceed the background level by more than: (i) 0.18 Becquerels (5 picocuries) per gram of radium-226, or, in the case of thorium byproduct material, radium-228, averaged over the first 15 centimeters (cm) below the surface, and (ii)0.56 Becquerels (15 pCi) of radium-226, or, in the case of thorium byproduct material, radium-228, averaged over 15-cm thick layers more than 15 cm below the surface.

Byproduct material containing concentrations of radionuclides other than radium in soil, and surface activity on remaining structures, must not result in a total effective dose equivalent (TEDE) exceeding the dose from cleanup of radium contaminated soil to the above standard (benchmark dose), and must be at levels which are as low is reasonably achievable. If more than one residual radionuclide is present in the same 100 square-meter area, the sum of the ratios for each radionuclide of concentration present to the concentration limit will not exceed "1" (unity). A calculation of the potential peak annual TEDE within 1000 years to the average member of the critical group that would result from applying the radium standard (not including radon) on the site must be submitted for approval. The use of decommissioning plans with benchmark doses which exceed 1 millisievert per year (100 mrem/year), before application of ALARA, requires the approval of the Department. This requirement for dose criteria does not apply to sites that have decommissioning plans for soil and structures approved before the effective date of this Criterion 6(6).

(7) The licensee shall also address the nonradiological hazards associated with the wastes in planning and implementing closure. The licensee shall ensure that disposal areas are closed in a manner that minimizes the need for further maintenance. To the extent necessary to prevent threats to human health and the environment, the licensee shall control, minimize, or eliminate post-closure escape of nonradiological hazardous constituents, leachate, contaminated rainwater, or waste decomposition products to the ground or surface waters or to the atmosphere.

Criterion 6A.

(1) For impoundments containing uranium byproduct materials, the final radon barrier must be completed as expeditiously as practicable considering technological feasibility after the pile or impoundment ceases operation in accordance with a written, Department-approved reclamation plan. (The term as expeditiously as practicable considering technological feasibility as specifically defined in section 18.2 includes factors beyond the control of the licensee). Deadlines for completion of the final radon barrier and, if applicable, the following interim milestones must be established as a condition of the individual license: windblown tailings retrieval and placement on the pile and interim stabilization including dewatering or the removal of freestanding liquids and recontouring. The placement of erosion protection barriers or other feature necessary for long-

term control of the tailings must also be completed in a timely manner in accordance with a written, Department-approved reclamation plan.

(2) The Department may approve a licensee's request to extend the time for performance of milestones related to emplacement of the final radon barrier if, after providing an opportunity for public participation, the Department finds that the licensee has adequately demonstrated in the manner required in paragraph (2) of Criterion 6 that releases of radon-222 do not exceed an average of 0.74 Becquerel/m^2 s (20 pCi/m^2 s). If the delay is approved on the basis that the radon releases do not exceed 0.74 Becquerel/m^2 s (20 pCi/m^2 s), a verification of radon levels, as required by paragraph (2) of Criterion 6, must be made annually during the period of delay. In addition, once the Department has established the date in the reclamation plan for the milestone for completion of the final radon barrier, the Department may extend that date based on cost if after providing an opportunity for public participation, the Department finds that the licensee is making good faith efforts to emplace the final radon barrier, the delay is consistent with the definition of available technology, and the radon releases caused by the delay will not result in a significant incremental risk to the public health.

(3) The Department may authorize by license amendment, upon licensee request, a portion of the impoundment to accept uranium byproduct material or such materials that are similar in physical, chemical, and radiological characteristics to the uranium mill tailings and associated wastes already in the pile or impoundment from other sources, during the closure process. No such authorization will be made if it results in a delay or impediment to emplacement of the final radon barrier over the remainder of the impoundment in a manner that will achieve levels of radon-222 releases not exceeding 0.74 Becquerel/m^2 s (20 pCi/m^2 s) averaged over the entire impoundment. The verification required in paragraph (2) of Criterion 6 may be completed with a portion of the impoundment being used for further disposal if the Department makes a final finding that the impoundment will continue to achieve a level of radon-222 release not exceeding 0.74 Becquerel/m^2 s (20 pCi/m^2 s) averaged over the entire impoundment. In this case, after the final radon barrier is complete except for the continuing disposal area, (a) only byproduct material will be authorized for disposal, (b) the disposal will be limited to the specified existing disposal area, and (c) this authorization will only be made after providing opportunity for public participation. Reclamation of the disposal area, as appropriate, must be completed in a timely manner after disposal operations cease in accordance with paragraph (1) of Criterion 6; however, these actions are not required to be complete as part of meeting the deadline for final radon barrier construction.

Criterion 7.

The licensee shall establish a detection monitoring program needed for the Department to set the site-specific ground water protection standards in paragraph 5B(1) of this appendix. For all monitoring under this paragraph, the licensee or applicant will propose for Department approval as license conditions which constituents are to be monitored on a site-specific basis. A detection monitoring program has two purposes. The initial purpose of the program is to detect leakage of hazardous constituents from the disposal area so that the need to set ground water protection standards is monitored. If leakage is detected, the second purpose of the program is to generate data and information needed for the Department to establish the standards under Criterion 5B. The data and information must provide a sufficient basis to identify those hazardous constituents which require concentration limit standards and to enable the Department to set the limits for those constituents and the compliance period. They may also need to provide the basis for adjustments to the point of compliance. The detection monitoring programs must be in place when specified by the Department in orders or license conditions. Once ground water protection standards have been established pursuant to paragraph 5B(1), the licensee shall establish and implement a compliance monitoring program. The purpose of the compliance monitoring program is to determine that the hazardous constituent concentrations in ground water continue to comply with the standards set by the Department. In conjunction with a corrective action program, the licensee shall establish and implement a corrective action monitoring program. The purpose of the corrective action monitoring program is to demonstrate the effectiveness of the corrective actions. Any monitoring program required by this paragraph may be based on existing monitoring programs to the extent the existing programs can meet the stated objective for the program.

Criterion 8.

Milling operations must be conducted so that all airborne effluent releases are reduced to levels as low as is reasonably achievable. The primary means of accomplishing this must be by means of emission controls. Institutional controls, such as extending the site boundary and exclusion area, may be employed to ensure that offsite exposure limits are met, but only after all practicable measures have been taken to control emissions at the source. Notwithstanding the existence of individual dose standards, strict control of emissions is necessary to assure that population exposures are reduced to the maximum extent reasonably achievable and to avoid site contamination. The greatest potential sources of offsite radiation exposure (aside from radon exposure) are dusting from dry surfaces of the tailings disposal area not covered by tailings solution and emissions from yellowcake drying and packaging operations. During operations and prior to closure, radiation doses from radon emissions from surface impoundments of uranium or thorium byproduct materials must be kept as low as is reasonably achievable.

Checks must be made and logged hourly for all parameters (e.g., differential pressures and scrubber water flow rates) that determine the efficiency of yellowcake stack emission control equipment operation. The licensee shall retain each log as a record for three years after the last entry in the log is made. It must be determined whether or not conditions are within a range prescribed to ensure that the equipment is operating consistently near peak efficiency; corrective action must be taken when performance is outside of prescribed ranges. Effluent control devices must be operative at all times during drying and packaging operations and whenever air is exhausting from the yellowcake stack. Drying and packaging operations must terminate when controls are inoperative. When checks indicate the equipment is not operating within the range prescribed for peak efficiency, actions must be taken to restore parameters to the prescribed range. When this cannot be done without shutdown and repairs, drying and packaging operations must cease as soon as practicable. Operations may not be restarted after cessation due to off-normal performance until needed corrective actions have been identified and implemented. All these cessations, corrective actions, and restarts must be reported to the Department as indicated in Criterion 8A, in writing, within ten days of the subsequent restart.

To control dusting from tailings, that portion not covered by standing liquids must be wetted or chemically stabilized to prevent or minimize blowing and dusting to the maximum extent reasonably achievable. This requirement may be relaxed if tailings are effectively sheltered from wind, such as may be the case where they are disposed of below grade and the tailings surface is not exposed to wind. Consideration must be given in planning tailings disposal programs to methods which would allow phased covering and reclamation of tailings impoundments because this will help in controlling particulate and radon emissions during operation. To control dusting from diffuse sources, such as tailings and ore pads where automatic controls do not apply, operators shall develop written operating procedures specifying the methods of control which will be utilized.

Milling operations producing or involving uranium and thorium byproduct materials must be conducted in such a manner as to provide reasonable assurance that the annual dose equivalent does not exceed 0.25 millisievert (25 millirem) to the whole body, 0.75 millisievert (75 millirem) to the thyroid, and 0.25 millisievert (25 millirem) to any other organ of any member of the public as a result of exposures to the planned discharge of radioactive material, radon and its progeny excepted, to the general environment.

Uranium and thorium byproduct materials must be managed so as to conform to the applicable provisions of Title 40 of the *Code of Federal Regulations*, Part 440, "Ore Mining and Dressing Point Source Category: Effluent Limitations Guidelines and New Source Performance Standards, Subpart C, Uranium, Radium, and Vanadium Ores Subcategory", as codified on January 1, 1983.

Criterion 8A. Inspections of tailings or waste retention systems must be conducted daily during operations, or at an alternate frequency approved by the Department for other conditions. Such inspections shall be conducted by, or under the supervision of, a qualified engineer or scientist, and documented. The licensee shall retain the documentation for each inspection as a record for three years after the documentation is made. The Department must be immediately notified of any failure in a tailings or waste retention system that results in a release of tailings or waste into unrestricted areas, or any unusual conditions (conditions not contemplated in the design of the retention system) that if not corrected could indicate the potential or lead to failure of the system and result in a release of tailings or waste into unrestricted areas.

Criterion 9.

Criterion 9A. These criteria relating to ownership of tailings and their disposal sites became effective on November 8, 1981, and apply to all licenses terminated, issued, or renewed after that date.

Criterion 9B. Any uranium or thorium milling license or tailings license must contain such terms and conditions as the NRC and Department determine necessary to assure that prior to termination of the license, the licensee will comply with ownership requirements of this criterion for sites used for tailings disposal.

Criterion 9C. Title to the byproduct material licensed under this Part 18 and land, including any interests therein (other than land owned by the United States or by the State), which is used for the disposal of any such byproduct material, or is essential to ensure the long-term stability of such disposal site, must be transferred to the United States or the State in which such land is located, at the option of such State. In view of the fact that physical isolation must be the primary means of long-term control, and Government land ownership is a desirable supplementary measure, ownership of certain severable subsurface interests (for example, mineral rights) may be determined to be unnecessary to protect the public health and safety and the environment. In any case, however, the applicant/operator must demonstrate a serious effort to obtain such subsurface rights, and must in the event that certain rights cannot be obtained, provide notification in local public land records of the fact that the land is being used for the disposal of radioactive material and is subject to an NRC general or specific license prohibiting the disruption and disturbance of the tailings. In some rare cases, such as may occur with deep burial where no ongoing site surveillance will be required, surface land ownership transfer requirements may be waived with the approval of the NRC. For licenses issued before November 8, 1981, the NRC may take into account the status of the ownership of such land, and interests therein, and the ability of a licensee to transfer title and custody thereof to the United States or the State.

Criterion 9D. If the NRC subsequent to title transfer determines that use of the surface or subsurface estates, or both, of the land transferred to the United States or to a State will not endanger the public health, safety, welfare, or environment, the NRC shall permit the use of the surface or subsurface estates, or both, of such land in a manner consistent with the provisions provided in these criteria. If the NRC permits such use of such land, it will provide the person who transferred such land with the right of first refusal with respect to such use of such land.

Criterion 9E. Material and land transferred to the United States or the State in accordance with this Criterion 9 must be transferred to the United States or the State without cost other than administrative or legal costs incurred in carrying out such transfer.

Criterion 9F. The provisions of this part respecting transfer of title and custody to land and tailings and wastes do not apply in the case of lands held in trust by the United States for any Indian tribe or lands owned by such Indian tribe subject to a restriction against alienation imposed by the United States. In the case of such lands which are used for the disposal of uranium or thorium byproduct material, as defined in this Part, the licensee shall enter into arrangements with the NRC as may be appropriate to assure the long-term surveillance of such lands by the United States.

Criterion 10.

Secondary ground-water protection standards required by Criterion 5 of this Appendix are concentration limits for individual hazardous constituents. The following list of constituents identifies the constituents for which standards must be set and complied with if the specific constituent is reasonably expected to be in or derived from the radioactive material and has been detected in ground water. For purposes of this Appendix, the property of gross alpha activity will be treated as if it is a hazardous constituent. Thus, when setting standards under paragraph 5B(5) of Criterion 5, the Department will also set a limit for gross alpha activity. The Department does not consider the following list imposed by 40 CFR Part 192 to be exhaustive and may determine other constituents to be hazardous on a case-by-case basis, independent of those specified by the U.S. Environmental Protection Agency in Part 192.

PART 18 - CRITERION 10 HAZARDOUS CONSTITUENTS

- Acetonitrile (Ethanenitrile)
- Acetophenone (Ethanone, 1-phenyl)
- 3-(alpha-Acetonylbenzyl)-4-hydroxycoumarin and salts (Warfarin)
- 2-Acetylaminofluorene (Acetamide, N-(9H- fluoren-2-yl)-)
- Acetyl chloride (Ethanoyl chloride)
- 1-Acetyl-2-thiourea (Acetamide, N- (aminothioxomethyl)-)
- Acrolein (2-Propenal)
- Acrylamide (2-Propenamide)
- Acrylonitrile (2-Propenenitrile)
- Aflatoxins
- Aldrin (1,2,3,4,10,10-Hexachloro-1,4,4a,5,8,8a,8b-hexahydro-endo,exo-1,4:5,8-Dimethanonaphthalene)
- Allyl alcohol (2-Propen-1-ol)
- Aluminum phosphide
- 4-Aminobiphenyl ([1,1-Biphenyl])-4-amine)
- 6-Amino-1,1a,2,8,8a,8b-hexahydro-8-(hydroxymethyl)-8a-methoxy-5-methyl-carbamate azirino(2,3:3,4)pyrrolo(1,2-a]indole-4,7-dione,(ester) (Mitomycin C) (Azirino[2,3:3,4]pyrrolo(1,2-a)indole-4,7-dione,6-amino-8-[((amino-cabonyl)oxy)methyl)-1,1a,2,8,8a,8b-hexahydro-8a methoxy-5-methyl-)
- 5-(Aminomethyl)-3-isoxazolol (3(2H)-Isoxazolone, 5-(aminomethyl)-)4-Aminopyridine (4-Pyridinamine)
- Amitrole (1H-1,2,4-Triazol-3-amine)
- Aniline (Benzenamine)
- Antimony and compounds, N.O.S.[3]
- Aramite (Sulfurous acid,2-chloroethyl-,2-(4-(1,1-dimethylethyl)phenoxy)-1-methylethyl ester)
- Arsenic and compounds, N.O.S.[3]
- Arsenic acid (Orthoarsenic acid)
- Arsenic pentoxide (Arsenic (V) oxide)
- Arsenic trioxide (Arsenic (III) oxide)
- Auramine (Benzenamine,4,4-carbonimidoylbis (N,N-Dimethyl-,monohydrochloride)
- Azaserine (L-Serine, diazoacetate (ester))

- Barium and compounds, N.O.S.[3]
- Barium cyanide
- Benz(c)acridine (3.4-Benzacridine)
- Benz(a)anthracene (1,2-Benzanthracene)
- Benzene (Cyclohexatriene)
- Benzenearsonic acid (Arsonic acid, phenyl-)
- Benzene, dichloromethyl-(Benzal chloride)
- Benzenethiol (Thiophenol)
- Benzidine ([1,1-Biphenyl]-4,4 diamine)
- Benzo(b)fluoranthene (2,3-Benzofluoranthene)
- Benzo(j)fluoranthene (7,8-Benzofluoranthene)
- Benzo(a)pyrene (3,4-Benzopyrene)
- p-Benzoquinone (1,4-Cyclohexadienedione)
- Benzotrichloride (Benzene, Trichloromethyl)
- Benzyl chloride (Benzene, (chloromethyl)-)
- Beryllium and compounds, N.O.S.[3]
- Bis(2-chloroethoxy)methane (Ethane,1,1-(methylenebis(oxy)]bis[2-chloro-])
- Bis(2-chloroethyl) ether (Ethane, 1,1-oxybis (2-chloro-))
- N,N-Bis(2-chloroethyl)-2-naphthylamine (Chlornaphazine)
- Bis(2-Chloroisopropyl) ether (Propane, 2,2-oxybis[2-chloro-])
- Bis(chloromethyl) ether (methane,oxybis[chloro-])
- Bis(2-ethylhexyl) phthalate (1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester)
- Bromoacetone (2-Propanone, 1-bromo-)
- Bromomethane (Methyl bromide)
- 4-Bromophenyl phenyl ether (Benzene, 1-bromo-4-phenoxy-)
- Brucine (Strychnidin-10-one, 2,3-dimethoxy-)
- 2-Butanone peroxide (Methyl ethyl ketone,peroxide)
- Butyl benzyl phthalate (1,2-Benzenedicarboxylic acid, butylphenylmethyl ester)
- 2-sec-Butyl-4,6-dinitrophenol (DNBP) (Phenol,2,4-dinitro-6-(1-methylpropyl)-)
- Cadmium and compounds, N.O.S.[3]

- Calcium chromate (Chromic acid, calcium salt)
- Calcium cyanide
- Carbon disulfide (Carbon bisulfide)
- Carbon oxyfluoride (Carbonyl fluoride)
- Chloral (Acetaldehyde, trichloro-)
- Chlorambucil (Butanoic acid, 4-(bis(2-chloroethyl)amino)benzene-)
- Chlordane (alpha and gamma isomers)4,7-Methanoindan, 1,2,4,5,6,7,8,8-octachloro-3,4,7,7a-tetrahydro-) (alpha and gammaisomers)
- Chlorinated benzenes, N.O.S.[3]
- Chlorinated ethane, N.O.S.[3]
- Chlorinated fluorocarbons, N.O.S.[3]
- Chlorinated naphthalene, N.O.S.[3]
- Chlorinated phenol, N.O.S.[3]
- Chloroacetaldehyde (Acetaldehyde, chloro-)
- Chloroalkyl ethers N.O.S.[3]
- p-Chloroaniline (Benzenamine, 4-chloro-)
- Chlorobenzene (Benzene, chloro-)
- Chlorobenzilate (Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-,ethyl ester)
- p-Chloro-m-cresol (Phenol, 4-chloro-3-methyl)
- 1-Chloro-2,3-epoxypropane (Oxirane, 2-(chloromethyl)-)
- 2-Chloroethyl vinyl ether (Ethene, (2-chloroethoxy)-)
- Chloroform (Methane, trichloro-)
- Chloromethane (Methyl chloride)
- Chloromethyl methyl ether (Methane,chloromethoxy-)
- 2-Chloronaphthalene (Naphthalene,betachloro-)
- 2-Chlorophenol (Phenol, o-chloro-)
- 1-(o-Chlorophenyl) thiourea (Thiourea, (2-chlorophenyl)-)
- 3-Chloropropionitrile (Propanenitrile, 3-chloro-)
- Chromium and compounds, N.O.S.[3]
- Chrysene (1,2-Benzphenanthrene)

- Citrus red No. 2 (2-Naphthol, 1-((2,5-dimethoxyphenyl)azo)-)
- Coal tars
- Copper cyanide
- Creosote (Creosote, wood)
- Cresols (Cresylic acid) (Phenol, methyl-)
- Crotonaldehyde (2-Butenal)
- Cyanides (soluble salts and complexes),N.O.S.[3]
- Cyanogen (Ethanedinitrile)
- Cyanogen bromide (Bromine cyanide)
- Cyanogen chloride (Chlorine cyanide)
- Cycasin (beta-D-Glucopyranoside, (methyl-ONN-azoxy)methyl-)
- 2-Cyclohexyl-4,6-dinitrophenol (phenol, 2-cyclohexyl-4,6-dinitro-)
- Cyclophosphamide (2H-1,3,2-Oxazaphosphorine (bis(2-chloroethyl)amino)-tetrahydro-,2-oxide)
- Daunomycin (5,12-Naphthacenedione, (8S-cis)-8-acetyl-10-((3-amino-2,3,6-trideoxy)-alpha-L-lyxo-hexopyranosyl)oxy)7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-)
- DDD (Dichlorodiphenyldichloroethane)(Ethane, 1,1-dichloro-2,2-bis(p-chlorophenyl)-)
- DDE (Ethylene, 1,1-dichloro-2,2-bis(4-chlorophenyl)-)
- DDT (Dichlorodiphenyltrichloroethane) (Ethane, 1,1,1-trichloro-2,2-bis (p-chlorophenyl)-)
- Diallate (S-(2,3-dichloroallyl)diisopropylthiocarbamate)
- Dibenz(a,h)acridine(1,2,5,6-Dibenzacridine)
- Dibenz(a,j)acridine(1,2,7,8-Dibenzacridine)
- Dibenz(a,h)anthracene (1,2,5,6-Dibenzanthracene
- 7H-Dibenzo(c,g)carbazole (3,4,5,6-Dibenzcarbazole)
- Dibenzo(a,e)pyrene(1,2,4,5-Dibenzpyrene)
- Dibenzo(a,h)pyrene(1,2,5,6-Dibenzpyrene)
- Dibenzo(a,i)pyrene(1,2,7,8-Dibenzpyrene)
- 1,2-Dibromo-3-chloropropane (Propane, 1,2-dibromo-3-chloro-)
- 1,2 Dibromoethane (Ethylene dibromide)
- Dibromomethane (Methylene bromide)
- Di-n-butyl phthalate (1,2-Benzenedicarboxylic acid, dibutyl ester)

- o-Dichlorobenzene (Benzene, 1,2-dichloro-)
- m-Dichlorobenzene (Benzene, 1,3-dichloro-)
- p-Dichlorobenzene (Benzene, 1,4-dichlor-)
- Dichlorobenzene, N.O.S.[3] (Benzene, dichloro-N.O.S.[3])
- 3,3-Dichlorobenzidine ([1,1, Biphenyl]-4,4-diamine, 3,3-dichloro-)
- 1,4-Dichloro-2-butene (2-Butene, 1,4-dichloro-)
- Dichlorodifluoromethane (Methane, dichlorodifluoro-)
- 1,1 Dichloroethane (Ethylidene dichloride)
- 1,2 Dichloroethane (Ethylene dichloride)
- trans-1,2-Dichloroethene (1,2-Dichloroethylene)
- Dichloroethylene, N.O.S.[3] (Ethene, dichloro-N.O.S.[3]
- 1,1-Dichloroethylene (Ethene, 1,1-dichloro-)
- Dichloromethane (Methylene chloride)
- 2,4-Dichlorophenol (Phenol, 2,4-dichloro-)
- 2,6-Dichlorophenol (Phenol, 2,6-dichloro-)
- 2,4-Dichlorophenoxyacetic acid (2,4-D), saltsand esters (Acetic acid, 2,4-dichlorophenoxy-, salts and esters)
- Dichlorophenylarsine (Phenyl dichloroarsine)
- Dichloropropane, N.O.S.[3] (Propane, dichloro-N.O.S.[3]
- 1,2-Dichloropropane (Propylene dichloride)
- Dichloropropanol, N.O.S.[3] (Propanol, dichloro-N.O.S.[3])
- Dichloropropene, N.O.S.[3] (Propene, dichloro-N.O.S.[3]
- 1,3-Dichloropropene (1-Propene, 1,3-dichloro-)
- Dieldin (1,2,3,4,10,10-hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octa-hydro-endo,exo-1,4:5,8-Dimethanonaphthalene)
- 1,2:3,4-Diepoxybutane (2,2,-Bioxirane)
- Diethylarsine (Arsine, diethyl-)
- N,N-Diethylhydrazine (Hydrazine, 1,2-diethyl)
- O,O-Diethyl S-methyl ester of phosphorodithioic acid (Phosphorodithioic acid, O,O-diethyl S-methyl ester)
- O,O-Diethylphosphoric acid, O-p-nitrophenyl ester (Phosphoric acid, diethyl p-nitrophenyl ester)

- Diethyl phthalate (1,2-Benzenedicarboxylic acid, diethyl ester)
- O,O-Diethyl O-2-pyrazinyl phosphorothioate (Phosphorothioic acid, O,0-diethyl O-pyrazinyl ester)
- Diethylstilbesterol (4,4-Stilbenediol,alpha,alpha-diethyl,bis(dihydrogen phosphate, (E)-)
- Dihydrosafrole (Benzene, 1,2-methylenedioxy-4-propyl-)
- 3,4-Dihydroxy-alpha-(methylamino)methylbenzyl alcohol (1,2-Benzenediol, 4-(1-hydroxy-2 (methylamino)ethyl))
- Dilsopropylfluorophosphate (DFP) (Phosphorofluoridic acid, bis(1-methylethyl) ester)
- Dimethoate (Phosphorodithioic acid, O,O-dimethyl S-(2-(methylamino)-2-oxoethyl) ester)
- 3,3,-Dimethoxybenzidine ((1,1,-Biphenyl)-4,4,-diamine, 3-3,-dimethoxy-)
- p-Dimethylaminoazobenzene (Benzenamine, N,N-dimethyl-4-(phenylazo)-)
- 7,12-Dimethylbenz(a)anthracene(1,2-Benzathracene, 7,12-dimethyl-)
- 3,3-Dimethylbenzidine (1,1-Biphenyl)-4,4,diamine, 3,3-dimethyl-)
- Dimethylcarbamoyl chloride (Carbamoyl chloride, dimethyl)
- 1,1 Dimethylhydrazine (Hydrazine, 1,1-dimethyl-)
- 1,2-Dimethylhydrazine (Hydrazine, 1,2-dimethyl-)
- 3,3-Dimethyl-1-(methylthio)-2-butanone, O-[(methylamino) carbonyl] oxime (Thiofanox)
- alpha,alpha-Dimethylphenethylamine (Ethanamine, 1,1-dimethyl-2-phenyl-)
- 2,4-Dimethylphenol (Phenol, 2,4-dimethyl-)
- Dimethyl phthalate (1,2-Benzenedicarboxylic acid, dimethyl ester)
- Dimethyl sulfate (Sulfuric acid, dimethyl ester)
- Dinitrobenzene, N.O.S.[3] (Benzene, dinitro-N.O.S.[3])
- 4,6-Dinitro-o-cresol and salts (Phenol, 2,4-dinitro-6-methyl-, and salts)
- 2,4-Dinitrophenol (Phenol, 2,4-dinitro-)
- 2,4-Dinitrotoluene (Benzene, 1-methyl-2,4-dinitro-)
- 2,6-Dinitrotoluene (Benzene, 1-methyl 2,6-dinitro-)
- Di-n-octyl phthalate (1,2-Benzenedicarboxylic acid, dioctyl ester)
- 1,4-Dioxane (1,4-Diethylene oxide)
- Diphenylamine (Benzenamine, N-phenyl-)
- 1,2-Diphenylhydrazine (Hydrazine, 1,2-diphenyl-)
- Di-n-propylnitrosamine (N-Nitroso-di-n-propylamine)

- Disulfoton (O,O-diethyl S-(2-(ethylthio)ethyl) phosphorodithioate)
- 2,4-Dithiobiuret (Thiomidodicarbonic diamide)
- Endosulfan (5-Norbomene, 2,3-dimethanol,1,4,5,6,7,7-hexachloro-cyclic sulfite)
- Endrin and metabolites (1,2,3,4,10,10-hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-endo, endo-1,4,5,8-dimethanonaphthalene, and metabolites)
- Ethyl carbamate (Urethan) (Carbamic acid, ethyl ester)
- Ethyl cyanide (Propanenitrile)
- Ethylenebisdithiocarbamic acid, salts, and esters (1,2-Ethanediyl-biscarbamodithioic acid, salts and esters)
- Ethyleneimine (Aziridine)
- Ethylene oxide (Oxirane)
- Ethylenethiourea (2-Imidazolidinethione)
- Ethyl methacrylate (2-Propenoic acid, 2-methyl-, ethyl ester)
- Ethyl methanesulfonate (Methanesulfonic acid, ethyl ester)
- Fluoranthene (Benzo[j,k]fluorene)
- Fluorine
- 2-Fluoroacetamide (Acetamide, 2-fluoro-)
- Fluoroacetic acid, sodium salt (Acetic acid, fluoro-sodium salt)
- Formaldehyde (Methylene oxide)
- Formic acid (Methanoic acid)
- Glycidylaldehyde (1-Propanol-2,3 epoxy)
- Halomethane, N.O.S. [3]
- Heptachlor (4,7-Methano-1H-indene.1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-)
- Heptachlor epoxide (alpha, beta, and gamma isomers) (4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-2,3-epoxy-3a,4,7,7-tetrahydro-,alpha, beta, and gamma isomers)
- Hexachlorobenzene (Benzene, hexachloro-)
- Hexachlorobutadiene (1,3-Butadiene, 1,1,2,3,4,4-hexachloro-)
- Hexachlorocyclohexane (all isomers) (Lindane and isomers)
- Hexachlorocyclopentadiene (1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-)
- Hexachloroethane (Ethane, 1,1,1,2,2,2-hexachloro-)
- 1,2,3,4,10,10-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4,5,8-endo,endo-dimethanonaphthalene (Hexachlorohexa-hydro-endo,endo-dimethanonaphthalene)

- Hexachlorophene (2,2,-Methylenebis(3,4,6-trichlorophenol)
- Hexachloropropene (1-Propene, 1,1,2,3,3,3-hexachloro-)
- Hexaethyl tetraphosphate (Tetraphosphoric acid, hexaethyl ester)
- Hydrazine (Diamine)
- Hydrocyanic acid (Hydrogen cyanide)
- Hydrofluoric acid (Hydrogen fluoride)
- Hydrogen sulfide (Sulfur hydride)
- Hydroxydimethylarsine oxide (Cacodylic acid)
- Indeno (1,2,3-cd)pyrene(1,10-(1,2-phenylene)pyrene)
- Iodomethane (Methyl iodide)
- Iron dextran (Ferric dextran)
- Isocyanic acid, methyl ester (Methyl isocyanate)
- Isobutyl alcohol (1-Propanol, 2-methyl-)
- Isosafrole (Benzene, 1,2-methylenedioxy-4-allyl-)
- Kepone (decachlorooctahydro-1,3,4-Methano-2H-cyclobuta[cd]pentalen-2-one)
- Lasiocarpine (2-Butenoic acid, 2-methyl-,7-[(2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy) methyl]2,3,5,7a-tetrahydro-1H-pyrrolizin-1-yl-ester)
- Lead and compounds, N.O.S.[3]
- Lead acetate (Acetic acid, lead salt)
- Lead phosphate (Phosphoric acid, lead salt)
- Lead subacetate (Lead, bis(acetato-O)tetrahydroxytri-)
- Maleic anhydride (2,5-Furandione)
- Maleic hydrazide (1,2-Dihydro-3,6-pyridazinedione)
- Malononitrile (Propanedinitrile)
- Melphalan (Alanine, 3-(p-bis(2-chloroethyl)amino)phenyl-L-)- Mercury fulminate (Fulminic acid, mercury salt)
- Mercury and compounds, N.O.S.[3]
- Methacrylonitrile (2-Propenenitrile,2-methyl-)
- Methanethiol (Thiomethanol)
- Methapyrilene (Pyridine, 2-[(2-dimethylamino)ethyl)]-2-thenylamino-)
- Metholmyl (Acetimidic acid, N-[(methylcarbamoyl)oxy] thio-,methyl ester)

- Methoxychlor (Ethane, 1,1,1-trichloro-2,2'-bis(p-methoxyphenyl)-)
- 2-Methylaziridine (1,2-Propylenimine)
- 3-Methlycholanthrene (Benz[j]aceanthrylene,1,2-dihydro-3-methyl-)
- Methyl chlorcarbonate (Carbonochloridicacid, methyl ester)
- 4,4'-Methylenebis (2-chloroaniline) Benzenamine, 4,4'-methylenebis-(2-chloro-)
- Methyl ethyl ketone (MEK) (2-Butanone)
- Methyl hydrazine (Hydrazine methyl-)
- 2-Methyllactonitrile (Propanenitrile 2-hydroxy-2-methyl-)
- Methyl methacrylate (2-Propenoic acid, 2-methyl-, methyl ester)
- Methyl methanesulfonate Methanesulfonicacid, methyl ester)
- 2-Methyl-2-(methylthio)propionaldehyde-o-(methylcarbonyl) oxime (Propanal,2-methyl-2(methylthio-0-[(methylamino)carbonyl]oxime)
- N-Methyl-N'-nitro-N-nitrosoguanidine (Guanidine, N-nitroso-N-methyl-N'-nitro-)
- Methyl parathion (0,0-dimethyl 0-(40 nitrophenyl) phosphorothioate)
- Methylthiouracil (4-IH-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-)
- Molybdenum and compounds, N.O.S.[3]
- Mustard gas (Sulfide, bis(2-chloroethyl)-)
- Naphthalene
- 1,4-Naphthoquinone (1,4-Naphthalenedione)
- 1-Naphthylamine (alpha-Naphthylamine)
- 2-Naphthylamine (beta-Naphthylamine)
- 1-Naphthyl-2-thiourea (Thiourea, 1-naphthalenyl-)
- Nickel and compounds, N.O.S.[3]
- Nickel carbonyl (Nickel tetracarbonyl)
- Nickel cyanide (Nickel (II) cyanide)
- Nicotine and salts (Pyridine, (S)-3-(1-methyl-2-pyrrolidinyl)-, and salts)
- Nitric oxide (Nitrogen (II) oxide)
- p-Nitroaniline (Benzenamine, 4-nitro-)
- Nitrobenzine (Benzene, nitro-)
- Nitrogen dioxide (Nitrogen (IV) oxide)

- Nitrogen mustard and hydrochloride salt (Ethanamine, 2-chloro-,N-(2-chloroethyl)-N-methyl-, and hydrochloride salt)
- Nitrogen mustard N-Oxide and hydrochloride salt (Ethanamine, 2-chloro,N-(2-chloroethyl)-N-methyl-and hydrochloride salt)
- Nitroglycerine (1,2,3-Propanetriol, trinitrate)
- 4-Nitrophenol (Phenol, 4-nitro)
- 4-Nitroquinoline-1-oxide (Quinoline,4-nitro-1-oxide-)
- Nitrosamine, N.O.S.[3]
- N-Nitrosodi-n-butylamine (1-Butanamine,N-butyl-N-nitroso-)
- N-Nitrosodiethanolamine (Ethanol, 2,2'-(nitrosoimino)bis-)
- N-Nitrosodiethylamine (Ethanamine, N-ethyl-N-nitroso-)
- N-Nitrosodimethylamine (Dimethylnitrosamine)
- N-Nitroso-N-ethylurea (Carbamide, N-ethyl-N-nitroso-)
- N-Nitrosomethylethylamine (Ethanamine, N-methyl-N-nitroso-)
- N-Nitroso-N-methylurea (Carbamide, N-methyl-N-nitroso-)
- N-Nitroso-N-methylurethane (Carbamic acid, methylnitroso-, ethyl ester)
- N-Nitrosomethylvinylamine (Ethenamine,N-methyl-N-nitroso-)
- N-Nitrosomorpholine (Morpholine,-N-nitroso-)
- N-Nitrosonomicotine (Nornicotine,-N-nitroso-)
- N-Nitrosopiperidine (Pyridine, hexahydro-,N-nitroso-)
- Nitrosopyrrolidine (Pyrrole, tetrahydro-N-nitroso-)
- N-Nitrososarcosine (Sarcosine,-N-nitroso-)
- 5-Nitro-o-toluidine (Benzenamine, 2-methyl-5-nitro-)
- Octamethylpyrophosphoramide (Diphosphoramide, octamethyl-)
- Osmium tetroxide (Osmium(VIII)oxide)
- 7-Oxabicyclo(2,2,1)heptane-2,3-dicarboxylic acid (Endothal)
- Paraldehyde (1,3,5-Trioxane, 2,4,6-trimethyl-)
- Parathion (Phosphorothioic acid O,O-diethylO-(p-nitrophenyl) ester)
- Pentachlorobenzene (Benzene, pentachloro-)
- Pentachloroethane (Ethane, pentachloro-)
- Pentachloronitrobenzene (PCNB) (Benzene, Pentachloronitro-)

- Pentachlorophenol (Phenol, pentachloro-)
- Phenacetin (Acetamide, N-(4-ethoxyphenyl)-)
- Phenol (Benzene, hydroxy-)
- Phenylenediamine (Benzenediamine)
- Phenylmercury acetate (Mercury acetatophenyl-)
- N-Phenylthiourea (Thiourea, phenyl-)
- Phosgene (Carbonyl chloride)
- Phosphine (Hydrogen phosphide)
- Phosphorodithioic acid, O,O-diethyl S-[(ethylthio)methyl]ester (Phorate)
- Phosphorothioic acid, O,O-dimethyl O-(p-[(dimethylamino)sulfonyl)phenyl]ester (Famphur)
- Phthalic acid esters, N.O.S.[3] (Benzene, 1,2-dicarboxylic acid, esters, N.O.S.[3])
- Phthalic anhydride (1,2-Benzenedicarboxylic acid anhydride)
- 2-Picoline (Pyridine, 2-methyl-)
- Polychlorinated biphenyl, N.O.S.[3]
- Potassium cynanide
- Potassium silver cyanide (Argentate(1-),dicyano-,potassium)
- Pronamide (3,5-Dichloro-N-(1,1-dimethyl-2-propynyl)benzamide)
- 1,3 Propane sultone (1,2-Oxathiolane, 2,2-dioxide)
- n-Propylamine (1-Propanamine)
- Propylthiouracil (Undecamethylenediamine,N,N-bis(2-chlorobenzyl-),dihydrochloride)
- 2-Propyn-1-ol (Propargyl alcohol)
- Pyridine
- Radium-226 and -228
- Reserpine (Yohimban-16-carboxylic acid,11,17-dimethoxy-18-[3,4,5-trimethoxybenzoyl)oxy]-, methyl ester)
- Resorcinol (1,3-Benzenediol)
- Saccharin and salts (1,2-Benzoisothiazolin-3-one, 1,1-dioxide, and salts)
- Safrele (Benzene, 1,2-methylenedioxy-4-allyl-)
- Selenious acid (Selenium dioxide)
- Selenium and compounds, N.O.S.[3]

- Selenium sulfide (Sulfur selenide)
- Selenourea (Carbamimidoselenoic acid)
- Silver and compounds, N.O.S.[3]
- Silver cyanide
- Sodium cyanide
- Streptozotocin (D-Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-)
- Strontium sulfide
- Strychnine and salts (Strychnidin-10-one, and salts)
- 1,2,4,5-Tetrachlorobenzene (Benzene,1,2,4,5-tetrachloro-)
- 2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD) (Dibenzo-p-dioxin, 2,3,7,8-tetrachloro-)
- Tetrachloroethane, N.O.S.[3] (Ethane, tetrachloro-N.O.S.[3]
- 1,1,1,2-Tetrachlorethane (Ethane, 1,1,1,2-tetrachloro-)
- 1,1,2,2-Tetrachlorethane (Ethane 1,1,2,2-tetrachloro-)
- Tetrachlorethane (Ethene, 1,1,2,2-tetrachloro-)
- Tetrachloromethane (Carbon tetrachloride)
- 2,3,4,6-Tetrachlorophenol (Phenol 2,3,4,6-tetrachloro-)
- Tetraethyldithiopyrophosphate (Dithiopyrophosphoric acid, tetraethyl-ester)
- Tetraethyl lead (Plumbane, tetraethyl-)
- Tetraethylpyrophosphate (Pyrophosphoricacide, tetraethyl ester)
- Tetranitromethane (Methane, tetranitro-)
- Thallium and compounds, N.O.S.[3]
- Thallic oxide (Thallium (III) oxide)
- Thallium (I) acetate (Acetic acid, thallium (I) salt)
- Thallium (I) carbonate (Carbonic acid dithallium (I) salt)
- Thallium (I) chloride
- Thallium (I) nitrate (Nitric acid, thallium (I) salt)
- Thallium selenite
- Thallium (I) sulfate (Sulfuric acid, thallium (I) salt)
- Thioacetamide (Ethanethioamide)
- Thiosemicarbazide (Hydrazinecarbothioamide)

- Thiourea (Carbamide thio-)
- Thiuram (Bis(dimethylthiocarbamoyl) disulfide)
- Thorium and compounds, N.O.S.[3] when producing thorium byproduct material
- Toluene (Benzene, methyl-)
- Toluenediamine (Diaminotoluene)
- o-Toluidine hydrochloride (Benzenamine, 2-methyl-,hydrochloride)
- Tolylene diisocyanate (Benzene, 1,3-diisocyanatomethyl-)
- Toxaphene (Camphene, octachloro-)
- Tribromomethane (Bromoform)
- 1,2,4-Trichlorobenzene (Benzene, 1,2,4-trichloro-)
- 1,1,1-Trichloroethane (Methyl chloroform)
- 1,1,2-Trichloroethane (Ethane, 1,1,2-trichloro-)
- Trichloroethene (Trichloroethylene)
- Trichloromethanethiol (Methanethiol, trichloro-)
- Trichloromonofluoromethane (Methane, trichlorofluoro-)
- 2,4,5-Trichlorophenol (Phenol, 2,4,5-trichloro-)
- 2,4,6-Trichlorophenol (Phenol, 2,4,6-trichloro-)
- 2,4,5-Trichlorophenoxyacetic acid (2,4,5-T) (Acetic acid, 2,4,5-trichlorophenoxy-)
- 2,4,5-Trichlorophenoxypropionic acid (2,4,5-TP) (Silvex) (Propionoic acid, 2-(2,4,5-trichlorophenoxy)-)
- Trichloropropane, N.O.S.[3] (Propane, trichloro-, N.O.S.[3])
- 1,2,3-Trichloropropane (Propane, 1,2,3-trichloro-)
- O,O,O-Triethyl phosphorothioate (Phosphorothioic acid, O,O,O-triethyl ester)
- sym-Trinitrobenzene (Benzene, 1,3,5-trinitro-)
- Tris(1-azridinyl) phosphine sulfide (Phosphine sulfide, tris(1-aziridinyl-)
- Tris(2,3-dibromopropyl) phosphate (1-Propanol, 2,3-dibromo-, phosphate)
- Trypan blue (2,7-Naphthalenedisulfonic acid, 3,3,-((3,3,-dimethyl (1,1,-biphenyl)-4,4,diyl)bis(azo))bis(5-amino-4-hydroxy-tetrasodium salt)
- Uracil mustard (Uracil-5-[bis(2-chloroethyl]amino)-)
- Uranium and compounds, N.O.S.[3]
- Vanadic acid, ammonium salt (ammonium vanadate)

- Vanadium pentoxide (Vanadium (V) oxide)
- Vinyl chloride (Ethene, chloro-)
- Zinc cyanide
- Zinc phosphide

3 The abbreviation N.O.S. (not otherwise specified) signifies those members of the general class not specifically listed by name in this list.

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.

History

Part 18, Rules 8.1 – Appendix A, Criterion 9 eff. 04/30/2011.

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Office of the Attorney General

Tracking number: 2015-00733

Opinion of the Attorney General rendered in connection with the rules adopted by the

Hazardous Materials and Waste Management Division

on 12/16/2015

6 CCR 1007-1 Part 18

RADIATION CONTROL - LICENSING REQUIREMENTS FOR URANIUM AND THORIUM PROCESSING

The above-referenced rules were submitted to this office on 12/23/2015 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.

Frederick R. Yarger

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

December 30, 2015 16:07:43

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Health Facilities and Emergency Medical Services Division (1011, 1015 Series)

CCR number

6 CCR 1015-4

Rule title

6 CCR 1015-4 STATEWIDE EMERGENCY MEDICAL AND TRAUMA CARE SYSTEM 1 - eff 02/14/2016

Effective date

02/14/2016

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Health Facilities and Emergency Medical Services Division

Statewide Emergency Medical and Trauma Care System

6 CCR 1015-4

Adopted by the Board of Health on December 16, 2015

……

[Publication Instructions: Replace current existing text for all of Chapter One with the following new text, including the new Chapter Title]

CHAPTER 1 - THE TRAUMA REGISTRY

100. Definitions

1. Admission - Inpatient or observation status for a principal diagnosis of trauma.

2. Blunt injury - Any injury other than penetrating or thermal.

3. Community Clinics and Emergency Centers (CCEC) - Facilities as licensed by the department under 6 CCR 1011-1, Chapter IX.

4. Department - The Colorado Department of Public Health and Environment.

5. Facility - A health facility licensed by the Department that receives ambulances such as a hospital, hospital unit, Critical Access Hospital (CAH) or Community Clinics and Emergency Centers (CCEC) caring for trauma patients.

6. Injury type - Can be blunt, penetrating or thermal and is based on the mechanism of injury.

7. Interfacility transfer - The movement of a trauma patient from one facility as defined by these rules to another facility. Transfers may occur between the emergency department of one facility and a second facility, or from inpatient status at one facility to a second facility.

8. Penetrating injury - Any wound or injury resulting in puncture or penetration of the skin and either entrance into a cavity, or for the extremities, into deeper structures such as tendons, nerves, vascular structures or deep muscle beds.

9. Readmission - A patient who is readmitted (for greater than 12 hours) to the same or to a different facility within 30 days of discharge from inpatient status for missed diagnoses or complications from the first admission. Readmission does not include subsequent hospitalizations that are part of routine care for a particular injury (such as removal of orthopedic hardware, skin grafts, colostomy takedowns, etc.)

10. Severity - An indication of the likelihood that the injury or all injuries combined will result in a significant decrease in functionality or loss of life.

11. State Emergency Medical and Trauma Services Advisory Committee (SEMTAC) - A council created in the Department pursuant to Section 25-3.5-104, C.R.S., which advises the Department on all matters relating to emergency medical and trauma services.

12. Statewide trauma registry - The statewide trauma registry means a statewide data base of information concerning injured persons and licensed facilities receiving injured persons, which

information is used to: evaluate and improve the quality of patient management, facilitate trauma education, conduct research and promote injury prevention programs.

13. Thermal injury - Any trauma resulting from the application of heat or cold, such as thermal burns, scald, chemical burns, electrical burns, lightning or radiation.

14. Traumatic injury - A blunt, penetrating or thermal injury or wound to a living person caused by the application of an external force or by violence. Injuries that are not considered to be trauma include such conditions as: injuries due to repetitive motion, pathological fractures as determined by a physician and scheduled elective surgeries.

101. Reporting of trauma data by facilities

1. Facilities designated as Level I, II, III or Regional Pediatric Trauma Centers, as defined in Section 25-3.5-703(4), C.R.S., shall submit data as defined by the Department based on recommendations by SEMTAC or a committee thereof. These data elements include but are not limited to:

    A. The data for discharges, inpatients, transfers, readmits and deaths in a particular month shall be submitted as an electronic data file to the Department within 60 days of the end of that month. These data elements include but are not limited to:

        i. Patient information: name; date of birth; gender; race/ethnicity; address; pre-existing medical diagnoses; medical record number;

        ii. Injury information: date, time and location of injury; cause of injury; injury circumstances; whether or not protective devices were used by the patient; evidence of alcohol or other intoxication;

        iii. Prehospital information: transport mode from the injury scene; name of agency providing transport to the facility; physiologic and anatomic conditions; times of notification, arrival at scene, departure from scene and arrival at destination;

        iv. Emergency department information: clinical data upon arrival; procedures; providers; response times; disposition from the emergency department;

        v. Interfacility transfer information: transfer mode from the referring facility; name of the referring facility; arrival and discharge times from the referring facility; whether the patient was seen in the emergency department only or was admitted as an inpatient at the referring hospital;

        vi. Inpatient care information: name and address of the facility; admission date and time; admission service; surgical procedures performed; date and time of all surgical procedures; co morbid factors; total days in the Intensive Care Unit (ICU); date and time of discharge; discharge disposition; payer source; discharge diagnoses, including International Classification of Disease (ICD) codes, Abbreviated Injury Scale (AIS), body region, diagnosis description and Injury Severity Score (ISS);

        vii. Readmission information: patient's name, date of birth, gender, address; medical record number, name of facility and the date of admission at the original facility; and medical record number, name of facility, date of readmission and the reason for admission at the readmitting facility;

viii. Death information: patient's name, date of birth, gender and address; patient's injury type, diagnostic codes, severity and cause; the time and date of arrival at the facility; the date of the death; autopsy status if performed (i.e. complete, pending, not done).

2. Level IV, V and non-designated facilities, as defined in Section 25-3.5-703(4), C.R.S., shall submit data as defined by the Department based on recommendations by SEMTAC or a committee thereof.

A. Data shall be submitted to the Department for all discharges, transfers and deaths on a quarterly basis within 60 days of the end of that quarter. These data elements include but are not limited to:

i. Inpatient information: name, age, gender, zip code of residence, medical record number, admission date, discharge date, injury type, and cause;

ii. Interfacility transfer information, whether from the emergency department or after inpatient admission: the patient's name, age, gender and zip code of residence;

iii. Readmission information: patient's name, age, gender and zip code of residence; medical record number, name of facility and the date of admission at the original facility; medical record number, name of facility, date of readmission and the reason for admission at the readmitting facility;

iv. Death information: patient's name, age, gender and zip code of residence; patient's injury type and cause; the time and date of arrival at the facility; the date of the death.

B. Level IV, V and non-designated facilities shall fulfill the reporting requirement by participating in a reporting system approved by the Department with submission dates determined by the data system operator.

3. All facilities shall submit to the Department such additional information regarding the care, medical evaluation and clinical course of specified individual patients with trauma as requested by the Department for the purpose of evaluating the quality of trauma management and care. Such information shall be defined by the Department based on recommendations by SEMTAC or a committee thereof.

102. Provision of technical assistance and training

1. The Department may contract with any public or private entity to perform its duties concerning the statewide trauma registry, including but not limited to, duties of providing technical assistance and training to facilities within the state or otherwise facilitating reporting to the registry.

103. Confidentiality

1. Any data maintained in the trauma registry that identifies patients or physicians or is part of the patient's medical record shall be strictly confidential pursuant to Section 25-3.5-704(2)(f)(III), C.R.S., whether such data is recorded on paper or stored electronically. The data shall not be admissible in any civil or criminal proceeding.

2. The data in the trauma registry may not be released in any form to any agency, institution or individual if the data identifies patients or physicians.

3. The Department may establish procedures to allow access by outside agencies, institutions or individuals to information in the registry that does not identify patients or physicians. These procedures are outlined in the Colorado Trauma Registry Data Release Policy and other applicable Department data release policies.

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Office of the Attorney General

Tracking number: 2015-00734

Opinion of the Attorney General rendered in connection with the rules adopted by the

Health Facilities and Emergency Medical Services Division (1011, 1015 Series)

on 12/16/2015

6 CCR 1015-4

STATEWIDE EMERGENCY MEDICAL AND TRAUMA CARE SYSTEM

The above-referenced rules were submitted to this office on 12/21/2015 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.

Frederick R. Yarger

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

December 30, 2015 16:07:53

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Prevention Services Division (1015 Series)

CCR number

6 CCR 1015-8

Rule title

6 CCR 1015-8 SERVICE GRANTS FOR THE DENTAL ASSISTANCE PROGRAM 1 - eff 02/14/2016

Effective date

02/14/2016

[Publication Instructions: Strike, in its entirety, current existing text.]

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Prevention Services Division – Rules promulgated by the Colorado Board of Health

SERVICE GRANTS FOR THE DENTAL ASSISTANCE PROGRAM

6 CCR 1015-8

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

1.1 Definitions

1) "Advisory Committee" means the Dental Advisory Committee created in Section 25-21-107.5, C.R.S.

2) "Department" means the Department of Public Health and Environment

3) "Eligible Senior" means an adult who is eligible for old age pension dental assistance Program as defined in section 25-21-103, C.R.S.

4) "Qualified Grantee" means an entity that either provides comprehensive dental and oral health services or that can administer funds for such services through sub-grants, awards, or reimbursement processes that comply with the federal "Health Insurance Portability and Accountability Act of 1996", 42 U.S.C. sec. 1320d to 1320d-8.

5) "Service grant" means a grant awarded by the Department to a qualified grantee pursuant to this article.

1.2 Application requirements

1) At a minimum, all applications for service grants submitted to the Department shall contain the following information:

A) Compliance with the definition of "qualified grantee" as defined in Section 1.1(4).

B) Demonstrates an established relationship with or willingness to coordinate with local community organizations serving eligible seniors. Evidence of this relationship may be demonstrated by, but is not limited to, a Memorandum of Agreement with local community organizations serving eligible seniors or, minutes for regular meetings with local community organizations serving eligible seniors that will be submitted to the Department on a semi-annual basis.

C) Defined service area.

D) A plan for outreach to include:

i. A plan for marketing the available services to eligible seniors within the defined service area; and

ii. A plan for meeting needs of eligible seniors in contiguous service areas should they not be served by another qualified grantee.

E) A description of plan for verifying eligibility of seniors.

F) An operating budget that designates a procedure for prioritization of funds to meet the needs of those eligible seniors most in need.

G) A description of the applicant's ability to comply with and monitor the implementation of the grant requirements, which includes a statement whether the applicant will charge a copayment to eligible seniors and certifying that the copayment shall not exceed twenty percent of the cost of the services provided.

H) Demonstration of capacity to implement and administer the program specified in Section 2(1).

2) A successful applicant for participation in the program shall sign a contract with the Department or a Purchase Order with a scope of work that complies with the State's Procurement Rules in 24-101-101 to 24-112-101, C.R.S.. The terms of the service grant contract/purchase order shall be determined by the Department and shall include, but need not be limited to, the following:

A) The total amount of grant to qualified grantee;

B) The qualified grantee's agreement to provide care to eligible seniors for the length of the grant;

C) The qualified grantee's agreement to provide the Department with semi-annual reports. At a minimum, the reports shall include:

i. The number of eligible seniors served;

ii. The types of dental and oral health services provided; and

iii. The amount of co-payments charged and received.

D) Reasonable penalties and other enforcement remedies available to the Department in the event the qualified grantee breaches contract or purchase order;

E) The qualified grantee's agreement to notify the department if there is a decrease in eligible seniors served; and

F) The time period of the grant.

1.3 Review of Application

1) The initial review will be done by the Department to determine whether the application is complete and to ensure the grantee meets the requirements of the definition previously stated in 1.1(4).

2) After initial review of applications, the dental advisory committee will review applications, and then submit their recommendations to the Department.

3) The Department will consider the recommendations made by the dental advisory committee, but is not bound by them. In the event the Department disagrees with the committee's findings, it will provide a written statement of its rationale to both the applicant and the committee for their reference.

Allowable Procedures and Fees for Dental Services

2.1 Effective April 30, 2013 and through such time that the Board of Health approves a new effective provider procedures and fee schedule, a qualified grantee, as defined in Section 1.1 of these regulations, may charge fees, not to exceed the maximum allowable fee, and perform the procedures for an eligible senior as set forth in Section 2.3.

2.2 Nothing in this part shall prohibit a qualified grantee from charging less than the allowable fee or reducing the amount of the patient co-payment set forth in Section 2.3. Any reduction in the amount of the patient co-payment shall be at the discretion of the qualified grantee.

2.3 TABLE OF ALLOWABLE PROCEDURES AND FEES

CDT 2013	Procedure Description	Maximum Allowable Fee	Program Payment	Maximum Patient Co-pay
	Diagnostic			
0120	Periodic Oral Evaluation – Est. Pt.	$ 46	$ 46	$ 0
0140	Limited Oral Evaluation	$ 62	$ 52	$ 10
0150	Comprehensive Oral Exam	$ 81	$ 81	$ 0
0180	Comprehensive periodontal evaluation – new or est. pt.	$ 88	$ 88	$ 0
0210	Intraoral– Complete series of radiographic images	$ 125	$ 125	$ 0
0220	Periapical – 1st radiographic image	$ 25	$ 25	$ 0
0230	Periapical – each additional radiographic image	$ 23	$ 23	$ 0
0270	Bitewing – single film	$ 26	$ 26	$ 0
0272	Bitewings – two films	$ 42	$ 42	$ 0
0273	Bitewings – three films	$ 52	$ 52	$ 0
0274	Bitewings – four films	$ 60	$ 60	$ 0
0330	Panoramic radiographic image	$ 63	$ 63	$ 0

Preventive

1110	Prophylaxis (Adult)	$ 88	$ 88	$ 0
1206	Topical Fluoride Varnish	$ 52	$ 52	$ 0
1208	Topical Fluoride	$ 52	$ 52	$ 0

Restorative

2140	Amalgam – one surface	$ 107	$ 97	$ 10
2150	Amalgam – two surfaces	$ 138	$ 128	$ 10
2160	Amalgam – three surfaces	$ 167	$ 157	$ 10
2161	Amalgam – four + surfaces	$ 203	$ 193	$ 10
2330	Resin – one surface, anterior	$ 115	$ 105	$ 10
2331	Resin – two surface, anterior	$ 146	$ 136	$ 10
2332	Resin – three surface, anterior	$ 179	$ 169	$ 10
2335	Resin – four surface, incisal angle	$ 212	$ 202	$ 10
2391	Resin – one surface, posterior	$ 134	$ 124	$ 10
2392	Resin – two surface, posterior	$ 176	$ 166	$ 10
2393	Resin – three surface, posterior	$ 218	$ 208	$ 10
2394	Resin – four surface, posterior	$ 268	$ 258	$ 10
2951	Pin retention per tooth	$ 50	$ 40	$ 10

Periodontics

4341	Scaling and Root Planing ≥ 4 teeth/quad	$ 177	$ 167	$ 10
4342	Scaling and Root Planing ≤ 3 teeth/quad	$ 128	$ 128	$ 0
4910	Periodontal Maintenance	$ 136	$ 136	$ 0

Prosthetics (Patient co-pay for these services are not to exceed 10%)

5110	Complete denture - maxillary	$ 793	$ 713	$ 80
5120	Complete denture, mandibular	$ 793	$ 713	$ 80
5211	Partial denture, maxillary – resin, inc. clasps, rests, teeth	$ 700	$ 640	$ 60
5212	Partial denture, mandibular – resin, inc. clasps, rests, teeth	$ 778	$ 718	$ 60
5510	Repair broken complete denture	$ 87	$ 77	$ 10
5520	Replace missing or broken teeth – Complete denture/tooth	$ 73	$ 63	$ 10
5610	Repair broken partial base	$ 95	$ 85	$ 10
5630	Replace or repair broken clasp	$ 123	$ 113	$ 10
5640	Replace missing or broken teeth – partial denture/tooth	$ 80	$ 70	$ 10
5650	Add tooth to existing partial	$ 109	$ 99	$ 10
5660	Add clasp to existing partial	$ 131	$ 121	$ 10

5710	Rebase complete denture – maxillary	$ 322	$ 297	$ 25
5711	Rebase complete denture – mandibular	$ 308	$ 283	$ 25
5720	Rebase partial denture – maxillary	$ 304	$ 279	$ 25
5721	Rebase partial denture – mandibular	$ 304	$ 279	$ 25
5730	Reline denture – maxillary - chair-side	$ 182	$ 172	$ 10
5731	Reline denture – mandibular – chairside	$ 182	$ 172	$ 10
5740	Reline partial – maxillary - chair-side	$ 167	$ 157	$ 10
5741	Reline partial – mandibular – chairside	$ 167	$ 157	$ 10
5750	Reline denture – maxillary - laboratory	$ 243	$ 218	$ 25
5751	Reline denture – mandibular – laboratory	$ 243	$ 218	$ 25
5760	Reline partial – maxillary - laboratory	$ 239	$ 214	$ 25
5761	Reline partial – mandibular – laboratory	$ 239	$ 214	$ 25
	Oral Surgery			
7140	Extraction erupted tooth or exposed root	$ 82	$ 72	$ 10
7210	Surgical removal of erupted tooth	$ 135	$ 125	$ 10
7250	Surgical removal of residual tooth roots	$ 143	$ 133	$ 10
7286	Biopsy, soft tissue	$ 381	$ 381	$ 0

7310	Alveoloplasty (w/extractions) (Four or more teeth)	$ 150	$ 140	$ 10
7311	Alveoloplasty (w/extractions) (Three teeth or less)	$ 138	$ 128	$ 10
7320	Alveoloplasty (w/out extractions)(Four or more teeth)	$ 150	$ 140	$ 10
7321	Alveoloplasty (w/out extractions) (Three teeth or less)	$ 138	$ 128	$ 10
7510	Incision and drainage of abscess – intraoral soft tissue	$ 193	$ 183	$ 10
9110	Palliative treatment – ER treatment of dental pain - minor procedure (limited to one exam per year)	$ 61	$ 36	$ 25

Editor's Notes

History

Sections 2.1 – 2.3 eff. 12/30/2008.

Entire rule eff. 10/30/2012.

Sections 2.1 – 2.3 emer. rules eff. 01/16/2013.

Sections 2.1 – 2.3 eff. 05/15/2013

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Office of the Attorney General

Tracking number: 2015-00735

Opinion of the Attorney General rendered in connection with the rules adopted by the

Prevention Services Division (1015 Series)

on 12/16/2015

6 CCR 1015-8

SERVICE GRANTS FOR THE DENTAL ASSISTANCE PROGRAM

The above-referenced rules were submitted to this office on 12/17/2015 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 30, 2015 16:08:06

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Nonrulemaking Public Notices and other Miscellaneous Rulemaking Notices

Department

Department of State

Agency

Secretary of State

STATE OF COLORADO
Department of State
1700 Broadway
Suite 200
Denver, CO 80290

Wayne W. Williams
Secretary of State

Judd Choate
Director, Elections Division

Notice of Hearing on the Closure of Inactive Committees

Date of Notice: January 20, 2016

Date of Hearing: February 25, 2016 from 11:00 a.m. to 12:00 p.m.

I. Notice and purpose of hearing

The Secretary of State gives notice as follows for a public hearing concerning the closure of inactive committees. A hearing is scheduled for **February 25, 2016 from 11:00 a.m. to 12:00 p.m.** in the Blue Spruce Conference Room on the second floor of the Secretary of State's Office at 1700 Broadway, Denver, Colorado 80290.

At the hearing, the Secretary of State will determine whether the committees listed below are inactive and closed. In accordance with Campaign and Political Finance Rule 12.4 and section 24-4-105, C.R.S., after receiving evidence and testimony, the Secretary of State will determine whether to terminate a committee.

II. Authority and requirements

In accordance with Campaign and Political Finance Rule 12.4, a committee is inactive if it fails to file any reports with the appropriate filing officer for six consecutive reporting periods or 18 months, whichever is shorter. Additionally, the Secretary of State may close an inactive committee after six missed reports or 18 months of non-reporting, whichever happens first." *(See also: Article XXVIII, section 2(3) of the Colorado Constitution and section 24-4-105, C.R.S.)*

III. Committees

- Coloradans for Peace, SOS ID 20115022956. Registered Agent: Roland Aranjo
- Committee to Elect Jim Bullock District Attorney, SOS ID 20125024711. Registered Agent: James Bullock
- Committee to Elect Lorraine Melgosa Otero County Commissioner, SOS ID 20125023253. Registered Agent: Jennifer Frost
- Open-Eyed and for Ainsworth-Commissioner, SOS ID 20125024874. Registered Agent: Alan Ainsworth
- Progress for Craig, SOS ID 20105018579. Registered Agent: Christina Oxley
- Rosario for Denver Schools, SOS ID 20135025496. Registered Agent: Margaret Atencio
- Stand Up for Jeffco Students, SOS ID 20125025091. Registered Agent: Don Concannon
- The Committee for a Better El Paso County, SOS ID 20125025228. Registered Agent: James Bauer III

IV. Opportunity to testify

The hearing will be held in accordance with Article 4 of Title 24, C.R.S. All interested persons will have the opportunity to testify relating to this matter.

V. Broadcast and audio recording of the hearing

If you are unable to attend the hearing, you may listen to the live broadcast from the Blue Spruce Conference Room online at www.sos.state.co.us/pubs/info_center/audioBroadcasts.html. After the hearing, visit the same website and click on "archived recordings" to access an audio recording of the hearing.

VI. Additional information

For additional information, please contact the Campaign Finance Support at (303) 894-2200 ext. 6383 or at cpfhelp@sos.state.co.us.

Dated this 20th Day of January, 2016.

Suzanne Staiert
Deputy Secretary of State

Calendar of Hearings

Hearing Date/Time	Agency	Location
02/25/2016 09:00 AM	Motor Vehicle Dealer Board	Department of Revenue offices, Entrance B, Room 110, Board Commission Meeting Room, 1881 Pierce Street, Lakewood, Colorado.
02/25/2016 09:00 AM	Motor Vehicle Dealer Board	Department of Revenue offices, Entrance B, Room 110, Board Commission Meeting Room, 1881 Pierce Street, Lakewood, Colorado.
02/18/2016 09:30 AM	Division of Gaming - Rules promulgated by Gaming Commission	17301 W. Colfax Ave., Suite 135, Golden, CO 80401
02/16/2016 09:30 AM	Hazardous Materials and Waste Management Division	CDPHE, Bldg. A, Sabin Conference Room, 4300 Cherry Creek Drive South, Denver, Co 80246
02/16/2016 09:30 AM	Hazardous Materials and Waste Management Division	CDPHE, Bldg. A, Sabin Conference Room, 4300 Cherry Creek Drive South, Denver, CO 80246
02/16/2016 09:30 AM	Hazardous Materials and Waste Management Division	CDPHE, Bldg. A, Sabin Conference Room, 4300 Cherry Creek Drive South, Denver, CO 80246
02/17/2016 10:00 AM	Division of Workers' Compensation	633 17th Street, Denver, CO 80202
02/17/2016 10:00 AM	Division of Workers' Compensation	633 17th Street, Denver, CO 80202