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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

2017-00033

Department

700 - Department of Regulatory Agencies

Agency

713 - Division of Professions and Occupations - Colorado Medical Board

CCR number

3 CCR 713-30

Rule title

RULE 800 - DELEGATION AND SUPERVISION OF MEDICAL SERVICES TO UNLICENSED HEALTH CARE PROVIDERS PURSUANT TO 12-36-106(3)(l), C.R.S.

Rulemaking Hearing

Date

02/16/2017

Time

10:00 AM

Location

1560 Broadway, Conference Room 1250C

Subjects and issues involved

Rule revised to further clarify the requirements of section 12-36-106(3)(l), C.R.S., governing the delegation of medical services to, and the responsible direction and supervision over a person who is not licensed to practice medicine or otherwise licensed to perform the delegated medical services.

Statutory authority

12-36-106(3)(l), 12-36-104(1)(a) and 24-4-103, C.R.S.

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RULE 800
3 CCR 713-30

RULES REGARDING THE DELEGATION AND SUPERVISION OF MEDICAL SERVICES TO UNLICENSED PERSONS~~HEALTH CARE PROVIDERS~~ PURSUANT TO SECTION 12-36-106(3)(l), C.R.S.

~~Table of Contents~~

INTRODUCTION

Basis. The general authority for promulgation of these Rules by the Colorado Medical Board ("Board") is set forth in sections 12-36-104(1)(a) and 24-4-103, C.R.S.

Purpose. The following Rules have been adopted by the Board to clarify the requirements of section 12-36-106(3)(l), C.R.S. (the "Delegation Statute"). The Delegation Statute governs the delegation of medical services to, and personal and responsible direction and supervision over, a person who is ***not*** licensed to practice medicine or otherwise licensed to perform the delegated medical services. This Rule does not govern delegation of medical services to physician assistants, anesthesiologist assistants or those individuals regulated by the Board of Nursing. Such delegation is governed by Rules 400 and 510, and the Nurse Practice Act, section 12-38-101 *et. seq.*, C.R.S., respectively. ~~Additionally, these Rules clarify particular requirements applicable to the delegation of medical services pursuant to section 12-36-106(3)(l), C.R.S. when the delegatee is performing Medical-Aesthetic Services as defined in Section VI(B) of these Rules.~~

~~Statutory provision. These Rules interpret and clarify the requirements of section 12-36-106(3)(l), C.R.S., which provides as follows:~~

> ~~Under the personal and responsible direction and supervision of a person licensed under the laws of this State to practice medicine, a license to practice medicine is not required for the rendering of services, other than the prescribing of drugs, by persons qualified by experience, education, or training. Nothing in this exemption, however, shall be deemed to extend or limit the scope of any license, and this exemption shall not apply to persons otherwise qualified to practice medicine but not licensed to so practice in this State.~~

~~RULES~~

~~I.~~ Scope of Rules. These Rules apply to the delegation of ~~medical~~ services constituting the practice of medicine to a person who is not licensed to practice medicine, is not qualified for licensure as a physician, ~~or~~ physician assistant or anesthesiologist assistant, and is not otherwise exempt

pursuant to section 12-36-106, C.R.S. from holding a license to practice medicine.

SECTION 1. MEDICAL SERVICES THAT MAY BE DELEGATED UNDER THESE RULES

A. Medical Services

1. "Medical services" are defined by the Medical Practice Act, section 12-36-106, C.R.S., to include suggesting, recommending, prescribing, or administering any form of treatment, operation, or healing for the intended palliation, relief, or cure of any physical or mental disease, ailment, injury, condition or defect of any person.

2. "Medical services" also include holding oneself out to the public as being able to diagnose, treat, prescribe for, palliate or prevent any human disease, ailment, pain, injury, deformity, or physical or mental condition. "Medical services" are further defined by section 12-36-106(1), C.R.S.

3. "Medical Services" includes those acts, ~~performed by~~by ~~unlicensed person or licensed healthcare professionals. unlicensed medical assistants,~~ other than those acts excluded by subsection (~~E~~D) of this Section, performed pursuant to physician delegation by unlicensed persons or licensed healthcare professionals.~~.~~

B. Medical-Aesthetic Services

1. "Medical-Aesthetic Services" are medical services in the cosmetic or aesthetic field that constitute the practice of medicine. Such Medical-Aesthetic Services include, but are not limited to: (a) the use of a Class II or higher ~~or III~~ laser as defined by the Food and Drug Administration, radio-frequency device, intense pulsed light, or other technique that results in the revision, destruction, incision or other structural alteration of human tissue and/or for hair removal; and (b) the performance of injection(s) of ~~Botox, Collagen, Restylane, or any other substance injected for a primarily cosmetic purpose.~~any substance into the human body except as may be permitted pursuant to section D.~~.~~

2. As with all delegated medical services, delegated Medical-Aesthetic Services must be of the type that a reasonable and prudent physician would find within the scope of sound medical judgment to delegate. Consequently, delegated Medical-Aesthetic Services should be routine, technical services, the performance of which do not require the special skills of a licensed physician.

3. Off-label use of medications or devices when performing delegated Medical-Aesthetic Services is generally prohibited unless:

a. the delegating physician has specifically authorized and delegated the off-label use, and

b. the off-label use is within generally accepted standards of medical practice.

4 Medical-Aesthetic Services must be delivered within a facility appropriate to the delegated service provided and listed on the written agreement as set forth in Appendix A.

C. Use of Lasers

1. The revision, destruction, incision, or other structural alteration of human tissue using laser technology is a medical service and constitutes the practice of medicine, as defined in Section 12-36-106, C.R.S.

2. Use of lasers or pulse light devices identified by the FDA as Class II or higher ~~laser devices~~ constitutes the practice of medicine.

~~3. Laser surgery may only be performed by a physician, another licensed healthcare provider working within his or her scope of practice as defined by Colorado law, or by a person functioning as a delegatee of a licensed physician.~~

~~4. The use of devices commonly known as electrolysis devices and identified as Class I devices, does not constitute the practice of medicine and, therefore, does not require physician delegation or supervision.~~

D. Acts That Do Not Constitute Medical Services

1. The definition of medical services under the Medical Practice Act does not include acting as an intermediary by communicating a physician's message or order to another person, and therefore a person who merely acts as an intermediary to communicate a physician's message or order to another person is not subject to these Rules.

2. The definition of medical services under the Medical Practice Act does not include gathering data. A person who merely gathers data is not subject to these Rules. For example, performing phlebotomy, measuring vital signs, and gathering historical patient information is not subject to these Rules.

3. Tattooing,~~—~~ application of permanent makeup, superficial exfoliative therapies, such as microdermabrasion, ~~and~~ other superficial skin treatments, and those services regulated by the Barber and Cosmetology Practice Act, section 12-8-101, *et. seq.*, C.R.S., are not medical services.

4. The use of Class I medical devices, including Class I lasers, does not constitute a medical service.

5. Monitoring of medication compliance is not a medical service.

6. Medication Adminstration by Qualified Medication Administration Personnel (QMAP) who are regulated by the Colorado Department of Public Health and Environment is not included within the definition of medical services for purposes of this rule.

E. Delegated Medical Services Should Not Require Exercise of Medical Judgment

1. A physician should not delegate a medical service requiring the exercise of medical judgment by the delegatee. ~~delegated medical service may not require the exercise of medical judgment.~~

2. Delegated medical services should be limited to~~include~~ routine, technical services that do not require the special skills of a licensed physician.

F. Medical Services that May Not Be Delegated

1. Prescription Medications

a. Prescribing of drugs may not be delegated under section 12-36-106(3)(l), C.R.S. and these Rules.

b. The ordering of a prescription refill by a delegatee does not constitute "the prescribing of drugs" provided that:

1. The prescription refill is ordered at the same dose and for the same medication as the original prescription for that patient; and

2. The prescription refill is ordered pursuant to a written refill protocol developed and authorized by one or more delegating physicians.

2. Non-Prescription Medications

a. The recommendation of marijuana as a therapeutic option may not be delegated under 12-36-106(3)(l), C.R.S., and these Rules.

~~A. **Exemption from these Rules: Licensed providers practicing within their scope of practice.**~~

~~1. These Rules do not apply to health care providers who are licensed, registered or certified by the state of Colorado and who are acting within their scope of practice. By way of example and not by way of limitation, these Rules do not apply to:~~

~~a. a licensed dentist practicing dentistry as defined by article 35 of title 12, C.R.S.,~~

b. a licensed pharmacist practicing pharmacy as defined by article 22 of title 12, C.R.S.,

c. a licensed physical therapist practicing physical therapy as defined by article 41 of title 12, C.R.S.

2. These Rules do not apply to a registered nurse (also known as a professional nurse or an RN). Services provided by a registered nurse, either as an independent nursing function or a delegated medical function, are governed by the Nurse Practice Act.

3. These Rules do not apply to any person who is otherwise exempt pursuant to section 12-36-106, C.R.S. from holding a license to practice medicine and who is acting within the scope of the specific statutory exemption.

4. These Rules do apply to a licensed, registered or certified health care provider (other than a registered nurse) who acts outside his or her scope of practice. See section III(C) of these Rules. Additionally, these Rules do apply to individuals who are certified by a national or private body but who do not have Colorado state licensure, registration or certification.

B. **Exemption from these Rules: Acts that do not constitute "medical services" as defined by the Medical Practice Act.**

1. These Rules do not apply to a person performing acts that do not constitute the practice of medicine as defined by section 12-36-106(1), C.R.S. of the Medical Practice Act.

2. In part, "medical services" are defined by the Medical Practice Act to include suggesting, recommending, prescribing, or administering any form of treatment, operation, or healing for the intended palliation, relief, or cure of any physical or mental disease, ailment, injury, condition or defect of any person. "Medical services" also include holding oneself out to the public as being able to diagnose, treat, prescribe for, palliate or prevent any human disease, ailment, pain, injury, deformity, or physical or mental condition. "Medical services" are further defined by section 12-36-106(1), C.R.S.

~~3. The definition of medical services under the Medical Practice Act does not include gathering data. A person who merely gathers data is not subject to these Rules. For example, performing phlebotomy, measuring vital signs, and gathering historical patient information is not subject to these Rules.~~

~~4. The definition of medical services under the Medical Practice Act does not include acting as an intermediary by communicating a physician's message or order to another person, and therefore a person who merely acts as an intermediary to communicate a physician's message or order to another person is not subject to these Rules.~~

SECTION 2. RULES GOVERNING INDIVIDUALS WHO CHOOSE TO DELEGATE MEDICAL SERVICES

A. Who May Delegate

1. Licensed physicians may delegate the performance of medical services to delegatees, in conformance with these Rules.

2. To delegate a medical service, an eligible delegating physician must be:

a. Qualified by education, training and experience to perform the medical service;

b. Actively performing the medical service as part of his or her medical practice and not exclusively by delegating the service to a delegatee;

c. Insured to perform the medical service; and

d. Actively practicing medicine and available in the community where the delegated medical services occur.

1. ~~1.~~ To be "available in the community," a physician must be physically present in the State and able to promptly, personally consult with or otherwise provide follow up care to the patient.

2. A delegating physician may occasionally utilize telehealth technologies, where appropriate, to satisfy the requirements for prompt personal consultation or follow-up care, but should not rely exclusively on such telehealth technologies to perform those services.

B. Who May Not Delegate

1. Delegated services cannot be ~~subsequently~~ re-delegated to another party by the delegatee.

2. A person who holds a physician training license pursuant to section 12-36-122, C.R.S. is not authorized to delegate medical services pursuant to section 12-36-106(3)(l), C.R.S. and these Rules.

3. Physician assistants or anesthesiologist assistants may not delegate medical services to another person pursuant to these Rules. Notwithstanding this prohibition, physician assistants and anesthesiologist assistants may delegate medical services to nursing staff or medical assistants who are acting under the direct supervision of the licensed physician assistant or anesthesiologist assistant so long as the medical services was not originally delegated to the physician assistant or anesthesiologist assistant pursuant to Rule 400 or Rule 510.

4. When a licensee's license has been restricted or is otherwise limited, that licensee may not delegate pursuant to these rules Persons with a limited medical license may not delegate pursuant to these rules any medical service s for which the licensee is prohibited from performing.

~~C. **Limitations: Persons not eligible to serve as delegatees under these Rules.**~~

~~1. A physician shall not delegate medical services to any person who is~~

otherwise qualified to be licensed by the Board as a physician or physician assistant but who is not so licensed, including, but not limited to:

a. Any physician or physician assistant with an inactive, lapsed, revoked, restricted, limited, suspended or surrendered license;
b. Any physician or physician assistant who meets all qualifications for licensure but who is not licensed in Colorado; and
c. Any physician or physician assistant whose application for licensure in the State of Colorado has been denied unless the denial is pursuant to section 12-36-116(1)(a), C.R.S.

2. Section 12-36-106(3)(l), C.R.S. shall not be deemed to extend or limit the scope of any license and may not be used to circumvent the revocation, suspension, surrender, restriction, limitation, inactivation, non-renewal or denial of a license to practice any field of the healing arts in the State of Colorado.

3. Medical services shall not be delegated to any person who holds a physician training license pursuant to section 12-36-122, C.R.S.

D. **Limitations: Physicians not eligible to delegate medical services under these Rules.**

1. A person who holds a physician training license pursuant to section 12-36-122, C.R.S. is not authorized to delegate medical services pursuant to section 12-36-106(3)(l), C.R.S. and these Rules.

E. **Limitations: Delegation by the delegatee prohibited.**

1. Delegated services cannot be subsequently delegated to another party by the delegatee.

II. **What "medical services" may be delegated under these Rules.**

A. The prescribing of drugs may not be delegated under section 12-

~~36-106(3)(l), C.R.S. and these Rules. The ordering of a prescription refill by a delegatee, however, does not constitute "the prescribing of drugs" provided that:~~

1. ~~The prescription refill is ordered at the same dose and for the same medication as the original prescription for that patient; and~~

2. ~~The prescription refill is ordered pursuant to a written refill protocol developed and authorized by one or more delegating physicians.~~

~~B. In addition to other requirements set forth in these Rules, Medical- Aesthetic Services performed by a delegatee must comply with the particular requirements set forth in Section VI of these Rules.~~

~~C. To delegate a medical service, the physician must be:~~

1. ~~Qualified by education, training and experience to perform the medical service;~~

2. ~~Actively performing the medical service as part of his or her medical practice and not exclusively by delegating the service to a delegatee;~~

3. ~~Insured to perform the medical service; and~~

4. ~~Actively practicing medicine and available in the community where the delegated medical services occur.~~

~~D. Delegated medical services must be of the type that a reasonable and prudent physician would find within the scope of sound medical judgment to delegate. Consequently, delegated services should be routine, technical services, the performance of which do not require the special skills of a licensed physician.~~

SECTION 3. RULES GOVERNING INDIVIDUALS TO WHOM MEDICAL SERVICES ARE DELEGATED ("DELEGATEES")

A. Persons Who May Serve as Delegatees

1. Qualified by Education, Training or Experience

~~III. Determination that a delegatee is "qualified by education, training or experience" to perform delegated medical services under these Rules.~~

a. The delegating physician must evaluate and determine

~~A. It is the responsibility of the physician to ensure~~ that the delegatee has the necessary education, training or experience to perform each delegated medical service.

b. As part of his or her evaluation, the delegating physician shall personally assess and review:

~~B. Upon request, the delegating physician must provide written documentation of the delegatee's qualifications to the Board. Such documentation may include, but not be limited to:~~

1. Copies of diplomas, certificates or professional degrees from bona fide training program(s) appropriate to the specific services delegated; and

~~2. Documentation of direct observation of the repeated and successful performance of the delegated services; and/or~~

3. Appropriate credentialing by a bona fide agency, Board or institution, if applicable.

4. In any practice which utilizes a credentialing committee or a human resourses department for verification of credentials, a delegating physician may rely on a credentialing committee or human resourses department for verification of Section (3)(A)(1)(b)(1) and (2).

c. The delegating physician shall perform over-the-shoulder direct observation of the delegatee's performance of any medical service prior to authorizing the delegatee to perform the medical service outside of the delegating physician's physical presence.

2. In the event that a delegating physician chooses to delegate medical services to a person holding a license, certificate or registration, and the delegated services are beyond the scope of

that person's license, certificate or registration, the delegating physician must ensure that the delegatee is qualified by additional education, training or experience beyond that required for the delegatee's license, certificate or registration. Any delegation described in this paragraph must comply with the requirements of this Rule 800.

3. These Rules apply to individuals who are certified by a national or private body but who do not have Colorado state licensure, registration or certification.

~~C. If a physician wishes to delegate medical services to a person holding a license, certification or registration and the services are beyond the scope of that person's license, certification, or registration, the following requirements apply:~~

~~1. The person must have education, training or experience qualifying the person to perform the medical service in question, and this education, training or experience must be in addition to the education, training or experience related to the license, certification or registration. As an illustration, if consistent with these Rules, a physician may delegate a medical service that is beyond the scope of the practice of respiratory therapy to a respiratory therapist. It is insufficient, however, to rely solely on that respiratory therapist's education, training or experience as a respiratory therapist when evaluating qualifications to perform the delegated medical service. Instead, the physician must assure that the respiratory therapist has sufficient additional education, training or experience to qualify that person to perform the delegated medical service at issue.~~

~~2. Additionally, the delegation of the medical service must otherwise be in compliance with these Rules.~~

~~3. This section III(C) does not apply to delegation of medical services to a registered nurse. Instead, such delegation would be governed by the Nurse Practice Act.~~

4. Graduates of physician assistant and anesthesiologist assistant programs who have not yet taken the certification examination, and thus, are not qualified for licensure, may perform

delegated medical services pursuant to section 12-36-106(3)(l), C.R.S., until such time as they have been notified that they have passed the certification exam and are eligible for a Colorado license. The delegating physician and the unlicensed physician assistant graduate or the anesthesiologist assistant shall comply with the requirements of these Rules until the physician assistant or anesthesiologist assistant is licensed and subject to Board Rule 400 or 510.~~.~~

B. The delegating physician and the delegatee shall take appropriate measures to assure that delegatees are identified in a manner that prevents confusion as to the delegatees' qualifications and legal authority to provide medical services. Following are examples of situations in which confusion as to the delegatees' qualifications and legal authority to provide medical services is likely and in which the physician and the delegatee shall be responsible for taking effective measures to prevent such confusion. This list is illustrative and not exhaustive.

~~A delegatee uses a title such as "nurse" or "LPN". Note that even a delegatee who is licensed as a practical nurse may not use the title "nurse" or "LPN" when performing acts as a delegatee that are beyond the scope of the practice of practical nursing;~~

~~A delegatee acting as an EMT or paramedic uses the title EMT or paramedic outside of the pre-hospital care setting, such as in the emergency room;~~

1. A delegatee who is a "radiology practitioner assistant" uses the acronym "RPA", which is easily confused with the title of a licensed physician assistant or PA;

2. A delegatee uses the word "licensed" as part of a title when the delegatee is not licensed, registered, or certified by the state of Colorado ~~does not possess a Colorado license~~ to perform the medical services at issue; ~~or~~

3. A delegatee uses the word "doctor" or the abbreviation "Dr." when acting as a ~~delegatee~~delegatee; or

4. A delegate who is an "aesthetician" uses the word "medical" as

part of a titile, such as "medical aesthetician", when the delegate is not licensed, registered or certified by the state of Colorado to perform medical services.

C. Persons Not Eligible to Serve as Delegatees

1. A physician shall not delegate medical services to any person who is otherwise qualified to be licensed by the Board as a physician, or physician assistant or anesthesiologist assistant but who is not so licensed, including, but not limited to:

a. Any physician, or physician assistant or anesthesiologist assistant with an inactive, expired, revoked, restricted, limited, suspended or surrendered license;

b. Any physician, physician assistant or anesthesiologist assistant (other than those physician assistants or anesthesiologist assistant authorized pursuant to Section 3(A)(4) of these Rules) who meets all qualifications for licensure but who is not licensed in Colorado; and

c. Any physician, or physician assistant or anesthesiologist assistant whose application for licensure in the State of Colorado has been denied unless the denial is pursuant to section 12-36-116(1)(a), C.R.S.

3. 2. Medical services shall not be delegated to any person who holds a physician training license pursuant to section 12-36-122, C.R.S.

3. esilicense

D. Exceptions

1. These Rules do not apply to a person performing acts that do not constitute the practice of medicine as defined by section 12-36-106(1), C.R.S.

2. These Rules do not apply to health care providers who are

licensed, registered or certified by the state of Colorado and who are acting within their scope of practice.

3. These Rules do not apply to a registered nurse (also known as a professional nurse or an RN). Services provided by a registered nurse, either as an independent nursing function or a delegated medical function, are governed by the Nurse Practice Act.

4. These Rules do not apply to any person who is otherwise exempt pursuant to section 12-36-106, C.R.S. from holding a license to practice medicine and who is acting within the scope of the specific statutory exemption.

SECTION 4. RULES GOVERNING THE DELEGATING PHYSICIAN'S DELEGATION OF AUTHORITY TO PROVIDE MEDICAL SERVICES.

~~A. The delegating physician is responsible for assuring the qualifications and competence of the delegatee to perform the delegated medical services as follows:~~

~~1. Prior to authorizing a delegatee to perform any medical services, the delegating physician must personally assess the qualifications and competence of the delegatee to perform the medical services. This assessment must include a review the delegatee's education and training as relevant to performance of the delegated medical service(s). Additionally, this assessment must include, but must not be limited to, initial over-the-shoulder monitoring of the delegatee's performance of each delegated medical service.~~

~~B. All patients receiving a delegated medical service must be informed that the delegating physician is available personally to consult with them or provide appropriate evaluation or treatment in relation to the delegated medical services. Upon request, the delegating physician must timely and personally provide such consultation, evaluation or treatment, or provide appropriate follow-up care and/or referrals.~~

~~C~~A. Any medical service rendered by the delegatee must conform to the same standard applicable if the delegating physician performed the service personally.

SECTION 5. RULES GOVERNING THE DELEGATING PHYSICIAN'S REQUIREMENTS FOR SUPERVISION OF DELEGATEES

A. The delegating physician must:

1. Provide ongoing inspection, evaluation, advice and control;

2. Make decisions as to the necessity, type, effectiveness and method of treatment;

3. Provide sufficient on-the-spot inspection to determine that the physician's directions are regularly being followed;

4. Monitor the quality of the services provided by the delegatee; and

5. Provide personal and responsible direction and supervision that is consistent with generally accepted standards of medical practice.

B. The physician's direction and supervision of the delegatee shall be sufficient to limit the need for the exercise of the judgment required of a physician.

C. Delegated services must be provided in the context of an appropriate physician/patient relationship.

~~D.~~ ~~D.~~ Ongoing care of a particular patient without direct physician involvement is inappropriate and demonstrates insufficient personal and responsible direction and supervision of a delegatee.

1. Factors establishing the presence of an appropriate physician/patient relationship include, but are not limited to, some or all of the following: physician performance of an initial consultation with the patient, direct observation by the physician of delegated services rendered by the

delegatee, review by the physician of care rendered to the patient by the delegatee, review by the physician of outcomes following the performance of delegated services, and other active physician involvement in the provision, review and documentation of services provided by the delegatee.

E. Except as otherwise provided in these Rules, a physician must be on the premises and readily available to provide adequate personal and responsible direction and supervision.

F. Where a delegatee is acting pursuant to specific and detailed written protocols and where adequate written emergency protocols are in place, the presence of the delegating physician on the premises may not be necessary. However, a delegating physician must be physically present in the state and available to promptly, personally attend to the patient. At any time when a delegating physician is not physically present within the State, the delegating physician must identify and provide the contact information to delegates of a covering physician who is physically present in the State and available to promptly, personally attend to the patient.

G. At least ~~weekly~~ every two weeks, the delegating physician must monitor the quality of the services provided by the delegatee through such means as direct observation, review of care, review of outcomes, review of equipment, review of protocols and procedures and review of charts. The ~~weekly~~ monitoring must occur at the site where the delegated services are performed.

H. On at least an annual basis, the delegating physician must personally reassess the qualifications and competence of the delegatee to perform the medical services. This reassessment must include, but must not be limited to, over-the-shoulder monitoring of the delegatee's performance of each delegated medical service.

I. The delegating physician must document the initial assessment and follow-up reassessments of the delegatee's performance of the delegated medical services. Upon request, the delegating physician must provide such documentation to the Board.

SECTION 6. DOCUMENTATION REQUIREMENTS

A. Written Procedure Protocols

Written procedure protocols are required to be in place at any time that a delegating physician will not be physically located on the premises where medical services are provided by a delegatee.

The delegating physician shall create a comprehensive written protocol for use by the delegatee for each procedure that the physician delegates to the delegatee. The delegating physician may not rely upon a written protocol created by the delegatee to satisfy this requirement.

B. Written Emergency Protocols

Written emergency protocols are required to be in place at any time that a delegating physician will not be physically located on the premises where medical services are provided by a delegatee.

The delegating physician shall create a comprehensive written emergency protocol for use by the delegatee when medical services result in adverse events. The delegating physician may not rely upon a written protocol created by the delegatee to satisfy this requirement.

As part of a written emergency protocol, the delegatee shall be required to notify the delegating physician of all adverse events.

C. Medical Records

1. A delegating physician shall assure that there is a timely medical record for all patient contacts with either the delegatee or with the delegating physician. The medical record prepared by a delegatee shall conform to generally accepted standards of medical practice for recordkeeping.

2. A delegating physician shall review the care provided to every patient who is treated by the delegatee. The delegating physician shall demonstrate that he or she has reviewed the care provided to the patient by reviewing each entry in the patient's medical record. The delegating physician shall initial and date the

medical record at the time he or she reviews the record.

3. A delegating physician shall review the care provided to patients pursuant to his or her delegated authority within fourteen ~~seven~~ days of the date that the care was provided.

4. When the delegated medical services by delegatees occur in the context of a same-day encounter with the delegating physician and the delegating physician has been personally involved in care of the patient, the delegating physician's own documentation of the encounter shall be adequate to meet the requirements for chart review, and the delegating physician need not co-sign any entries made by the delegatee.

D. Written Agreement between Delegating Physician and Delegatee

1. The delegating physician and the delegate must have a written agreement documenting and detailing the relationship. This written agreement is attached in Appendix A of these Rules. The written agreement as set forth in Appendix A must be available to the public at the site where the delegated medical services are performed.

2. The delegating physician must maintain a list of all delegatees to whom the physician has delegated medical services. The list must include a comprehensive and specific list of the delegated medical services that the physician has authorized the delegatee to perform.

E. Documentation that the Delegating Physician or Healthcare Facility Must Maintain

1. The delegating physician or healthcare facility shall maintain a copy of all documentation required by these Rules, including but not limited to:

a. Appendix A written agreement;

b. Any agreement that the delegating physician enters into, in order to serve as a medical director.

2. The delegating physician or healthcare facility is required to maintain all documentation required by these Rules. ~~and may not rely solely on a medical office or other entity to provide the documents to the Board.~~

3. Upon request, the delegating physician is responsible to provide all documentation maintained by the physician or healthcare facility in accordance with these Rules ~~shall be provided~~ to the Board. The delegating physician may not rely solely on the medical office or other entity to provide the requested documents.

F. Disclosure Requirements to Patients

1. ~~1.~~ Delegating physicians shall ensure that delegatees adequately disclose that a medical service will be performed by a delegatee, rather than by the delegating physician. When the delegating physician is not actively involved in the patient encounter, the disclosure shall include: the service the person is receiving is a medical service; the delegatee of the service is not licensed by the state of Colorado or is acting beyond the scope of his or her Colorado license, certification or registration; the delegatee~~provider is~~ is providing the service pursuant to the delegated authority of a physician; and, the delegating physician is available personally to consult with them or provide appropriate evaluation or treatment in relation to the delegated medical services. Upon request, the delegating physician must timely and personally provide such consultation, evaluation or treatment, or provide appropriate follow-up care and/or referrals.

   a. The disclosure requirements may be made in writing as part of a signed disclosure agreement, an informed consent agreement, or a Consent or Agreement to Treat form.

2. For all delegated medical services occurring in the context of a bona fide physician-patient relationship, the delegating physician and the delegatee shall document the disclosure made to the patient, at the time each medical service is performed.

3. For all offices at which delegated medical-aesthetic services are provided, the delegating physician shall ensure that each office conspicuously posts, in the office's reception area, a notice with the name and contact information for each delegating physician.

4. For all offices at which delegated medical-aesthetic services are provided, the delegating physician shall create a written disclosure, identifying the service to be performed, the fact that the medical service was delegated to an unlicensed ~~a~~ delegatee, the name of the delegatee, and the name and contact information for the delegating physician. The written disclosure shall be signed by the patient ~~as part of the informed consent~~prior to receiving the medical service ~~for each procedure.~~ The patient shall be given a copy of each disclosure and a copy shall be retained within the patient's medical record.

5. The delegating physician must ensure that each patient receives all information necessary to give appropriate informed consent or consent or agreement to for treatment for any medical service and that such informed consent or consent or agreement for treatment is timely documented in the patient's chart.

~~IV. **"Personal and responsible direction and supervision" required under these Rules.**~~

~~A. One or more physicians shall have explicitly agreed to provide the necessary direction and supervision of the delegatee(s). The agreement need not be written.~~

~~B. The delegating physician is accountable for the acts of the delegatee(s).~~

~~C. The physician's direction and supervision of the delegatee shall be sufficient to limit the need for the exercise of the judgment required of a physician.~~

~~D. The delegating physician must:~~

~~1. Provide ongoing inspection, evaluation, advice and control;~~

2. Make decisions as to the necessity, type, effectiveness and method of treatment;

3. Provide sufficient on-the-spot inspection to determine that the physician's directions are regularly being followed;

4. Monitor the quality of the services provided by the delegatee; and

5. Provide personal and responsible direction and supervision that is consistent with generally accepted standards of medical practice.

E. Delegated services must be provided in the context of an appropriate physician/patient relationship.

1. Section VI of these Rules sets forth the requirements for a physician/patient relationship when delegating Medical-Aesthetic Services.

2. For all other delegations, ongoing care of a particular patient without direct physician involvement is inappropriate and demonstrates insufficient personal and responsible direction and supervision of a delegatee. Factors establishing the presence of an appropriate physician/patient relationship include, but are not limited to, some or all of the following: physician performance of an initial consultation with the patient, direct observation by the physician of delegated services rendered by the delegatee, review by the physician of care rendered to the patient by the delegatee, review by the physician of outcomes following the performance of delegated services, and other active physician involvement in the provision, review and documentation of services provided by the delegatee.

F. In the event of an adverse outcome resulting from a delegated medical service, the delegating physician must provide appropriate follow-up care and/or referrals.

G. Any medical service rendered by the delegatee must conform to the same standard applicable if the delegating physician performed the service personally.

H. Except as otherwise provided in these Rules, a physician must be on

the premises and readily available to provide adequate personal and responsible direction and supervision.

I. Where a delegatee is acting pursuant to specific and detailed written protocols and where adequate written emergency protocols are in place, the presence of the delegating physician on the premises may not be necessary. However, a delegating physician must be available to attend to the patient.

J. A delegating physician shall assure that there is a timely chart note for all patient contacts with the delegatee and with the delegating physician.

V. Identification of authority to act:

A. The delegating physician must provide information to patients regarding delegatees performing medical services pursuant to the physician's delegation.

B. The delegating physician and the delegatee shall take appropriate measures to assure that delegatees are identified in a manner that prevents confusion as to the delegatees' qualifications and legal authority to provide medical services. Following are examples of situations in which confusion as to the delegatees' qualifications and legal authority to provide medical services is likely and in which the physician and the delegatee shall be responsible for taking effective measures to prevent such confusion. This list is illustrative and not exhaustive.

1.5. A delegatee uses a title such as "nurse" or "LPN". Note that even a delegatee who is licensed as a practical nurse may not use the title "nurse" or "LPN" when performing acts as a delegatee that are beyond the scope of the practice of practical nursing;

2.6. A delegatee acting as an EMT or paramedic uses the title EMT or paramedic outside of the pre-hospital care setting, such as in the emergency room;

3.7. A delegatee who is a "radiology practitioner assistant" uses the acronym "RPA", which is easily confused with the title of a licensed physician assistant or PA;

4.8. A delegatee uses the word "licensed" as part of a title when the delegatee does not possess a Colorado license to perform the medical services at issue; or

5.9. A delegatee uses the word "doctor" or the abbreviation "Dr." when acting as a delegatee.

VI. Special provisions applicable to the delegation of Medical-Aesthetic Services.

A. **Purpose of the section.** The Board finds that the delegation of medical services in the area of Medical-Aesthetic Services involves a broad range of changing technologies and practices, and is an area in which insufficient personal and responsible delegation and supervision of medical services has led to public safety concerns in Colorado and nationwide. Such public safety concerns have also been identified by the Colorado Office of Barber and Cosmetology Licensure, which has referred numerous cases of concern to the Board. Representatives of the Colorado Office of Barber and Cosmetology Licensure have appeared before the Board on more than one occasion to address public safety concerns stemming from improper or inadequate physician delegation of Medical-Aesthetic Services, poor outcomes and the difficulty in identifying whether appropriate equipment is used in this field under appropriate supervision. These representatives have also reported that many practitioners in this field use devices that are not approved by the Food and Drug Administration, or devices that have been altered from their approved form. Additionally, the Board is concerned about fraudulent practices in this field, including the sham or inadequate supervision provided too many delegatees rendering Medical-Aesthetic Services.

B. **Definition of "Medical-Aesthetic Services."** "Medical-Aesthetic Services" are medical services in the cosmetic or aesthetic field that constitute the practice of medicine. Such Medical-Aesthetic Services include, but are not limited to: (a) the use of a laser, radio-frequency device, intense pulsed light, or other technique that results in the revision, destruction, incision or other structural alteration of human tissue and/or for hair removal; and (b) the performance of injections of Botox, Collagen, Restylane, or any other substance injected for a primarily cosmetic

purpose.

1. As with all delegated medical services, delegated Medical-Aesthetic Services must be of the type that a reasonable and prudent physician would find within the scope of sound medical judgment to delegate. Consequently, delegated Medical-Aesthetic Services should be routine, technical services, the performance of which do not require the special skills of a licensed physician.

2. Off-label use of medications or devices when performing delegated Medical-Aesthetic Services is generally prohibited unless:

   a.c. the delegating physician has specifically authorized and delegated the off-label use, and

   b.d. the off-label use is within generally accepted standards of medical practice.

C. **General applicability of other sections.** Except as explicitly provided in this Section VI of these Rules, all requirements set forth in other Sections of these Rules apply to delegation of Medical-Aesthetic Services.

D. **Additional requirements.** In addition to the other provisions of these Rules, the personal and responsible direction and supervision of delegatees performing Medical-Aesthetic Services must include the following:

1.2. The delegating physician and the delegate must have a written agreement documenting and detailing the relationship. This written agreement is attached in Appendix A of these Rules. The written agreement as set forth in Appendix A must be available to the public at the site where the delegated medical services are performed.

2.3. The delegating physician must maintain a list of all delegatees to whom the physician has delegated Medical-Aesthetic Services. The list must include a comprehensive and specific list of the delegated Medical-Aesthetic Services the physician has authorized the delegatee to perform. The list shall

be maintained with documentation of the delegatee's qualifications to perform the Medical-Aesthetic Services as described in paragraph III(B) of these Rules. Upon request, all documentation maintained by the physician in accordance with this paragraph shall be provided to the Board.

3.4. The delegating physician is responsible for assuring the qualifications and competence of the delegatee to perform the delegated Medical-Aesthetic Services as follows:

a. Prior to authorizing a delegatee to perform any Medical-Aesthetic Services, the delegating physician must personally assess the qualifications and competence of the delegatee to perform the Medical-Aesthetic Services. This assessment must include a review the delegatee's education and training as relevant to performance of the delegated medical service(s). Additionally, this assessment must include, but must not be limited to, initial over-the-shoulder monitoring of the delegatee's performance of each delegated Medical-Aesthetic Service.

b. On at least an annual basis, the delegating physician must personally reassess the qualifications and competence of the delegatee to perform the Medical-Aesthetic Services. This reassessment must include, but must not be limited to, over-the-shoulder monitoring of the delegatee's performance of each delegated Medical-Aesthetic Service.

c. The delegating physician must document the initial assessment and follow-up reassessments of the delegatee's performance of the delegated Medical- Aesthetic Services. Upon request, the delegating physician must provide such documentation to the Board.

4.5. Medical-Aesthetic Services must be delivered within a facility appropriate to the delegated service provided and listed on the written agreement as set forth in Appendix A.

E. **Physician-patient relationship for delegated Medical-Aesthetic Services.** The delegating physician's physician-patient relationship with a patient receiving delegated Medical-Aesthetic Services pursuant to these Rules need not comply with Section

~~IV(E) of these Rules, but must include the following:~~

1. ~~The delegating physician must ensure that each patient receives all information necessary to give appropriate informed consent for any Medical-Aesthetic Service and that such informed consent is timely documented in the patient's chart.~~

2. ~~All patients receiving a delegated Medical-Aesthetic Service must be informed that the delegating physician is available personally to consult with them or provide appropriate evaluation or treatment in relation to the delegated Medical-Aesthetic Services. Upon request, the delegating physician must timely and personally provide such consultation, evaluation or treatment.~~

3. ~~The delegating physician must assure that the delegatee maintains appropriate patient charts for each patient receiving Medical-Aesthetic Services.~~

4. ~~At least weekly, the delegating physician must monitor the quality of the services provided by the delegatee through such means as direct observation, review of care, review of outcomes, review of equipment, review of protocols and procedures and review of charts. The weekly monitoring must occur at the site where the delegated services are performed.~~

SECTION 7. UNPROFESSIONAL CONDUCT

A. It is a violation of these Rules for any licensee to have delegated medical services without complying with the provisions of these Rules.

B. It is a violation of these Rules for a licensee to perform delegated medical services pursuant to these Rules, when such licensee is otherwise restricted from performing such acts.

C. It is a violation of these Rules for any person qualified for licensure by this Board and who later applies for licensure by this Board, to have performed delegated medical services or to have delegated medical services pursuant to section 12-36-106(3)(l), C.R.S. prior to licensure in Colorado.

D. Any violation of these Rules may be determined to be unprofessional conduct pursuant to Section 12-36-117(1)(u), C.R.S.

E. To the extent that delegatees do not provide delegated medical services within generally accepted standards of medical practice, the delegating physician may be determined to have committed unprofessional conduct pursuant to Section 12-36-117(1)(p), C.R.S.

F. To the extent that delegatees falsify or repeatedly make incorrect essential entries on patient records, or repeatedly fail to make essential entries on patient records, the delegating physician may be determined to have committed unprofessional conduct pursuant to Section 12-36-117(1)(cc), C.R.S.

G. In the event that a delegating physician fails to produce to the Board, upon its request through 30-day letter, a copy of any document required to be maintained by these Rules, the Board may determine that the delegating physician has committed unprofessional conduct pursuant to Section 12-36-117(1)(gg), C.R.S.

SECTION 8. UNLICENSED PRACTICE OF MEDICINE

~~VII. Unlicensed practice of medicine.~~

A. Pursuant to section 12-36-106(2), C.R.S., any person who performs any of the acts constituting the practice of medicine as defined by section 12-36-106(1), C.R.S. and who is not licensed by the Board to practice medicine or exempt from licensure requirements by some provision of section 12-36-106, C.R.S. shall be deemed to be practicing medicine without a license. No person shall be exempt from medical licensure requirements pursuant to section 12-36-106(3)(l), C.R.S., unless such person is acting in conformance with these Rules.

B. A person who ~~subject of a cease and desist~~ practices medicine without a license may be the subject of a cease and desist order pursuant to section 12-36-118, C.R.S. Such person may also be the subject of injunctive proceedings by the Board in the name of the People of the State of Colorado pursuant to section 12-36-129(6), C.R.S. Such person may also be held criminally liable pursuant to section 12-36-129(1), C.R.S. Finally, such person may be subject to any other enforcement allowed under the law.

~~VIII. Unprofessional conduct.~~

~~A. It shall be unprofessional conduct pursuant to section 12-36-117(1)(u), C.R.S. for any licensee to have delegated medical services or to have performed delegated medical services pursuant to section 12-36-106(3)(l), C.R.S. without complying with the provisions of these Rules.~~

~~B. It shall also be unprofessional conduct pursuant to section 12-36-117(1)(u), C.R.S. for any person who is not licensed by this Board but who applies for licensure by this Board to have performed delegated medical services or to have delegated medical services pursuant to section 12-36-106(3)(l), C.R.S. prior to licensure in Colorado.~~

Adopted 11/15/02, Effective 1/30/03; Revised ~~0~~4/14/05, Effective ~~0~~6/30/05; Revised 10/13/05, Effective 11/30/05, Revised 5/11/06, Effective 7/2/06; Repealed and Readopted 5/22/08, Effective 6/30/08; Revised ~~0~~8/19/10; Effective 10/15/10; Revised 11/18/2010; Effective 01/14/2011; Revised 2/16/17, Effective 4/14/17

BOARD RULE 800, APPENDIX A

Agreement Between Delegating Physician and Delegatee Performing Medical ~~Aesthetic~~ Services Under Colorado Medical Board Rule 800

_____ and
(Print Name & Title of Delegating Physician)

_____,
attest that: (Print Name & Title of Delegatee)

The delegating physician is licensed in the state of Colorado to practice medicine.

The delegating physician is qualified to perform each delegated medical service listed below, and actively performs each listed medical service as part of his or her medical practice and not exclusively by delegating the medical service to a delegatee.

The delegated services listed below are routine, technical services, the performance of which does not require the special skills of a licensed physician.

The delegating physician is insured to delegate the delegated services listed below.

The delegating physician is not legally restricted from performing the delegated services listed below.

The delegating physician is providing personal and responsible direction and supervision to the delegatee by complying with Colorado Medical Board Rule 800 ("Rule 800").

The delegating physician is delegating the following services and understands that (s)he is fully accountable for the performance of these services by the delegatee. (Note: the description of the delegated medical services must be specific and detailed.)

_____

_____

_____

_____

_____

_____

_____

The delegated medical services will be performed at the following facilities. (Note:please include the name and address of each facility.]

_____

_____

The delegating physician has personally assessed the qualifications and competence of the delegatee to perform the Medical~~-Aesthetic~~ Services listed above. The assessment included, but was not limited to, initial over-the-shoulder monitoring of the delegatee's performance of each delegated Medical~~-Aesthetic~~ Service. The delegating physician will reassess the competence and performance of the delegatee on at least an annual basis as set forth in Rule 800.

It is agreed that all patients receiving a delegated Medical~~-Aesthetic~~ Service will be informed that the delegating physician is available personally to consult with them or provide appropriate evaluation or treatment in relation to the delegated Medical~~-Aesthetic~~ Services. The delegating physician shall timely and personally provide such consultation, evaluation or treatment to the patient upon request. The

delegating physician will ensure that each patient receives all information to give appropriate informed consent for any Medical~~-Aesthetic~~ Services and that such

informed consent is timely documented in the patient's chart.

In the event of an adverse outcome resulting from a delegated medical service, the delegating physician will provide appropriate follow-up care and/or referrals.

It is expressly agreed that the delegatee will only provide the delegated services listed in this document, unless the delegatee is separately licensed or otherwise legally authorized to provide other services not listed in this document.

This agreement shall remain in effect until formally rescinded in writing by either party.

_____	_____
(Signature & Title of Delegating Pphysician)	(Signature of Delegatee)
_____	_____
(Date)_____	(Date)

COLORADO
Department of
Regulatory Agencies
Division of Professions and Occupations
Healthcare Branch
Colorado Medical Board

NOTICE OF RULE MAKING HEARING

Pursuant to Section 24-4-103, C.R.S., and Section 12-36-104(1)(a), C.R.S., you are hereby advised that the Colorado Medical Board ("Board") will hold a public rule making hearing on Thursday, February 16, 2017, at 10:00 a.m., 1560 Broadway, Conference Room 1250C, Denver, Colorado 80202, for consideration of the following:

Amending existing rules:

RULE 800- RULES REGARDING THE DELEGATION AND SUPERVISION OF MEDICAL SERVICES TO UNLICENSED PERSONS PURSUANT TO SECTION 12-36-106(3)(l), C.R.S.

The Board encourages interested parties to submit written comments regarding the proposed revisions to Rule 800 to the following address: Karen McGovern- Program Director, Colorado Medical Board, 1560 Broadway, Suite 1300, Denver, CO 80202, or via electronic mail to Jamie.groen@state.co.us regarding any of the above-listed rulemaking matters no later than Tuesday, January 31, 2017. In addition, at the time and place designated in this notice, the Board will afford interested parties an opportunity to submit written information, data, views or arguments. The Board also will afford interested parties an opportunity to make brief oral presentations unless the Board in its discretion determines that such oral presentations are unnecessary. All submissions will be considered. The rules under consideration may be changed or modified after public comment and hearing.

BY ORDER OF THE COLORADO STATE MEDICAL BOARD

Karen M. McGovern, Program Director

Dated this 15th day of January, 2017

Notice of Proposed Rulemaking

Tracking number

2017-00019

Department

1000 - Department of Public Health and Environment

Agency

1002 - Water Quality Control Commission (1002 Series)

CCR number

5 CCR 1002-21

Rule title

REGULATION NO. 21 - PROCEDURAL RULES

Rulemaking Hearing

Date

05/08/2017

Time

10:30 AM

Location

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

Subjects and issues involved

Appeals of final decisions by the Water Quality Control Division pursuant to Regulation #86 (5 CCR 1002-86) for graywater research variance projects.

Statutory authority

sections 25-8-202 and 401, C.R.S.

Contact information

Name

Bret Icenogle

Title

Engineering Section Manager

Telephone

303-692-3278

Email

bret.icenogle@state.co.us

COLORADO
Water Quality
Control Commission
Department of Public Health & Environment

NOTICE OF PUBLIC RULEMAKING HEARING
BEFORE THE
COLORADO WATER QUALITY CONTROL COMMISSION

SUBJECT:

For consideration of the adoption of revisions to the Procedural Rules, Regulation #21 (5 CCR 1002-21) and the Graywater Control Regulation, Regulation #86 (5 CCR 1002-86). Revisions to Regulation #21 and Regulation #86 proposed by the Water Quality Control Division, along with a proposed Statements of Basis, Specific Statutory Authority and Purpose, are attached to this notice as Exhibits 1 and 2 respectively.

In these attachments, proposed new language is shown with double-underlining and proposed deletions are shown with ~~strikeouts~~. Any alternative proposals related to the subject of this hearing will also be considered.

SCHEDULE OF IMPORTANT DATES

Party status requests due	02/22/2017 5 pm	Additional information below.
Proponent's prehearing statement due	03/01/2017 5 pm	Additional information below.
Responsive prehearing statement due	03/29/2017 5 pm	Additional information below.
Rebuttal statements due	04/18/2017 5 pm	Additional information below.
Last date for submittal of motions	04/21/2017 5 pm	Additional information below.
Notify commission office if participating in prehearing conference by phone	03/24/2017 noon	Send email to cdphe.wqcc@state.co.us with participant(s) name(s).
Prehearing conference (mandatory for parties)	04/25/2017 2:00 pm	Florence Sabin Conference Room Department of Public Health and Environment 4300 Cherry Creek Drive South Denver, CO 80246
Rulemaking Hearing	05/8/2017 10:30 am	Florence Sabin Conference Room Department of Public Health and Environment 4300 Cherry Creek Drive South Denver, CO 80246

HEARING SUBMITTALS:

For this hearing, the commission will receive all submittals electronically. Submittals must be provided as PDF documents, except for raw data exhibits which may be provided as Excel workbooks. Submittals may be emailed to cdphe.wqcc@state.co.us, provided via an FTP site, CD or flash drive, or otherwise conveyed to the commission office so as to be received no later than the specified date.

PARTY STATUS:

Party status requests must be in writing and must provide:

- the organization's name,
- one contact person,
- a mailing address,
- a phone number, and
- email addresses of all individuals associated with the party who wish to be notified when new submittals are available on the commission's website for review.

In accordance with section 25-8-104(2)(d), C.R.S., any person who believes that the actions proposed in this notice have the potential to cause material injury to his or her water rights is requested to so indicate, along with an explanation of the alleged harm, in their party status request.

PREHEARING AND REBUTTAL STATEMENTS:

Each party must submit a prehearing statement: parties that have proposed revisions attached as exhibits to the notice must submit a proponent's prehearing statement; all other parties must submit a responsive prehearing statement. Proponents may also submit responsive prehearing statements when there are multiple proposals attached to the notice. Any party may submit a rebuttal statement. Each prehearing and rebuttal statement must be provided as a separate PDF document from any accompanying written testimony or exhibits.

Following the rebuttal statement due date, no other written materials will be accepted from parties except for good cause shown.

Oral testimony at the hearing should primarily summarize written material previously submitted. The hearing will emphasize commission questioning of parties and other interested persons about their written prehearing submittals. Introduction of written material at the hearing by those with party status will not be permitted unless authorized by the commission.

PREHEARING CONFERENCE:

Attendance at the prehearing conference is mandatory for all persons requesting party status. Parties needing to participate by telephone can call 1-857-216-6700 and enter the conference code 543213.

Following the cut-off date for motions, no motions will be accepted, except for good cause shown.

PUBLIC PARTICIPATION ENCOURAGED:

The commission encourages input from non-parties, either orally at the hearing or in writing prior to the hearing. Written submissions should be emailed to cdphe.wqcc@state.co.us by April 26, 2017.

SPECIFIC STATUTORY AUTHORITY:

The provisions of sections 25-8-202(1)(m) and (2), and 25-10-101 through 113, C.R.S., provide the specific statutory authority for consideration of the regulatory amendments proposed by this notice. Should the commission adopt the regulatory language as proposed in this notice or alternative amendments, it will also adopt, in compliance with section 24-4-103(4) C.R.S., an appropriate Statement of Basis, Specific Statutory Authority, and Purpose.

Dated this 10th day of January 2017 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION

Digitally signed by Trisha Oeth
DN: cn=Trisha Oeth, o, ou=Water Quality Control Commission, email=trisha.oeth@state.co.us, c=US
Date: 2017.01.10 09:30:22 -07'00'

Trisha Oeth, Administrator

EXHIBIT 1
WATER QUALITY CONTROL DIVISION

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Water Quality Control Commission

REGULATION NO. 21 - PROCEDURAL RULES

5 CCR 1002-21

. . . .

21.4 Adjudicatory Procedures

A. Applicability

. . . .

2) The Commission shall provide the opportunity for a formal public adjudicatory hearing in the following cases:

. . . .

(I) Appeals of final decisions by the Water Quality Control Division pursuant to Regulation 86, 5 CCR 1002-86 for graywater research variance projects.

. . . .

21.42 Statement of Basis, Specific Statutory Authority and Purpose (May 8, 2017 Rulemaking, Effective July 30, 2017)

The provisions of sections 25-8-202 and 401, C.R.S. provide the specific statutory authority for the amendments to this regulation adopted by the Water Quality Control Commission (commission). The commission has also adopted, in compliance with section 24-4-103(4) C.R.S., the following statement of basis and purpose.

Basis and Purpose

The commission adopted a new subsection 21.4(A)(2)(I) to explicitly reflect that appeals of graywater research variance determinations are to be heard by the commission. Such appeals may be filed with the commission after a determination is made by the Water Quality Control Division. C.R.S. § 25-8-202(1)(k) states: "The Commission shall…act as an appellate body to review all determinations by the division except those determinations dealing with surface water discharge permits or portions thereof." If an appeal is timely filed, it shall be heard in accordance with section 24-4-105, C.R.S. of the Administrative Procedures Act and section 21.4 of this regulation, except that notice of any adjudicatory hearing shall also be provided to the city, city and county, or county that has authorized the research through their local graywater control program.

EXHIBIT 2
WATER QUALITY CONTROL DIVISION

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Water Quality Control Commission

REGULATION NO. 86 - GRAYWATER CONTROL REGULATION

5 CCR 1002-86

. . . .

86.16 Research Variance

A. Upon application by a Colorado "private college or university" or "state college or university", as defined in §23-2-102(11) and (15), C.R.S., the division may grant a variance from the following sections of Regulation 86 for each graywater treatment works involved in a research project:

1. local graywater control program requirements in 86.9(B)(2)(a) and 86.9(B)(2)(e);

2. uses of graywater in 86.10;

3. design criteria in 86.12(B) and 86.12 (C);

4. operations and maintenance manual requirements in 86.13; and

5. control measure requirements in 86.14(A), 86.14 (B)(3), 86.14(B)(6), 86.14 (C)(1) , 86.14 (D).

B. A research variance may only be granted if:

1. The division determines that the graywater treatment works will protect public health and the environment; and

2. All remaining sections of Regulation 86 from which a variance is not granted are met.

C. A private or state university that is granted a research variance shall only conduct the graywater research as permitted by the variance, the remaining applicable sections of Regulation 86, the statutory requirements of §25-8-205(1)(g), C.R.S., and any other applicable statutes pertaining to graywater. A new use of graywater beyond the uses permitted in section 86.10 and approved by variance must be further authorized by a city, city and county, or county pursuant to §25-8-205(1)(g), C.R.S.

D. Research variances reviews shall be conducted by the division in accordance with policies established by the division and commission. The application for a variance must include:

1. A description of the technical or framework goals to be accomplished through the research;

2. A description of the method by which the proposed research project will be periodically and representatively monitored to ensure protection of public health and the environment and the proper functioning of the graywater treatment works involved in the proposed research project;

3. A description of how individuals exposed to graywater during the research will be informed and made aware of health risks and the actions to be followed if health and/or environmental risks are identified during the investigation;

4. A description of the graywater treatment works and supporting technical documentation including design parameters to ensure safety to public health and the environment through a multi-barrier approach;

5. A description of how the graywater treatment works will operate, including control measures to ensure safety to public health and the environment; and

6. Any other information needed/requested by the division to determine if the variance is justified.

E. The division will act expeditiously on all complete applications that have been submitted with a goal to complete the final review in a total of sixty days from the date of receipt of the application. The burden is on the applicant to supply the information necessary for the division to make an adequate review.

F. An approved research variance shall be limited to a period of time to be justified by the applicant and approved by the division, but not to exceed five years. To permanently utilize the graywater treatment works at the conclusion of the research variance, the legally responsible party must have the graywater treatment works authorized under a local graywater control program and in compliance with Regulation 86 and all the statutory requirements of 25-8-205(1)(g), C.R.S.

G. The division's decision to approve, conditionally approve, or deny an application for a research variance may be appealed to the commission pursuant to 5 CCR 1002-21.4.

H. The division may withdraw approval of a research variance based on a determination that the periodic monitoring demonstrates that the research graywater treatment works is not properly functioning or the research is being implemented in a manner that may be harmful to public health or the environment. The division may also withdraw its approval based on a determination that the research graywater treatment works is not in compliance with any of the requirements set forth in the division's approval of the research variance. The division's decision to withdraw approval of a research variance may be appealed to the commission pursuant to 5 CCR 1002-21.4.

86.~~16~~ 17 – 86.20 Reserved

. . . .

86.23 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE; MAY 8, 2017, RULEMAKING, FINAL ACTION JUNE 12, 2017, EFFECTIVE JULY 30, 2017

The provisions of sections 25-8-202(1)(c) and 25-8-205(1)(g), C.R.S., provide the specific statutory authority for the Graywater Control Regulation adopted by the Water Quality Control Commission (commission). The commission has also adopted, in compliance with section 24-4-103(4), C.R.S., the following statement of basis, specific statutory authority, and purpose.

BASIS AND PURPOSE

The commission recognizes that research is routinely regulated and finds that the proposed requirements are reasonable and necessary for the protection of public health and environment. The commission finds that nothing in the current Regulation #86 prevents research involving water quality and treatment technology effectiveness. Graywater treatment works for research can operate and be used to collect water quality data and evaluate treatment technologies either as pretreatment to a graywater treatment system that satisfies the requirements of Regulation #86 or may discharge treated graywater to the sewer. Regulation #86 does not currently allow graywater research systems that involve exposure to human subjects.

The commission supports adding a graywater research category to Regulation #86 that would allow human subject exposure, added uses and environmental applications provided the research is conducted according to rigorous academic standards by an accredited university and involving a high bar for human health and environmental protection through a multi-barrier approach. The support for the variance concept is contingent on any applicable university or college protocols for research involving human exposure to pathogens and/or human test subjects being stringently followed. The commission believes that it is critical that any persons exposed during the research and/or test subjects be aware of the research by being notified in plain language outlining potential health risks and steps to take if they believe they are ill due to the exposure. This public notice should also be available in other languages if the research location is frequented by non-English speakers.

The commission believes that graywater research will benefit from the multi-disciplinary approach that universities can bring to bear on such efforts. Specifically, the commission believes that research involving engineering evaluations of treatment technology effectiveness (which are often more akin to drinking water treatment techniques) for removing various viral, bacterial and protozoan pathogens will enhance understanding of how best to move forward in Colorado with utilizing this resource and deploying adequate safeguards to protect public health and the environment. Similarly, involving epidemiology evaluations into the research will help broaden the understanding of how to manage health risks and consider vulnerable populations as well. The commission directs the division and stakeholders to consider these items as work moves forward on a research variance policy following adoption of the regulation. The commission is directing the division to develop a policy to describe the submittal and review process for a research variance application. The policy should provide expectations on the submittal process, minimum requirements, and any required forms. The commission feels that identifying the policy within the regulation is consistent with other commission regulations and important for transparency. The policy should clarify to submitting parties any requirements and helps expedite the review process.

The statutory language indicates that the commission may promulgate control regulations to describe requirements, prohibitions, and standards for the use of graywater for nondrinking purposes, to encourage the use of graywater, and to protect public health and the environment. The commission has authorized each research variance for a maximum of five years to encourage research, but expects that each research application will minimize the number of persons exposed for the shortest period time necessary to test the research hypothesis. The intent of the research variance is to provide the flexibility to perform research projects that solve current unknowns and will lead to improved statewide implementation through future regulatory rulemaking changes.

The division's granting of a research variance from the graywater control regulations in this Regulation #86 does not remove the applicability of any other statutory requirements that must be met in order to be authorized to use graywater in a specific location. House Bill 13-1044 requires compliance with other local, state and federal requirements including plumbing codes, water rights, etc. and local city, city and county, or county regulatory oversight for graywater use via an ordinance or resolution. The proposed graywater research variance allows for local control by requiring that the local jurisdiction authorize any research graywater treatment works located in their city, city and county or county. Additionally, if a variance allows for another use not provided for in the regulations, the city, city and county, or county will need to amend or create an ordinance or resolution to allow for the use. Similarly, the graywater statute established an opt-in framework for graywater where the state provides the minimum requirements and each local county, city and county, or city has the opportunity to implement a local graywater control program. The commission determined that the division's approval of a research variance should not be used to force graywater research into an area without the local city, city and county, or county opting to create a local graywater program. Each local graywater control program has exclusive enforcement authority and must have the oversight, fee setting requirements, and control responsibilities should the locals opt-in. A local graywater control program must be in place before research project can operate.

The research variance will be limited to: local graywater control program requirements in 86.9(B)(2)(a)and 86.9(B)(2)(e); uses of graywater in 86.10; design criteria in 86.12(B) and 86.12 (C); operations and maintenance manual requirements in 86.13; and control measure requirements in 86.14(A), 86.14 (B)(3), 86.14(B)(6), 86.14 (C)(1) , 86.14 (D). Due to the statutory limitations, the commission could not extend the research variance for new sources. New sources of graywater must be authorized through the routine commission rulemaking processes.

While the statute allows for up to ninety days for the division to review a variance, the commission finds it is appropriate to state a general expectation for the review of research variances and included a goal for the division to complete review of research variances in sixty days considering that the division carries a backlog due to limited resources. Additionally, the commission recognizes that not all applications may be complete upon initial submittal to the Division, and that the sixty day goal does not include time during which the applicant is developing responses to Division comments.

The commission also proposes modifying Regulation #21 which describes the commission's procedural rules. An appeal of the division's research variance decision will follow the existing processes described within Regulation #21. The process allows for testimony and the introduction of expert witnesses by all parties.

The division did not receive funding for the original Regulation #86 development or for this research variance regulation modification. The division has been redirecting personnel from other core work duties for this project. The commission is cognizant of the division's resource constraints with respect to graywater and expects that research variances will be limited in number.

Notice of Proposed Rulemaking

Tracking number

2017-00018

Department

1000 - Department of Public Health and Environment

Agency

1002 - Water Quality Control Commission (1002 Series)

CCR number

5 CCR 1002-81

Rule title

REGULATION NO. 81 - ANIMAL FEEDING OPERATIONS CONTROL REGULATION

Rulemaking Hearing

Date

05/08/2017

Time

10:00 AM

Location

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

Subjects and issues involved

Correction of typographical and formatting errors; removal of the term, "Large" from Section 81.2, 81.5 and 81.6; revision of definition for "Land Application Site" for consistency with corresponding definition found in Regulation #61; clarification of recordkeeping requirements for non-permitted CAFOs

Statutory authority

Sections 25-8-202, 25-8-205- and 25-8-401, C.R.S.

Contact information

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COLORADO
Water Quality
Control Commission
Department of Public Health & Environment

NOTICE OF PUBLIC RULEMAKING HEARING
BEFORE THE
COLORADO WATER QUALITY CONTROL COMMISSION

SUBJECT:

For consideration of the adoption of revisions to the Confined Animal Feeding Operations Control Regulation, Regulation #81 (5 CCR 1002-81). Revisions to Regulation #81 proposed by the Environmental Agriculture Program, along with a proposed Statement of Basis, Specific Statutory Authority and Purpose, are attached to this notice as Exhibit 1.

In these attachments, proposed new language is shown with double-underlining and proposed deletions are shown with ~~strikeouts~~. Any alternative proposals related to the subject of this hearing will also be considered.

SCHEDULE OF IMPORTANT DATES

Party status requests due	02/22/2017 5 pm	Additional information below.
Proponent's prehearing statement due	03/01/2017 5 pm	Additional information below.
Responsive prehearing statement due	03/29/2017 5 pm	Additional information below.
Rebuttal statements due	04/18/2017 5 pm	Additional information below.
Last date for submittal of motions	04/21/2017 5 pm	Additional information below.
Notify commission office if participating in prehearing conference by phone	03/24/2017 noon	Send email to cdphe.wqcc@state.co.us with participant(s) name(s).
Prehearing conference (mandatory for parties)	04/25/2017 1:00 pm	Florence Sabin Conference Room Department of Public Health and Environment 4300 Cherry Creek Drive South Denver, CO 80246
Rulemaking Hearing	05/8/2017 10:00 am	Florence Sabin Conference Room Department of Public Health and Environment 4300 Cherry Creek Drive South Denver, CO 80246

HEARING SUBMITTALS:

For this hearing, the commission will receive all submittals electronically. Submittals must be provided as PDF documents, except for raw data exhibits which may be provided as Excel workbooks. Submittals may be emailed to cdphe.wqcc@state.co.us, provided via an FTP site, CD or flash drive, or otherwise conveyed to the commission office so as to be received no later than the specified date.

PARTY STATUS:

Party status requests must be in writing and must provide:

- the organization's name,
- one contact person,
- a mailing address,
- a phone number, and
- email addresses of all individuals associated with the party who wish to be notified when new submittals are available on the commission's website for review.

In accordance with section 25-8-104(2)(d), C.R.S., any person who believes that the actions proposed in this notice have the potential to cause material injury to his or her water rights is requested to so indicate, along with an explanation of the alleged harm, in their party status request.

PREHEARING AND REBUTTAL STATEMENTS:

Each party must submit a prehearing statement: parties that have proposed revisions attached as exhibits to the notice must submit a proponent's prehearing statement; all other parties must submit a responsive prehearing statement. Proponents may also submit responsive prehearing statements when there are multiple proposals attached to the notice. Any party may submit a rebuttal statement. Each prehearing and rebuttal statement must be provided as a separate PDF document from any accompanying written testimony or exhibits.

Following the rebuttal statement due date, no other written materials will be accepted from parties except for good cause shown.

Oral testimony at the hearing should primarily summarize written material previously submitted. The hearing will emphasize commission questioning of parties and other interested persons about their written prehearing submittals. Introduction of written material at the hearing by those with party status will not be permitted unless authorized by the commission.

PREHEARING CONFERENCE:

Attendance at the prehearing conference is mandatory for all persons requesting party status. Parties needing to participate by telephone can call 1-857-216-6700 and enter the conference code 543213.

Following the cut-off date for motions, no motions will be accepted, except for good cause shown.

PUBLIC PARTICIPATION ENCOURAGED:

The commission encourages input from non-parties, either orally at the hearing or in writing prior to the hearing. Written submissions should be emailed to cdphe.wqcc@state.co.us by April 26, 2017.

SPECIFIC STATUTORY AUTHORITY:

The provisions of sections 25-8-202(1)(m) and (2), and 25-10-101 through 113, C.R.S., provide the specific statutory authority for consideration of the regulatory amendments proposed by this notice. Should the commission adopt the regulatory language as proposed in this notice or alternative amendments, it will also adopt, in compliance with section 24-4-103(4) C.R.S., an appropriate Statement of Basis, Specific Statutory Authority, and Purpose.

Dated this 10th day of January 2017 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION

Digitally signed by Trisha Oeth
DN: cn=Trisha Oeth, o, ou=Water Quality Control Commission, email=trisha.oeth@state.co.us, c=US
Date: 2017.01.10 09:34:09 -07'00'

Trisha Oeth, Administrator

EXHIBIT 1
ENVIRONMENTAL AGRICULTURE PROGRAM

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Water Quality Control Commission

REGULATION NO. 81 - ANIMAL FEEDING OPERATIONS CONTROL REGULATION

5 CCR 1002-81

Throughout these regulations, standards and requirements by outside organizations have been adopted and incorporated by reference. The materials incorporated by reference cited herein include only those versions that were in effect as of ~~November 30~~June 30, 201~~73~~, and not later amendments to the incorporated material.

Materials incorporated by reference are available for public inspection during regular business hours from the Water Quality Control Division, 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530. Copies may be purchased from the source organization.

81.0 AUTHORITY

Section 25-8-205, C.R.S. as amended of the Colorado Water Quality Control Act.

81.1 APPLICABILITY

The provisions of this control regulation are applicable to all animal feeding operations and concentrated animal feeding operations, except those defined as housed commercial swine feeding operations in section 61.2 of the Colorado Discharge Permit System Regulations, Regulation No. 61. Housed commercial swine feeding operations are subject to permitting requirements as set forth in Regulation No. 61 and financial assurance requirements in Regulation No. 66. A concentrated animal feeding operation is also subject to permitting requirements under Regulation No. 61 where it discharges to waters of the U.S.

81.2 PURPOSE

The purpose of this control regulation is:

(1) To ensure that discharges to ground water from permitted and non-permitted concentrated animal feeding operations are controlled in a manner consistent with the performance standards as set forth in this regulation.

(2) To ensure that non-permitted concentrated animal feeding operations protect surface waters of the state.

(3) To ensure that non-permitted ~~large~~ concentrated animal feeding operations register with the Division.

(4) To ensure that animal feeding operations that are not defined as concentrated animal feeding operations protect waters of the state through proper application of "best management practices" that consider existing physical conditions and constraints at the facility site.

This regulation is not intended to address public health nuisance conditions or land use controls such as zoning requirements.

81.3 DEFINITIONS

As used in this regulation, the following definitions of terms apply.

(1) " 25-YEAR, 24-HOUR STORM " means a storm of a 24-hour duration which yields a total rainfall of a magnitude which has a probability of recurring once every twenty-five years.

(2) "AGRONOMIC RATE" means the rate of application of nitrogen to plants that is necessary to satisfy the plants' nutritional requirements while accounting for applicable nitrogen credits.

(3) "ANIMAL FEEDING OPERATION" (AFO) means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

(a) Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and

(b) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(4) "BEST MANAGEMENT PRACTICE" means an activity, procedure, or practice necessary for the reduction of impacts from animal feeding operations on surface or ground water, as described in section 81.8.

(5) "CHRONIC STORM" means a series of storms that occur during a 10-day period which yield a total precipitation of a magnitude that has a probability of recurring once every 10 years.

(6) "CONCENTRATED ANIMAL FEEDING OPERATIONS" (CAFO) means an AFO that is defined as a Large or Medium CAFO, or that is designated by the Division as a CAFO pursuant to Section 81.4. Two or more AFOs under common ownership are deemed to be a single AFO for the purposes of determining whether they qualify as a Large or Medium CAFO, if they are adjacent to each other or if they use a common area or system for land application of manure or wastewater.

(7) "CONVEYANCE STRUCTURE" means a natural or constructed conduit (e.g., berm, channel, ditch, pipe, or culvert) that carries process-generated wastewater and/or open-lot wastewater from production areas, and diverts the wastewater to an impoundment or between impoundments.

(8) "DISCHARGE" means the introduction or addition of a pollutant into waters of the state.

(9) "DIVISION" means the Division of Administration of which the Water Quality Control Division of the Department of Public Health and Environment is a part. The Environmental Agriculture Program (Ag Program) implements this regulation on behalf of the Division.

(10) "FACILITY" means the production area and land application sites of an animal feeding operation or concentrated animal feeding operation.

(11) "FREEBOARD" means the vertical distance measured from the liquid surface level (elevation) in an impoundment or tank to the top elevation of the impoundment or tank (for example, berm or wall).

(12) "GROUND WATER" means subsurface waters in a zone of saturation which are or can be brought to the surface of the ground or to surface waters through wells, springs, seeps, or other discharge areas.

(13) "GROUND WATER RECHARGE" means the entry into the saturated zone of water made available at the water-table surface, together with the associated flow away from the water table within the saturated zone.

(14) "IMPOUNDMENT" means a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials or other seepage control materials), or any other structure which is used for the storage, treatment, evaporation or discharge of pollutant-containing waters, sludge or associated sediment.

(15) "LAND APPLICATION SITE" means~~:~~

~~(a) Land owned by an AFO or CAFO, to which manure or wastewater from the production area is or may be applied; or~~

~~(b)~~ Land under the control of an AFO or CAFO, whether it is owned, rented, or leased by the AFO or CAFO, to which manure or wastewater from the production area is or may be applied, or where cropping or nutrient budget decisions for the site are made by the AFO or CAFO.

(16) "LARGE CONCENTRATED ANIMAL FEEDING OPERATION" (Large CAFO) means an AFO that stables or confines as many as or more than the numbers of animals specified in any of the following categories:

(a) 700 mature dairy cows, whether milked or dry;

(b) 1,000 veal calves

(c) 1,000 cattle other than mature dairy cows or veal calves. Cattle includes, but is not limited to, heifers, steers, bulls and cow/calf pairs;

(d) 2,500 swine each weighing 55 pounds or more;

(e) 10,000 swine each weighing less than 55 pounds;

(f) 500 horses;

(g) 10,000 sheep or lambs;

(h) 55,000 turkeys;

(i) 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;

(j) 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;

(k) 82,000 laying hens, if the AFO uses other than a liquid manure handling system;

(l) 30,000 ducks (if the AFO uses other than a liquid manure handling system) or

(m) 5,000 ducks (if the AFO uses a liquid manure handling system).

(17) "MAN-MADE DRAINAGE SYSTEM" means a drainage ditch, flushing system, or other drainage device which was constructed by man and is used for the purpose of transporting manure or wastewater.

(18) "MANURE" means feces, litter, and/or urine and materials, such as bedding, sludge, compost, feed waste, dry harvested forage, and any raw material used in or resulting from the operation of an animal feeding operation, that have been commingled with feces, litter, and/or urine.

(19) "MEDIUM ANIMAL FEEDING OPERATION" (Medium AFO) means an AFO with the type and number of animals that fall within any of the ranges listed in section 81.3(A)(20), and which has not been defined or designated as a CAFO.

(20) "MEDIUM CONCENTRATED ANIMAL FEEDING OPERATION" (Medium CAFO) means an AFO with the type and number of animals that fall within any of the ranges listed in (a) below and which has been defined or designated as a CAFO. An AFO is defined as a Medium CAFO if:

(a) The type and number of animals that it stables or confines falls within any of the following ranges:

(I) 200 to 699 mature dairy cows, whether milked or dry;

(II) 300 to 999 veal calves;

(III) 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls, and cow/calf pairs.

(IV) 750 to 2,499 swine each weighing 55 pounds or more;

(V) 3,000 to 9,999 swine each weighing less than 55 pounds;

(VI) 150 to 499 horses;

(VII~~I~~) 3,000 to 9,999 sheep or lambs;

(VIII~~IX~~) 16,500 to 54,999 turkeys;

(IX) 9,000 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system;

(X~~I~~) 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;

(XI~~I~~) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system;

(XII~~I~~) 10,000 to 29,999 ducks (if the AFO uses other than a liquid manure handling system); or

(XIII~~V~~) 1,500 to 4,999 ducks (if the AFO uses a liquid manure handling system); and

(b) Either one of the following conditions are met:

(I) Pollutants are discharged into surface waters of the state through a man-made drainage system; or

(II) Pollutants are discharged directly into surface waters of the state which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(21) "NEW SOURCE" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the promulgation of standards of performance for the particular source, pursuant to section 306 of the Clean Water Act. The term also applies where a standard of performance has been proposed, provided that the standard is promulgated within 120 days of its proposal. Except as otherwise provided in an applicable new source performance standard, a source is a "new source" if it meets this definition of "new source", and:

(a) It is constructed at a site at which no other source is located; or

(b) It totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

(c) Its processes are substantially independent of an existing source at the same site. In determining whether these processes are substantially independent, the Division shall consider such factors as the extent to which the new facility is integrated with the existing source; and the extent to which the new facility is engaged in the same general type of activity as the existing source.

(22) "OPEN-LOT WASTEWATER" means any precipitation that comes into contact with manure or feed, any spillage or overflow from animal or poultry watering systems in production area facilities that are not roof-covered (except livestock drinking water in constant-flow watering troughs that overflow into in-trough drain pipes and is retained separately from wastewater storage), or, spray-cooling water used in open-sided pole sheds that are not flushed.

(23) "OPERATOR" means any person who owns, leases, operates, controls, or supervises an animal feeding operation or concentrated animal feeding operation.

(24) "PERMIT" means a permit issued pursuant to Colorado Water Quality Control Commission Regulation No. 61.

(25) "PERSON" means an individual, corporation, partnership, association, state or political subdivision thereof, federal agency, state agency, municipality, commission, or interstate body.

(26) "POLLUTANT" means dredged spoil, dirt, slurry, solid waste, incinerator residue, sewage, sewage sludge, garbage, trash, chemical waste, biological nutrient, biological material, radioactive material, heat, wrecked or discarded equipment, rock, sand, or any industrial, municipal, or agricultural waste.

(27) "PROCESS-GENERATED WASTEWATER" means wastewater resulting from water being directly or indirectly used in the operation of an animal feeding operation for any or all of the following:

(a) Spillage or overflow from animal or poultry watering systems in roof-covered production area facilities (except livestock drinking water in constant-flow watering troughs that overflows into in-trough drain pipes and is retained separately from wastewater storage);

(b) Washing, cleaning or flushing pens, barns, manure pits, or other roof-covered production area facilities;

(c) Direct contact swimming, washing or spray cooling of animals (except in open-sided pole barns in open lots);

(d) Dust control; or

(e) Water which comes into contact with any products or byproducts including manure litter, feed, milk, eggs, or bedding that is not defined as open-lot wastewater.

(28) "PRODUCTION AREA" means that part of an AFO or CAFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and wastewater containment areas. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.

The animal confinement area includes but is not limited to:

(a) Open lots, housed lots and feedlots;

(b) Confinement houses;

(c) Stall barns and free stall barns;

(d) Milkrooms and milking centers;

(e) Cowyards, barnyards and stables;

(f) Medication and hospital pens;

(g) Walkers and animal walkways.

The manure and residual solids storage area includes but is not limited to:

(a) Lagoons, runoff ponds, liquid impoundments and tanks;

(b) Storage sheds, under house or pit storages;

(c) Stockpiles, static piles and composting piles.

The raw materials storage area includes but is not limited to:

(a) Feed silos, silage bunkers and bedding materials.

The waste containment area includes but is not limited to:

(a) Settling basins; and

(b) Areas within berms and diversions which separate uncontaminated stormwater.

(29) "PUBLIC DRINKING WATER SYSTEM" means a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or serves an average of at least 25 persons daily at least 60 days out of the year. A public drinking water system includes both community and non-community systems.

(30) "SETBACK" means a specified distance from waters of the state, or potential conduits to waters of the state.

(31) "SMALL CONCENTRATED ANIMAL FEEDING OPERATION" (Small CAFO) means an AFO that is designated by the Division as a CAFO, and is not a Medium CAFO.

(32) "SOLID/LIQUID WASTE SEPARATION FACILITY" means a filtration or screening device, settling tank, or settling channel used to separate a portion of solids from a liquid wastewater stream.

(33) "STOCK WATERING POINT" means a fenced area with a hardened surface that limits access to surface water for a very small number of animals (typically one or two at a time) for the purpose of the animals obtaining drinking water.

(34) "STORMWATER" means precipitation induced surface runoff from land, except that defined as wastewater.

(35) "SURFACE WATER" means all waters of the state, except ground water, but includes ground water that may be hydrologically connected to non-subsurface water.

(36) "TANK" means a stationary device designed to contain an accumulation of pollutant-containing water, which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.

(37) "WASTEWATER" means water defined as process-generated wastewater and/or open-lot wastewater.

(38) "WASTEWATER TREATMENT STRIP" means a treatment component of an agricultural waste management system consisting of a strip or area of herbaceous vegetation that assimilates pollutants and within which wastewater runs via sheet flow.

(39) "WATERS OF THE STATE" means any and all surface and subsurface waters which are contained in or flow in or through this state, except waters in sewage systems, waters in treatment works of disposal systems, waters in potable water distribution systems, and all water withdrawn for use until use and treatment have been completed.

(40) "WATERS OF THE U.S." means waters of the United States as defined in 40 C.F.R. Part 122.2.

(41) "WATER QUALITY STANDARD" means any standard promulgated pursuant to section 25-8-204, C.R.S.

81.4 DESIGNATION OF AN ANIMAL FEEDING OPERATION AS A CONCENTRATED ANIMAL FEEDING OPERATION

The Division may designate any AFO as a CAFO upon performing an on-site inspection and determining that it reasonably could be a significant contributor of pollutants to waters of the U.S.

(1) The following criteria shall be considered to determine if an AFO will be designated as a CAFO:

(a) The size of the AFO and the amount of manure and wastewater reaching waters of the U.S;

(b) The location of the AFO relative to waters of the U.S.;

(c) The means of conveyance of manure and wastewater into waters of the U.S.;

(d) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of manure and wastewater into waters of the U.S.; and

(e) Other relevant factors.

(2) No AFO with animal numbers below those established for a Medium CAFO shall be designated as a CAFO unless:

(a) Pollutants are discharged into waters of the U.S. through a manmade ditch, flushing system, or other similar manmade device from the animal feeding operation; or

(b) Pollutants from the animal feeding operation are discharged directly into waters of the U.S. that originate outside of the facility and pass over, across, or through the facility or otherwise come into contact with the animals confined in the operation.

(3) Where an AFO is at risk of being designated a CAFO, the AFO operator shall submit to the Division, within 60 days of receiving written notice by the Division of such a risk, one of the following:

(a) In consultation with the Division, an approvable work plan and associated timeline for reducing actual or potential environmental impacts such that the Division would not designate the AFO as a CAFO. The operator shall implement the plan within 30 days of it being approved by the Division; or

(b) A written statement signed by the operator indicating the operator's intention to do one of the following:

(i) Operate as a CAFO and submit a complete application to be covered under a CAFO discharge permit within 180 days of the date of the written statement; or,

(ii) Comply with all of the CAFO surface water and ground water protection provisions of this control regulation.

(4) Where an operator does not complete and implement a work plan pursuant to section 81.4(3)(a), does not submit a written statement pursuant to section 81.4(3)(b), or evidence exists of a discharge from the facility to waters of the U.S., the AFO may be designated a CAFO by the Division and be required to submit a complete application to be covered under a CAFO discharge permit within 90 days of receiving written notice by the Division of such a designation and permit application requirement.

81.5 REQUIREMENTS – NON-PERMITTED ~~LARGE~~ CAFOs

(1) Performance Standards – Surface Water Protection

(a) There shall be no discharge of manure or wastewater from the production area to waters of the U.S. without a discharge permit.

(b) There shall be no discharge of manure or wastewater from the production area to surface water, except whenever precipitation causes a discharge and the production area is designed, constructed, operated, and maintained to contain all manure and wastewater, including the runoff and direct precipitation from a 25-year, 24-hour storm or Chronic Storm, whichever is greater.

(c) The discharge of manure and wastewater to waters of the U.S. from a CAFO as the result of the application of that manure or wastewater by the CAFO to a land application site is a discharge from that CAFO subject to permit requirements, except where it is an agricultural stormwater discharge. Where the manure or wastewater has been applied in accordance with the requirements of sections 81.6(2)(a-d), a precipitation-related discharge of manure or wastewater from the site to waters of the U.S. is an agricultural stormwater discharge.

(d) Manure and wastewater shall not be applied directly to surface water.

(2) Requirement to r~~R~~egister w~~W~~ith t~~T~~he Division - The operator of a non-permitted ~~Large~~ CAFO shall register the facility with the Division by no later than February 27, 2009 or upon being defined as ~~such~~ a CAFO.

(a) The registration shall be submitted to the Division and include the following information about the facility:

(i) Legal name;

(ii) Names of legal owner and current operator;

(iii) Facility phone number;

(iv) Physical address;

(v) Mailing address;

(vi) County in which the facility exists;

(vii) Latitude/longitude coordinates at the entrance of the facility and source of the datum;

(viii) Maximum number and type of all animals the facility will confine in the production area;

(ix) A Standard Operating Procedure (SOP) for removal of manure from impoundments in accordance with section 81.7(3), unless the facility has previously submitted a SOP; and

(x) Evidence of impoundment liner certification, unless previously submitted.

(b) At such time that any of the above information changes, the operator shall submit to the Division a revised registration by no later than 30 days after a change occurs.

(3) Discharge Reporting – The operator shall notify the Colorado Release and Incident Reporting Line at 1-877-518-5608 of a discharge of manure or wastewater to surface water.

(a) Such notification shall be made within 24-hours after the operator becomes aware of the discharge.

(b) The notification shall describe, at minimum, the date, time, cause of the discharge, approximate volume of the discharge, the estimated length of time of the discharge, the level of wastewater in the discharging impoundment(s), and whether the discharge entered, or could enter, waters of the U.S.

(4) Fees – Non-permitted ~~Large~~ CAFOs shall pay fees in accordance with the schedule set forth in section 25-8-502(1.1)(~~a~~)(III), C.R.S.

(a) All annual fees must be paid within 30 days of receipt of the Division's billing statement.

(b) All fees collected under this regulation shall be made payable to the Colorado Department of Public Health and Environment.

(c) Failure to pay annual fees in accordance with 25-8-502(1.1)(a)(III) shall result in the suspension of the non-permitted CAFOs registration and initiation of enforcement action by the Division.

(~~d~~) The annual fee for non-permitted ~~Large~~ CAFOs shall be prorated if the following occur during a fiscal year in which a fee has been paid:

(i) Issuance of a concentrated animal feeding operation discharge permit; or

(ii) Termination of a registration at the registrant's request with Division approval.

The prorated fee for terminations shall be based on the period of time the registration is in effect for the fiscal year during which the termination is requested, except that the period of time shall not exceed 90 days from the date the registration termination request is received by the Division. Prorated amounts less than $75 will not be refunded.

(ed) The administrative fee shall be applicable to all non-permitted ~~Large~~ CAFOs as of July 1, 2009, regardless of the date upon which registration with the Division is made.

81.6 FACILITY MANAGEMENT PLAN: NON-PERMITTED ~~LARGE~~ CAFOs

The operator of a non-permitted ~~Large~~ CAFO shall compile and maintain on-site a facility management plan (FMP) that includes, to the extent applicable, the information specified in sections 81.6(1), 81.6(2), 81.6(3) and 81.6(4).

(1) Surface water protection elements – Production Area. The operator of a non-permitted ~~Large~~ CAFO must develop, document in the FMP and implement the following design, construction and performance requirements for the production area by no later than May 30, 2011 or upon being defined as a ~~Large~~ CAFO.

(a) Use of the following structures, methods and procedures to control wastewater:

(i) Impoundments

(A) All impoundments must be designed, constructed, and maintained to be capable of storing, the volume of all manure and wastewater, including the runoff resulting from a 25-year, 24-hour storm or Chronic Storm, whichever is greater, plus two feet of freeboard, except where the operator requests, and the Division approves, an alternative freeboard level.

(B) All requests for an alternative freeboard level shall include documentation that the alternative freeboard level will protect the structural integrity of the impoundments and terminal tanks, and will be functionally equivalent to two feet of freeboard to prevent overflows caused by factors such as wind and receipt of direct precipitation.

(ii) Conveyance Structures

(A) All conveyance structures must be designed, constructed, and maintained to be capable of carrying the flow expected from a 25-year, 24-hour storm or Chronic Storm, whichever is greater.

(iii) For open-lot wastewater only; a solid/liquid waste separation facility used in conjunction with a wastewater treatment strip

(A) The solid/liquid waste separation facility in conjunction with a wastewater treatment strip shall be designed, constructed, and maintained so that it is capable of managing the flow expected from a 25-year, 24-hour storm or Chronic Storm, whichever is greater.

(B) The system described in subsection (A) above shall also be designed in accordance with United States Department of Agriculture – Natural Resources Conservation Service standards, or other standards approved by the Division.

(iv) For process-generated wastewater, the operator may use the wastewater control system described in section 81.6(1)(a)(iii) where the Division approves a plan submitted by the operator demonstrating that the system will be sustainable, including that wastewater released into the treatment strip will be properly assimilated by the vegetation.

(v) A method approved by the Division.

(b) Install a depth marker in all impoundments indicated in the facility design calculations as being necessary to contain a 25-year, 24-hour storm or Chronic Storm, whichever is greater. Depth markers must be clearly marked, at minimum, in one foot increments and shall clearly indicate the minimum capacity necessary to contain the greater storm event.

(i) Perform weekly inspections of depth markers and record the wastewater level in each impoundment containing a depth marker.

(c) Design, construct, and maintain structures that are sized to divert stormwater from running onto a production area as appropriate.

(d) Procedures to ensure proper operation and maintenance of the impoundments, including the following:

(i) Whenever the storage capacity of impoundments and tanks is less than the volume required to store runoff from the designed storm event, the structures shall be dewatered to a level that restores the required capacity once soils on a land application site have the water holding capacity to receive the wastewater, or in accordance with section 81.6(2)(a)(i)(C).

(2) Surface water protection elements – Land Application Sites. The operator of a non-permitted ~~Large~~ CAFO shall develop, document in the FMP and implement the following practices and procedures for land application sites by no later than February 27, 2009 or upon being defined as a ~~Large~~ CAFO.

(a) Apply manure and wastewater to a land application site in accordance with the following practices and procedures:

(i) Conservation Practices - Site-specific conservation practices that have been identified and implemented, including as appropriate, buffers or equivalent practices, to control runoff of pollutants to surface water. Such practices shall include, but are not limited to:

(A) Solid manure shall be incorporated as soon as possible after application, unless the application site has perennial vegetation or is no-till cropped, or except where the operator adequately demonstrates that surface water quality will be protected where manure is not so incorporated.

(B) Where wastewater is applied to a land application site via furrow- or flood-irrigation, it shall be applied in a manner that prevents any wastewater runoff into surface water.

(C) There shall be no discharge to surface water from land application activities when the ground is frozen or saturated.

(D) Manure or wastewater shall not be land-applied within 150 feet of domestic water supply wells, and within 300 feet of community domestic water supply wells.

(ii) Sampling and Analysis - Manure, wastewater, and soil shall be sampled and analyzed with the following frequency. The results of the analyses shall be used in determining application rates for manure and wastewater.

(A) Manure and wastewater shall be sampled and analyzed a minimum of once annually for nitrogen and phosphorus content.

(B) The soil of land application sites shall be sampled and analyzed a minimum of once annually for available nutrients, including nitrate-nitrogen.

(C) The top one foot of soil of land application sites shall be sampled and analyzed for available phosphorus a minimum of once every five years, or as specified in section 81.6(2)(b)(v), below.

(iii) Protocols established by the operator for land applying manure or wastewater in accordance with site specific nutrient management practices that ensure appropriate utilization of the nutrients in the manure or wastewater. Such protocols shall include, but are not limited to:

(A) No application of manure or wastewater shall be made to a land application site at a rate that will exceed the capacity of the soil and the planned crops to assimilate plant available nitrogen within 12 months of the manure or wastewater being applied.

(B) Manure and wastewater shall be applied as uniformly as possible with properly calibrated equipment.

(C) Application rates of manure and wastewater shall be calculated using one of the following methods: the most current published fertilizer suggestions of Cooperative Extension in Colorado or adjacent states; the most current nutrient management planning guidelines for Colorado as published by the USDA, NRCS; or an alternative method approved by the Division.

(b) Nutrient Transport Minimization - Application rates for manure and wastewater applied to a land application site must minimize phosphorus and nitrogen transport from the sites to surface water and shall be in accordance with the following standards:

(i) Assessments shall be made for each land application site of the potential for phosphorus and nitrogen transport from the site to surface water and that address the form, source, amount, timing, and method of application of nitrogen and phosphorus to achieve realistic yield goals, while minimizing nitrogen and phosphorus movement to surface water.

(A) Phosphorus transport risk assessments shall be made using the most current USDA, NRCS Colorado Phosphorus Index Risk Assessment tool or other Division-approved method. The approved risk assessment tool

shall provide for off-site transport risk scores of either 'low', 'medium', 'high', or 'very high'.

(B) An initial assessment of the potential for phosphorus and nitrogen transport risk to surface water shall be made prior to manure or wastewater being applied to an application site after the operator's FMP is implemented.

(ii) Where the assessed risk of off-site phosphorus transport for a land application site is rated as 'high', phosphorus-based manure and wastewater application rates may be applied at crop phosphorus removal rates only if a phosphorus draw-down strategy is implemented for the crop rotation (i.e. rotational phosphorus application rate is less than the rotational crop removal).

(iii) No application of manure or wastewater shall be made to a land application site where the assessed risk of off-site phosphorus transport is rated as 'very high' until the risk of phosphorus movement off-site has been decreased to a phosphorus transport risk assessment rating of 'high' or less.

(iv) No application of manure or wastewater shall be made to a land application site where the risk of off-site nitrogen transport to surface water is not minimized.

(v) After an initial assessment is made of the potential for phosphorus and/or nitrogen transport from a land application site to surface water, additional assessments shall be made at the following frequency, whichever is sooner:

(A) Of both phosphorus and nitrogen transport risk, every five years; or,

(B) Where a crop management change has occurred, assess phosphorus transport risk within one year after such change would reasonably result in an increase in the phosphorus transport risk assessment score, and assess nitrogen transport risk within one year after such a change would reasonably result in the nitrogen transport to surface water not being minimized; or,

(C) Where a phosphorus transport risk assessment score was 'very high', assess phosphorus transport risk within six months of intending to apply manure or wastewater, except as provided in section 81.6(2)(b)(iv), above.

(D) Where a nitrogen transport risk assessment reveals that nitrogen transport to surface water is not minimized, assess nitrogen transport risk within six months of intending to apply manure or wastewater.

(vi) Where a multi-year phosphorus application was made to a land application site, no additional manure or wastewater shall be applied to the same site in subsequent years until the applied phosphorus has been removed from the site via harvest and crop removal.

(c) Inspect Land Application Equipment - Periodically inspect for leaks from equipment used for land application of manure or wastewater. At minimum, such inspection shall be made annually and within the six month period prior to the first application of manure or wastewater, and at least once daily when wastewater is being applied.

(d) Setback Requirements – Unless the operator exercises one of the alternatives provided below, manure and wastewater shall not be applied closer than 100 feet to any down-

gradient surface waters, open tile line intake structures, sinkholes, agricultural well heads, or other conduits to surface water.

(i) As a setback alternative, the operator may substitute the 100-foot setback with a 35-foot wide vegetated buffer where applications of manure or wastewater are prohibited.

(ii) The Division may approve an alternative setback or buffer based on a demonstration by the operator that a required setback or buffer is not necessary because implementation of alternative conservation practices or land application site conditions will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot setback.

(e) Mortalities – Mortalities shall remain on the production area until disposal and shall be managed to ensure that they are not disposed of in a wastewater storage system that is not specifically designed to treat animal mortalities.

(f) Prevent direct contact of confined animals with surface water.

(g) Ensure that chemicals and other contaminants handled on-site are not disposed of in any manure or wastewater storage system unless specifically designed to treat such chemicals and other contaminants.

(3) Ground water protection elements – Production Area. The operator of a non-permitted ~~Large~~ CAFO shall include in the FMP the following information by no later than February 27, 2009 or upon being defined as a ~~large~~ CAFO. The FMP shall be updated as necessary to meet the requirements of the sections of this regulation cited below.

(a) The impoundment liner records and certifications specified in sections 81.7(2)(b) and (c).

(b) The current approved Standard Operating Procedure (SOP) specified in section 81.7(3)(a), and manure/sludge removal certifications specified in section 81.7(3)(d).

(c) Information demonstrating that the facility is in compliance with the depth marker, conveyance structure, and setback requirements specified in sections 81.7(4),(5) and (6).

(4) Recordkeeping – The operator shall create, maintain at the facility for five years from the date they are created, and make available to the Division or its designee, upon request, the following records:

(a) Records identified by the operator that will be maintained to document the implementation and management of the surface water protection elements described in sections 81.6(2)(a) through (g)~~(i) through (iii)~~.

(b) Weekly records of the depth of the manure and wastewater as indicated by the depth markers in the impoundments required to be inspected by section 81.6(1)(b)(i), or as indicated by an alternative method approved by the Division.

(c) A copy of the current FMP shall be compiled and maintained in one discrete place at the facility, such as an office or filing cabinet.

81.7 GROUND WATER PROTECTION REQUIREMENTS - CONCENTRATED ANIMAL FEEDING OPERATIONS (PERMITTED AND NON-PERMITTED)

(1) Tanks at concentrated animal feeding operations shall be operated and maintained so as not to discharge wastewater to ground water.

(2) Impoundment liners

(a) An impoundment at a concentrated animal feeding operation shall be constructed and maintained to comply with one of the following standards, as applicable:

(i) The seepage rate from an impoundment shall not exceed 1×10^{-6} cm/sec; or

(ii) Where approved by the Division for an impoundment with an earthen liner that collects only open-lot runoff, the seepage rate from the impoundment shall not exceed 7.35×10^{-6} cm/sec. The operator of the impoundment shall submit to the Division a request that the impoundment be approved to meet this seepage standard. Such a request shall include, but not be limited to, information documenting that only open-lot wastewater will be diverted to the impoundment, that the impoundment is not designed as an evaporation impoundment, and that the ten foot soil depth zone immediately beneath the impoundment has a cation exchange capacity of at least 15 meq/100 g of soil. Demonstration of compliance with the cation exchange capacity criteria requires the following:

(A) At least seven soil samples shall be acquired from below the entire surface area of the impoundment and analyzed for cation exchange capacity.

(B) The soil samples shall be reasonably equidistant from each other, with five locations being within ten feet of, and downslope of, the two-foot freeboard elevation of the impoundment, and two locations from the middle of the impoundment.

(C) The operator shall have available a map of the impoundment and soil sampling locations.

(D) Where soil samples were taken below existing impoundments, the operator shall have available documentation from a professional engineer registered in the State of Colorado of how the core locations were sealed to meet a 1×10^{-6} cm/sec maximum seepage rate.

(b) CAFO operators shall have available documentation, including the supporting information required by section 81.7(2)(b)(i), prepared by a professional engineer registered in Colorado certifying that the provisions of section 81.7(2) have been met, and stating what constitutes each constructed liner (e.g., synthetic, clay).

The liner certification and, where applicable (i.e., for impoundments constructed after February 27, 2009), the seepage rate calculations using Darcy's Law shall be available prior to wastewater entering the impoundment.

(i) Copies of the liner certification and supporting information shall be made available to the Division or its designee, upon request.

For a newly constructed impoundment, submit the documents to the Division by no later than 30 days after construction of the impoundment is complete.

(c) A CAFO operator shall visually inspect the exposed liner of an impoundment weekly to identify physical changes or deficiencies that may affect the integrity of the liner. Such deficiencies and physical changes shall be corrected 30 days of having been identified.

(i) The operator shall record the date of the inspection, deficiencies identified, corrective actions taken, and dates that corrective action was completed.

(ii) Deficiencies not corrected within 30 days shall be accompanied by an explanation of the factors preventing completion of corrective actions within this time period.

(iii) The records shall be maintained on-site for five years from the date of creation and shall be made available to the Division upon request.

(3) Removal of manure or wastewater from an impoundment shall be accomplished in a manner that does not damage the integrity of the liner. The operator shall submit to the Division for approval a Standard Operating Procedure (SOP) that demonstrates how manure, including sludge, will be removed such that the liner integrity of impoundments is not damaged. The SOP also shall indicate the expected frequency with which manure will be removed from impoundments.

(a) The approved SOP must be available on-site and be submitted to the Division upon request.

(b) The operator shall follow the approved SOP whenever manure, including sludge, is removed. Where the SOP was not followed, the Division may require that the operator make the liner available for inspection. Where the Division has just cause as a result of the inspection, the Division may require re-certification of the liner by a professional engineer registered in Colorado.

(c) A CAFO shall submit the SOP no later than 120 days after animals are placed on the production area.

(i) The operator shall submit a revised SOP for approval within 30 days of a change having been made to the impoundment(s) at the facility that requires a revision of the SOP, such as a new impoundment or different liner having been constructed.

(d) The operator shall certify after each manure, or sludge removal event that the manure or sludge was removed in accordance with the approved SOP.

(i) The certifications must be available on-site and be submitted to the Division upon request.

(ii) For a concrete-lined impoundment, where a certification for each removal event is not completed, at least once every five years the operator shall:

(A) Drain and clean the impoundment. The operator shall use best professional judgment to determine whether the liner integrity is capable of having a maximum seepage rate of 1×10^{-6} cm/sec.

(B) Where the operator determines that the impoundment remains capable of having a maximum seepage rate of 1×10^{-6} cm/sec, the operator shall document the determination within five days of the liner inspection. The documentation shall include photographs supporting the determination.

(C) Where the operator determines the liner integrity is damaged such that the impoundment is no longer capable of having a maximum seepage rate of 1×10^{-6} cm/sec, the operator shall:

(I) Repair the impoundment within 30 days of the liner inspection so that the impoundment is capable of having a maximum seepage rate of 1×10^{-6} cm/sec.

(II) Within 14 days of repairing the impoundment, submit evidence of the properly completed repair to the Division. The evidence shall consist either of photographs with accompanying written documentation or of other evidence approved by the Division.

(e) Where the SOP is not followed, the operator shall provide notice to the Division within 30 days of the date of manure removal.

(4) Any depth marker in an impoundment shall be installed in a manner that maintains the integrity of the liner and maintains the required seepage rate standard.

(5) Wastewater Conveyance Structures - Conveyance structures shall be designed and maintained to convey but not store any manure or wastewater.

(a) Conveyance structures that carry process-generated wastewater continuously (48 hours or less between conveyance events) shall be constructed and maintained to have a maximum seepage rate of 1×10^{-6} cm/sec.

(b) Where upon inspection the Division has just cause to determine that the required liner is not in place, the Division may require that the operator submit to the Division a certification that the conveyance structure meets the requirements of section 81.7(5)(a). The certification shall be made by a professional engineer registered in the State of Colorado.

(6) Setbacks for New and Expanded Impoundments – A new impoundment constructed after June 30, 2008, or an existing impoundment that is expanded by 50 percent or more of existing storage capacity after June 30, 2008, shall not be located:

(a) Except as provided below, where the seasonally high ground water level is located within four feet of the bottom of the impoundment liner; and

(i) Where the seasonally high ground water level is located within four feet of the bottom of the impoundment liner, the impoundment shall be constructed and maintained in accordance with the design by a professional engineer registered in the state of Colorado that accounts for hydrostatic pressure adversely affecting the integrity of the impoundment's liner.

(b) Within 150 feet of a private domestic water supply well or within 300 feet of a community domestic water supply well.

(7) Ground Water Monitoring - Where an impoundment is not in compliance with section 81.7(2), or where the Division determines that an impoundment liner is not being properly maintained, the Division may require the operator to conduct site-specific ground water quality monitoring of, but not limited to, total nitrogen, ammonia-nitrogen, nitrate-nitrogen, and fecal coliform. In making a determination of whether ground water monitoring is required, the Division shall consider all pertinent factors, including but not limited to: whether the impoundment poses a significant potential risk to beneficial uses of ground water, whether there is suspected contamination of ground water attributable to the facility, whether early detection of ground water contamination is essential to protect valuable drinking water sources, and whether there has been a significant failure on the part of the operator to comply with sections 81.7(2), (3), (4), (6), or (7).

(8) Ground Water Remediation - When the Division determines that non-compliance with sections 81.7(2), (3), (4), (6), or (7) has caused, or contributed to, the exceedance of established ground water quality standards, the operator shall:

(a) Submit, in consultation with the Division, an approvable investigation plan within 60 days of being notified by the Division of the exceedance, unless an extension of time is granted by the Division based on good faith efforts made by the operator.

(i) The investigation plan must indicate how the nature and extent of the contamination will be delineated and shall include the following, at minimum:

(A) A plan to determine the full vertical and horizontal extent of ground water contamination.

(B) All potential human and environmental receptors, including: 1) all surface water features including springs, streams, and lakes that could be impacted; and 2) all municipal, agricultural, and domestic ground water users.

(C) A plan to obtain other site-specific hydrogeologic data necessary to fully determine the nature and extent of the contamination. These shall include, as appropriate, but not be limited to, the hydraulic conductivity of all hydrogeologic units, associated porosity values, ground water flow directions, regional and local hydraulic gradients, and pumping rates associated with all wells. The Division may require that the operator install additional monitoring wells for the purpose of fully determining the nature and extent of the contamination.

(D) A reasonable timeline for completing the investigation.

(ii) The operator shall implement the investigation plan within 30 days of it being approved by the Division.

(b) The operator shall submit the following information by no later than 60 days after completion of the approved investigation plan, unless an extension of time is granted by the Division based on good faith efforts made by the operator:

(i) A summary report of the findings of the investigation conducted pursuant to section 81.7(8)(a).

(ii) A comparison of all appropriate and applicable remediation alternatives, including innovative technologies, the associated performance and costs of each alternative, the estimated timelines to achieve the required remediation goals and the monitoring that will be done until the remediation goal(s) is reached. The Division shall review remediation alternatives based on technological, economic and environmental risk factors. In determining economic reasonableness, the Division shall take into account such factors as costs of the various alternatives, the potential impact of the alternatives on a project's profitability or competitive position and any long-term energy impacts. In determining environmental risk factors the Division will include potential exposures of sensitive human and environmental receptors. In cases where sensitive human and environmental impacts could occur, the Division may require interim, or emergency, remedial activities.

(c) The operator shall submit an approvable remediation plan by no later than 60 days of being notified of the Division's preferred remediation alternative, unless an extension of time is granted by the Division based on good faith efforts made by the operator. The remediation plan shall contain designs and plans for implementation of the preferred alternative.

(i) The operator shall implement the remediation plan within 30 days of it being approved by the Division.

(9) Impoundment Closure – The operator of a facility shall remove manure and wastewater from a closed impoundment, to the fullest extent practicable within 60 days of the impoundment being closed, unless an alternative timeline is approved by the Division. Within 120 days of an impoundment being closed, an impoundment shall be backfilled with soil that is graded to blend with surface topography and prevent ponding, unless an alternative procedure and timeline is approved by the Division.

81.8 ANIMAL FEEDING OPERATIONS - BEST MANAGEMENT PRACTICES

The following Best Management Practices (BMPs) shall be utilized by animal feeding operations, as appropriate, based upon existing physical conditions and site constraints. Best management practices means, for purposes of this regulation, activities, procedures, or practices necessary for the reduction of impacts from animal feeding operations on surface or ground water, as described in this section.

The following practices, designed to decrease runoff volume from animal feeding operations, are BMPs within the meaning of this regulation:

(1) Divert runoff from uncontaminated areas away from animal confinement areas, and manure and wastewater control facilities to the extent practicable through:

(a) Construction of ditches, terraces or other waterways

(b) Installation of gutters, downspouts and buried conduits to divert roof drainage;

(c) Construction of roofed areas over animal confinement areas everywhere it is practicable.

(2) Decrease open lot surface area, where practicable by:

(a) Reducing lot size;

(b) Improving lot surfacing to support increased animal density;

(c) Providing roofed area to the maximum extent practicable; and

(d) Eliminating animal confinement areas, and manure and wastewater control facilities in areas that slope in directions such that wastewater/rainfall cannot be collected.

(3) Decrease water volume by:

(a) Repairing or adjusting waterers and water systems to minimize water wastage.

(b) Using lowest practical amounts of water for manure and wastewater flushing.

(c) Recycling water used to flush manure from paved surfaces or housed confinement areas, if practical.

(4) Decrease wastewater discharges to surface water by:

(a) Collecting and allowing process-generated wastewater to evaporate~~, or by collecting and evenly applying wastewater to land application sites at agronomic rates.~~

(i) Additionally, For Medium AFOs that do not apply wastewater to land application sites (i.e. evaporative impoundments only), the impoundment(s) must be capable of storing the volume of all process-generated wastewater for 180 days, at a minimum.

(b) Collecting and evenly applying wastewater to land application sites at agronomic rates.

~~In addition, Medium AFOs must design, construct and maintain an impoundment(s) that is capable of storing wastewater as described in 81.8(4)(b)(i) and (ii) below:~~

~~(i) For Medium AFOs that do not apply wastewater to land application sites (i.e. evaporative impoundments only), the impoundment(s) must be capable of storing the volume of all process-generated wastewater for 180 days, at a minimum.~~

(i~~i~~) Additionally, ~~F~~for Medium AFOs that apply wastewater to land application sites, the impoundment(s) must be capable of storing the volume of all open-lot runoff and process-generated wastewater for 120 days, at a minimum.

(ii~~i~~) For Medium AFOs that land apply wastewater, the operator shall keep records demonstrating that wastewater has been applied to each land application site at an agronomic rate.

(A) Such records shall be maintained on-site for five years from the date they are created.

(B) Such records shall be made available to the Division or its designee, upon request.

(c) Treating open-lot wastewater through use of one of the following:

(i) A wastewater treatment strip; or,

(A) Inflow to a wastewater treatment strip shall be pretreated by a solid/liquid waste separation facility, as appropriate based upon site constraints and to have the wastewater treatment strip adequately assimilate pollutants.

(ii) A method approved by the Division.

(d) Preventing animals from having direct contact with surface water. A stock watering point may be used where animals have access to no other source of drinking water. A stock watering point shall be cleaned frequently of manure and have wastewater diverted at the watering point entry.

(e) Locating wastewater retention structures or collection sites away from areas where stormwater run-off or seasonally high stream flow may carry the waste into waters of the state.

(f) Not locating wastewater retention structures located within a mapped 100 year flood plain as designated by the Colorado Water Conservation Board (CWCB) unless proper flood proofing measures (structures) are designed and constructed.

(g) Managing animal mortalities in a manner that prevents a discharge of pollutants to surface water.

(5) Minimize manure transport to surface water by:

(a) Locating manure stockpiles away from surface water, and above the 100 year flood plain as designated and approved by CWCB, unless adequate flood proofing structures are provided, and bermed to minimize runoff.

(b) Locating manure stockpiles away from areas where stormwater run-off or normally high stream flow will carry the waste manure into the waters of the state, unless the area is bermed to minimize runoff.

(c) Providing adequate manure storage capacity based upon manure and wastewater production.

(d) Removing settleable solids by using solids-settling basins, terraces, diversions, or other solid removal methods approved by the Division. Construction of solids-settling facilities shall not be required where the Division determines existing site conditions provide adequate settleable solids removal. Sufficient capacity shall be provided in the solids-settling facilities to store settled solids between periods of manure and wastewater disposal.

(e) Applying manure to land application sites at an agronomic rate.

(i) For Medium AFOs that land apply manure, the operator shall keep records demonstrating that manure has been applied to each land application site at an agronomic rate.

(A) Such records shall be maintained on-site for five years from the date they are created.

(B) Such records shall be made available to the Division or its designee, upon request.

(f) Avoid applications on saturated soils and lands subject to excessive erosion.

(g) Operators of animal feeding operations shall use edge-of-field, grassed strips, filter fences or straw bales to separate eroded soil and manure particles from the field runoff.

(h) Collect manure frequently.

(6) Practices to Protect Groundwater.

(a) Operators of animal feeding operations shall locate manure and wastewater management facilities hydrologically downgradient and a minimum horizontal distance of 150 feet from all water supply wells.

(b) When applying manure and wastewater to land, operators of animal feeding operations shall utilize a buffer area around water wells sufficient to prevent the possibility of waste transport to groundwater via the well or well casing.

(c) An impoundment at a Medium AFO shall have a liner that is constructed and maintained such that the seepage rate from the impoundment does not exceed 1×10^{-6} cm/sec.

(i) The operator of such a facility shall have documentation prepared by a professional engineer registered in Colorado certifying that each impoundment has a liner that does not allow a seepage rate in excess of 1×10^{-6} cm/sec. Such documentation shall be available prior to wastewater entering the impoundment.

(ii) The operator shall make a copy of such documentation available to the Division or its designee, upon request.

(d) Where the Division determines that an animal feeding operation, other than a Medium AFO, could adversely affect ground water quality, the operator of such an AFO shall install a liner in all impoundments such that the seepage rate from each impoundment does not exceed 1 x 10^{-6} cm/sec.

(i) The Division shall determine that such an AFO could adversely affect ground water quality by demonstrating that it is in a location where:

(A) Significant ground water recharge occurs as determined using the United States Department of Agriculture, Natural Resources Conservation Service's current "Agricultural Waste Management Field Handbook, Part 651, Chapter 7, Geologic and Ground Water Considerations"; or,

(B) Contamination from the AFO could cause ground water to exceed the standards adopted by the Colorado Water Quality Control Commission; or,

(C) A water source susceptibility analysis results in the AFO having a "medium-high" or "high" potential for contaminating existing or reasonably likely future public drinking water system withdrawals. Such an analysis shall examine the physical setting of ground water and the contaminant threat that the AFO poses to the ground water source. Factors that shall be considered in examining the physical setting include aquifer sensitivity at the water source intake location, depth to the water source, structural integrity of the water system at the withdrawal point, flow of the water source and first draw of the water source. Factors that shall be considered in examining the contaminant threat are migration potential, contaminant hazard, potential volume and likelihood of contaminant release.

(ii) A liner, where required, shall be installed according to a work plan approved by the Division.

(A) The operator shall, in consultation with the Division, develop and submit an approvable work plan that includes a timeline for installing each liner within 60 days of receiving the written request from the Division.

(B) The operator shall implement the plan within 30 days of it being approved by the Division.

(C) The operator shall submit to the Division, within 30 days of each liner having been properly constructed, documentation prepared by a professional engineer registered in the State of Colorado certifying that the seepage rate from each impoundment does not exceed 1 x 10^{-6} cm/sec.

81.9 SEVERABILITY

The provisions of this regulation are severable, and if any provisions or the application of the provisions to any circumstances is held invalid, the application of such provision to other circumstances, and the remainder of this regulation, shall not be affected thereby.

81.10 – 81.14 RESERVED

. . . .

81.26 STATEMENT OF BASIS, SPECIFIC AUTHORITY AND PURPOSE: MAY 8, 2017 RULEMAKING, EFFECTIVE DATE OF JUNE 30, 2017

The provisions of sections 25-8-202, 25-8-205 and 25-8-401, C.R.S., provide the specific statutory authority for adoption of the attached regulatory amendments. The ~~Commission~~ commission also adopted, in compliance with section 24-4-103(4) C.R.S., the following statement of basis and purpose.

BASIS AND PURPOSE

A. BACKGROUND

This hearing was held to consider changes as recommended during the triennial informational hearing for this regulation on October 11, 2016, and during subsequent discussions with stakeholders and parties to the hearing process.

As a result of this rulemaking proceeding, the commission adopted the following amendments to this regulation.

B. DISCUSSION OF AMENDMENTS

Typographical and Formatting Errors: The commission corrected typographical and formatting errors found throughout the regulation. These corrections have no effect on the substantive meaning of the regulation.

Removal of the Term "Large" from Sections 81.2, 81.5, and 81.6: Upon review of the regulation, the commission concluded that use of the term "Large" when describing CAFOs in these sections hindered the division's ability to regulate facilities not defined as Large CAFOs that are required to meet the regulatory requirements of the sections due to potential adverse impacts associated with a discharge, as described in section 81.15. Therefore, the commission found it appropriate to remove the term "Large" from sections of the regulation that are applicable to any facility that is either defined or designated as a CAFO regardless of the number of animals confined.

Definitions [81.3]:

The definition for "Land Application Site" was revised to add clarity and consistency with the corresponding definition found in Regulation No. 61.

Requirements – Non-Permitted CAFOs [81.5]

The Colorado Revised Statute citation in subsection 81.5(4), which requires non-permitted CAFOs to pay an annual registration fee, was updated by the commission to reflect formatting changes made by the legislature. In addition, language was added in 81.5(4)(c) which enables the division to suspend a CAFOs registration and initiate enforcement proceedings against a CAFO that fails to pay the required annual fee. Subsequent subsections of 81.5(4) were renumbered as a result the added language.

Facility Management Plan: Non-Permitted CAFOs [81.6]

Subsection 81.6(4)(a) was revised by the commission to clarify the recordkeeping requirements for a non-permitted CAFO to demonstrate that the surface water protection elements of the Facility Management Plan have been implemented and are being properly managed.

Animal Feeding Operations – Best Management Practices [81.8]

Subsections 81.8(4)(a) and (b) were reformatted by the commission to clarify the impoundment sizing requirements for Medium AFOs depending on ~~if~~whether they land apply wastewater or collect and allow it to evaporate. No substantive changes were made to the existing language.

Notice of Proposed Rulemaking

Tracking number

2017-00020

Department

1000 - Department of Public Health and Environment

Agency

1002 - Water Quality Control Commission (1002 Series)

CCR number

5 CCR 1002-86

Rule title

REGULATION NO. 86 - GRAYWATER CONTROL REGULATION

Rulemaking Hearing

Date

05/08/2017

Time

10:30 AM

Location

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

Subjects and issues involved

Addition of a graywater research variance to Regulation #86 that would allow human subject exposure, added uses and environmental applications. Regulatory language to include provisions that the research be conducted according to rigorous academic standards by an accredited university and involving a high bar for human health and environmental protection through a multi-barrier approach.

Statutory authority

sections 25-8-202(1)(c) and 25-8-205(1)(g), C.R.S.

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COLORADO
Water Quality
Control Commission
Department of Public Health & Environment

NOTICE OF PUBLIC RULEMAKING HEARING
BEFORE THE
COLORADO WATER QUALITY CONTROL COMMISSION

SUBJECT:

For consideration of the adoption of revisions to the Procedural Rules, Regulation #21 (5 CCR 1002-21) and the Graywater Control Regulation, Regulation #86 (5 CCR 1002-86). Revisions to Regulation #21 and Regulation #86 proposed by the Water Quality Control Division, along with a proposed Statements of Basis, Specific Statutory Authority and Purpose, are attached to this notice as Exhibits 1 and 2 respectively.

In these attachments, proposed new language is shown with double-underlining and proposed deletions are shown with ~~strikeouts~~. Any alternative proposals related to the subject of this hearing will also be considered.

SCHEDULE OF IMPORTANT DATES

Party status requests due	02/22/2017 5 pm	Additional information below.
Proponent's prehearing statement due	03/01/2017 5 pm	Additional information below.
Responsive prehearing statement due	03/29/2017 5 pm	Additional information below.
Rebuttal statements due	04/18/2017 5 pm	Additional information below.
Last date for submittal of motions	04/21/2017 5 pm	Additional information below.
Notify commission office if participating in prehearing conference by phone	03/24/2017 noon	Send email to cdphe.wqcc@state.co.us with participant(s) name(s).
Prehearing conference (mandatory for parties)	04/25/2017 2:00 pm	Florence Sabin Conference Room Department of Public Health and Environment 4300 Cherry Creek Drive South Denver, CO 80246
Rulemaking Hearing	05/8/2017 10:30 am	Florence Sabin Conference Room Department of Public Health and Environment 4300 Cherry Creek Drive South Denver, CO 80246

HEARING SUBMITTALS:

For this hearing, the commission will receive all submittals electronically. Submittals must be provided as PDF documents, except for raw data exhibits which may be provided as Excel workbooks. Submittals may be emailed to cdphe.wqcc@state.co.us, provided via an FTP site, CD or flash drive, or otherwise conveyed to the commission office so as to be received no later than the specified date.

PARTY STATUS:

Party status requests must be in writing and must provide:

- the organization's name,
- one contact person,
- a mailing address,
- a phone number, and
- email addresses of all individuals associated with the party who wish to be notified when new submittals are available on the commission's website for review.

In accordance with section 25-8-104(2)(d), C.R.S., any person who believes that the actions proposed in this notice have the potential to cause material injury to his or her water rights is requested to so indicate, along with an explanation of the alleged harm, in their party status request.

PREHEARING AND REBUTTAL STATEMENTS:

Each party must submit a prehearing statement: parties that have proposed revisions attached as exhibits to the notice must submit a proponent's prehearing statement; all other parties must submit a responsive prehearing statement. Proponents may also submit responsive prehearing statements when there are multiple proposals attached to the notice. Any party may submit a rebuttal statement. Each prehearing and rebuttal statement must be provided as a separate PDF document from any accompanying written testimony or exhibits.

Following the rebuttal statement due date, no other written materials will be accepted from parties except for good cause shown.

Oral testimony at the hearing should primarily summarize written material previously submitted. The hearing will emphasize commission questioning of parties and other interested persons about their written prehearing submittals. Introduction of written material at the hearing by those with party status will not be permitted unless authorized by the commission.

PREHEARING CONFERENCE:

Attendance at the prehearing conference is mandatory for all persons requesting party status. Parties needing to participate by telephone can call 1-857-216-6700 and enter the conference code 543213.

Following the cut-off date for motions, no motions will be accepted, except for good cause shown.

PUBLIC PARTICIPATION ENCOURAGED:

The commission encourages input from non-parties, either orally at the hearing or in writing prior to the hearing. Written submissions should be emailed to cdphe.wqcc@state.co.us by April 26, 2017.

SPECIFIC STATUTORY AUTHORITY:

The provisions of sections 25-8-202(1)(m) and (2), and 25-10-101 through 113, C.R.S., provide the specific statutory authority for consideration of the regulatory amendments proposed by this notice. Should the commission adopt the regulatory language as proposed in this notice or alternative amendments, it will also adopt, in compliance with section 24-4-103(4) C.R.S., an appropriate Statement of Basis, Specific Statutory Authority, and Purpose.

Dated this 10th day of January 2017 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION

Digitally signed by Trisha Oeth
DN: cn=Trisha Oeth, o, ou=Water Quality Control Commission, email=trisha.oeth@state.co.us, c=US
Date: 2017.01.10 09:30:22 -07'00'

Trisha Oeth, Administrator

EXHIBIT 1
WATER QUALITY CONTROL DIVISION

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Water Quality Control Commission

REGULATION NO. 21 - PROCEDURAL RULES

5 CCR 1002-21

. . . .

21.4 Adjudicatory Procedures

A. Applicability

. . . .

2) The Commission shall provide the opportunity for a formal public adjudicatory hearing in the following cases:

. . . .

(I) Appeals of final decisions by the Water Quality Control Division pursuant to Regulation 86, 5 CCR 1002-86 for graywater research variance projects.

. . . .

21.42 Statement of Basis, Specific Statutory Authority and Purpose (May 8, 2017 Rulemaking, Effective July 30, 2017)

The provisions of sections 25-8-202 and 401, C.R.S. provide the specific statutory authority for the amendments to this regulation adopted by the Water Quality Control Commission (commission). The commission has also adopted, in compliance with section 24-4-103(4) C.R.S., the following statement of basis and purpose.

Basis and Purpose

The commission adopted a new subsection 21.4(A)(2)(I) to explicitly reflect that appeals of graywater research variance determinations are to be heard by the commission. Such appeals may be filed with the commission after a determination is made by the Water Quality Control Division. C.R.S. § 25-8-202(1)(k) states: "The Commission shall…act as an appellate body to review all determinations by the division except those determinations dealing with surface water discharge permits or portions thereof." If an appeal is timely filed, it shall be heard in accordance with section 24-4-105, C.R.S. of the Administrative Procedures Act and section 21.4 of this regulation, except that notice of any adjudicatory hearing shall also be provided to the city, city and county, or county that has authorized the research through their local graywater control program.

EXHIBIT 2
WATER QUALITY CONTROL DIVISION

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Water Quality Control Commission

REGULATION NO. 86 - GRAYWATER CONTROL REGULATION

5 CCR 1002-86

. . . .

86.16 Research Variance

A. Upon application by a Colorado "private college or university" or "state college or university", as defined in §23-2-102(11) and (15), C.R.S., the division may grant a variance from the following sections of Regulation 86 for each graywater treatment works involved in a research project:

1. local graywater control program requirements in 86.9(B)(2)(a) and 86.9(B)(2)(e);

2. uses of graywater in 86.10;

3. design criteria in 86.12(B) and 86.12 (C);

4. operations and maintenance manual requirements in 86.13; and

5. control measure requirements in 86.14(A), 86.14 (B)(3), 86.14(B)(6), 86.14 (C)(1) , 86.14 (D).

B. A research variance may only be granted if:

1. The division determines that the graywater treatment works will protect public health and the environment; and

2. All remaining sections of Regulation 86 from which a variance is not granted are met.

C. A private or state university that is granted a research variance shall only conduct the graywater research as permitted by the variance, the remaining applicable sections of Regulation 86, the statutory requirements of §25-8-205(1)(g), C.R.S., and any other applicable statutes pertaining to graywater. A new use of graywater beyond the uses permitted in section 86.10 and approved by variance must be further authorized by a city, city and county, or county pursuant to §25-8-205(1)(g), C.R.S.

D. Research variances reviews shall be conducted by the division in accordance with policies established by the division and commission. The application for a variance must include:

1. A description of the technical or framework goals to be accomplished through the research;

2. A description of the method by which the proposed research project will be periodically and representatively monitored to ensure protection of public health and the environment and the proper functioning of the graywater treatment works involved in the proposed research project;

3. A description of how individuals exposed to graywater during the research will be informed and made aware of health risks and the actions to be followed if health and/or environmental risks are identified during the investigation;

4. A description of the graywater treatment works and supporting technical documentation including design parameters to ensure safety to public health and the environment through a multi-barrier approach;

5. A description of how the graywater treatment works will operate, including control measures to ensure safety to public health and the environment; and

6. Any other information needed/requested by the division to determine if the variance is justified.

E. The division will act expeditiously on all complete applications that have been submitted with a goal to complete the final review in a total of sixty days from the date of receipt of the application. The burden is on the applicant to supply the information necessary for the division to make an adequate review.

F. An approved research variance shall be limited to a period of time to be justified by the applicant and approved by the division, but not to exceed five years. To permanently utilize the graywater treatment works at the conclusion of the research variance, the legally responsible party must have the graywater treatment works authorized under a local graywater control program and in compliance with Regulation 86 and all the statutory requirements of 25-8-205(1)(g), C.R.S.

G. The division's decision to approve, conditionally approve, or deny an application for a research variance may be appealed to the commission pursuant to 5 CCR 1002-21.4.

H. The division may withdraw approval of a research variance based on a determination that the periodic monitoring demonstrates that the research graywater treatment works is not properly functioning or the research is being implemented in a manner that may be harmful to public health or the environment. The division may also withdraw its approval based on a determination that the research graywater treatment works is not in compliance with any of the requirements set forth in the division's approval of the research variance. The division's decision to withdraw approval of a research variance may be appealed to the commission pursuant to 5 CCR 1002-21.4.

86.~~16~~ 17 – 86.20 Reserved

. . . .

86.23 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE; MAY 8, 2017, RULEMAKING, FINAL ACTION JUNE 12, 2017, EFFECTIVE JULY 30, 2017

The provisions of sections 25-8-202(1)(c) and 25-8-205(1)(g), C.R.S., provide the specific statutory authority for the Graywater Control Regulation adopted by the Water Quality Control Commission (commission). The commission has also adopted, in compliance with section 24-4-103(4), C.R.S., the following statement of basis, specific statutory authority, and purpose.

BASIS AND PURPOSE

The commission recognizes that research is routinely regulated and finds that the proposed requirements are reasonable and necessary for the protection of public health and environment. The commission finds that nothing in the current Regulation #86 prevents research involving water quality and treatment technology effectiveness. Graywater treatment works for research can operate and be used to collect water quality data and evaluate treatment technologies either as pretreatment to a graywater treatment system that satisfies the requirements of Regulation #86 or may discharge treated graywater to the sewer. Regulation #86 does not currently allow graywater research systems that involve exposure to human subjects.

The commission supports adding a graywater research category to Regulation #86 that would allow human subject exposure, added uses and environmental applications provided the research is conducted according to rigorous academic standards by an accredited university and involving a high bar for human health and environmental protection through a multi-barrier approach. The support for the variance concept is contingent on any applicable university or college protocols for research involving human exposure to pathogens and/or human test subjects being stringently followed. The commission believes that it is critical that any persons exposed during the research and/or test subjects be aware of the research by being notified in plain language outlining potential health risks and steps to take if they believe they are ill due to the exposure. This public notice should also be available in other languages if the research location is frequented by non-English speakers.

The commission believes that graywater research will benefit from the multi-disciplinary approach that universities can bring to bear on such efforts. Specifically, the commission believes that research involving engineering evaluations of treatment technology effectiveness (which are often more akin to drinking water treatment techniques) for removing various viral, bacterial and protozoan pathogens will enhance understanding of how best to move forward in Colorado with utilizing this resource and deploying adequate safeguards to protect public health and the environment. Similarly, involving epidemiology evaluations into the research will help broaden the understanding of how to manage health risks and consider vulnerable populations as well. The commission directs the division and stakeholders to consider these items as work moves forward on a research variance policy following adoption of the regulation. The commission is directing the division to develop a policy to describe the submittal and review process for a research variance application. The policy should provide expectations on the submittal process, minimum requirements, and any required forms. The commission feels that identifying the policy within the regulation is consistent with other commission regulations and important for transparency. The policy should clarify to submitting parties any requirements and helps expedite the review process.

The statutory language indicates that the commission may promulgate control regulations to describe requirements, prohibitions, and standards for the use of graywater for nondrinking purposes, to encourage the use of graywater, and to protect public health and the environment. The commission has authorized each research variance for a maximum of five years to encourage research, but expects that each research application will minimize the number of persons exposed for the shortest period time necessary to test the research hypothesis. The intent of the research variance is to provide the flexibility to perform research projects that solve current unknowns and will lead to improved statewide implementation through future regulatory rulemaking changes.

The division's granting of a research variance from the graywater control regulations in this Regulation #86 does not remove the applicability of any other statutory requirements that must be met in order to be authorized to use graywater in a specific location. House Bill 13-1044 requires compliance with other local, state and federal requirements including plumbing codes, water rights, etc. and local city, city and county, or county regulatory oversight for graywater use via an ordinance or resolution. The proposed graywater research variance allows for local control by requiring that the local jurisdiction authorize any research graywater treatment works located in their city, city and county or county. Additionally, if a variance allows for another use not provided for in the regulations, the city, city and county, or county will need to amend or create an ordinance or resolution to allow for the use. Similarly, the graywater statute established an opt-in framework for graywater where the state provides the minimum requirements and each local county, city and county, or city has the opportunity to implement a local graywater control program. The commission determined that the division's approval of a research variance should not be used to force graywater research into an area without the local city, city and county, or county opting to create a local graywater program. Each local graywater control program has exclusive enforcement authority and must have the oversight, fee setting requirements, and control responsibilities should the locals opt-in. A local graywater control program must be in place before research project can operate.

The research variance will be limited to: local graywater control program requirements in 86.9(B)(2)(a)and 86.9(B)(2)(e); uses of graywater in 86.10; design criteria in 86.12(B) and 86.12 (C); operations and maintenance manual requirements in 86.13; and control measure requirements in 86.14(A), 86.14 (B)(3), 86.14(B)(6), 86.14 (C)(1) , 86.14 (D). Due to the statutory limitations, the commission could not extend the research variance for new sources. New sources of graywater must be authorized through the routine commission rulemaking processes.

While the statute allows for up to ninety days for the division to review a variance, the commission finds it is appropriate to state a general expectation for the review of research variances and included a goal for the division to complete review of research variances in sixty days considering that the division carries a backlog due to limited resources. Additionally, the commission recognizes that not all applications may be complete upon initial submittal to the Division, and that the sixty day goal does not include time during which the applicant is developing responses to Division comments.

The commission also proposes modifying Regulation #21 which describes the commission's procedural rules. An appeal of the division's research variance decision will follow the existing processes described within Regulation #21. The process allows for testimony and the introduction of expert witnesses by all parties.

The division did not receive funding for the original Regulation #86 development or for this research variance regulation modification. The division has been redirecting personnel from other core work duties for this project. The commission is cognizant of the division's resource constraints with respect to graywater and expects that research variances will be limited in number.

Notice of Proposed Rulemaking

Tracking number

2017-00028

Department

1000 - Department of Public Health and Environment

Agency

1007 - Hazardous Materials and Waste Management Division

CCR number

6 CCR 1007-2 Part 1

Rule title

SOLID WASTE DISPOSAL SITES AND FACILITIES

Rulemaking Hearing

Date

02/21/2017

Time

09:30 AM

Location

Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Bldg. A, Sabin Conference Rm., Denver, CO 80246

Subjects and issues involved

The purpose of this amendment to Section 9.1.2 is to eliminate the partial exemption at Section 9.1.2(B) for waste impoundments that manage and contain coal combustion residuals (CCR).

CCR facilities and waste management units will continue to be regulated under Sections 1,2, 3 and 9 of the state Solid Waste Regulations (6 CCR 1007-2). Existing state-approved Engineering Design and Operations Plans (EDOPs) will remain in effect and are not superseded by the federal CCR rule. The Division will continue to work with facilities to consider proposed modifications to the existing EDOPs to better integrate and avoid possible inconsistencies between provisions in state-approved EDOPs and requirements of the federal CCR rule.

Statutory authority

This amendment to 6 CCR 1007-2, Section 9.1.2(B) is made pursuant to the authority granted to the Solid and Hazardous Waste Commission in Sections 25-15-302(4.5) and 30-20-109, C.R.S.

Contact information

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DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

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

6 CCR 1007-2

PART 1 REGULATIONS PERTAINING TO SOLID WASTE SITES AND FACILITIES

Amendment of Section 9.1.2(B) – Elimination of Partial Exemption for Impoundments Managing Coal Combustion Residuals (CCR)

1) Section 9.1.2 (Exemptions) is amended by deleting paragraph (B) as follows:

Section 9

Waste Impoundments

9.1.2. EXEMPTIONS

(A) **********

(B) **Reserved**~~Impoundments containing only coal combustion residuals (CCR impoundments) potentially subject to the proposed rule of the U.S. Environmental Protection Agency (USEPA), published at 75 Fed. Reg. 35127 (June 21, 2010), are not subject to Sections 9.1.9, 9.2, and 9.3 of this Section 9.~~

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DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Solid and Hazardous Waste Commission

Hazardous Materials and Waste Management Division (HMWMD)

6 CCR 1007-2

STATEMENT OF BASIS AND PURPOSE AND SPECIFIC STATUTORY AUTHORITY FOR

Amendment of Regulations Pertaining to Solid Waste Sites and Facilities (6 CCR 1007-2 Part 1) – Section 9.1.2(B) – Elimination of partial exemption for waste impoundments managing coal combustion residuals (CCR)

Basis and Purpose

This amendment to 6 CCR 1007-2, Section 9.1.2(B) is made pursuant to the authority granted to the Solid and Hazardous Waste Commission in Sections 25-15-302(4.5) and 30-20-109, C.R.S.

The purpose of this amendment to Section 9.1.2 is to eliminate the partial exemption at Section 9.1.2(B) for waste impoundments that manage and contain coal combustion residuals (CCR).

Background

On February 12, 2012, the Solid and Hazardous Waste Commission (the "Commission") adopted new Section 9 (Waste Impoundments) regulations for surface impoundments managing solid waste. The purpose of the 2012 amendments was to update the existing Section 9 regulations that were promulgated in 1984.

The 2012 amendments included a partial exemption at Section 9.1.2(B) for impoundments that manage and contain coal combustion residuals (CCR impoundments) from the requirements of Section 9.1.9 (Timing of Submittal of an Engineering Design and Operation Plan); Section 9.2 (Requirements for Type A Waste Impoundments); and Section 9.3 (Requirements for Type B Waste Impoundments).

At the time of the Commission's adoption of the 2012 amendments, EPA was still evaluating comments on their proposed rule on whether to require that CCR impoundments be managed under national solid waste standards or under hazardous waste standards. Pursuant to Section 9.1.2(B), CCR impoundments were provided an exemption based on an assumption that impoundments potentially subject to the proposed rule of the U.S. Environmental Protection Agency (EPA) published in the Federal Register on June 21, 2010 {75 FR 35127} would be

regulated by the state under a pending CCR-specific regulation.

On April 17, 2015, the EPA published a final rule {80 FR 21302-21501} in the Federal Register to regulate CCR as solid waste under Subtitle D of the Resource Conservation and Recovery Act (RCRA). The April 17, 2015 final rule established nationally applicable minimum criteria for the disposal of CCR in landfills and surface impoundments.

Following issuance of the federal rule, the Hazardous Materials and Waste Management Division (the "Division" or "HMWMD") initiated a stakeholder process for the development of applicable state regulations for the management of CCR. As part of the stakeholder process, the Division issued draft Section 19 regulations on January 4, 2016, and held four stakeholder meetings between January and April 2016 to discuss the proposed regulations.

On June 10, 2016, the Division received a letter from the Colorado Utilities Coalition with extensive comments and proposed changes to the Division's draft Section 19 regulations. The Colorado Utilities Coalition's letter represented all of the power utilities in Colorado that would be affected by the proposed regulations.

After consideration of the comments received during the stakeholder process, the Division decided to suspend its efforts on the rulemaking process for the proposed Section 19 regulations. The stakeholders agreed to this suspension of efforts.

Summary of Regulatory Proposal

This amendment to Section 9.1.2(B) eliminates the partial exemption for waste impoundments that manage CCR. CCR facilities and waste management units will continue to be regulated under Sections 1,2, 3 and 9 of the state Solid Waste Regulations (6 CCR 1007-2). Existing state-approved Engineering Design and Operations Plans (EDOPs) will remain in effect and are not superseded by the federal CCR rule. The Division will continue to work with facilities to consider proposed modifications to the existing EDOPs to better integrate and avoid possible inconsistencies between provisions in state-approved EDOPs and requirements of the federal CCR rule.

Notice of Proposed Rulemaking

Tracking number

2017-00025

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

02/21/2017

Time

09:30 AM

Location

Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Bldg A, Sabin Conference Room, Denver, CO 80246

Subjects and issues involved

This rulemaking proposes two revisions to Part 261 of the Colorado Hazardous Waste Regulations (6 CCR 1007-3):

1) Addition of Lewisite Agent (L) (2-Chlorovinylarsine dichloride (L1), Dichlorovinylchloroarsine (L2), and 2,2,2-Trichloro-trivinylarsine (L3)) to Appendix VIII Hazardous Constituents; and,

2)Addition of Lewisite Agent (L1, L2, L3) to Appendix VII Basis of Listing Hazardous Waste for K901 and K902 hazardous waste listings.

Adding Lewisite to the list of hazardous constituents for the existing K901 and K902 listings will allow for a more robust ability to manage and regulate both the acute toxic Lewisite agent as well as secondary wastes contaminated through contact with the material.

Statutory authority

These amendments to 6 CCR 1007-3, Part 261 are made pursuant to the authority granted to the Hazardous Waste Commission in § 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 Part 261, Appendix VII and Appendix VIII Regarding the Addition of Lewisite to the K901 and K902 Listings.

1) Appendix VII of Part 261 is amended by revising the K901 and K902 listings to read as follows:

Appendix VII -- Basis for Listing Hazardous Waste

EPA hazardous waste No.	Hazardous constituents for which listed
*******	*******
K901	0-isopropyl methylphosphonofluoridate (Sarin, GB), bis(2-chloroethyl)sulfide (Mustard, Mustard Agent, Mustard Gas, H, HD), bis(2-chloroethylthio)ethyl ether (Mustard T), Arsenic, Barium, Cadmium, Chromium, Lead, Mercury, Selenium, and Silver, 1,2 – Dichloroethane, 1,1 – Dichloroethylene, **Lewisite,** Tetrachloroethylene, Trichloroethylene, Vinyl Chloride.
K902	0-isopropyl methylphosphonofluoridate (Sarin, GB), bis(2-chloroethyl)sulfide (Mustard, Mustard Agent, Mustard Gas, H, HD), bis(2-chloroethylthio)ethyl ether (Mustard T), Arsenic, Barium, Cadmium, Chromium, Lead, Mercury, Selenium, and Silver, 1,2 – Dichloroethane, 1,1 – Dichloroethylene, **Lewisite,** Tetrachloroethylene, Trichloroethylene, Vinyl Chloride.
*******	*******

2) Appendix VIII of Part 261 is amended by adding a listing of lewisite to read as follows:

Appendix VIII -- Hazardous Constituents

Common name	Chemical abstracts name	Chemical abstracts No.	Hazardous waste No.
*******	*******	*******	*******
Lead subacetate	Lead, bis(acetato-O)tetrahydroxytri-	1335-32-6	U146
Lewisite 1	**(2-chloroethenyl) arsonous dichloride; Chlorovinylarsine dichloride**	**541-25-3**	**K901 & K902**
Lewisite 2	**2-Chlorovinyldichloroarsine; Bis (2-chlorovinyl) Chloroarsine**	**40334-69-8**	**K901 & K902**
Lewisite 3	**Arsine, tris(2-chloroethenyl); tir-(2-Cholorvinyl) arsine**	**40334-70-1**	**K901 & K902**
Lindane	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1alpha,2alpha,3beta,4alpha,5alpha,6beta)-	58-89-9	U129
*******	********	*******	******

3) Section 8.87 {Statement of Basis and Purpose for the Rulemaking Hearing of February 21, 2017} is added to Part 8 of the Regulations to read as follows:

Statement of Basis and Purpose
Rulemaking Hearing of February 21, 2017

8.87 Basis and Purpose.

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

Introduction

The Colorado Hazardous Waste Regulations (CHWRs), 6 CCR 1007-3, Part 261, Subpart B allow chemicals or other materials that are solid wastes to be added to the hazardous waste listing if the chemical or material can be shown to meet any of the criteria listed in 6 CCR 1007-3, Section 261.11(a). Pursuant to 6 CCR 1007-3, Section 261.11(b), classes or types of solid waste may also be listed as hazardous waste if wastes within the class or type of waste are, typically or frequently hazardous under the definition of hazardous waste found in the Colorado Hazardous Waste Act. That is, a "hazardous waste" means a solid waste which may "cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness or poses a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed." C.R.S. § 25-15-101(6)(a).

The Division has previously requested listing of other chemical agents in the past. The Division submitted a proposal to the Hazardous Waste Commission to list Mustard Agents as acute hazardous (P listed) wastes in June, 1997. The Commission adopted these changes at the rulemaking hearing on August 19, 1997. Additionally, the Division previously requested addition of chemical weapons containing Sarin and Mustard agents and environmental media, debris, and containers contaminated through contact with these agents to the specific source hazardous wastes, K901 and K902 listed hazardous wastes respectively in June, 2001. The hazardous constituents that formed the basis for listing the K901 and K902 hazardous wastes in 6 CCR 1007-3, Part 261, Appendix VII were Sarin and both types of sulfur Mustard agents, HD and HT. The Commission adopted these changes at the rulemaking hearing on June 19, 2001.

Currently, K901 wastes are described as waste chemical weapons using or containing any chemical compound identified in Appendix VII of Part 261 as the basis for the listing. K902 hazardous wastes consist of "Any soil, water, debris or containers contaminated through contact with waste chemical weapons listed as K901. Acute hazardous wastes are subject to more stringent management requirements than wastes that are not acute, including limited waste accumulation volumes.

Until recently, it was believed that Sarin and the Mustard agents wastes were the only chemical agent wastes that existed in Colorado. However, during the last year it was discovered that Lewisite chemical agent wastes may also be buried at the Pueblo Chemical Depot. Currently, the Army is formulating plans to excavate two Solid Waste Management Units (SWMUs 12 and 13)

at the Pueblo Chemical Depot. There are reports indicating that between 1944 and 1946, an unspecified number of Lewisite –containing munitions (possible maximum of 160 M70 bombs and various shells) may have been buried in at least one of these areas onsite.

When Lewisite agent is discarded as defined in 6 CCR 1007-3, Section 261.2(a)(2), the agent becomes a solid waste and meets at least one of the regulatory criteria set forth under 6 CCR 1007-3, Section 261.11(a). Accordingly, if Chemical Weapons, or Environmental Media, Debris, and Containers Contaminated through Contact with Waste Chemical Weapons containing Lewisite are discarded as defined in 6 CCR 1007-3, Section 261.2(a)(2), they pose a substantial present and potential hazard to human health or the environment if they are improperly treated, stored, transported, disposed of, or otherwise managed. For this and other reasons presented herein, Waste Lewisite Chemical Weapons, or Environmental Media, Debris, and Containers Contaminated through Contact with Lewisite should be added to the existing K901 and K902 - listed hazardous wastes.

Statement of Basis and Purpose

These amendments to the CHWRs are made pursuant to the authority granted to the Hazardous Waste Commission in C.R.S. § 25-15-302(2).

The Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division (the Division) is proposing two revisions to 6 CCR 1007-3, Parts 261. The proposed revisions provide for the following amendments to Part 261 of the CHWRs:

1) Addition of Lewisite Agent (L) (2-Chlorovinylarsine dichloride (L1), Dichlorovinylchloroarsine (L2), and 2,2',2"-Trichloro-trivinylarsine (L3)) to Appendix VIII "Hazardous Constituents"; and,

2) Addition of Lewisite Agent (L1, L2, L3) to Appendix VII – "Basis of Listing Hazardous Waste" for K901 and K902 hazardous waste listings.

Adding Lewisite to the list of hazardous constituents for the existing K901 and K902 listings will allow for a more robust ability to manage and regulate both the acute toxic Lewisite agent as well as secondary wastes contaminated through contact with the material.

Lewisite (L) is an organoarsenic compound. It was once manufactured in the U.S., Japan, and Germany for use as a chemical weapon, acting as a vesicant (blister agent) and lung irritant.

The regulatory criteria for listing a hazardous waste or listing classes or types of solid waste can be found in 6 CCR 1007-3, Section 261.11. In summary a solid waste can be listed as a hazardous waste if it meets any one of three (3) criteria: first, if the solid waste exhibits any characteristic of a hazardous waste; second if a solid waste presents or is suspected to present certain acute human health hazards; and third, if it is capable of posing a substantial present or potential hazard to human health or the environment when improperly managed. The second criterion applies to Acute Hazardous Waste, as the Division has proposed for the Lewisite Agent, Waste Chemical Weapons, and Environmental Media, Debris, and Containers Contaminated through Contact with Waste Lewisite Chemical Weapons.

Currently, the only facility in Colorado known to have material affected by this hazardous waste listing is the Pueblo Chemical Depot (PCD). This facility is owned and operated by the United States Army (the Army).

Overview of Chemical Weapons, Lewisite Agent L

In the past, international agreements such as that arising from the 1972 Biological and Toxin Weapons Convention focused on the destruction of biological and toxin weapons that were manufactured and stockpiled as a result of their production during wartime. These agreements have left nations with the formidable task of treating and disposing of these lethal weapons.

The Chemical Weapons Convention (CWC), the most recent of such agreements sought to clarify both the definition of Chemical Weapons and the prohibitions on the development, production, acquisition, stockpiling, destruction, and use of chemical weapons. Article II of the CWC defines chemical weapons in three parts. First, chemical weapons are "identified as all toxic chemicals and their precursors, except those intended for purposes allowed by the CWC," second as "munitions and devices specifically designed to release these toxic chemicals," and third as "any equipment specifically designed for use with such munitions or devices."(OPCW Fact Sheet 2, 2001).

Chemical weapons are defined in Section 260.10 of the CHWRs to clearly define the K-waste listing. The regulatory definition closely follows the definition for "chemical agent and munitions" found in 50 USC 1521(j) which is used by both the U.S. Environmental Protection Agency and the Department of Defense. In proposing this regulatory definition the Division reviewed the comprehensive definition provided by the CWC to ensure that the definition "does not unnecessarily hinder the legitimate use of chemicals and the economic and technological development to which such uses may lead" (OPCW Fact Sheet 4, 2001). The Division believes that the definition for lewisite-containing chemical weapons is consistent with that provided by the CWC.

Lewisite was developed as a chemical warfare blister agent during World War I and was named after its inventor Captain W. Lee Lewis. It is no longer produced in the United States. The general population will not be exposed to Lewisite. People that are potentially exposed to Lewisite are soldiers or people who work at military sites where Lewisite may be stored or disposed.

Pure Lewisite is a colorless, odorless oily liquid; however, synthesized agent is amber to dark brown liquid with a geranium like odor. Lewisite may exist as the *trans* or *cis* isomer. In basic solution, the *trans* isomer of Lewisite is cleaved to yield acetylene and sodium arsenite. In addition, the *cis* isomer of Lewisite may be photoconverted to the *trans* isomer, and the trivalent form of arsenic in Lewisite oxide is generally oxidized to pentavalent arsenic under environmental conditions. Lewisite is an unstable compound; thus, environmental exposures may be to a mixture of Lewisite with one or more of its degradation products and/or frequently occurring impurities. Lewisite has moderate vapor pressure, and if released into the air, it is expected to exist solely in the vapor phase. Once in the air, Lewisite is expected to degrade slowly (may persist for a few days before being broken down). Lewisite has low water solubility, but it rapidly hydrolyzes in water forming the water-soluble product 2-chlorovinyl arsonous acid (CVAA) and hydrochloric acid, but small amounts may evaporate. Lewisite will be broken down in moist soil quickly, but small amounts may evaporate. Lewisite does not accumulate in the food Chain.

Lewisite is an organic arsenical with vesicant properties. Lewisite-1 (L-1) is formed by the reaction of acetylene with arsenic trichloride using aluminum trichloride as a catalyst. Arsenic trichloride, Lewisite-2 (L-2; bis(2-chlorovinyl) chloroarsine), and Lewisite-3 (L-3; tris(2-chlorovinyl) arsine) are co-products/impurities concurrently formed with L-1. L-1 yield is greater than 65%, and approximate yields of arsenic trichloride, L-2, and L-3 are 16-21%, 7-10%, and 4-12%, respectively. Therefore, an accidental release from storage tanks or disposed chemical weapons of L will likely be the release of a mixture of L-1, L-2, L-3, and arsenic trichloride. Exposure will be to these compounds and to potential hydrolysis products, sodium arsenite (NaAsO2) and arsenic acid (H3AsO4). Toxicity data on arsenic trichloride are limited; however, effects are similar to those of L-1. With regard to lethality, arsenic trichloride appears to be approximately 2-3 times less toxic than L-1.

Health Effects of Lewisite

As summarized by the National Research Council (NRC, 2013)[1], Lewisite is readily absorbed through the mucous membranes, and is also readily absorbed through the skin because of its lipophilicity. Lewisite causes local corrosive damage and may cause systemic poisoning after absorption through skin or mucous membranes. Lewisite is immediately and highly irritating at concentrations of about 6-8 mg/m^3. The geranium-like odor is reportedly detectable at 14-23 mg/m^3 (Gates et al. 1946 as cited by NRC, 2013).

Exposure to lewisite causes almost immediate irritation and burning sensation of the eyes, skin, upper respiratory tract, and lungs. Death may result from direct pulmonary damage or circulatory failure from fluid loss and arrhythmia. Death that occurs within 24 h of exposure is likely due to pulmonary damage. According to ATSDR (2014)[2], exposure to very high levels of lewisite may cause liver and kidney damage. Additionally, chronic respiratory diseases and severe damage to the eye may be present for a long time following exposure to large amounts of lewisite. Chronic exposure to lewisite may lead to arsenical poisoning.

Human exposure data are dated and many studies are not well described. No information concerning developmental or reproductive toxicity or genotoxicity with regard to Lewisite exposure in humans was identified. Information suggesting an increased cancer incidence in workers from a Japanese poison gas factory is confounded because workers were exposed to several chemicals.

Animal data are limited but suggest that lewisite is highly irritating and corrosive, causing dermal and ocular lesions by contact with liquid or vapor inhalation. There is no evidence that Lewisite is a reproductive or developmental toxicant in rats or rabbits in the absence of maternal toxicity.

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[1] NRC (2013). Acute exposure guideline levels for selected airborne chemicals: Volume 15. Washington (DC): National Academies Press (US).

[2] ATSDR (2014). Medical Management Guidelines for Blister Agents: Lewisite (L)($C_2H_2AsCl_3$) and Mustard-Lewisite Mixture (HL). Available at: https://www.atsdr.cdc.gov/mmg/mmg.asp?id=922&tid=190

Genotoxicity assay results were generally negative; the only positive result was in chromosome aberrations in Chinese hamster ovary (CHO) cells. No information concerning carcinogenicity in animals was found.

Acute lethality

Inhalation

The inhalation LC50 for lewisite vapor in humans was estimated to be 120 mg/m^3 for 10 min and 50 mg/m^3 for 30 min.

In rabbits, 7.5-min LC_{50} of 160 mg/m3 and a 60-min LC_{50} of 25 mg/m^3 was reported (Gates et al. 1946 as cited by NRC, 2013). In guinea pigs, a 9-min LC_{50} of 111 mg/m^3 and a 60-min LC_{50} of 8 mg/m^3 were reported (Gates et al. 1946 as cited by NRC, 2013).

Dermal

In humans an LC_{50} of 3,300 mg/m^3 for 30 min for lewisite vapor absorption through the bare skin was estimated. This estimate is based on animal data and assumes that absorption of lewisite through skin is a function of the ratio of surface exposed to body volume. A dermal LD_{50} of more than 40 mg/kg was also estimated based on animal data (NRC 2013).

In rabbits, dermal LD_{50} of 6 mg/kg and intravenous LD_{50} of 0.5 mg/kg were reported (Cameron et al. 1946 as cited by NRC, 2013). In guinea pigs, a dermal LD_{50} of 12 mg/kg and subcutaneous LD_{50} of 1 mg/kg were also reported (Cameron et al. 1946 as cited by NRC, 2013).

Ingestion

Ingestion of Lewisite is an uncommon route for exposure but can lead to local effects and systemic absorption. Ingestion of Lewisite may cause severe stomach pain, nausea, vomiting, and bloody stools ATSDR (2014)[2] and ATSDR (2002)[3].

Regulatory Evaluation

The regulatory criteria for listing a solid waste as a hazardous waste can be found in 6 CCR 1007-3, Section 261.11. As explained previously, this proposed listing applies to Lewisite Agent, and Environmental Media, Debris, and Containers Contaminated through Contact with Waste Chemical Weapons containing Lewisite that have been determined to be solid wastes.
Solid waste that has been found to be fatal to humans in low doses, or in the absence of data on human toxicity, has been shown in studies to have certain specific levels of toxicity in animals, may be listed as hazardous waste by the Division. As discussed above, Lewisite Agent, by its inherent design as a lethal chemical agent, is fatal to humans in low doses. Toxicological data and other information are readily available to establish that Lewisite is fatal to humans in low doses. Pursuant to the CHWRs, materials exhibiting these criteria will be designated as Acute Hazardous Wastes.

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[2] ATSDR (2014). Medical Management Guidelines for Blister Agents: Lewisite (L)(C2H2AsCl3) and Mustard-Lewisite Mixture (HL). Available at: https://www.atsdr.cdc.gov/mmg/mmg.asp?id=922&tid=190

[3] ATSDR (2002). FAQs on Blister agents: Lewisite and Mustard-Lewisite Mixture. Available at: https://www.atsdr.cdc.gov/toxfaqs/tfacts163.pdf

Chemical weapons containing Lewisite, are designed to pose similar hazards to human health and the environment, as do the pure chemical agents. These hazards are due both to the presence and demonstrated high toxicity of the chemical agents themselves. The Division is seeking the addition of Lewisite to the Waste Chemical Weapons as a general class of hazardous waste because the weapons themselves, i.e. the shell casings and other material composing the "chemical weapon", are contaminated with the chemical agent. In addition, any Environmental Media, Debris, and Containers which are solid wastes that have been generated as a result of the treatment, storage, or disposal of Chemical Weapons, frequently or typically pose a hazard to human health because these materials can also be contaminated with the chemical agent contained in the weapon. Accordingly, Waste Chemical Weapons and Environmental Media, Debris, and Containers Contaminated through Contact with Waste Chemical Weapons "pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed." C.R.S. § 25-15-101(6)(a).

The Division believes that shell casings, munitions, devices, and other equipment used to contain, and release chemical agents as part of a Waste Chemical Weapon can be assumed to be contaminated with chemical agent as these components are often in direct contact with the chemical agent. While it may be true that some of the components of a Waste Chemical Weapon may not be in direct contact with the chemical agent itself, the Division believes that the potential for these components to become contaminated with the chemical agent as a result of the agent leaking out is a realistic concern.

The Division also believes that Environmental Media, Debris, and Containers which are solid wastes generated as a result of the treatment, storage, or disposal of Waste Chemical Weapons frequently or typically pose a hazard to human health because these materials can also be contaminated with the chemical agent contained in the weapon. In fact, the "Army generates a number of secondary waste streams, primarily from treatment of wastes to remove or destroy chemical agent, that may contain minute amounts of the agents or associated compounds." (Army Vol. 1, pg. 40, 1999).

In order to assure that these secondary wastes are handled and disposed of appropriately, the Division is proposing the addition of Lewisite to the existing K901 and K902 listing for Waste Chemical Weapons and Environmental Media, Debris, and Containers Contaminated through Contact with Waste Chemical Weapons to the hazardous waste listings. Wastes that meet the K902 listing description would not carry the listing code for Waste Chemical Weapons (K901) which might otherwise be applied to these wastes based on the mixture and derived from rules. The Army appears to agree with this contention. For example, the Army has proposed to list the following wastes as K-hazardous wastes in Utah: spent chemical neutralization solutions used to neutralize chemical agents, miscellaneous solids such as glass, metal, and wood contaminated with chemical agents, spent laboratory or monitoring and testing materials such as rags, wipes, gloves, aprons, and ppe contaminated with chemical agent, antifreeze, hydraulic fluid and refrigerants contaminated with chemical agents, spent carbon from air filtration equipment contaminated with chemical agent, ash, cyclone residue, baghouse dust, slag and refractory contaminated with chemical agent, and brine salts, liquids, solids and sludges generated from pollution abatement systems designed for treatment of chemical agents. The Army contends that these "waste streams are all proposed to be listed because they typically or frequently contain (or at one time contained) toxic constituents B specifically one or more of the chemical agents . . ." (Army Vol. 1, pg. 69, 1999).

Based on the above regulatory evaluation, Waste Chemical Weapons and Environmental Media, Debris, and Containers Contaminated through Contact with Waste Chemical Weapons meet the necessary criteria presented in Section 261.11(b) of the CHWRs for listing as a class of hazardous waste. In addition, waste Lewisite Agent meets the necessary criteria presented in Section 261.11(a) of the CHWRs for listing as an acute hazardous waste. Therefore, the Division proposes that Waste Chemical Weapons and Environmental Media, Debris, and Containers Contaminated through Contact with Waste Chemical Weapons and Lewisite Agent be added to the K-listed wastes found in Sections 261.32 and 261.33 of the CHWRs respectively. The Division specifically proposes to add Lewisite to the waste codes K901 for Waste Chemical Weapons, K902 for Environmental Media, Debris, and Containers Contaminated through Contact with Waste Chemical Weapons.

Lewisite Agent is also proposed for addition into Appendices VII and VIII of Part 261 of the CHWRs to identify the specific chemicals which form the basis for the K-listings. As previously stated, Mustard Agents are already P-listed hazardous wastes in the CHWRs. Addition of Lewisite to Appendix VII identifies the specific chemical agents that pose the acute health hazard (basis for listing) in the proposed listings.

<u>Benefits of Listing Lewisite as a hazardous constituent forming the basis for the K901 Waste Chemical Weapons, and K902 Environmental Media, Debris, and Containers Contaminated through Contact with Waste Chemical Weapons as Hazardous Waste</u>

The principal benefits of listing Lewisite as hazardous wastes include the following:

1) The State will have an increased regulatory framework for management of waste Lewisite Agent, Waste Chemical Weapons containing Lewisite, and any Environmental Media, Debris, and Containers Contaminated through Contact with Waste Chemical Weapons which contain concentrations of the chemical agents. Approving the proposed listing will require more complete and appropriate treatment, as well as adequate record keeping and management of current and future inventories of these waste streams under the CHWRs.

   The Division believes this proposed listing is appropriate given the extreme toxicity of Lewisite agent and the potential for solid waste generated during management of chemical weapons to be contaminated with chemical agents. The Department will have additional accountability from the Army thereby ensuring protection of human health and the environment during management of waste Lewisite Agent, Waste Chemical Weapons, or Environmental Media, Debris, and Containers Contaminated through Contact with Lewisite-containing Waste Chemical Weapons. Management of these wastes will include the time during interim management (the time between recovery and treatment) of the wastes, during treatment and destruction of the wastes, and throughout disposal of the wastes.

2) There will be an increase in the regulatory guidelines and enforcement accountability for the treatment and management of associated waste streams including munitions parts, personnel protective equipment (PPE), dunnage, etc. If the proposed listing is approved, Lewisite-containing wastes would carry the listings until they are either delisted, fully

treated or decontaminated, or properly disposed of. These associated waste streams, resulting from the demilitarization process, may be large in volume, and could potentially have significant impacts on human health and the environment if improperly managed.

3) Under the proposed listings, any spills (to soil or otherwise) or other impacts to environmental media would require cleanup and disposition as listed wastes under the "mixture rule." The mixture rule provides that material mixed with a listed hazardous waste become a hazardous waste. This provision helps ensure that waste quantities are minimized, and ensures the protection of public health and the environment through proper management of these contaminated wastes.

4) This listing will require the Army to consider waste management planning as a factor in the Chemical Demilitarization Process which will be chosen for any Lewisite agent rounds recovered and stored at the Pueblo Chemical Depot. All listed waste streams must be managed adequately to protect public health and the environment. In addition, the planning process may result in the minimization of waste generation in the excavation and cleanup of burial areas.

The anticipated costs to the Army related to the impact of these proposed listings are minimal when compared to the overall cost of treatment and destruction of chemical agents and the decommissioning and disposal of any recovered chemical weapons. Many of the costs to manage these wastes streams are already required to ensure worker safety.

Notice of Proposed Rulemaking

Tracking number

2017-00026

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

02/21/2017

Time

09:30 AM

Location

Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Bldg. A, Sabin Conference Room, Denver, CO 80246

Subjects and issues involved

Section 261.6(a)(2) is being modified to add a reference to Part 268 to clarify that the requirements of Part 268 are applicable to hazardous wastes that are recycled. Section 267.20(b) is being modified to add a reference to Section 268.7(b)(6) to clarify that a recycling facility must comply with the record keeping requirements of Section 268.7(b)(6) and keep a one-time certification and notification related to recyclable materials being used in a manner constituting disposal.

Statutory authority

These amendments to 6 CCR 1007-3, Parts 261 and 267 are made pursuant to the authority granted to the Solid and Hazardous Waste Commission in § 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 § 261.6(a)(2) and § 267.20(b) Regarding Requirements for Recyclable Materials.

1) Paragraph (a)(2) of § 261.6 is revised to read as follows:

§ 261.6 Requirements for recyclable materials.

(a)(1) *******

(2) The following recyclable materials are not subject to the requirements of this section but are regulated under Subparts C through G of Part 267 of these regulations and all applicable provisions in Part**s 268 and** 100 of these regulations:

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2) Paragraph (b) of § 267.20 is revised to read as follows:

Subpart C - Recyclable Materials Used In A Manner Constituting Disposal

§ 267.20 Applicability.

(a) *******

(1) *******

(2) ********

(b) Products produced for the general public's use that are used in a manner that constitutes disposal and that contain recyclable materials are not presently subject to regulation if the recyclable materials have undergone a chemical reaction in the course of producing the products so as to become inseparable by physical means and if such products meet the applicable treatment standards in Subpart D of Part 268 (or applicable prohibition levels in § 268.32 or RCRA section 3004(d), where no treatment standards have been established) for each recyclable material (i.e., hazardous waste) that they contain**, and the recycler complies with § 268.7(b)(6) of these regulations**.
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3) Section 8.87 {Statement of Basis and Purpose for the Rulemaking Hearing of February 21, 2017} is added to Part 8 of the Regulations to read as follows:

Statement of Basis and Purpose
Rulemaking Hearing of February 21, 2017

8.87 Basis and Purpose.

These amendments to 6 CCR 1007-3, Parts 261 and 267 are made pursuant to the authority granted to the Solid and Hazardous Waste Commission in § 25-15-302(2), C.R.S.

Amendment of § 261.6(a)(2) and § 267.20(b) Regarding Requirements for Recyclable Materials.

Section 261.6(a)(2) is being modified to add a reference to Part 268 to clarify that the requirements of Part 268 are applicable to hazardous wastes that are recycled. Section 267.20(b) is being modified to add a reference to Section 268.7(b)(6) to clarify that a recycling facility must comply with the record keeping requirements of Section 268.7(b)(6) and keep a one-time certification and notification related to recyclable materials being used in a manner constituting disposal.

These technical corrections/clarifications to the existing state regulations are applicable to the amendment of the corresponding federal regulations as published in the Federal Register on March 18, 2010 (75 FR 12989-13009) and April 13, 2012 (77 FR 22229-22232). These amendments are considered to be neither more nor less stringent than the current standards, and Colorado is not required to adopt these corrections. However, the Division recommends the adoption of these technical corrections to avoid any confusion or misunderstanding by the regulated community and the public.

Notice of Proposed Rulemaking

Tracking number

2017-00027

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

02/21/2017

Time

09:30 AM

Location

Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Bldg. A, Sabin Conf. Rm, Denver, CO 80246

Subjects and issues involved

These amendments to Section 268.7 clarify the generator waste analysis and notification requirements under RCRAs land disposal restrictions (LDR). Section 268.7(a)(1) is being amended to add a cross reference to § 262.11, in order to reduce duplicative testing requirements and clarify that that the two generator waste analysis functions can be performed concurrently, thus avoiding redundant waste analysis.

To provide additional flexibility to generators of hazardous waste, § 268.7(a)(1) is also being modified to clarify that if a generator does not want to determine, based on waste analysis or knowledge of the waste, whether the waste must be treated, he may assume that he is subject to the full array of LDR requirements. The generator then must send the waste to a RCRA-permitted hazardous waste treatment facility where the treatment facility must make the determination when the waste has met the LDR treatment standards (possibly even upon receipt as generated). A conforming change is also being made to the notification requirement in § 268.7(a)(2) for such cases.

Section 268.7(b)(6) is being amended to eliminate the requirement to submit notifications and certifications to the Division, and instead require that the information be placed in the treating/recycling facilitys on-site files.

Statutory authority

These amendments to 6 CCR 1007-3, Part 268.7 are made pursuant to the authority granted to the Solid and Hazardous Waste Commission in § 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 § 268.7 Testing, tracking, and recordkeeping requirements for generators, treaters, and disposal facilities.

1) Section 268.7 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 268.7 Testing, tracking, and recordkeeping requirements for generators, treaters, and disposal facilities.

(a) Requirements for generators:

(1) A generator of hazardous waste must determine if the waste has to be treated before it can be land disposed. This is done by determining if the hazardous waste meets the treatment standards in § 268.40, § 268.45, or § 268.49. This determination can be made concurrently with the hazardous waste determination required in § 262.11 of these regulations, in either of two ways: testing the waste or using knowledge of the waste. If the generator tests the waste, testing would normally determine the total concentration of hazardous constituents, or the concentration of hazardous constituents in an extract of the waste obtained using test method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW 846, (~~as referenced in~~ incorporated by reference, see § 260.11 of these regulations), depending on whether the treatment standard for the waste is expressed as a total concentration or concentration of hazardous constituent in the waste's extract. (Alternatively, the generator must send the waste to a RCRA-permitted hazardous waste treatment facility, where the waste treatment facility must comply with the requirements of § 264.13 of these regulations and paragraph (b) of this section. In addition, some hazardous wastes must be treated by particular treatment methods before they can be land disposed and some soils are contaminated by such hazardous wastes. These treatment standards are also found in § 268.40, and are described in detail in § 268.42, Table 1. These wastes, and soils contaminated with such wastes, do not need to be tested (however, if they are in a waste mixture, other wastes with concentration level treatment standards would have to be tested). If a generator determines they are managing a waste or soil contaminated with a waste, that displays a hazardous characteristic of ignitability, corrosivity, reactivity, or toxicity, they must comply with the special requirements of § 268.9 of this part in addition to any applicable requirements in this section.

(2) If the waste or contaminated soil does not meet the treatment standards, or if the generator chooses not to make the determination of whether his waste must be treated: ~~W~~with the initial shipment of waste to each treatment or storage facility, the generator must send a one-time written notice to each treatment or storage facility receiving the waste, and place a copy in the file. The notice must include the information in column "268.7(a)(2)" of the Generator Paperwork Requirements Table in § 268.7(a)(4) of

this section. (Alternatively, if the generator chooses not to make the determination of whether the waste must be treated, the notification must include the EPA Hazardous Waste Numbers and Manifest Number of the first shipment and must state "This hazardous waste may or may not be subject to the LDR treatment standards. The treatment facility must make the determination.") No further notification is necessary until such time that the waste or facility change, in which case a new notification must be sent and a copy placed in the generator's file.

2) Section 268.7 is amended by revising paragraph (b)(6) to read as follows:

§ 268.7 Testing, tracking, and recordkeeping requirements for generators, treaters, and disposal facilities.

****

(b) Treatment facilities must test their wastes according to the frequency specified in their waste analysis plans as required by § 264.13 (for permitted TSDs) or § 265.13 (for interim status facilities). Such testing must be performed as provided in paragraphs (b)(1), (b)(2) and (b)(3) of this section.

****

(6) Where the wastes are recyclable materials used in a manner constituting disposal subject to the provisions of § 267.20(b) regarding treatment standards and prohibition levels, the owner or operator of a treatment facility (i.e., the recycler) ~~is not required to notify the receiving facility, pursuant to paragraph (b)(3) of this section. With each shipment of such wastes the owner or operator of the recycling facility~~ must, for the initial shipment of waste, prepare ~~submit~~ a one-time certification described in paragraph (b)(4) of this section, and a one-time notice which includes the information listed in paragraph (b)(3) of this section (except the manifest number). ~~to the Director, or to the Director's delegated representative.~~ The certification and notification must be placed in the facility's on-site files. If the waste or the receiving facility changes, a new certification and notification must be prepared and placed in the on-site files. In addition, ~~T~~the recycling facility must also keep records of the name and location of each entity receiving the hazardous waste-derived product.

****

3) Section 8.87 {Statement of Basis and Purpose for the Rulemaking Hearing of February 21, 2017} is added to Part 8 of the Regulations to read as follows:

Statement of Basis and Purpose
Rulemaking Hearing of February 21, 2017

8.87 Basis and Purpose.

These amendments to 6 CCR 1007-3, Part 268.7 are made pursuant to the authority granted to the Solid and Hazardous Waste Commission in § 25-15-302(2), C.R.S.

Amendment of § 268.7 Testing, tracking, and recordkeeping requirements for generators, treaters, and disposal facilities.

These amendments to Section 268.7 clarify the generator waste analysis and notification requirements under RCRA's land disposal restrictions (LDR). Section 268.7(a)(1) is being amended to add a cross reference to § 262.11, in order to reduce duplicative testing requirements and clarify that that the two

generator waste analysis functions can be performed concurrently, thus avoiding redundant waste analysis.

To provide additional flexibility to generators of hazardous waste, § 268.7(a)(1) is also being modified to clarify that if a generator does not want to determine, based on waste analysis or knowledge of the waste, whether the waste must be treated, he may assume that he is subject to the full array of LDR requirements. The generator then must send the waste to a RCRA-permitted hazardous waste treatment facility where the treatment facility must make the determination when the waste has met the LDR treatment standards (possibly even upon receipt as generated). A conforming change is also being made to the notification requirement in § 268.7(a)(2) for such cases.

Section 268.7(b)(6) is being amended to eliminate the requirement to submit notifications and certifications to the Division, and instead require that the information be placed in the treating/recycling facility's on-site files. In accordance with the requirements of § 268.7(b)(6), facilities (i.e., recyclers) must prepare and maintain notifications and certifications with the initial shipment of waste, and prepare new documentation only if the waste, the treatment process, or the receiving facility changes. Maintaining these records on-site, and available for inspection, provides sufficient documentation of waste treatment, and reduces the burden on the facility.

These amendments are equivalent to, or less stringent than the existing provisions, and Colorado is not required to adopt these provisions. Nevertheless, the Division believes that these amendments will provide some burden reduction to the regulated community, without compromising human health or environmental protection.

This Basis and Purpose incorporates by reference the applicable preamble language for the Environmental Protection Agency regulations that were published in the Federal Register at 71 FR 16862-16915, April 4, 2006 for which state analogs are being adopted at this time.

Notice of Proposed Rulemaking

Tracking number

2017-00029

Department

500,1008,2500 - Department of Human Services

Agency

2508 - Finance and Accounting Rules (Volume 5)

CCR number

11 CCR 2508-1

Rule title

RULE MANUAL VOLUME 5, FINANCE

Rulemaking Hearing

Date

02/14/2017

Time

11:00 AM

Location

CDHS, 1575 Sherman St., Denver, CO

Subjects and issues involved

Executive Director Rules
"Minor changes to remove outdated references and other minor edits, most significantly:
Rule 5.302 will reference the new OMB Uniform Grant Guidance (2 C.F.R. Part 200), instead of the no longer applicable various OMB Circulars.
Rule 5.401 will reference the letter informing counties about their annual allocations, instead of the no longer applicable Agency Letter.
"

Statutory authority

"26-1-107, C.R.S. (2015); 26-1-109, C.R.S. (2015); 26-1-111, C.R.S. (2015)
§26-1-108, C.R.S. (2016); 2 C.F.R. Part 200; §200.104 Supersession
"

Contact information

Name

Mette Boes

Title

Rule Author

Telephone

303-866-7327

Email

mette.boes@state.co.us

Title of Proposed Rule:	**Revisions to Finance and Accounting Rules**	
CDHS Tracking #:	**16-10-17-1**	
Office, Division, & Program:	Rule Author:	Phone: (303) 866-7327
OPSO / Audit Division	Mette Boes	E-Mail: mette.boes@state.co.us

STATEMENT OF BASIS AND PURPOSE

Summary of the basis and purpose for new rule or rule change.

Explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule.

Minor changes to remove outdated references and other minor edits for consistency, most significantly:

- Rule 5.302 will reference the new OMB Uniform Grant Guidance (2 C.F.R. Part 200), instead of the no longer applicable various OMB Circulars.
- Rule 5.401 will reference the letter informing counties about their annual allocations, instead of the no longer applicable Agency Letter.

State Board Authority for Rule:

Code	Description
26-1-107, C.R.S. (2015)	State Board to promulgate rules
26-1-109, C.R.S. (2015)	State department rules to coordinate with federal programs
26-1-111, C.R.S. (2015)	State department to promulgate rules for public assistance and welfare activities.

Program Authority for Rule: *Give federal and/or state citations and a summary of the language authorizing the rule-making function AND authority.*

Code	Description
§26-1-108, C.R.S. (2016)	Powers and duties of the executive director – rules (1)(a) Rules governing matters of internal administration in the state department, including organization, staffing, records, reports, systems, and procedures, and also governing fiscal and personnel administration for the state department and establishing accounting and fiscal reporting rules for disbursement of federal funds, contingency funds, and proration of available appropriations except those determinations precluded by authority granted to the state board. (2) The rules issued by the executive director pertaining to this title shall be binding upon the several county departments, providers, vendors, and agents of the state department…
2 C.F.R. Part 200 §200.104 Supersession	The following OMB guidance documents and regulations under Title 2 of the Code of Federal Regulations are superseded: (a) A-21, “Cost Principles for Educational Institutions” (2 CFR part 220); (b) A-87, “Cost Principles for State, Local and Indian Tribal Governments” (2 CFR part 225) and also Federal Register notice 51 FR 552 (January 6, 1986); (c) A-89, “Federal Domestic Assistance Program Information”; (d) A-102, “Grant Awards and Cooperative Agreements with State and Local Governments”; (e) A-110, “Uniform Administrative Requirements for Awards and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations” (codified at 2 CFR 215); (f) A-122, “Cost Principles for Non-Profit Organizations” (2 CFR part 230); (g) A-133, “Audits of States, Local Governments and Non-Profit Organizations”; and (h) Those sections of A-50 related to audits performed under Subpart F - Audit Requirements of this part.

Does the rule incorporate material by reference?	[X]	Yes	[ ]	No
Does this rule repeat language found in statute?	[ ]	Yes	[X]	No

If yes, please explain. Rule 5.302 incorporates 2 C.F.R. Part 200 “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.”

Title of Proposed Rule:	**Revisions to Finance and Accounting Rules**	
CDHS Tracking #:	**16-10-17-1**	
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REGULATORY ANALYSIS

1. List of groups impacted by this rule.

Which groups of persons will benefit, bear the burdens or be adversely impacted by this rule?

County departments of social/human services

2. Describe the qualitative and quantitative impact.

How will this rule-making impact those groups listed above? How many people will be impacted? What are the short-term and long-term consequences of this rule?

The finance and accounting requirements contained in 11 CCR 2508-1 remain the same. The revisions presented herein are minor changes to remove outdated references and other minor edits.

3. Fiscal Impact

For each of the categories listed below explain the distribution of dollars; please identify the costs, revenues, matches or any changes in the distribution of funds even if such change has a total zero effect for any entity that falls within the category. If this rule-making requires one of the categories listed below to devote resources without receiving additional funding, please explain why the rule-making is required and what consultation has occurred with those who will need to devote resources. ***Answer should NEVER be just "no impact" answer should include "no impact because…."***

State Fiscal Impact *(Identify all state agencies with a fiscal impact, including any Colorado Benefits Management System (CBMS) change request costs required to implement this rule change)*

County Fiscal Impact

No impact because the finance and accounting requirements contained in 11 CCR 2508-1 remain the same. The revisions presented herein are minor changes to remove outdated references and other minor edits.

Federal Fiscal Impact

Other Fiscal Impact *(such as providers, local governments, etc.)*

4. Data Description

List and explain any data, such as studies, federal announcements, or questionnaires, which were relied upon when developing this rule?

None because the finance and accounting requirements contained in 11 CCR 2508-1 remain the same. The revisions presented herein are minor changes to remove outdated references and other minor edits.

Title of Proposed Rule:	**Revisions to Finance and Accounting Rules**	
CDHS Tracking #:	**16-10-17-1**	
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5. Alternatives to this Rule-making

Describe any alternatives that were seriously considered. Are there any less costly or less intrusive ways to accomplish the purpose(s) of this rule? Explain why the program chose this rule-making rather than taking no action or using another alternative. **Answer should NEVER be just "no alternative" answer should include "no alternative because…"**

No alternative because the finance and accounting requirements contained in 11 CCR 2508-1 must comply with 2 C.F.R. Part 200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."

Title of Proposed Rule: **Revisions to Finance and Accounting Rules**
CDHS Tracking #: **16-10-17-1**

Office, Division, & Program:	Rule Author:	Phone: (303) 866-7327
OPSO / Audit Division	Mette Boes	E-Mail: mette.boes@state.co.us

OVERVIEW OF PROPOSED RULE

Compare and/or contrast the content of the current regulation and the proposed change.

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
5.100	Added comma	These rules are the fiscal rules for county departments of social/human services concerning public assistance, social services, other forms of assistance, and the administration of the above including but not limited to internal controls, financial reporting, accounting and auditing.	These rules are the fiscal rules for county departments of social/human services concerning public assistance, social services, other forms of assistance, and the administration of the above including but not limited to internal controls, financial reporting, accounting, and auditing.		Yes
5.301	Consistent language	A county department of social/human services shall follow county procurement processes. If counties do not have procurement processes in place, State Procurement Rules shall be used pursuant to 1 CCR 101 through 1 CCR 109.	County departments of social/human services shall follow county procurement processes. If counties do not have procurement processes in place, State Procurement Rules shall be used pursuant to 1 CCR 101 through 1 CCR 109.		Yes
5.302	Outdated reference & consistent language	Counties shall comply with the applicable federal cost circulars and shall hold their sub-recipients and vendors accountable for compliance with the applicable circulars. Counties shall comply with OMB Circular A-87, “Cost Principles for State, Local, and Indian Tribal Governments” published at 2 CFR 225, and OMB Circular A-102, “Common Rule” published at 45 CFR 92. If a county passes through federal funds to a non-profit organization, that non-profit organization shall comply with OMB Circular A-122, “Cost Principles for Non-Profit Organizations” published at 2 CFR 230. If a county passes through federal funds to an educational institution, that educational institution shall comply with OMB Circular A-21, “Cost Principles for Educational Institutions” published at 2 CFR 220. No later amendments or editions are incorporated.	County departments of social/human services shall comply with 2 C.F.R. Part 200 “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” and any other applicable federal cost circulars. When counties are a pass-through entity, they shall hold their subrecipients and contractors accountable for compliance with 2 C.F.R. Part 200 and any other applicable circulars.		Yes
5.401	Outdated reference & consistent language & added comma	The counties shall refer to an annual Colorado Department of Human Services Agency Letter which sets forth program allocations as well as procedures that counties shall follow regarding any appeal of an allocation, closeout of actual expenditures each year, as well as methodology and data used to calculate annual allocations by program.	County departments of social/human services shall refer to an annual Colorado Department of Human Services County Allocation Letter which sets forth program allocations, as well as procedures that counties shall follow regarding any appeal of an allocation, closeout of actual expenditures each year, as well as methodology and data used to calculate annual allocations by program.		Yes
5.501	Consistent language	Counties shall adhere to all county guidelines for contract processes and procedures. In the absence of county procedures, county departments of	County departments of social/human services shall adhere to all county guidelines for contract processes and procedures. In the absence of county procedures, county		Yes

Title of Proposed Rule: **Revisions to Finance and Accounting Rules**
CDHS Tracking #: **16-10-17-1**

Office, Division, & Program:	Rule Author:	Phone: (303) 866-7327
OPSO / Audit Division	Mette Boes	E-Mail: mette.boes@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		social/human services shall follow State contract processes and procedures pursuant to 1 CCR 101 through 1 CCR 109.	departments of social/human services shall follow State contract processes and procedures pursuant to 1 CCR 101 through 1 CCR 109.		
5.601	Consistent language & capitalize “State”	Counties shall adhere to all county guidelines for travel policies and reimbursement procedures. In the absence of county policies and procedures, county departments of social/human services shall follow state travel policies and procedures pursuant to 1 CCR 103-1.	County departments of social/human services shall adhere to all county guidelines for travel policies and reimbursement procedures. In the absence of county policies and procedures, county departments of social/human services shall follow State travel policies and procedures pursuant to 1 CCR 103-1.		Yes
5.800	Incorrect reference to State Fiscal Rule 1-9 & capitalize “State”	Any suspected theft or embezzlement of federal, state or local funds shall be immediately reported to at least one level of management above the party(s) suspected or to the county social/human services board. In addition, theft or embezzlement of state and/or federal funds or assets totaling $5,000 or more shall be reported in writing to the county social/human service board and to the Director of the Audit Division of the Colorado Department of Human Services at 4126 South Knox Court, Denver, Colorado 80236-3102.	Any suspected theft or embezzlement of federal, State or local funds shall be immediately reported to at least one level of management above the party(s) suspected or to the county social/human services board. In addition, theft or embezzlement of State and/or federal funds or assets totaling $5,000 or more per incident shall be reported in writing to the county social/human service board and to the Audit Division Director of the Colorado Department of Human Services at 4126 South Knox Court, Denver, Colorado 80236.		Yes
5.900	Consistent language	Counties shall maintain a written set of internal control policies and procedures that promote a sound internal control environment that ensures an adequate and appropriate segregation of duties. The same staff may not initiate, authorize, and record a transaction, if staff also has the ability to receipt or disburse monies for that same transaction.	County departments of social/human services shall maintain a written set of internal control policies and procedures that promote a sound internal control environment that ensures an adequate and appropriate segregation of duties. The same staff may not initiate, authorize, and record a transaction, if staff also has the ability to receipt or disburse monies for that same transaction.		Yes

Title of Proposed Rule:	**Revisions to Finance and Accounting Rules**	
CDHS Tracking #:	**16-10-17-1**	
Office, Division, & Program:	Rule Author:	Phone: (303) 866-7327
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STAKEHOLDER COMMENT SUMMARY

Development

The following individuals and/or entities were included in the development of these proposed rules (such as other Program Areas, Legislative Liaison, and Sub-PAC):

CDHS Division of Financial Services/Controller

This Rule-Making Package

The following individuals and/or entities were contacted and informed that this rule-making was proposed for consideration by the State Board of Human Services:

Finance Sub-PAC Committee & Colorado Human Services Directors Association (through Tracey Garchar, Executive Director, Mesa County Department of Human Services)

Other State Agencies

Are other State Agencies (such as HCPF or CDPHE) impacted by these rules? If so, have they been contacted and provided input on the proposed rules?

[ ] Yes [X] No

If yes, who was contacted and what was their input?

N/A

Sub-PAC

Have these rules been reviewed by the appropriate Sub-PAC Committee?

[X] Yes [ ] No

Date presented	10/6/2016
What issues were raised?	None
If not presented, explain why.	

Sub-PAC

Have these rules been approved by PAC?

[ ] Yes [X] No

Date presented	N/A

Other Comments

Comments were received from stakeholders on the proposed rules:

[X] Yes [ ] No

If "yes" to any of the above questions, summarize and/or attach the feedback received, including requests made by the State Board of Human Services, by specifying the section and including the Department/Office/Division response. Provide proof of agreement or ongoing issues with a letter or public testimony by the stakeholder.

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The proposed changes were presented to the Finance Sub-PAC Committee on 10/6/2016 as "housekeeping" changes in order to comply with current requirements and practices. A document with the track changes on each rule was sent to attendees ahead of time for their review.

Rules 5.302 and 5.401 were highlighted as the most significant (although still minor) proposed changes. Rule 5.302 will reference the new OMB Uniform Grant Guidance (2 C.F.R. Part 200), instead of the no longer applicable OMB Circulars. Rule 5.401 will reference the allocation letter informing counties about their annual allocations, instead of the no longer applicable Agency Letter.

One question was received from Sharon Svendsen (Douglas County Department of Human Services) who asked about the use of "contractor" in the proposed rules. Mette Boes explained that 2 C.F.R. Part 200 replaced "vendor" (old term) with "contractor" (new term); the distinction is the same, but the terminology has changed. Mette Boes and Clint Woodruff further explained that 2 C.F.R. Part 200 combined eight OMB Circulars (see 2 C.F.R. §200.104) into one comprehensive Circular that includes requirements for both contractors and subrecipients. Clint Woodruff gave the example of procurement processes that apply to both contractors and subrecipients in the new 2 C.F.R. Part 200. No other questions, comments, or edits were received on the proposed changes.

Title of Proposed Rule:	**Revisions to Finance and Accounting Rules**	
CDHS Tracking #:	**16-10-17-1**	
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EXAMPLE OF RULES WITH SECRETARY OF STATE'S STYLE CODING

(11 CCR 2508-1)

5.000 FINANCE AND ACCOUNTING [Rev. eff. 7/1/12]

5.100 PURPOSE AND SCOPE [Rev. eff. 7/1/12]

These rules are the fiscal rules for county departments of social/human services concerning public assistance, social services, other forms of assistance, and the administration of the above including but not limited to internal controls, financial reporting, accounting, and auditing.

5.200 ROUTINE REPORTING PERIOD [Rev. eff. 7/1/12]

5.201 Monthly Reporting to the Colorado Department of Human Services [Rev. eff. 7/1/12]

The county social/human services director shall report to the Colorado Department of Human Services at such times and in such manner and form as the Colorado Department of Human Services may from time to time direct. The routine reporting period from the county to the Colorado Department of Human Services is a calendar month. The Controller of the Colorado Department of Human Services shall determine the date required to submit financial data for each monthly reporting cycle.

5.300 PROCUREMENT PROCESS [Rev. eff. 7/1/12]

5.301 Counties Shall Follow County Procurement Processes [Rev. eff. 7/1/12]

A cCounty departmentS of social/human services shall follow county procurement processes. If counties do not have procurement processes in place, State Procurement Rules shall be used pursuant to 1 CCR 101 through 1 CCR 109.

5.302 Compliance with Office of Management and Budget (OMB) Circulars [Eff. 7/1/12]

CountYies DEPARTMENTS OF SOCIAL/HUMAN SERVICES shall comply with 2 C.F.R. PART 200 AND ANY OTHERthe applicable federal cost circulars. andWHEN COUNTIES ARE A PASS-THROUGH ENTITY, THEY shall hold their sub-recipients and CONTRACTORSvendors accountable for compliance with 2 C.F.R. PART 200 AND ANY OTHER the applicable circulars. Counties shall comply with OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments" published at 2 CFR 225, and OMB Circular A-102, "Common Rule" published at 45 CFR 92. If a county passes through federal funds to a non-profit organization, that non-profit organization shall comply with OMB Circular A-122, "Cost Principles for Non-Profit Organizations" published at 2 CFR 230. If a county passes through federal funds to an educational institution, that educational institution shall comply with OMB Circular A-21, "Cost Principles for Educational Institutions" published at 2 CFR 220. No later amendments or editions are incorporated.

Copies of this material are available by contacting the Controller of the Colorado Department of Human Services, 1575 Sherman Street, Denver, Colorado, 80203, and online at http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=87f8582883b9a1bdf2ba739bee355a07&mc=true&n=pt2.1.200&r=PART&ty=HTMLwww.whitehouse.gov/omb/circulars_default or http://www.gpoaccess.gov/cfr/. Additionally, any incorporated material in these rules may be examined at any Sstate publications depository library.

5.400 County Allocations [Rev. eff. 7/1/12]

5.401 Counties Shall Use Colorado Department of Human Services Guidance [Rev. eff. 7/1/12]

~~The c~~County~~ies~~ DEPARTMENTS OF SOCIAL/HUMAN SERVICES shall refer to an annual Colorado Department of Human Services COUNTY ALLOCATION LETTER~~Agency Letter~~ which sets forth program allocations, as well as procedures that counties shall follow regarding any appeal of an allocation, closeout of actual expenditures each year, as well as methodology and data used to calculate annual allocations by program.

5.500 CONTRACTS [Rev. eff. 7/1/12]

5.501 Contract Procedures [Rev. eff. 7/1/12]

County~~ies~~ DEPARTMENTS OF SOCIAL/HUMAN SERVICES shall adhere to all county guidelines for contract processes and procedures. In the absence of county procedures, county departments of social/human services shall follow State contract processes and procedures pursuant to 1 CCR 101 through 1 CCR 109.

5.600 TRAVEL [Rev. eff. 7/1/12]

5.601 Travel Procedures [Rev. eff. 7/1/12]

County~~ies~~ DEPARTMENTS OF SOCIAL/HUMAN SERVICES shall adhere to all county guidelines for travel policies and reimbursement procedures. In the absence of county policies and procedures, county departments of social/human services shall follow S~~s~~tate travel policies and procedures pursuant to 1 CCR 103-1.

5.700 REQUIRED USE OF STATEWIDE AUTOMATED SYSTEMS [Rev. eff. 7/1/12]

County departments of social/human services shall use the Colorado Department of Human Services automated statewide client and/or provider information systems. These systems are designed to collect and store program data; assist with eligibility and payment determinations; generate forms and reports; create electronic benefit authorizations; and add to, delete, or make changes to the information on file.

5.800 REPORTING OF EMPLOYEE THEFT OR EMBEZZLEMENT [Rev. eff. 7/1/12]

Any suspected theft or embezzlement of federal, S~~s~~tate or local funds shall be immediately reported to at least one level of management above the party(s) suspected or to the county social/human services board. In addition, theft or embezzlement of S~~s~~tate and/or federal funds or assets totaling $5,000 or more PER INCIDENT shall be reported in writing to the county social/human service board and to the ~~Director of the~~ Audit Division DIRECTOR of the Colorado Department of Human Services at 4126 South Knox Court, Denver, Colorado 80236~~-3102~~.

5.900 MAINTAIN INTERNAL CONTROLS AND ADEQUATE SEGREGATION OF DUTIES [Rev. eff. 7/1/12]

County~~ies~~ DEPARTMENTS OF SOCIAL/HUMAN SERVICES shall maintain a written set of internal control policies and procedures that promote a sound internal control environment that ensures an adequate and appropriate segregation of duties. The same staff may not initiate, authorize, and record a transaction, if staff also has the ability to receipt or disburse monies for that same transaction.

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 02/14/2017

Effective date

02/14/2017

BASIS AND PURPOSE FOR RULE 10

The purpose of Rule 10 is to establish playing rules for authorized types of poker and management procedures for conducting poker games in compliance with section 12-47.1-302 (2), C.R.S. The statutory basis for Rule 10 is found in sections 12-47.1-201, C.R.S., 12-47.1-203, C.R.S., 12-47.1-302, C.R.S., 12-47.1-816, C.R.S., and 12-47.1-818, C.R.S.

RULE 10 RULES FOR POKER

47.1-1003 Types of Poker authorized.

(52) DJ Wild Stud Poker;

(53) 2 card Poker; and

(54) Flushes Gone Wild.

47.1-1017.60 The Play – Flushes Gone Wild.

Flushes Gone Wild and Flushes Gone Wild Progressive are copyright and patent-protected poker variation games, the rights to which are owned by Bally Technologies of Las Vegas, Nevada, and which may be transferred or assigned. Flushes Gone Wild must be played according to the following rules:

(1) Flushes Gone Wild may only be played on tables displaying the Flushes Gone Wild layout.

(2) Flushes Gone Wild features head-to-head play against the dealer and an optional Flush Rush bonus bet. Players and the dealer are dealt 5 cards and combine them with the community hand (2 cards) to make their longest flush hand possible. Deuces (2-valued Cards) are always wild and can be used to complete the Flush hand. If the player and dealer have flushes of identical length, the rank of the highest kicker card in the flush determines the winner. For example, an Ace,7,3 of clubs will lose to an Ace,10,7 of hearts. An Ace will be the highest card in a Flush hand.

(3) To begin the game, players make equal bets on the Ante and Blind betting spots. Players may also make the optional Flush Rush bonus bet at this time. See pay table below for odds.

(4) Immediately prior to the start of play and after each round of play has been completed, the dealer shall shuffle the cards. Following the shuffle and cut, the dealer will deal 5 cards face downward, and place them in the center of the table. These 5 cards will be used for the community hand.

(5) The dealer, working clockwise from his/her left to right, then gives each player and him/herself a packet of five cards face downward. The dealer will then discard the remainder of the deck.

(6) The dealer will then spread the 5 community cards. He or she will then remove cards 1, 2 and 5 as they are counted from the dealer's left. These cards will be discarded. The cards that remain will be used as the community cards.

(a) Alternatively to the dealing procedures outlined above in (4) through (6), the retail licensee may elect to deal each player and him/herself five cards, face downward and one at a time in rotation. After the players and the dealer have received their five cards, the dealer will deal the next two cards, face downward, and place them in the center of the table. These two cards will be used for the community hand.

(7) Each player will then look at his/her cards and make a choice:

(a) Fold his/her cards and lose his/her Ante and Blind bets. If the player who has chosen to fold made a Flush Rush bonus bet, the dealer will pick up the player's Ante and Blind bets and will tuck the player's cards face down under the Flush Rush bonus bet.

(b) Remain in the game by making a Play bet of 2 times his/her ante.

(8) The dealer will then reveal his/her hand and will then turn over both community cards.

(9) The dealer, working counter-clockwise from his/her right to left, will compare his/her hand with the hand of each player that remained in the game.

(10) If the player's hand beats the dealer's hand, the player is paid 1 to 1 on his/her Ante and Play bets. His/her Blind bet is resolved based on the margin of victory over the dealer per the pay table below:

Win by	Pays
5 cards or more	200 to 1
4 cards	25 to 1
3 cards	5 to 1
2 cards	3 to 1
0 or 1 card	Push

(11) If the player's hand loses to the dealer's hand, his/her Ante, Play and Blind bets all lose.

(12) If the player's hand ties the dealer's hand, his/her Ante, Play and Blind bets all push.

(13) Players will win the Flush Rush bonus bet if they can make a 4-card flush or better, even if they lose to the dealer. See pay table below:

Hand	FGW-01	FGW-02	FGW-03	FGW-04
7-Card Natural Flush	250	200	250	250
7-Card Wild Flush	100	75	100	100
6-Card Natural Flush	50	50	50	60
6-Card Wild Flush	10	10	10	10
5-Card Natural Flush	6	6	5	5
5-Card Wild Flush	3	3	3	4
4-Card Natural Flush	1	1	1	1

If the casino licensee offers the optional Flushes Gone Wild Progressive bet, the following game rules will apply:

(1) Flushes Gone Wild Progressive is an optional progressive bonus bet which may only be played on tables displaying the Flushes Gone Wild progressive layout.

(2) The Flushes Gone Wild Progressive bet considers the best hand possible among the player's 5 cards. Community cards are not considered for this bet. Note: Deuces (2-valued cards) are NOT considered to be wild cards for this bet.

(3) The meter will be reseeded when the 100% award hits. The cost of the reseed has been factored into the casino's mathematical advantage.

(4) To begin each round, a player must make his/her regular game's wager. He or she may also place any bonus wagers and the progressive wager. A player must place the progressive wager on the sensor in front of his/her betting position. The sensor will light up.

(5) The dealer then follows house procedures for dealing the regular game.

(6) All hands are resolved at the same time. The dealer reconciles the standard wager and the Flush Rush bonus wager using the player's 5 card hand and the 2 community cards. To reconcile the progressive wager, only the player's 5 cards will be considered. Deuces will NOT be considered wild for the progressive wager. Folded hands do NOT qualify for payouts on the progressive wager. Follow the procedures in the next section for reconciling percentage pays from the progressive meter.

(7) Progressive Winners:

(a) The percentage pays are paid from the progressive jackpot shown on the progressive meter.

(b) Other hands are paid from the tray; they do not come off the meter.

(c) In the event more than one progressive meter pay hits during the same round during the same time, house procedures are then followed for paying the prize.

(d) When a player has a progressive winner, the dealer will select the player spot corresponding to the player with the winning progressive hand. The dealer will then press the appropriate hand button on the display. (If the hand button is pressed by accident, pressing it again will turn it off.)

(e) The dealer will then contact a supervisor.

(f) Once the casino verifies the progressive win, house procedures are then followed for paying the prize.

(g) When the dealer reconciles all action, he/she presses "End Game." This resets the system to begin the next hand.

(h) Once the Supervisor or Executive card (depending on the jackpot level) is swiped, the prize is logged into Game Manager. If the progressive pay needs to be backed out at this point, the award will need to be manually backed out using the Game Manager manual adjustment feature.

(i) An incorrect number of cards dealt to any player constitutes a dead hand for that player only. The player receiving the misdealt cards retains the player's ante and any bet. An incorrect number of cards dealt to the dealer constitutes a misdeal to the table and the players may play their hands for the purposes of the progressive jackpot only. If there are no progressive jackpot hands, all hands at the table are dead and the players retain their antes and bets.

(8) Envy Bonus:

(a) A player making the progressive wager also qualifies to win an envy payout, if another player at the table hits a hand associated with an envy payout. If another player at the table hits a hand associated with an envy pay, all other players who made the progressive bet win the envy pay. The player hitting the hand receives the normal prize pay only, but does NOT receive the envy pay.

(b) If a player's hand triggers an envy payout, the dealer will leave the hand face-up on the layout; otherwise, the dealer will lock up the cards. The dealer will then move on to the next player.

(c) The dealer pays any Envy Bonuses at the end of the round. In the event that more than one player is involved in a qualifying envy pay, then all players win multiple envy payouts.

(9) Pay Tables:

	FGWP-01		**FGWP-02**	
Hand	Pays*	Envy**	Pays*	Envy**
Royal Flush	100%	$1,000	100%	$5,000
Straight Flush	10%	$300	10%	$1,500
Four of a Kind	300 for 1		300 for 1	
Full House	50 for 1		50 for 1	
Flush	40 for 1		40 for 1	
Straight	30 for 1		30 for 1	
Three of a Kind	9 for 1		9 for 1	

*Original Wager is not returned

**Envy and Seed amounts adjust up or down accordingly with changes made to the wager amount.

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Tracking number: 2016-00562

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

Division of Gaming - Rules promulgated by Gaming Commission

on 12/15/2016

1 CCR 207-1

GAMING REGULATIONS

The above-referenced rules were submitted to this office on 12/15/2016 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

December 29, 2016 11:15:03

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

Permanent Rules Adopted

Department

Department of Personnel and Administration

Agency

State Personnel Board and Division of Human Resources

CCR number

4 CCR 801-1

Rule title

4 CCR 801-1 PERSONNEL BOARD RULES AND PERSONNEL DIRECTOR'S ADMINISTRATIVE PROCEDURES 1 - eff 02/14/2017

Effective date

02/14/2017

PREAMBLE

Unless otherwise noted in a specific provision, the State Personnel Director's Administrative Procedures were adopted by the State Personnel Director on May 2005, pursuant to a Statement of Basis & Purpose dated May 5, 2005. Such rules and procedures were effective July 1, 2005. This version reflects rulemaking by the State Personnel Director as follows: To modify Procedures 3-18.

Chapter 3 – Compensation

Authority for rules promulgated in this chapter is found in one or more of the following: the State of Colorado Constitution Article XII, Section 13, State of Colorado Revised Statutes (C.R.S.) § §24-50-104 (1)(a), (b), (c), (e), (f), (4), (5), (6), (9), and 24-50-104.5(1), 109.5, 136, 137, and 208, C.R.S. Board rules are identified by cites beginning with "Board Rule".

Lateral Adjustments

3-18. Lateral movement is a change to a different class or position with the same range maximum (e.g., transfers, individual allocations, system maintenance studies including class placement), or an in-range salary movement in the same class and position. Base pay can be offered at a rate that falls within the pay range of the class and does not exceed the grade maximum. In addition, in-range salary movements are subject to the provisions below. (1/1/14)

In-Range Salary Movements. A department may use these discretionary movements to increase base salaries of permanent employees who remain in their current classes and positions when there is a critical need not addressed by any other pay mechanism. The use of in-range salary movements is not guaranteed and shall be funded within existing budgets. These movements shall not be retroactive and unless specifically noted in these rules, frequency is limited to one in-range salary movement in a 12-month period. No aspect of granting these movements is subject to grievance or appeal, except for alleged discrimination; however, an alleged violation of the department's plan can be disputed. A department's decision in the dispute is final and no further recourse is available. Once granted, a reduction in base salary is subject to appeal. Departments must develop a written plan addressing appropriate criteria for the use of any movement based on sound business practice and needs, e.g., eligibility, funding sources, approval requirements, measures to ensure consistent use. The plan must be communicated within the department and a copy provided to the Director prior to implementation. If granted, there must be an individual written agreement between the employee and the appointing authority that stipulates the terms and conditions of the movement. Records of any aspect of these movements shall be provided to the Director when requested. (02/2017)

A. Salary Range Compression. Used as a salary leveling increase where longer-term or more experienced employees are paid lower in the range for the class than new hires or less experienced employees over a period of time resulting in documented retention difficulties. Thus, there is a valid need to increase one or more employee's base salary in the class to recognize contributions equal to or greater than the newly hired or less experienced employees. Justification shall be required based on facts. To be eligible, an employee must be performing satisfactorily as evidenced by the most recent final overall performance rating. The increase may be up to 10 percent or the maximum permitted by the department's policy on hiring salaries, whichever is greater, and subject to the pay grade maximum. (9/1/12)

B. Counteroffer. Used when an employee with critical, strategic skills receives a higher salary offer from another department or outside employer and the appointing authority needs to increase the employee's base salary for retention purposes. To be eligible, an employee must be performing satisfactorily as evidenced by the most recent final overall performance rating. Written confirmation of the other entity's salary offer is required. The increase may be up to 10 percent or the maximum permitted by the department's policy on promotional pay, whichever is greater, and subject to the pay grade maximum.

C. Delayed Promotional Increase. Used when a promotion is made with no salary increase or partial salary increase because performance expectations are unproven and/or funds may be unavailable at the time of promotion. This is a one-time base salary increase within 12 months of the date of promotion when funds become available and the employee's contributions are fulfilled. The intent to provide a later salary increase must be documented at the time of the promotion. To be eligible, an employee must be performing satisfactorily as evidenced by the most recent final overall performance rating. The increase may be up to 10 percent or the maximum amount permitted in the department's policy on promotional pay increases, whichever is greater, and subject to the pay grade maximum. Transfer, promotion, demotion, or separation of the employee will negate the delayed increase. (02/2017)

D. New Hires. Used at the time an employee is hired when performance expectations are unproven and/or funds may be unavailable. This is a one-time base salary increase within 12 months of hire. The intent to provide a later salary increase must be documented at the time of hire. To be eligible, early satisfactory completion of specified training objectives must be documented. This is limited to a one-time increase up to 10 percent or the maximum permitted by the department's policy on promotional pay increases, whichever is greater, and subject to the pay grade maximum. Transfer, promotion, demotion, or separation of the employee will negate the delayed increase. (02/2017)

E. Competency-Based Increase. Used when an employee applies the complete set, or a subset, of competencies required to successfully perform the work of a specific position. Required competencies must be specifically defined with deadlines and evaluation criteria for achievement, and must be communicated in writing to the employee prior to granting an increase. Competencies that are the basis for this increase must be required to perform permanent, essential functions assigned to the position. The intent of this increase is to promote career development by aligning pay increases with achieving all required competencies to fully perform the job. Increases are limited to no more than two per 12-month period. This type of increase shall not be applied as a substitute for Merit Pay. To be eligible, an employee must demonstrate required competencies as evidenced by a written evaluation by the appointing authority. The increase may be up to 10 percent or the maximum permitted by the department's policy, whichever is greater, and subject to the pay grade maximum. (02/2017)

PREAMBLE

Unless otherwise noted in a specific provision, The State Personnel Director's Administrative Procedures were adopted by the State Personnel Director on May 2005, pursuant to a Statement of Basis & Purpose dated May 5, 2005. Such rules and procedures were effective July 1, 2005. This version reflects rulemaking by the State Personnel Director as follows: To modify Procedures 5-1, 5-2, 5-5, 5-7, 5-8, 5-9, 5-10, 5-12, 5-13, 5-14, 5-15, 5-16, 5-18, 5-19, 5-20, 5-21, 5-25, 5-28, 5-29, 5-30, 5-31, 5-32, 5-34, 5-37, 5-38.

Chapter 5 - Time Off

Authority for rules promulgated in this chapter is found in one or more of the following: the State of Colorado Constitution Article XII, Section 13, The Family Medical Leave Act (FMLA), Americans with Disabilities Act (ADA), Family Care Act (FCA), Uniformed Services Employment and Reemployment Rights Act (USERRA), the State of Colorado Constitution Article XII, Section 13, The Patient Protection and Affordable Care Act (PPACA), commonly called the Affordable Care Act (ACA), and 26 U.S.C. 63, State of Colorado Revised Statutes (C.R.S.) §§ 1-6-115, 1-6-122, 1-7-102, 8-40-101, 14-2-101, 14-15-103, 24-11-101, 24-11-112, 24-18-102, 24-33.5-825, 24-50-104, 24-50-109.5, 24-50-401, 28-1-104, 28-3-601, 28-6-602, 28-3-607, 28-3-609, and 28-3-610. (02/2017).

General Principles

5-1. Employees are required to work their established work schedule unless on approved leave. Employees are responsible for requesting leave as far in advance as possible. The leave request must provide sufficient information to determine the type of leave. (5/1/10)

A. The appointing authority shall respect the employee's privacy rights when requesting adequate information to determine the appropriate type of leave. (02/2017)

B. Appointing authorities are responsible for approving all leave requests and for determining the type of leave granted, subject to these rules and any additional departmental leave procedures. Departmental procedures shall be provided to employees. (02/2017)

C. Unauthorized use of any leave may result in the denial of paid leave and/or corrective or disciplinary action.

D. Mandates to maintain a minimum balance of sick or annual leave (or a combination of both) are not permitted except under a leave sharing program or a corrective or disciplinary action. (02/2017)

5-2. Paid leave is to be exhausted before an employee is placed on unpaid leave, unless the reason for leave does not qualify for the type of leave available, or during a mandatory or voluntary furlough. (02/2017)

5-3. Departments shall keep accurate leave records in compliance with rule and law and be prepared to report the use of any type of leave when requested by the Director. (5/1/10)

Accrued Paid Leave

5-4. Annual leave is for an employee's personal needs and use is subject to the approval of the appointing authority. The appointing authority may establish periods when annual leave will not be allowed, or must be taken, based on business necessity. These periods cannot create a situation where the employee does not have a reasonable opportunity to use requested leave

that will be subject to forfeiture. If the department cancels approved leave that results in forfeiture, the forfeited hours must be paid before the end of the fiscal year. (5/1/10)

5-5. Sick leave is for health reasons only, including diagnostic and preventative examinations, treatment, and recovery. Accrued sick leave may be used for the health needs of the employee, employee's child, parent, spouse, injured military service member as established under Rule 5-20, legal dependent, or a person in the household for whom the employee is the primary care giver. The appointing authority may require documentation of the familial relationship. (02/2017)

A. Appointing authorities may use discretion to send employees home for an illness or injury that impacts the employee's ability to perform the job or the safety of others. Sick leave shall be charged but annual leave shall be charged if sick leave is exhausted; unpaid leave if both annual and sick leave are exhausted. (02/2017)

B. Employees shall provide the State's authorized form (or other official document containing the same information) from a health care provider for an absence of more than three consecutive full working days for any health reason or the use of sick leave shall be denied. Appointing authorities have the discretion to require the State's authorized form (or other official document containing the same information) for absences of less than three days when the appointing authority has a reasonable basis for suspecting abuse of sick leave. (02/2017)

1. The completed official form or document must be returned within 15 days from the appointing authority's request. (02/2017)

2. Failure to provide the State's authorized form (or other official document containing the same information) may result in corrective/disciplinary action. Appointing authorities have the discretion to approve other forms of leave if sick leave is denied. (02/2017)

Exhaustion of Leave and Administrative Discharge

5-6. If an employee has exhausted all credited paid leave and is unable to return to work, unpaid leave may be granted or the employee may be administratively discharged by written notice following a good faith effort to communicate with the employee. Administrative discharge applies only to exhaustion of leave. (5/1/10)

A. The notice of administrative discharge must inform the employee of appeal rights and the need to contact the employee's retirement plan on eligibility for retirement.

B. An employee cannot be administratively discharged if FML or short-term disability leave (includes the 30-day waiting period) apply, or if the employee is a qualified individual with a disability under the ADA who can reasonably be accommodated without undue hardship.

C. A certified employee who has been discharged under this rule and subsequently recovers has reinstatement privileges.

5-7. Table (02/2017)

Monthly Leave Earning, Accrual, Payout, and Restoration for Permanent Employees							
Annual Leave				**Sick Leave**			
Years of Service*	**Hrs. / Mon.**	**Max. Accrual****	**Payout**	**Hrs./Mon.**	**Max. Accrual*****	**Restoration**	**Payout**
Years 1 - 5 (01 - 60 Months)	8	192 hours	Upon termination or death, unused leave is paid out up to the maximum accrual rate.	6.66	360 hours	Previously accrued sick leave up to 360 hours is restored when eligible for reinstatement or reemployment.	Upon death or if eligible to retire, 1/4 of unused leave paid out to the maximum accrual rate. PERA's age and service requirements under the Defined Benefit plan are applied regardless of the plan actually enrolled in.
Years 6 - 10 (61 - 120 Months)	10	240 hours					
Years 11 -15 (121 - 180 Months)	12	288 hours					
Year 16 or Greater (181 or more Months)	14	336 hours					
*Years of service is computed from the 1st calendar day of the month following the hire date; except if the employee began work on the 1st working day of a month, include that month in the count. Employees with prior permanent state service, in or out of the state personnel system, earn leave based on the total whole months of service, excluding temporary assignments. ** Over-accrued amounts are forfeited at the beginning of the new fiscal year (July 1st).				*** Over-accrued sick leave up to 80 hours is converted to annual leave each new fiscal year (July 1st) at a 5:1 ratio (5 hours of sick converts to 1 hour annual leave). An employee may have an individual maximum accrual that is greater than 360 hours if continuously employed in the state personnel system prior to 7/1/88. Maximum accrual for these employees is calculated by adding 360 hours to the leave balance on 6/30/88.			

General Provisions:

Employees must be at work or on paid leave to earn monthly leave. Leave is credited on the last day of the month in which it is earned and is available for use on the first day of the next month, subject to any limitations elsewhere in Chapter 5, Time Off. A terminating employee shall be compensated for annual leave earned through the last day of employment.

Part-time employees who work regular, non-fluctuating schedules earn leave on a prorated basis based on the percentage of the regular appointment, rounded to the nearest 1/100 of an hour. Leave for part-time employees who work irregular, fluctuating schedules and full-time employees who work or are on paid leave less than a full month is calculated by dividing the number of hours paid by the number of work hours in the monthly pay period. The percentage is then multiplied by the employee's leave earning rate to derive the leave earned. Overtime hours are not included in leave calculations.

Leave payouts at separation are calculated using the annualized hourly rate of pay (annual salary divided by 2080 hours for full-time employees), and employees are only eligible for the sick leave payout one time - initial eligibility for retirement.

Borrowing against any leave that may be earned in the future or "buying back" leave already used is not allowed.

Forfeiture of leave as a disciplinary action or a condition of promotion, demotion, or transfer is not allowed.

Use of annual leave cannot be required for an employee being laid off.

Make Whole: When an employee is receiving workers' compensation payments, accrued paid leave is used to make the employee's salary whole in an amount that is closest to the difference between the temporary compensation payment and the employee's gross base pay, excluding any pay differentials. Leave earning is not prorated when an employee is being made whole.

Short-Term Disability: Employees are required to use paid leave during the 30-day waiting period for short-term disability benefits, including the use of accrued annual leave and/or compensatory time once sick leave has been exhausted. Any remaining sick leave beyond the 30-day waiting period must be exhausted prior to eligibility for short-term disability benefit payments.

Leave Sharing

5-8. Leave sharing allows for the transfer of annual leave between permanent state employees for an unforeseeable life-altering event beyond the employee's control, and is subject to the discretionary approval of a department head. Departments must develop and communicate their programs prior to use, including criteria for qualifying events. The authority to approve leave sharing shall not be delegated below the department head without advance written approval of the Director. (02/2017)

5-9. Employees must have at least one year of state service to be eligible. Leave sharing is not an entitlement even if the individual case is qualified. Donated leave is not part of the leave payout upon termination or death. (5/1/10)

A. Donated leave is allowed for a qualifying event for the employee or the employee's immediate family member as defined under Rule 5-5. In order to use donated leave, the employee must first exhaust all applicable paid leave and compensatory time and must not be receiving short-term disability or long-term disability benefit payments. If all leave is exhausted, donated leave may be used to cover the leave necessary during the 30-day waiting period for short-term disability benefit payments. The transfer of donated leave between departments is allowed only with the approval of both department heads. (02/2017)

Holiday Leave

5-10. Permanent full-time employees on the payroll when the holiday is observed are granted eight hours of paid holiday leave (prorated for part-time work or unpaid leave in the month) to observe each legal holiday designated by law, the Governor, or the President. Appointing authorities may designate alternative holiday schedules for the fiscal year. (5/1/10)

A. Department heads have the discretion to grant employee requests to observe César Chávez day, March 31, in lieu of another holiday in the same fiscal year. The department must be open and at least minimally operational for both days and the employee must have work to perform.

B. Each department shall establish an equitable and consistent policy to ensure that all permanent employees are granted their full complement of holidays. (02/2017)

Other Employer-Provided Leaves

5-11. The types of leave in this section do not accrue, carry over, or pay out. (5/1/10)

5-12. Bereavement leave is for an employee's personal needs and use is subject to the approval of the appointing authority. The appointing authority may provide up to 40 hours (prorated for part-time work or unpaid leave in the month) of paid leave to permanent employees for the death of a family member or other person. Employees are responsible for requesting the amount of leave needed. Documentation may be required when deemed necessary by the appointing authority. (02/2017)

5-13. Military leave provides up to 15 paid regular workdays in a fiscal year to permanent employees who are members of the National Guard, military reserves, or National Disaster Medical Service to attend the annual encampment or equivalent training or who are called to active service, including declared emergencies. Unpaid leave is granted after exhaustion of the 15 regular workdays. The employee may request the use of annual leave before being placed on unpaid leave. (02/2017)

A. In the case of a state emergency, the employee must return upon release from active duty. In the case of federal service, the employee must notify the appointing authority of the intent to return to work, return to work, or may need to apply to return, and is entitled to the same position or an equivalent position, including the same pay, benefits, location, work schedule, and other working conditions. This leave is not a break in service. (02/2017)

5-14. Jury leave provides paid leave to all employees; however, temporary employees receive paid leave for a maximum of three days of jury leave. Jury pay is not turned over to the department. Proof may be required. (02/2017)

5-15. Administrative leave may be used to grant paid time when the appointing authority wishes to release employees from their official duties for the good of the state. In determining what is for the good of the state, an appointing authority must consider prudent use of taxpayer and personal services dollars and the business needs of the department. (02/2017)

A. Activities performed in an official employment capacity, including job-related training and meetings, voluntary training, conferences, participation in hearings or settlement conferences at the direction of the Board or Director, and job-related testimony in court or official government hearings required by an appointing authority or subpoena are work time and not administrative leave. Administrative leave is not intended to be a substitute for corrective or disciplinary action or other benefits and leave. (02/2017)

B. Administrative leave may be granted for the following: (02/2017)

1. Up to five days for local or 15 days for national emergencies per fiscal year to employees who are certified disaster service volunteers of the American Red Cross. (02/2017)

2. One period of administrative leave for the initial call up to active military service in the war against terrorism of which shall not exceed 90 days and applies after exhaustion of paid military leave. Administrative leave is only used to make up the difference between the employee's base salary (excluding premiums) and total gross military pay and allowances. The employee must furnish proof of military pay and allowances. This leave does not apply to regular military obligations such as the annual encampment and training. (02/2017)

3. Employee participation in community or school volunteer activities. (02/2017)

4. Employee recognition for special accomplishments or contributions in accordance with the department's established incentive plan. (02/2017)

C. Administrative leave must be granted for the following: (02/2017)

1. Two hours to participate in general elections if the employee does not have three hours of unscheduled work time during the hours the polls are open. (02/2017)

2. Up to two days per fiscal year for organ, tissue, or bone donation for transplants. (02/2017)

3. To serve as an uncompensated election judge unless a supervisor determines that the employee's attendance on Election Day is essential. The employee must provide evidence of service. (02/2017)

4. Up to 15 days in a fiscal year when qualified volunteers or members of the Civil Air Patrol are directed to serve during a declared local disaster, provided the employee returns the next scheduled workday once relieved from the volunteer service. (02/2017)

5-16. Administrative leave that exceeds 20 consecutive working days must be reported to the department head and the Director. (02/2017)

5-17. Unpaid leave may be approved by the appointing authority unless otherwise prohibited. The appointing authority may also place an employee on unpaid leave for unauthorized absences and may consider corrective and/or disciplinary action. Probationary and trial service periods are extended by the number of days on unpaid leave and may be extended for periods of paid leave. Unpaid leave is calculated based on the monthly hourly rate. (1/1/14)

A. Short-term disability (STD) leave is a type of unpaid leave of up to six months while either state or PERA STD benefit payments are being made. To be eligible for this leave, employees must have one year of service and an application for the STD benefit must be submitted within 30 days of the beginning of the absence or at least 30 days prior to the exhaustion of all accrued sick leave. The employee must also notify the department at the same time that a benefit application is submitted.

B. Voluntary furlough is unpaid job protection granted for up to 72 workdays per fiscal year when a department head declares a budget deficit in personal services. The employee may request such absence to avoid more serious position reduction or abolishment. Employees earn sick and annual leave and continue to receive service credit as if the furlough had not occurred.

C. Victim protection leave is unpaid job protection granted for up to 24 hours (prorated for part-time employees) per fiscal year for victims of stalking, sexual assault, or domestic abuse or violence. An employee must have one year of state service to be eligible and have exhausted all annual and, if applicable, sick leave. All information related to the leave shall be confidential and maintained in separate confidential files with limited access. Retaliation against an employee is prohibited; however, this rule does not prohibit adverse employment action that would have otherwise occurred had the leave not been requested or used.

5-18. Parental Academic leave. Departments may provide up to 18 hours (prorated for part-time) in an academic year for parents or legal guardians to participate in academic-related activities. A department shall adopt and communicate a policy on whether the leave will be unpaid or paid, the amount and type of paid leave, and specifically the substitution of annual leave or use of administrative leave. (02/2017)

Family/Medical Leave (FML)

5-19. The state is considered a single employer under the Family and Medical Leave Act (FMLA) and complies with its requirements, the Family Care Act (FCA), and the following rules for all employees in the state personnel system. Family/medical leave cannot be waived. (02/2017)

A. The FCA provides unpaid leave to eligible employees to care for their partners in a civil union or domestic partnership who have a serious health condition and is administered consistent with FML. (02/2017)

5-20. FML is granted to eligible employees for the following conditions: (02/2017)

A. Birth and care of a child and must be completed within one year of the birth; (02/2017)

B. Placement and care of an adopted or foster child and must be completed within one year of the placement; (02/2017)

C. Serious health condition of an employee's parent, child under the age of 18, an adult child who is disabled at the time of leave, spouse, partner in a civil union, or registered domestic partner for physical care or psychological comfort; see Chapter 1, Organization, Responsibilities, Ethics, Payroll Deduction, And Definitions for the definition of serious health condition and ADA definition for disability; (02/2017)

D. Employee's own serious health condition; (02/2017)

E. Active duty military leave when a parent, child, or spouse experiences a qualifying event directly related to being deployed to a foreign country; or (02/2017)

F. Military caregiver leave for a parent, child, spouse, or next of kin who suffered a serious injury or illness in the line of duty while on active duty. Military caregiver leave includes time for veterans who are receiving treatment within five years of the beginning of that treatment. (02/2017)

5-21. To be eligible for FML, an employee must have 12 months of total state service as of the date leave will begin, regardless of employee type. A state temporary employee must also have worked 1250 hours within the 12 months prior to the date leave will begin. Time worked includes overtime hours. (02/2017)

A. Full-time employees will be granted up to 520 hours per rolling 12-month period. The amount of leave is determined by the difference of 520 hours and any FML leave taken in the previous 12-month period and is calculated from the date of the most recent leave. The amount of leave is prorated for part-time employees based on the regular appointment or schedule. Any extension of leave beyond the amount to which the employee is entitled is not FML, see Rule 5-1 B. (02/2017)

5-22. Military caregiver leave is a one-time entitlement of up to 1040 hours (prorated for part-time) in a single 12-month period starting on the date the leave begins. While intermittent leave is permitted, it does not extend beyond the 12-month period. In addition, the combined total for military caregiver and all other types of FML shall not exceed 1040 hours. (5/1/10)

5-23. All other types of leave, compensatory time, and make whole payments under workers' compensation run concurrently with FML and do not extend the time to which the employee is entitled. The employee must use all accrued paid leave subject to the conditions for use of such leave before being placed on unpaid leave for the remainder of FML. An employee on FML cannot be required to accept a temporary "modified duty" assignment even though workers' compensation benefits may be affected. (7/1/13)

5-24. Unpaid leave rules apply to any unpaid FML except the state continues to pay its portion of insurance premiums. An employee's condition that also qualifies for short-term disability benefits must comply with the requirements of that plan.

5-25. Employer Requirements. The appointing authority, human resources director, or FMLA coordinator must designate and notify the employee whether requested leave qualifies as FML based on the information provided by the employee, regardless of the employee's desires. Departments shall follow all written directives and guidance on designation and notice requirements. (02/2017)

5-26. Employee Requirements. Written notice of the need for leave must be provided by the employee 30 days in advance. If an employee becomes aware of the need for leave in less than 30 days in advance, the employee shall provide notice either the same day or the next business day. Failure to provide timely notice when the need for leave is foreseeable, and when there is no reasonable excuse, may delay the start of FML for up to 30 days after notice is received as long as it is designated as FML in a timely manner. Advance notice is not required in the case of a medical emergency. In such a case, an adult family member or other responsible party may give notice, by any means, if the employee is unable to do so personally. (5/1/10)

5-27. The employee shall consult with the appointing authority to: establish a mutually satisfactory schedule for intermittent treatments and a periodic check-in schedule; report a change in circumstances; make return to work arrangements, etc. (5/1/10)

5-28. Employees shall provide proper medical certification, including additional medical certificates and fitness-to-return certificates as prescribed in Rules 5-29 through 5-32. If the employee does not provide the required initial and additional medical certificates, the leave will not qualify as FML and shall be denied. (02/2017)

Medical Certificates

5-29. Employees must provide the State's authorized medical certification form (or other official document containing the same information) when initiating an FML leave request. Appointing authorities have the discretion to require periodic medical certification to determine if FML continues to apply or when the appointing authority has a reasonable basis for suspecting leave abuse. Medical certification for FML may be required for the first leave request in an employee's rolling 12-month period. Additional medical certification may be required every 30 days or the time period established in the initial certification, whichever is longer, unless circumstances change or new information is received. (02/2017)

A. The medical certification must be completed by a health care provider as defined in federal law. The completed medical certification must be returned within 15 days from the appointing authority's request. If it is not practical under the particular circumstances to provide the requested medical certification within 15 days despite the employee's diligent, good faith efforts, the employee must provide the medical certification within a reasonable period of time involved, but no later than thirty calendar days after the initial date the appointing authority requested such medical certification. (02/2017)

B. Failure to provide the medical certification shall result in denial of leave and possible corrective/disciplinary action. (7/1/13)

5-30. When incomplete medical certification is submitted, the employee must be allowed seven days to obtain complete information, absent reasonable extenuating circumstances. (7/1/13)

A. Following receipt of the information or the seven days from which it was requested, the department's human resources director or FMLA coordinator may, with the employee's

written permission, contact the health care provider for purposes only of clarification and authentication of the medical certification. (02/2017)

5-31. When medical certification is submitted to demonstrate that the leave is FML-qualifying, the department has the right to request a second opinion on the initial certification. If the first and second opinion conflict, the department may require a binding third opinion by a mutually agreed upon health care provider. Under both circumstances the cost is paid by the department. Second and third opinions are not permitted on additional certification for recertification purposes. (02/2017)

5-32. If an absence is more than 30 days for the employee's own condition, the employee must provide a fitness-to-return certificate. The fitness-to-return certificate may be required for absences of 30 days or less based on the nature of the condition in relation to the employee's job. The department may also require a fitness-to-return certificate from employees taking intermittent FML every 30 days if there are reasonable safety concerns regarding the employee's ability to perform his or her job duties. (02/2017)

A. When requested, employees must present a completed fitness-to-return certificate before they will be allowed to return to work. Failure to provide a fitness-to-return certificate as instructed could result in delay of return, a requirement for new medical certification, or administrative discharge as defined in Rule 5-6. (7/1/13)

B. When an incomplete fitness-to-return certification is submitted, the employee must be allowed seven days to obtain complete information, absent reasonable extenuating circumstances. Following receipt of the information or the seven days from which it was requested, the department's human resources director or FMLA coordinator may, with the employee's written permission, contact the health care provider for purposes only of clarification and authentication of the fitness-to-return certification. (02/2017)

5-33. Benefits coverage continues during FML. If the employee is on paid FML, premiums will be paid through normal payroll deduction. If the FML is unpaid, the employee must pay the employee share of premiums as prescribed by benefits and payroll procedures. (5/1/10)

5-34. Upon return to work, the employee is restored to the same, or an equivalent, position, including the same pay, benefits, location, work schedule, and other working conditions. If the employee is no longer qualified to perform the job (e.g., unable to renew an expired license), the employee must be given an opportunity to fulfill the requirement. (5/1/10)

A. If the employee is no longer able to perform the essential functions of the job due to a continuing or new serious health condition, the employee does not have restoration rights under FML, and the appointing authority may separate the employee pursuant to Rule 5-6 subject to any applicable ADA provisions. (02/2017)

B. The employee does not have restoration rights if the employment would not have otherwise continued had the FML leave not been taken, e.g., discharge due to performance, layoff, or the end of the appointment.

5-35. FML does not prohibit adverse action that would have otherwise occurred had the leave not been taken. (5/1/10)

5-36. The use of FML cannot be considered in evaluating performance. If the performance plan includes an attendance factor, any time the employee was on FML cannot be considered. (5/1/10)

5-37. Records. Federal law requires that specified records be kept for all employees taking FML. These records must be kept for three years. Any medical information must be maintained in a separate confidential medical file in accordance with ADA requirements and Chapter 1, Organization, Responsibilities, Ethics, Payroll Deduction, And Definition. (02/2017)

Injury Leave

5-38. Injury Leave. A permanent employee who suffers an injury or illness that is compensable under the Workers' Compensation Act shall be granted injury leave up to 90 occurrences (whole day increments regardless of the actual hours absent during a day) with full pay if the temporary compensation is assigned or endorsed to the employing department. (5/1/10)

A. If after 90 occurrences of injury leave an employee still is unable to work, the employee is placed on leave under the "make whole" policy. The employee will receive temporary disability benefits pursuant to the Colorado Workers' Compensation Act. The employing department will make up the difference between the temporary disability benefits and the employee's full pay using sick leave first, then annual leave or compensatory time as available. Once all paid leave is exhausted, employees may be given unpaid leave. Workers' compensation payments after termination of injury leave shall be made to the employee as required by law. (02/2017)

B. The appointing authority may invoke Rule 5-6 if the employee is unable to return to work after exhausting all accrued paid leave and applicable job protection. Termination of service under that rule will not affect continuation of payments under the Workers' Compensation Act.

C. If the employee's temporary compensation payment is reduced because the injury or occupational disease was caused by willful misconduct or violation of rules or regulations, the employee shall not be entitled to or granted injury leave. Any absence shall be charged using sick leave first, then annual leave or compensatory time on a "make whole basis" or, at the appointing authority's discretion, unpaid leave may be granted and the temporary compensation payments shall be made to the employee. (02/2017)

D. The first three regular working days missed as a result of a compensable work injury will be charged to the employee's sick leave, then annual leave or compensatory time, as available. Injury leave will only be granted once an eligible employee misses more than three regular working days. Sick or annual leave for the first three regular working days will be restored if the employee is off work for more than two weeks. (02/2017)

E. If a holiday occurs while an employee is on injury leave, the employee receives the holiday and the day is not counted as an injury leave occurrence.

PREAMBLE

Unless otherwise noted in a specific provision, the State Personnel Director's Administrative Procedures were adopted by the State Personnel Director on May 2005, pursuant to a Statement of Basis & Purpose dated May 5, 2005. Such rules and procedures were effective July 1, 2005. This version reflects rulemaking by the State Personnel Director as follows: To modify Procedures 11-3, 11-7, 11-9, 11-11, 11-12, 11-16, 11-19, 11-21.

Chapter 11 – State Benefit Plans

Authority for rules promulgated in this chapter is found in State of Colorado Revised Statutes (C.R.S.) § §24-50-104, 24-50-109.5, and Part 6, the State of Colorado Constitution Article XII, Section 13, The Patient Protection and Affordable Care Act (PPACA), commonly called the Affordable Care Act (ACA), and 26 U.S.C. 63, The Family Medical Leave Act (FMLA), Americans with Disabilities Act (ADA), Family Care Act (FCA), Uniformed Services Employment and Reemployment Rights Act (USERRA), State of Colorado Revised Statutes (C.R.S.) §§ 1-6-115, 1-6-122, 1-7-102, 8-40-101, 14-2-101, 14-15-103, 24-11-101, 24-11-112, 24-18-102, 24-33.5-825, 24-50-104, 24-50-109.5, 24-50-401, 28-1-104, 28-3-601, 28-6-602, 28-3-607, 28-3-609, and 28-3-610. (02/2017).

General Principles

11-1. The state reserves the sole right to add, modify, or discontinue any state group benefits as deemed necessary. (7/1/10)

11-2. The Director complies with applicable federal and state law and regulations that govern state group benefit plans, as well as the terms and conditions of the state group benefit plans contracts and plan documents. Governing laws and regulations, and these rules shall prevail in the event of a conflict with contracts or plan documents. (7/1/10)

11-3. The rules in Chapter 11, State Benefit Plans, apply to all departments administering and all employees eligible for state benefit plans. (02/2017)

Director Responsibilities

11-4. The Director will provide all group benefits information, written directives and training to departments necessary for department benefit administrators to fulfill their responsibilities as delegated agents to the plans. (7/1/10)

11-5. The Director has sole authority to determine eligibility, negotiate contracts, determine plan designs, set rates and coverage tiers, define the plan year, and establish open enrollment periods, in accordance with law, regulations, and approved funding. (7/1/10)

11-6. The Director's online benefits administration system is the official system of record for all eligibility and enrollment transactions. (7/1/10)

Department Responsibilities

11-7 All departments shall exercise due diligence when administering group benefits in the best interests of the plans and all members. As delegated agents of the Director in their respective departments, each department benefits administrator's responsibilities include, but are not limited to, the following. (7/1/10)

A. Know and comply with plan documents and basic plan features, law and regulations, rules, benefits administration system, deadlines, the Director's website, and written directives.

B. Communicate, disseminate, explain, and answer questions on all benefits-related information including, but not limited to, options and changes, process, requirements and eligibility.

C. Provide prompt notice of enrollment opportunities and information so employees can elect benefits during open enrollment or enroll within 31 days of hire or an employee's notice of a qualified event. The first day (day 1 of the 31 days) is the day after hire or a qualified event. (1/1/14)

D. Monitor deadlines and assist employees with meeting those deadlines.

E. Provide access to and training in the use of the benefits administration system, and assist employees with transactions.

F. Refrain from advising an employee of which individual elections to make and assisting an employee in the commission of fraud or attempted fraud of a state benefit plan.

G. Process timely and accurate transactions and payments. This includes regular review of pending actions, supporting documentation, and system reports in order to promptly approve elections, terminate coverage, investigate suspicious or questionable actions or data, correct errors, and verify continuing dependent eligibility.

H. Repealed (02/2017)

11-8 These responsibilities apply to all departments, including those that offer their own separate group benefit plans to other employees not covered by the "State Employees Group Benefits Act". (7/1/10)

Employee Responsibilities

11-9. Employees are responsible for knowing, understanding, and adhering to these rules, plan documents for the terms and conditions of coverage, and eligibility and enrollment requirements in order to make timely and informed choices, including, but not limited to, the following. (1/1/14)

A. Employees shall enter all required information in the benefits administration system in a timely and accurate manner in order to comply with eligibility and enrollment requirements for themselves and eligible dependents.

B. Enrollment of employees and eligible dependents is restricted to initial hire, annual open enrollment, and limited qualified events defined by law and plan documents. Elections are irrevocable for the plan year, except in limited circumstances specified by law or regulations. Failure to enroll or change elections within deadlines is not a qualifying event.

1. Any permitted enrollment, modification, or termination of enrollment shall be entered into the official benefit administration system within 31 days of a qualifying event. Any supporting documentation required for the enrollment, modification, or termination of enrollment must be submitted within 45 days of the qualifying event. The first day of the 31-day period is the day after the qualifying event. For open enrollment, transactions shall be entered into the official benefits administration system with accompanying documentation within the allotted time period established. (02/2017)

2. Failure to enroll or modify enrollment on or before the 31st day of the qualifying event requires the employee to wait until the next open enrollment or at the time of another qualifying event. (02/2017)

3. Enroll and verify elections annually.

4. Employees who transfer from one department to another must notify both department benefit administrators to avoid a potential lapse in coverage.

C. Employees shall remove any dependent by the end of the month in which the dependent ceases to meet eligibility requirements. Failure to do so results in the employee's continuing financial liability for total premium (employee and employer contributions) and cost of paid claims for the ineligible dependent, as specified in law and regulations, plan documents, and these rules.

D. Any enrollment or qualified change to enrollment constitutes authorization to begin or end payroll deductions.

1. Employees must verify the accuracy of their payroll deductions and notify their department benefits administrator of any error. The notice must be in writing and within 15 days from the pay date in which the first payroll deduction occurred.

2. If an employee fails to notify the department of the payroll error within the 15-day period, the employee will continue to be liable for the election for the remainder of the plan year unless the election is not consistent with plan documents, rules, laws, regulations, and written directives.

11-10. It is unlawful for any employee, or dependent to intentionally provide false, incomplete, or misleading facts, information, or document in written or electronic form, including the benefits administration system for the purpose of defrauding or attempting to defraud the State of Colorado. The Director shall investigate when there is reason to believe an employee or dependent is committing or attempting to commit fraud against any state group benefit plan. If the Director finds evidence of fraud or attempted fraud, the employee, dependent, or both may be subject to any or all of the following sanctions. (7/1/10)

A. Immediate termination of coverage.

B. Denial of future enrollment.

C. Requirement to reimburse the state contributions and claims costs during the time of ineligible coverage.

D. Filing of criminal charges.

E. Notice to the employee's department, which may take employment action, such as corrective or disciplinary action.

Eligibility

11-11. Employees and their dependents must meet the eligibility requirements as defined in state law, plan documents, and rules to qualify for enrollment in the state group benefit plans. (7/1/10)

A. Dependents may not enroll in the State Benefit Plans unless the employee is enrolled. If the employee and spouse/partner are both employees of the state, each may be enrolled as an

employee or covered as a dependent of the other person but not both. If both the employee and spouse/partner make a separate election under the State Benefit Plans, only one parent may enroll children as dependents. (02/2017)

11-12. Additional criteria and documentation requirements are contained in the State of Colorado Salary Reduction Plan, law and regulations, rule, and other written directives, which are available in the Employee Benefits Unit. Dependents may be federal tax dependents (qualified) or non-tax dependents (non-qualified). Non-qualified dependents' coverage is subject to taxable income regulations. Eligible dependents are specified in statutes, primarily § 24-50-603(5) and (6.5), C.R.S., as modified or further defined by other state statutes (e.g., Title 10) or federal regulations (e.g., Affordable Care Act [ACA], IRC on taxable income). (02/2017)

11-13. Legal documentation is required to add any dependent to State benefits. (1/1/14)

Coverage of Benefits

11-14. Initial coverage in group benefit plans is effective on the first day of the month following the date of hire or initial eligibility unless otherwise specified by the contracts, law, or regulations. (1/1/14)

11-15. All coverage for a qualifying event is prospective from the beginning of the next month or the date of entry into the official benefit administration system, whichever is later, except for initial coverage for new employees and newborn children. (1/1/14)

11-16. Elections made during open enrollment are effective the first day of the new plan year, with the exception of optional benefits. (02/2017)

11-17. Termination of coverage is subject to law and regulation, plan documents, and contracts, as well as the following rules. (7/1/10)

A. If at any time during the plan year any dependent ceases to meet the eligibility criteria, coverage ends on the last day of the month in which that dependent becomes ineligible.

B. Coverage in state group benefit plans is terminated on the last day of the month that employment ends.

Payment of Contributions

11-18. Departments shall make prompt monthly payments based on enrollment in the official benefit administration system. (7/1/10)

A. The employee's current department as of the last day of the month is responsible for payment.

B. A department is liable for both state and employee contributions when failing to promptly enter an employee termination.

11-19. Employees must make an irrevocable election for the plan year to have contributions deducted on a pre-tax or after-tax basis as defined by the State of Colorado Salary Reduction Plan, law and regulations, rule, and written directives. The employee's contribution is deducted from the employee's pay or, under certain circumstances, paid by personal payment for the selected state group benefit plans, in arrears as of the end of the month in which an employee is covered. (02/2017)

11-20. An enrolled employee who works or is on paid leave one or more regularly scheduled, full workdays in a month is eligible for the full state benefit contribution. (7/1/10)

11-21. When an employee is on leave, departments shall continue to pay the state contribution for non-contributory, fully paid benefits (e.g., basic life and short-term disability) as long as the employee remains on the payroll, regardless of status. (1/1/14)

A. During paid leave or mandatory furlough, the employee contribution continues to be paid through payroll deduction and the department continues to pay the state contribution.

B. During unpaid leave, the employee shall pay the total premium (employee and employer contributions) to the department within the month of coverage, except as follows.

1. During unpaid leave pursuant to the Family Medical Leave Act of 1993, the department shall continue to pay the state contribution as long as the employee continues to pay the employee contribution by the due date specified in the family/medical leave notice. If the employee fails to pay the employee contribution when due, coverage will be terminated but shall be reinstated upon return to work. In the event any contributions are owed upon the employee's return to work, such contributions shall be collected from the employee. If the employee fails to return after the leave, any contributions due will be recovered as specified by federal regulations. (02/2017)

2. While an employee is on voluntary furlough or short-term disability leave, the department shall continue to pay the state contribution as long as the employee continues to pay the employee contribution in a timely manner. If the employee fails to pay the employee contribution by the due date, coverage shall be terminated and the employee must wait for the next annual open enrollment.

11-22. Refunds for employee and state contributions are subject to plan limitations and as defined in law and regulations, rule, and written directives. (7/1/10)

11-23. When there is a difference between the contribution paid by the employee and the actual contribution due, the difference is paid by the employee (e.g., change in coverage tier). (7/1/10)

Appeal Procedures

11-24. Appeals regarding denial of eligibility for state group benefit plans must be submitted in writing to the Director, at the address below, within 31 days of receipt of the ineligibility decision. Use of the standard ***"Colorado State Employees Group Benefits Eligibility Determination Appeal Form"*** found on the Director's website is required. (1/1/14)

Appeals should be submitted to the Department Of Personnel and Administration, Division of Human Resources via mail, email, or by fax.

Department of Personnel and Administration
Division of Human Resources
1525 Sherman Street
Denver, CO 80203
benefits@state.co.us
Fax: 303-866-3879

The Director will issue a final written decision within 45 days of receipt of the appeal. The ineligibility decision is overturned only if found to be arbitrary, capricious or contrary to rule or law.

11-25. Appeals of denied claims under any of the state group benefit plans shall follow the specific appeal process defined in the specific contract, plan document, summary plan description, or regulated entity. The provider will issue a final written decision in accordance with its process. (7/1/10)

A. Appeals of denied claims under fully insured plans are regulated by the State of Colorado Division of Insurance, and follow the plan's appeal process as defined in the contract and plan document.

B. Appeals of denied claims under self-funded plans are not regulated by the State of Colorado Division of Insurance, and follow the third-party administrator's appeal process as defined in the contract and plan document.

Colorado State Employee Assistance Program

11-26. Services provided include but are not limited to counseling services, crisis intervention, consultations with supervisors and managers, facilitated groups, trainings, and workshops. (7/1/10)

11-27. Any state employee and any department may participate in the program. (7/1/10)

A. The program may request the participation of other persons if necessary to provide effective assistance to the employee.

B. The limit per employee is one six-session course of counseling in a 12-month period. At the discretion of the counselor, additional sessions may be authorized.

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Office of the Attorney General

Tracking number: 2016-00588

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

State Personnel Board and Division of Human Resources

on 12/23/2016

4 CCR 801-1

PERSONNEL BOARD RULES AND PERSONNEL DIRECTOR'S ADMINISTRATIVE PROCEDURES

The above-referenced rules were submitted to this office on 12/23/2016 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 09, 2017 11:24:30

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

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Air Quality Control Commission

CCR number

5 CCR 1001-5

Rule title

5 CCR 1001-5 REGULATION NUMBER 3 STATIONARY SOURCE PERMITTING AND AIR POLLUTANT EMISSION NOTICE REQUIREMENTS 1 - eff 02/14/2017

Effective date

02/14/2017

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Air Quality Control Commission

REGULATION NUMBER 3

Stationary Source Permitting and Air Pollutant Emission Notice Requirements

5 CCR 1001-5

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

>>>>>>>>>

PART F REGIONAL HAZE LIMITS - BEST AVAILABLE RETROFIT TECHNOLOGY (BART) AND REASONABLE PROGRESS (RP)

>>>>>>>>>

VI. Regional Haze Determinations

VI.A. BART Determinations

VI. A.1. The provisions of this Section VI.A of Regulation Number 3, Part F shall be incorporated into Colorado's Regional Haze State Implementation Plan.

VI.A.2. The sources listed below shall not emit or cause to be emitted nitrogen oxides (NOx), sulfur dioxide (SO2), or particulate in excess of the following limits:

BART Determinations for Colorado Sources			
Unit	**NOx Emission Limit**	**SO2 Emission Limit**	**Particulate Emission Limit**
CENC Unit 4	0.37 lb/MMBtu (30-day rolling average) or 0.26 lb/MMBtu Combined Average for Units 4 and 5 (30-day rolling average)	1.0 lb/MMBtu (30-day rolling average)	0.07 lb/MMBtu

CENC Unit 5	0.19 lb/MMBtu (30-day rolling average) or 0.26 lb/MMBtu Combined Average for Units 4 and 5 (30-day rolling average)	1.0lb/MMBtu (30-day rolling average)	0.07 lb/MMBtu
Craig Unit 1	*	0.11 lb/MMBtu (30-day rolling average)	0.03 lb/MMBtu
Craig Unit 2	0.08 lb/MMBtu (30-day rolling average)	0.11 lb/MMBtu (30-day rolling average)	0.03 lb/MMBtu

*Refer to VI.D. for requirements

Unit	**NOx Emission Limit**	**SO2 Emission Limit**	**Particulate Emission Limit**
Comanche Unit 1	0.20 lb/MMBtu (30-day rolling average) 0.15 lb/MMBtu (combined annual average for units 1 & 2)	0.12 lb/MMBtu (individual unit 30-day rolling average) 0.10 lb/MMBtu (combined annual average for units 1 & 2)	0.03 lb/MMBtu
Comanche Unit 2	0.20 lb/MMBtu (30-day rolling average) 0.15 lb/MMBtu (combined annual average for units 1 & 2)	0.12 lb/MMBtu (individual unit 30-day rolling average) 0.10 lb/MMBtu (combined annual average for units 1 & 2)	0.03 lb/MMBtu
Hayden Unit 1	0.08lb/MMBtu (30-day rolling average)	0.13 lb/MMBtu (30-day rolling average)	0.03 lb/MMBtu

Hayden Unit 2	0.07 lb/MMBtu (30-day rolling average)	0.13 lb/MMBtu (30-day rolling average)	0.03 lb/MMBtu
Martin Drake Unit 5	0.31 lb/MMBtu (30-day rolling average)	0.26 lb/MMBtu (30-day rolling average)	0.03 lb/MMBtu
Martin Drake Unit 6	0.31lb/MMBtu (30-day rolling average)	0.13lb/MMBtu (30-day rolling average)	0.03 lb/MMBtu
Martin Drake Unit 7	0.29 lb/MMBtu (30-day rolling average)	0.13lb/MMBtu (30-day rolling average)	0.03 lb/MMBtu
CEMEX – Lyons Kiln	255.3 lbs/hr (30-day rolling average) 901.0 tons/year (12-month rolling average)	25.3 lbs/hr (12-month rolling average) 95.0 tons/yr (12-month rolling average)	0.275 lb/ton of dry feed 20% opacity
CEMEX – Lyons Dryer	13.9 tons/yr	36.7 tons/yr	22.8 tons/yr 10% opacity

VI.A.3. Each source listed in the above tables must comply with the above limits and averaging times as expeditiously as practicable, but in no event later than five years after EPA approval of Colorado's state implementation plan for regional haze, which was January 30, 2013 with the exception of Craig Unit 1, or relevant component thereof. Each source listed in the above tables must maintain control equipment or operational practices required to comply with the above limits and averaging times, and establish procedures to ensure that such equipment or operational practices are properly operated and maintained.

VI.A.4. Except for Craig Unit 1, the sources shall submit to the Division a proposed compliance schedule within sixty days after EPA approves the BART portion of the Regional Haze

SIP. The Division shall publish these proposed schedules and provide for a thirty-day public comment period following publication. The Division shall publish its final determinations regarding the proposed schedules for compliance within sixty days after the close of the public comment period and will respond to all public comments received.

VI.B. Reasonable Progress Determinations

VI.B.1. The provisions of this Section VI.B of Regulation Number 3, Part F shall be incorporated into Colorado's Regional Haze State Implementation Plan.

VI.B.2. The sources listed below shall not emit or cause to be emitted nitrogen oxides (NOx), sulfur dioxide (SO2), or particulate in excess of the following limits:

RP Determinations for Colorado Sources			
Emission Unit	**NOx Emission Limit**	**SO2 Emission Limit**	**Particulate Emission Limit**
Rawhide Unit 101	0.145 lb/MMBtu (30-day rolling average)	0.11 lb/MMBtu (30-day rolling average)	0.03 lb/MMBtu
CENC Unit 3	246 tons per year (12-month rolling total)	1.2 lb/MMBtu	0.07 lb/MMBtu
Nixon	0.21 lb/MMBtu (30-day rolling average)	0.11 lb/MMBtu (30-day rolling average)	0.03 lb/MMBtu
Clark Units 1 & 2 Shutdown 12/31/2013	Shutdown 12/31/2013	Shutdown 12/31/2013	Shutdown 12/31/2013
Holcim - Florence Kiln	2.73 lbs/ton clinker (30-day rolling average) 2,086.8 tons/year	1.30 lbs/ton clinker (30-day rolling average) 721.4 tons/year	246.3 tons/year

Nucla	0.5 lb/MMBtu (30-day rolling average)*	0.4 lb/MMBtu (30-day rolling average)	0.03 lb/MMBtu

*Refer to VI.E. for requirements

RP Determinations for Colorado Sources			
Emission Unit	**NOx Emission Limit**	**SO2 Emission Limit**	**Particulate Emission Limit**
Craig Unit 3	0.28 lb/MMBtu (30-day rolling average)	0.15 lb/MMBtu (30-day rolling average)	0.013 lb/MMBtu filterable PM 0.012 lb/MMBtu filterable PM10
Cameo Shutdown 12/31/2011	Shutdown 12/31/2011	Shutdown 12/31/2011	Shutdown 12/31/2011

VI.B.3. Each source listed in the above table must comply with the above limits and averaging times as expeditiously as practicable, but in no event later than December 31, 2017, except for Nucla. Each source listed in the above table must maintain control equipment or operational practices required to comply with the above limits and averaging times, and establish procedures to ensure that such equipment or operational practices are properly operated and maintained.

VI.B.4. Except for Nucla, the sources shall submit to the Division a proposed compliance schedule within sixty days after EPA approves the RP portion of the Regional Haze SIP. The Division shall publish these proposed schedules and provide for a thirty-day public comment period following publication. The Division shall publish its final determinations regarding the proposed schedules for compliance within sixty days after the close of the public comment period and will respond to all public comments received.

VI.C. Public Service Company of Colorado (PSCo) BART Alternative Program

VI.C.1. The provisions of this Section VI.C of Regulation Number 3, Part F (with the exception of the SO2 cap of subsection VI.C.4) shall be incorporated into Colorado's Regional Haze State Implementation Plan.

VI.C.2. The sources listed below shall not emit or cause to be emitted nitrogen oxides (NOx), sulfur dioxide (SO2), or particulate in excess of the following limits, after the following compliance dates:

BART Alternative Program Determinations for PSCo Sources			
Emission Unit	**NOx Emission Limit**	**SO2 Emission Limit**	**Particulate Emission Limit**
Cherokee * Unit 1 Shutdown No later than 7/1/2012	0 Shutdown No later than 7/1/2012	0 Shutdown No later than 7/1/2012	0 Shutdown No later than 7/1/2012
Cherokee Unit 2 Shutdown 12/31/2011	0 Shutdown 12/31/2011	0 Shutdown 12/31/2011	0 Shutdown 12/31/2011
Cherokee Unit 3 Shutdown No later than 12/31/2016	0 Shutdown No later than 12/31/2016	0 Shutdown No later than 12/31/2016	0 Shutdown No later than 12/31/2016
Cherokee Unit 4	0.12 lb/MMBTU (30-day rolling average) by 12/31/2017 Natural Gas Operation 12/31/2017	7.81 tpy (rolling 12 month average) Natural Gas Operation 12/31/2017	0.03 lbs/MMBtu Natural Gas Operation 12/31/2017
Valmont Unit 5 Shutdown 12/31/2017	0 Shutdown 12/31/2017	0 Shutdown 12/31/2017	0 Shutdown 12/31/2017

Pawnee	0.07 lb/MMBTU (30-day rolling average) by 12/31/2014	0.12 lbs/MMBtu (30-day rolling average) by 12/31/2014	0.03 lbs/MMBtu
Arapahoe** Unit 3 Shutdown 12/31/2013	0 Shutdown 12/31/2013	0 Shutdown 12/31/2013	0 Shutdown 12/31/2013
Arapahoe Unit 4	600 tpy on (rolling 12 month average) Natural Gas operation12/31/2014	1.28 tpy (rolling 12 month average) Natural Gas operation 12/31/2014	0.03 lbs/MMBtu Natural Gas operation 12/31/2014

* 500 tpy NOx will be reserved from Cherokee Station for netting or offsets

** 300 tpy NOx will be reserved from Arapahoe Station for netting or offsets for additional natural gas generation

VI.C.3. Each source listed in the above table must either shut down or comply with the above limits and averaging times no later than the compliance date set forth in the above table. Each source listed in the above table must maintain any applicable control equipment required to comply with the above limits and averaging times, and establish procedures to ensure that such equipment is properly operated and maintained.

VI.C.4. In addition to the above listed emission limits and compliance dates, between 1/1/2013 and 12/31/2015, Cherokee Units 3 and 4 and Valmont, considered as a whole, shall not emit in excess of 4,200 tons of SO2 per year as determined on a calendar year annual basis. Between 1/1/2016 and 12/31/2017 Cherokee Unit 4 and Valmont considered as a whole, shall not emit in excess of 3,450 tons of SO2 per year as determined on a calendar year annual basis.

VI.D. Craig Unit 1 Additional Compliance Requirements

VI.D.1. Craig Unit 1 will:

VI.D.1.a. Close on or before December 31, 2025; or

VI.D.1.b. Alternatively, cease burning coal no later than August 31, 2021, with the option to convert the unit to natural-gas firing on or before August 31, 2023.

VI.D.1.b.(i) If Craig Unit 1 is converted to natural-gas firing, the Unit will meet a NOx emission limit of no more than 0.07 lb/MMBtu 30-day rolling average applicable after August 31, 2021.

VI.D.2. The owner-operator of Craig Unit 1 will notify the Division in writing on or before February 28, 2021 whether the unit will cease operation or convert to gas.

VI.D.3. Craig Unit 1 will meet a NOx emission limit of 0.28 lb/MMBtu 30-day rolling average going forward from January 1, 2017 (first compliance date January 31, 2017), until closure or converting to natural gas.

VI.D.4. Craig Unit 1 will meet an annual NOx limit of 4,065 tons per year by December 31, 2019 on a calendar year basis beginning in 2020.

VI.E Nucla Compliance Requirements

VI.E.1 Nucla Station will close on or before December 31, 2022.

VI.E.2. Nucla Station will meet an annual NOx limit of 952 tons per year by January 1, 2020 on calendar year basis beginning in 2020.

>>>>>>>>>

PART G STATEMENTS OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE

>>>>>>>

I.BBB. Adopted December 15, 2016

Regulation Number 3, Part F – Revising the BART and Reasonable Progress determinations for Craig Station Unit 1 ("Craig Unit 1") and Nucla ("Nucla").

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the Colorado Administrative Procedures Act, C.R.S. § 24-4-103, the Colorado Air Pollution Prevention and Control Act, C.R.S. §§ 25-7-110 and 25-7-110.5, and the Air Quality Control Commission's ("Commission") Procedural Rules.

Basis

Regulation Number 3, Part F – Revising the BART and Reasonable Progress determinations for Craig Unit 1 and Nucla, respectively.

Specific Statutory Authority

The Colorado Air Pollution Prevention and Control Act, C.R.S. § 25-7-105(1) directs the Commission to promulgate such rules and regulations as are consistent with the legislative declaration set forth in Section 25-7-102 and are necessary for the proper implementation and administration of Article 7, including a comprehensive state implementation plan which will prevent significant deterioration of air quality. Section 25-7-109 authorizes the Commission to adopt emission control regulations pertaining to air pollutants.

Purpose

The Colorado Air Quality Control Commission ("Commission") makes targeted revisions to portions of Regulation Number 3, Part F, Section VI., containing the Regional Haze Best Available Retrofit Technology ("BART") and Reasonable Progress determinations that the Commission previously adopted as part of Colorado's Regional Haze State Implementation Plan ("SIP").

After the U.S. Environmental Protection Agency ("EPA") approved Colorado's Regional Haze SIP, WildEarth Guardians and the National Parks Conservation Association ("NPCA") challenged portions of the approval by filing suit in the Tenth Circuit (Guardians v. EPA, No. 13-9520 and NPCA v. EPA, No. 13-9525). As part of that lawsuit, the plaintiffs contested the nitrogen oxides ("NO_X") provisions for Craig Unit 1, which is owned, in part, and operated by Tri-State Generation and Transmission Association, Inc. ("Tri-State"). In furtherance of settlement of that litigation, in 2014, the Commission approved revisions to Regulation Number 3, Part F, Section VI. to change the Craig Unit 1 NO_X emission limit from 0.28 lb/MMBtu to 0.07 lb/MMBtu, and set the associated compliance deadline for Craig Station Unit 1 as August 31, 2021.

Since the Commission approved the 2014 revisions to Regulation Number 3, Part F and Colorado's Regional Haze SIP, an agreement has been reached involving Craig Unit 1 and Nucla Station ("Nucla"). The agreement includes the following commitments:

(I) Craig Unit 1 will either close on or before December 31, 2025 ***or*** cease burning coal no later than August 31, 2021 with the option to convert the unit to natural-gas firing by August 31, 2023;

(II) In the case of a conversion to natural-gas firing, a 30-day rolling average NO_X emission limit of 0.07 lb/MMBtu will be effective after August 31, 2021;

(III) For both scenarios, Craig Unit 1 will be subject to a NO_X emission limit of 0.28 lb/MMBtu, on a 30 day rolling average, effective January 1, 2017 (first compliance date January 31, 2017), until converting to natural gas or permanently shutting down;

(IV) Craig Unit 1 will be subject to an annual NO_X emission limit of 4,065 tons per year effective on December 31, 2019 on a calendar year basis beginning in 2020;

(V) Nucla will close on or before December 31, 2022; and

(VI) Nucla will be subject to an annual NO_X emission limit of 952 tons per year effective January 1, 2020 on a calendar year basis beginning in 2020.

The Air Pollution Control Division ("Division") conducted a BART reassessment for Craig Unit 1 and Reasonable Progress review for Nucla, respectively, taking into account the agreement. The agreement reflects a changing industry, economic, and regulatory landscape that does not necessarily favor the installation of costly post-combustion retrofit controls on aging coal-fired electric generating units. The agreement and these revisions will also result in greater emissions reductions than would result from the previously approved SIP. The Commission's adoption of these revisions will result in further reductions of visibility impairing pollutants, in addition to providing other environmental co-benefits.

In accordance with the BART reassessment and Reasonable Progress review, the Commission revises 3, Part F, Section VI to reflect the applicable elements of the agreement described herein.

In addition to the regulatory changes to Regulation Number 3, Part F, the Commission revises corresponding portions of Colorado's Regional Haze SIP: Chapter 6 – Best Available Retrofit Technology; Chapter 8 – Reasonable Progress; Appendix C – Technical Support for the BART Determinations; and Appendix D – Technical Support for the Reasonable Progress Determinations. The revised chapters fully replace previously adopted SIP chapters. The revisions to Colorado's Regional Haze SIP, Chapter 6 – Best Available Retrofit Technology and Appendix C – Technical Support Document - for the BART Determinations, include, among other things, revised cost comparisons as part of the NOx BART reassessment for Craig Unit 1. The Commission is aware of the fact that there are differing views among parties to the recent agreement as to what the appropriate amortization periods should be for use in calculating the cost effectiveness of SNCR and SCR in Scenario 1 (closure on or before December 31, 2025). The Commission finds that regardless of the amortization period used, under Scenario 1, both SNCR and SCR are not cost effective when the remaining useful life is shortened.

The revisions also correct any typographical, grammatical, and formatting errors.

Findings of Fact

Colorado's Regional Haze SIP revisions are consistent with EPA's federal requirements under the Regional Haze rule. Accordingly, the revisions do not exceed the requirements of the federal act or differ from the federal act or rules. However, to the extent that these revisions could be viewed as exceeding or differing from the federal act, the Commission determines in accordance with C.R.S. § 25-7-110.5(5)(b):

(I) Colorado's Regional Haze SIP was drafted in accordance with EPA's Regional Haze Rule. The Regional Haze Rule provides states flexibility in how states may consider the federal statutory and regulatory factors when determining BART and reasonable progress goals.

(II) EPA's regional haze requirements are performance based. The Regional Haze Rule sets forth factors the states must consider when determining BART for sources reasonably anticipated to cause or contribute to the impairment of visibility in federal Class I areas. States have the discretion to select the appropriate controls for such sources.

(III) EPA's Regional Haze Rule guides how states must determine BART for their BART-eligible sources. However, state discretion is a cornerstone of the Regional Haze Rule (*70 FR 39137*). Colorado considered Colorado's issues of concern when developing these revisions.

(IV) The adopted revisions will improve industry's ability to comply with the goals of the Regional Haze Rule in a more cost-effective way, by increasing certainty and preventing or reducing the need for costly retrofits.

(V) The timing of the adopted revisions has been considered. The timeframe of the adopted revisions allows for the avoidance of costly retrofits.

(VI) The adopted rule will assist in establishing and maintaining a reasonable margin for accommodation of uncertainty and future growth.

(VII) The adopted rule establishes reasonable equity for sources because the Regional Haze Rule applies the same standards for determining BART to all BART-eligible sources. BART determinations are source specific and different controls and emission limits are to be expected.

(VIII) Adoption of a more stringent rule would not reduce costs upon other entities.

(IX) These revisions do not modify the currently approved procedural, reporting, or monitoring requirements in Colorado's Regional Haze SIP.

(X) Technology is available to comply with the adopted revisions. The technology to convert to natural gas is a demonstrated and already utilized technology.

(XI) The revisions will lead to further reductions of air pollutant emissions, contribute to the prevention of pollution, and represent a more cost-effective environmental gain.

(XII) Neither an alternative rule nor a no action alternative would address or achieve the emission reductions to be achieved through these revisions. Further, failure to adopt the revisions could result in expensive and time consuming retrofits or litigation.

As part of adopting the revisions to Regulation Number 3, Part F, Section VI., the Commission has taken into consideration each of the factors set forth in C.R.S. § 25-7-109(1)(b).

To the extent that C.R.S. § 25-7-110.8 requirements apply to this rulemaking, and after considering all the information in the record, the Commission hereby makes the determination that:

(I) These rules are based upon reasonably available, validated, reviewed, and sound scientific methodologies, and the Commission has considered all information submitted by interested parties.

(II) Evidence in the record supports the finding that the rules shall result in a demonstrable reduction of air pollutant emissions.

(III) Evidence in the record supports the finding that the rules shall bring about reductions in risks to human health and the environment that justify the costs to implement and comply with the rules.

(IV) The rules are the most cost-effective to achieve the necessary reduction in air pollution and provide the regulated community flexibility.

(V) The selected regulatory alternative will maximize the air quality benefits of regulation in the most cost-effective manner.

CYNTHIA H. COFFMAN
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Office of the Attorney General

Tracking number: 2016-00467

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

Air Quality Control Commission

on 12/15/2016

5 CCR 1001-5

REGULATION NUMBER 3 STATIONARY SOURCE PERMITTING AND AIR POLLUTANT EMISSION NOTICE REQUIREMENTS

The above-referenced rules were submitted to this office on 12/28/2016 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 29, 2016 11:13:27

Emergency Rules Adopted

Department

Department of Revenue

Agency

Division of Liquor Enforcement

CCR number

1 CCR 203-2

Rule title

1 CCR 203-2 LIQUOR CODE 1 - eff 01/01/2017

Effective date

01/01/2017

COLORADO DEPARTMENT OF REVENUE
LIQUOR ENFORCEMENT DIVISION
CHANGES TO EXISTING RULES

1 C.C.R. 203-2

Filed December 22, 2016

Regulation 47-506. Fees.

Basis and Purpose. The statutory authority for this regulation is located at subsections 12-47-202(1)(b) and 12-47-501(2)-(3), C.R.S. The purpose of this regulation is to establish fees for certain applications, notices, reports, and services.

Below are the fees set by the State Licensing Authority pursuant to sections 12-47-501(2) and 12-47-501(3), C.R.S.

Alternating Proprietor Licensed Premises	$150.00
Application for New License	$1,950.00
Application for New License with Concurrent Review	$2,050.00
Application for Transfer License	$1,950.00
Application for Transfer and Conversion for an Additional Liquor-Licensed Drugstore	$2,230.00
Art Gallery Permit	$71.25
Bed & Breakfast Permit	$50.00
Branch Warehouse or Warehouse Storage Permit	$100.00
Change of Corporate or Trade Name	$50.00
Change of Location	$150.00
Corporate/LLC Change (Per Person)	$100.00
Duplicate Liquor License	$50.00
Limited Liability Change	$100.00
Manager Permit Registration (Liquor-Licensed Drugstore)	$100.00
Manager Registration (Hotel/Restaurant, Tavern, or Lodging and Entertainment)	$75.00
Master File Background	$250.00
Master File Location Fee (Per Location)	$25.00
Modification of License Premises (City or County)	$150.00
New Product Registration (Per Unit)	$0.00
Optional Premises Added to H&R License (Per Unit)	$100.00
Retail Warehouse Storage Permit	$100.00
Wine Festival Permit	$25.00
Winery Direct Shipment Permit	$50.00
Subpoena Testimony (Per Hour)	$50.00

Minimum of four (4) hours of appearance or on-call or travel time to court and mileage, meals, and lodging at state employee per-diem rate. Actual hourly rate for all hours in excess of four (4) hours.

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Colorado Department of Revenue
Liquor Enforcement Division
Adoption of Revised Rule on an Emergency Basis
Colorado Liquor Rules, 1 C.C.R. 203-2

Emergency Rule

Regulation 47-506 – Fees

Statement of Emergency Justification and Adoption

Pursuant to sections 24-4-103, 12-47-202, and 12-47-501, C.R.S., I, Barbara J. Brohl, Executive Director of the Department of Revenue and State Licensing Authority, hereby adopt the aforementioned revised Colorado Liquor Rule which is attached hereto.

Section 24-4-103(6), C.R.S., authorizes the State Licensing Authority to issue an emergency rule if the State Licensing Authority finds that the immediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for the preservation of public health, safety, or welfare and compliance with the requirements of section 24-4-103, C.R.S., would be contrary to the public interest.

I find: (1) the adoption of this revised rule effective January 1, 2017, is necessary to comply with the statutory mandates of the Colorado Liquor Code sections 12-47-101 to 12-47-1002, C.R.S.; (2) the adoption of this revised rule is necessary to preserve the public health, safety, and welfare; and (3) compliance with the notice and public hearing requirements of section 24-4-103, C.R.S., would be contrary to the public interest.

Statutory Authority

The statutory authority for this revised rule is found at subsections 12-47-102, 12-47-202(1)(b), 12-47-202(2)(a), 12-47-501(2)(a)-(b) and (d), C.R.S.

Purpose

The purpose of the revision to this rule on an emergency basis is to update the fee levels in accordance with statutory requirements and the needs of the Liquor Enforcement Division. Pursuant to subsection 12-47-501(2)(d), C.R.S. the fees established pursuant to section 12-47-501, C.R.S. shall be reviewed at least annually and adjusted to reflect the direct and indirect costs of the Liquor Enforcement Division and the State Licensing Authority. In accordance with the legislative declaration of section 12-47-102, C.R.S., the Colorado Liquor Code is deemed an exercise of the police powers of the State of Colorado for the protection of the economic and social welfare and the health, peace, and morals of the people of the State of Colorado. Regulation of the manufacture, distribution, and sale of alcohol beverages is regulated by the Colorado Liquor Code as a matter of statewide concern. It is imperatively necessary to adjust fees upward to ensure continued proper regulation and control over the administration and enforcement of articles 46, 47, and 48 of title 12 to meet these legislative charges and responsibilities in order to preserve the public health, safety, and welfare of the State of Colorado.

The State Licensing Authority filed a permanent rulemaking notice for this rule on December 22, 2016. A public hearing on the proposed permanent rule will take place on February 9, 2017. That process will include the opportunity for substantial stakeholder and public participation.

Adoption

The State Licensing Authority is adopting this revised rule on an emergency basis to assure the public is provided with notice of the fees that the State Licensing Authority currently collects. Adoption of these emergency rules will clarify the fee schedule for applicants and licensees.

A permanent rule for an updated fee schedule under Regulation 47-506, 1 C.C.R. 203-2 was recently adopted by the State Licensing Authority on November 18, 2016, after notice and public hearing. That permanent rule is scheduled for implementation on January 01, 2017. This emergency rule supersedes the adopted Regulation 47-506, 1 C.C.R. 203-2.

This emergency rule is effective January 1, 2017. The prior version of Regulation 47-506, 1 C.C.R. 203-2 is hereby repealed and replaced by the attached emergency rule which will remain in effect until its expiration upon 120 days from the effective date unless sooner terminated or replaced by a permanent rule.

Barbara J. Brohl
Executive Director
Colorado Department of Revenue
State Licensing Authority

12/22/2016
Date

CYNTHIA H. COFFMAN
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Office of the Attorney General

Tracking number: 2016-00665

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

Division of Liquor Enforcement

on 12/22/2016

1 CCR 203-2

LIQUOR CODE

The above-referenced rules were submitted to this office on 12/22/2016 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 04, 2017 16:20:19

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

Emergency Rules Adopted

Department

Department of Revenue

Agency

Marijuana Enforcement Division

CCR number

1 CCR 212-1

Rule title

1 CCR 212-1 MEDICAL MARIJUANA RULES 1 - eff 12/22/2016

Effective date

12/22/2016

M 200 Series – Licensing and Interests

Basis and Purpose – M 201

The statutory authority for this rule is found at subsections 12-43.3-202(1)(a), 12-43.3-202(1)(b)(I), 12-43.3-202(1)(e), 12-43.3-202(2)(a)(XVI), 12-43.3-202(2)(a)(XX), 12-43.3-301(3), and 12-43.3-401(1)(a)-(e), and sections 12-43.3-104, 12-43.3-305, 12-43.3-306, 12-43.3-307.5, 12-43.3-310, 12-43.3-311, 12-43.3-313, 12-43.3-401, and 24-76.5-103, C.R.S. The purpose of this rule is to establish that only materially complete applications for licenses or registrations, accompanied by all required fees, will be accepted and processed by the Division. The purpose of this rule is also to clarify that when an initial application is materially complete, but the Division determines further information is required before the application can be fully processed, the Applicant must provide the additional requested information within the time frame provided by the Division. Otherwise, the Division cannot act on the application in a timely manner, and the application may be denied.

M 201 – Application Process

A. General Requirements

1. All applications for licenses or registrations authorized pursuant to subsections 12-43.3-401(1)(a)-(g), C.R.S., shall be made upon current forms prescribed by the Division.

2. A license or registration issued to a Medical Marijuana Business or an individual constitutes a revocable privilege. The burden of proving an Applicant's qualifications for licensure or registration rests at all times with the Applicant.

3. Each application shall identify the local licensing authority.

4. Applicants must submit a complete application to the Division before it will be accepted or considered.

    a. All applications must be complete and accurate in every material detail.

    b. All applications must include all attachments or supplemental information required by the current forms supplied by the Division.

    c. All applications must be accompanied by a full remittance for the whole amount of the application and license fees. See Rules M 207 – Schedule of Application Fees: Medical Marijuana Businesses; M 208 – Schedule of Business License and Registration Fees: Medical Marijuana Businesses; M 209 – Schedule of Business Renewal License and Registration Fees: Medical Marijuana Businesses; M 235 – Schedule of License Fees: Individuals; M 236 – Schedule of Renewal License Fees: Individuals.

    d. All applications must include all information required by the Division related to the Applicant’s proposed Direct Beneficial Interest Owners, Indirect Beneficial Interest Owners and Qualified Limited Passive Investors, and all other direct and indirect financial interests in the Applicant.

    e. At a minimum, each Applicant for a new license or registration shall provide, at the time of application, the following information:

i. For each Associated Key License Applicant, evidence of proof of lawful presence, citizenship, if applicable, residence, if applicable, and Good Moral Character as required by the current forms prescribed by the Division;

ii. For each Medical Marijuana Business Applicant and each Associated Key License Applicant, all requested information concerning financial and management associations and interests of other Persons in the business;

iii. If the Applicant for any license pursuant to the Medical Code is a Closely Held Business Entity it shall submit with the application:

A. The Associated Key License applications for all of its shareholders, members, partners, officers and directors who do not already hold an Associated Key License;

B. If the Closely Held Business Entity is a corporation, a copy of its articles of incorporation or articles of organization; evidence of authorization from the Colorado Secretary of State to do business within this State, and for each shareholder: his or her name, mailing address, state of residence and certification of Colorado residency for at least one officer and all officers with day-to-day operational control over the business;

C. If the Closely Held Business Entity is a limited liability company, a copy of its articles of incorporation and its operating agreement; evidence of authorization from the Colorado Secretary of State to do business within this State, and for each member: his or her name, mailing address, state of residence and certification of Colorado residency for at least one officer and all officers with day-to-day operational control over the business;

D. If the Closely Held Business Entity is a general partnership, limited partnership, limited liability partnership, or limited liability limited partnership, a copy of the partnership agreement and, for each partner, his or her name, mailing address and state of residency and certification of Colorado residency for at least one officer and all officers with day-to-day operational control over the business.

iv. For each Medical Marijuana Business Applicant and each Associated Key License Applicant, documentation establishing compliant return filing and payment of taxes related to any Medical Marijuana Business or Retail Marijuana Establishment in which such Applicant is, or was, required to file and pay taxes;

v. For each Medical Marijuana Business Applicant and each Associated Key License Applicant, documentation verifying and confirming the funds used to start and/or sustain the operation of the medical or retail marijuana business were lawfully earned or obtained;

vi. Accurate floor plans for the premises to be licensed; and

viii. The deed, lease, sublease, contract, or other document(s) governing the terms and conditions of occupancy of the premises to be licensed.

5. All applications to reinstate a license or registration will be deemed an application for a new license or registration. This includes, but is not limited to, Associated Key licenses that have expired, Medical Marijuana Business licenses or registrations that have been expired for more than 90 days, licenses or registrations that have been voluntarily surrendered, and licenses that have been revoked.

6. The Division may refuse to accept an incomplete application.

B. Additional Information May Be Required

1. Upon request by the Division, an Applicant shall provide any additional information required to process and fully investigate the application. The additional information must be provided to the Division no later than seven days after the request is made unless otherwise specified by the Division.

2. An Applicant's failure to provide the requested evidence or information by the Division deadline may be grounds for denial of the application.

C. Information Must Be Provided Truthfully. All Applicants shall submit information to the Division in a full, faithful, truthful, and fair manner. The Division may recommend denial of an application where the Applicant made misstatements, omissions, misrepresentations, or untruths in the application or in connection with the Applicant's background investigation. This type of conduct may be considered as the basis for additional administrative action against the Applicant and it may also be the basis for criminal charges against the Applicant.

D. Application Forms Accessible. All application forms supplied by the Division and filed by an Applicant for a license, including attachments and any other documents associated with the investigation, may be used for a purpose authorized by the Medical Code, the Retail Code, of for any other state or local law enforcement purpose or as otherwise required by law.

E. Division Application Management and Local Licensure.

1. For each application for a new Medical Marijuana Business, the Applicant shall submit the original application and one identical copy. The Division will retain the original application for a new Medical Marijuana Business and will send the copy to the local licensing authority.

2. If the Division grants a license before the local licensing authority approves the application or grants a local license, the license will be conditioned upon local approval. Such condition will not be viewed as a denial pursuant to the Administrative Procedure Act. If the local licensing authority denies the application, the state license will be revoked.

3. An Applicant is prohibited from operating a Medical Marijuana Business prior to obtaining all necessary licenses, registrations or approvals from both the State Licensing Authority and the local licensing authority.

4. Each Financial Interest is void and of no effect unless and until approved by the Division. A Financial Interest shall not exercise any privilege associated with the proposed interest until approved by the Division. Any violation of this requirement may be considered a license or registration violation affecting public safety.

Basis and Purpose – M 207

The statutory authority for this rule is found at subsections 12-43.3-202(1)(a), 12-43.3-202(1)(b)(I), 12-43.3-202(1)(e), 12-43.3-202(2)(a)(XVI), 12-43.3-202(2)(a)(XVIII.5), 12-43.3-202(2)(a)(XX), and 12-43.3-401(1)(a)-(e), and sections, 12-43.3-104, 12-43.3-310, 12-43.3-401, 12-43.3-501, and 12-43.3-502, C.R.S. The purpose of this rule is to clarify the schedules of application fees for Medical Marijuana Business Applicants.

M 207 – Schedule of Application Fees: Medical Marijuana Businesses

A. Base Medical Marijuana Application Fees

1. Medical Marijuana Center Application Fees

a. Type 1 Center (1-300 patients) - $6,000.00

b. Type 2 Center (301-500 patients) - $10,000.00

c. Type 3 Center (501 or more patients) - $14,000.00

2. Medical Marijuana-Infused Products Manufacturer Application Fee - $1,000.00

3. Optional Premises Cultivation Location Application Fee - $1,000.00

4. Medical Marijuana Testing Facility Application Fee - $1,000.00

5. Medical Marijuana Transporter Application Fee - $1,000.00

6. Medical Marijuana Business Operator Registration Application Fee - $1,000.00

7. Medical Marijuana Businesses Converting to Retail Marijuana Establishments. Medical Marijuana Center Applicants or Licensees that want to convert to Retail Marijuana Establishments should refer to 1 CCR 212-2, Rule R 207 – Schedule of Application Fees: Retail Marijuana Establishments.

B. Medical Marijuana Business Application Fees for Indirect Beneficial Interest Owners, Qualified Limited Passive Investors and Other Affiliated Interests

1. Affiliated Interest that is not an Indirect Beneficial Interest Owner - $200.00

2. Commercially Reasonable Royalty Interest Holder receiving more than 30 percent of the gross revenue or gross profit from the sales of the product or lines of products subject to the royalty - $400.00

3. Commercially Reasonable Royalty Interest Holder receiving less than or equal to 30 percent of the gross revenue or gross profit from the sales of the product or lines of product subject to the royalty - $200.00

4. Permitted Economic Interest - $400.00

5. Profit Sharing Plan Employee - $200.00

6. Qualified Limited Passive Investor

   a. Standard limited initial background check - $75.00

   b. Full background check for reasonable cause - $125.00

7. Qualified Institutional Investor - $200.00

H. When Application Fees Are Due. All application fees are due at the time a Medical Marijuana Business submits an application and/or at the time a Medical Marijuana Business submits an application for a new Financial Interest.

Basis and Purpose – M 208

The statutory authority for this rule is found at subsections 12-43.3-202(1)(a), 12-43.3-202(1)(b)(I), 12-43.3-202(1)(e), 12-43.3-202(2)(a)(XVI), 12-43.3-202(2)(a)(XX) and 12-43.3-302(5)(c), 12-3.3-401(1)(a)-(e), and sections 12-43.3-104, 12-43.3-310, and 12-43.3-501, and 12-43.3-502, C.R.S. The purpose of this rule is to establish basic requirements for all Division applications and help the regulated community understand procedural licensing and registration requirements.

M 208 – Schedule of Business License and Registration Fees: Medical Marijuana Businesses

A. Medical Marijuana Center License Fees

1. Type 1 Center (1-300 patients) - $3,000.00

2. Type 2 Center (301-500 patients) - $6,000.00

3. Type 3 Center (501 or more patients) - $8,000.00

B. Medical Marijuana-Infused Products Manufacturer License Fee- $1,500.00

C. Optional Premises Cultivation Location License Fee- $1,500.00

D. Medical Marijuana Testing Facility License Fee - $1,500.00

E. Medical Marijuana Transporter License Fee - $4,400.00

F. Medical Marijuana Business Operator Registration Fee - $2,200.00

G. When License and Registration Fees Are Due. All license and registration fees are due at the time an application is submitted.

F. If Application is Denied. If an application is denied, an Applicant may request that the State Licensing Authority refund the license or registration fee after the denial appeal period has lapsed or after the completion of the denial appeal process, whichever is later

Basis and Purpose – M 209

The statutory authority for this rule is found at subsections 12-43.3-202(1)(a), 12-43.3-202(1)(b)(I), 12-43.3-202(1)(e), 12-43.3-202(2)(a)(XVI), 12-43.3-202(2)(a)(XX), 12-43.3-401(1)(a)-(e), and sections 12-43.3-104, 12-43.3-310, 12-43.3-401, 12-43.3-501, and 12-43.3-502, C.R.S. The purpose of this rule is to establish basic requirements for all Division applications and help the regulated community understand procedural licensing requirements.

M 209 – Schedule of Business Renewal License and Registration Fees: Medical Marijuana Businesses

A. Renewal Fee Amount and Due Date. The renewal fee shall be $300 for each license and/or registration renewal application. Renewal license, registration and processing fees are due at the time the renewal application is submitted.

B. Medical Marijuana Center Renewal License Fees.

1. Type 1 Center – $2,000.00

2. Type 2 Center – $5,000.00

3. Type 3 Center – $7,000.00

4. Medical Marijuana-Infused Products Manufacturer - $1,500.00

5. Optional Premises Cultivation - $1,500.00

6. Medical Marijuana Testing Facility - $1,500.00

C. Medical Marijuana Transporter Renewal License Fee - $4,400.00

D. Medical Marijuana Business Operator Renewal Registration Fee - $2,200.00

E. If Renewal Application is Denied. If an application for renewal is denied, an Applicant may request that the State Licensing Authority refund the license or registration fee after the denial appeal period has lapsed or after the completion of the denial appeal process, whichever is later.

Basis and Purpose – M 210

The statutory authority for this rule is found at subsections 12-43.3-202(1)(a), 12-43.3-202(1)(b)(I), 12-43.3-202(1)(e), 12-43.3-202(2)(a)(XVI), and 12-43.3-202(2)(a)(XX), and sections 12-43.3-104, 12-43.3-310, 12-43.3-401, 12-43.3-501, and 12-43.3-502, 12-43.3-1101, and 12-43.3-1102, C.R.S. The purpose of this rule is to establish basic requirements for all Division applications and help the regulated community understand procedural licensing requirements.

M 210 – Schedule of Other Application Fees: All Licensees

A. Other Application Fees. The following other application fees apply:

1. Transfer of Ownership - New Owners - $1,600.00

2. Transfer of Ownership - Reallocation of Ownership - $1,000.00

3. Change of Corporation or LLC Structure - $800.00/Person

4. Change of Trade Name - $50.00

5. Change of Location Application Fee - Same Local Jurisdiction Only - $500.00

6. Modification of Licensed Premises - $100.00

7. Duplicate Business License - $20.00

8. Duplicate Occupational License - $20.00

9. Off Premises Storage Permit - $1,500.00

10. Medical Marijuana Transporter Off Premises Storage Permit - $2,200.00

11. Responsible Vendor Program Provider Application Fee: $850.00

12. Responsible Vendor Program Provider Renewal Fee: $350.00

13. Responsible Vendor Program Provider Duplicate Certificate Fee: $50.00

B. When Other Application Fees Are Due. All other application fees are due at the time the application and/or request is submitted.

C. Subpoena Fee - See Rule M 106 – Subpoena Fees

Basis and Purpose – M 235

The statutory authority for this rule is found at subsections 12-43.3-202(1)(a), 12-43.3-202(1)(b)(I), 12-43.3-202(1)(e), 12-43.3-202(2)(a)(XVI), 12-43.3-202(2)(a)(XX), 12-43.3-307.5(5)(a)-(b), and 12-43.3-401(1)(d), and sections 12-43.3-104, 12-43.3-310, 12-43.3-401, 12-43.3-501, and 12-43.3-502, C.R.S. The purpose of this rule is to establish the licensing fees for individuals.

M 235 – Schedule of License Fees: Individuals

A. Individual License Fees

1. Direct Beneficial Interest Owner Fees

a. Colorado Resident Associated Key License - $800.00

b. Non-Resident Associated Key License

i. Upon request for finding of suitability - $5,000.00

ii. Following finding of suitability - $75.00

2. Occupational Key License - $250.00

3. Occupational Support License - $75.00

B. When Fees Are Due. License fees are due at the time Applicant submits application.

Basis and Purpose – M 236

The statutory authority for this rule is found at subsections 12-43.3-202(1)(a), 12-43.3-202(1)(b)(I), 12-43.3-202(1)(e), 12-43.3-202(2)(a)(XVI), 12-43.3-202(2)(a)(XX), and 12-43.3-401(1)(d), and sections 12-43.3-104, 12-43.3-310, 12-43.3-401, 12-43.3-501, and 12-43.3-502, C.R.S. The purpose of this rule is to establish renewal fees for individuals.

M 236 – Schedule of Renewal License Fees: Individuals

A. Individual Renewal License Fees

1. Associated Key License Fee - $500.00

2. Occupational Key License Fee - $200.00

3. Occupational Support License - $75.00

B. When Fees Are Due. Renewal License fees are due at the time applicant submits application for renewal.

STATE OF COLORADO

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John W. Hickenlooper
Governor

Barbara J. Brohl
Executive Director

Colorado Department of Revenue
Marijuana Enforcement Division

Emergency Rules:

Revised Rules, Medical Marijuana, 1 CCR 212-1

Rule M 201 – Application Process

Rule M 207 – Schedule of Application Fees: Medical Marijuana Businesses

Rule M 208 – Schedule of Business License and Registration Fees: Medical Marijuana Businesses

Rule M 209 – Schedule of Business Renewal License and Registration Fees: Medical Marijuana Businesses

Rule M 210 – Schedule of Other Application Fees: All Licensees

Rule M 235 – Schedule of License Fees: Individuals

Rule M 236 – Schedule of Renewal License Fees: Individuals

Revised Rules, Retail Marijuana, 1 CCR 212-2

Rule R 207 – Schedule of Application Fees: Retail Marijuana Establishments

Rule R 208 – Schedule of Business License Fees: Retail Marijuana Establishments

Rule R 209 – Schedule of Business License Renewal Fees: Retail Marijuana Establishments

Rule R 210 – Schedule of Other Application Fees: All Licenses

Rule R 234 – Schedule of License Fees: Individuals

Rule R 235 – Schedule of Renewal Fees: Individuals

Statement of Emergency Justification and Adoption Order

Pursuant to sections 24-4-103, 12-43.3-202, and 12-43.4-202, C.R.S, I, Barbara J. Brohl, Executive Director of the Department of Revenue and State Licensing Authority, hereby adopt the aforementioned revised Medical Marijuana and Retail Marijuana Rules, which are attached hereto.

Section 24-4-103(6), C.R.S., authorizes the State Licensing Authority to issue an emergency rule if the State Licensing Authority finds that the immediate adoption of the rule is imperatively necessary to comply with a state law or for the preservation of public health, safety, or welfare and compliance with the requirements of section 24-4-103, C.R.S., would be contrary to the public interest.

I find: (1) the immediate adoption of these revised rules is necessary to comply with the statutory mandates of the Medical Marijuana Code, sections 12-43.3-101 to -1102, C.R.S., and the Retail Marijuana Code, sections 12-43.4-101 to -1101, C.R.S.; (2) the immediate adoption of these revised rules is necessary to preserve the public health, safety, and welfare; and (3) compliance with the notice and public hearing requirements of section 24-4-103, C.R.S., would be contrary to the public interest.

Statutory Authority

The statutory authority for the attached revised Medical Marijuana Rules is identified in the statement of basis and purpose preceding each rule, and includes subsections 12-43.3-202(1)(a), 12-43.3-202(1)(b)(I), 12-43.3-202(1)(e), 12-43.3-202(2)(a)(XVI), 12-43.3-202(2)(a)(XVIII.5), 12-43.3-202(2)(a)(XX), 12-43.3-301(3), 12-43.3-302(5)(c), 12-43.3-401(1)(a)-(e), and 12-43.3-401(1)(d), and sections 12-43.3-104, 12-43.3-305, 12-43.3-306, 12-43.3-307.5, 12-43.3-310, 12-43.3-311, 12-43.3-313, 12-43.3-401, 12-43.3-501, 12-43.3-502, 12-43.3-1101, 12-43.3-1102, and 24-76.5-103, C.R.S.

The statutory authority for the attached revised Retail Marijuana Rules is identified in the statement of basis and purpose preceding each rule, and includes subsections 12-43.4-104(1)(a)(I), 12-43.4-202(2)(a), 12-43.4-202(2)(b), 12-43.4-202(2)(e), 12-43.4-202(3)(a)(II), 12-43.4-202(3)(a)(XIV.5), 12-43.4-202(3)(b)(VIII), 12-43.4-202(3)(b)(IX); 12-43.4-304(1), 12-43.4-306.5(5)(a)-(b), 12-43.4-309(6), 12-43.4-310(2)(a), and 12-43.4-401(1)(a)-(g), C.R.S., and sections 12-43.4-103, 12-43.4-104, 12-43.4-305, 12-43.4-401, 12-43.3-501, 12-43.3-502, and 12-43.4-501, C.R.S.; and Colorado Constitution Article XVIII, Subsection 16(5)(a)(II).

Purpose

The purpose of the revisions to these rules on an emergency basis is to set fees related to several new types of licenses, registrations and interests in medical marijuana businesses and retail marijuana establishments, and related services, which will become effective January 1, 2017. The new license, registration and interest types were created pursuant to Senate Bill 16-040 and House Bill 16-1211, as well as pre-existing statutory and rule-making authority contained in the Medical and Retail Marijuana Codes, including the statutory provisions identified above.

Section 12-43.3-501, C.R.S., governs the marijuana cash fund, and requires the State Licensing Authority to establish and adjust all fees collected pursuant to both the Medical and Retail Marijuana Codes. Under this statute, the State Licensing Authority is required to establish and adjust the fees that will be collected by the State Licensing Authority to reflect direct and indirect costs of the State Licensing Authority and to avoid exceeding the statutory limit on uncommitted reserves in administrative agency cash funds. The State Licensing Authority must review the fees at least annually.

The fiscal analysis required for attached rule revisions could not be completed until now due to the short timeline for implementation of new types of licenses, registrations and interests that may be held in medical marijuana businesses and retail marijuana establishments, as set forth in Senate Bill 16-040 and House Bill 16-1211, and the time required for the subsequent rulemaking proceeding. Specifically, the Department of Revenue's Office of Budget & Financial Services could not perform its required fiscal analysis to determine appropriate fees for each license, registration, or interest prior to adoption of the implementing rules. The rules were adopted by the State Licensing Authority on October 13, 2016. The contents of those rules were key to performance of the requisite fiscal analysis to determine fee amounts

in accordance with subsection 12-43.3-501, C.R.S., after taking into account the direct and indirect costs of the State Licensing Authority, and the need to avoid exceeding the statutory limit on uncommitted reserves in administrative agency cash funds. The Office of Budget & Financial Services completed its fiscal analysis in mid-December 2016.

Consequently, there is not enough time to undergo a permanent rulemaking process for Rules M 201, M 207, M 208, M 209, M 210, M 235, M 236, 1 CCR 212-1 and Rules R 207, R 208, R 209, R 210, R 234 and R 235, 1 CCR 212-2, prior to January 1, 2017, the date on which the fees must be in place to comply with statute. As a result, these rules were adopted on an emergency basis on December 22, 2016. These emergency rules will expire on April 21, 2017.

The State Licensing Authority filed a permanent rulemaking notice for all of these fee rules, as well as other rules, on December 22, 2016, with an expected effective date of approximately March 30, 2017. That process will include the opportunity for substantial stakeholder and public participation. All fees reflected in the emergency rules are subject to change through permanent rulemaking. Specifically, because the State Licensing Authority, through the Department of Revenue's Marijuana Enforcement Division, has not previously engaged in background investigations related to out of state ownership interests, associated fees reflected in the emergency rules represent best estimates and may be subject to significant change after additional data is obtained following implementation of the emergency rules.

The attached emergency rules are effective immediately upon adoption. The prior versions of Rules M 201, M 207, M 208, M 209, M 210, M 235, and M 236, 1 CCR 212-1, and R 207, R 208, R 209 and R 210, R 234, and R 235, 1 CCR 212-2, are hereby repealed and replaced by the attached emergency rules. These emergency rules will remain in effect until their expiration or until replaced by permanent rules.

Barbara J. Brohl
Executive Director
Colorado Department of Revenue
State Licensing Authority

12/22/2016
Date

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Tracking number: 2016-00662

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

Marijuana Enforcement Division

on 12/22/2016

1 CCR 212-1

MEDICAL MARIJUANA RULES

The above-referenced rules were submitted to this office on 12/22/2016 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 04, 2017 16:20:56

Frederick R. Yarger

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

Emergency Rules Adopted

Department

Department of Revenue

Agency

Marijuana Enforcement Division

CCR number

1 CCR 212-2

Rule title

1 CCR 212-2 RETAIL MARIJUANA RULES 1 - eff 12/22/2016

Effective date

12/22/2016

Basis and Purpose – R 207

The statutory authority for this rule is found at subsections 12-43.4-202(2)(a), 12-43.4-202(2)(b), 12-43.4-104(1)(a)(I), 12-43.4-202(3)(a)(II), 12-43.4-202(3)(a)(XIV.5), 12-43.4-306.5(5)(a)-(b), and 12-43.4-401(1)(a)-(g), and sections 12-43.4-103, 12-43.4-401, 12-43.3-501, 12-43.3-502 and 12-43.4-501, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(II). The purpose of this rule is to clarify the schedules of application fees for new retail business Licensees.

R 207 – Schedule of Application Fees: Retail Marijuana Establishments

A. Base Retail Marijuana Application Fees

1. Application Fee for Existing Medical Marijuana Licensees in Good Standing and Qualified Applications.

a. A Person licensed pursuant to the Medical Code, section 12-43.3-401, and that meets the requirements of 12-43.4-104, C.R.S., shall pay a $500 application fee, for each application submitted, to operate a Retail Marijuana Establishment if the following are met:

i. The Licensee is operating; and

ii. The Licensee's license is in good standing. A license in good standing has complied consistently with the provisions of the Medical Code and the regulations adopted thereto and is not subject to a disciplinary action at the time of the application.

2. Application Fee for New Applicants - Retail Marijuana Store, Cultivation Facility, or Product Manufacturer. Applicants that do not meet the criteria in Part A. of this rule are required to pay a $5000 application fee that must be submitted with each application before it will be considered.

3. Retail Marijuana Testing Facility Application Fee - $1,000.00

4. Retail Marijuana Transporter Application Fee - $1,000.00

5. Retail Marijuana Establishment Operator License Application Fee - $1,000.00

B. Retail Marijuana Establishment Application Fees for Indirect Beneficial Interest Owners, Qualified Limited Passive Investors and Other Affiliated Interests

1. Affiliated Interest that is not an Indirect Beneficial Interest Owner - $200.00

2. Commercially Reasonable Royalty Interest Holder receiving more than 30 percent of the gross revenue profit from the sales of the product or lines of products subject to the royalty - $400.00

3. Commercially Reasonable Royalty Interest Holder receiving more than 30 percent of the gross revenue or gross profit from the sales of the product or lines of product subject to the royalty - $200.00

4. Permitted Economic Interest - $400.00

5. Profit Sharing Employee - $200.00

6. Qualified Limited Passive Investor

   a. Standard limited initial background check - $75.00

   b. Full background check for reasonable cause - $125.00

7. Qualified Institutional Investor - $200.00

E. When Application Fees Are Due. All application fees are due at the time a Retail Marijuana Establishment submits an application and/or at the time a Retail Marijuana Establishment submits an application for a new Financial Interest. . An Applicant must follow Division policies regarding payment to local jurisdictions.

Basis and Purpose – R 208

The statutory authority for this rule is found at subsections 12-43.4-202(2)(a), 12-43.4-202(2)(b), 12-43.4-202(3)(a)(II), 12-43.4-304(1), and 12-43.4-401(1)(a)-(g), and sections 12-43.4-103, 12-43.3-501, 12-43.3-502, 12-43.4-305, and 12-43.4-501, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(II). The purpose of this rule is to establish basic requirements for all Division applications and help the regulated community understand procedural licensing requirements.

R 208 – Schedule of Business License Fees: Retail Marijuana Establishments

A. License Fees - Medical Marijuana Business Converting To or Adding a Retail Marijuana Establishment Pursuant to 12-43.4-104(1)(a)(I).

1. Medical Marijuana Center Applying For A Retail Marijuana Store License – $2,000.00

2. Retail Marijuana Cultivation Facility License (Tier 1: 1 – 1,800 plants) – $1,500.00

3. Expanded Production Management Fees for Applicants with an increased production management tier approved by the Division pursuant to rule R 506(E):

   a. Expanded Production Management Fee for Tier 2 (1,801 – 3,600 plants) - $1,000.00

   b. Expanded Production Management Fee for Tier 3 (3,601 – 6,000 plants) - $2,000.00

   c. Expanded Production Management Fee for Tier 4 (6,001 – 10,200 plants) - $4,000.00

   d. Expanded Production Management Fee for Tier 5 (10,201 – 13,800 plants) - $6,000.00

   e. Expanded Production Management Fee for each additional tier of 3,600 plants over Tier 5 - $1,000.00

4. Retail Marijuana Products Manufacturing License – $1,500.00

B. Retail Marijuana Transporter License Fee - $4,400.00

C. Retail Marijuana Establishment Operator License Fee - $2,200.00

D. License Fees - New Retail Marijuana Establishment Applicants That Have Applied Pursuant To 12-43.4-104(1)(b)(II).

1. Retail Marijuana Store License - $2,000.00

2. Retail Marijuana Cultivation Facility License (Tier 1: 1 – 1,800 plants) - $1,500.00

3. Expanded Production Management Fees for Applicants with an increased production management tier approved by the Division pursuant to rule R 506(E):

a. Expanded Production Management Fee for Tier 2 (1,801 – 3,600 plants) - $1,000.00

b. Expanded Production Management Fee for Tier 3 (3,601 – 6,000 plants) - $2,000.00

c. Expanded Production Management Fee for Tier 4 (6,001 – 10,200 plants) - $4,000.00

d. Expanded Production Management Fee for Tier 5 (10,201 – 13,800 plants) - $6,000.00

e. Expanded Production Management Fee for each additional tier of 3,600 plants over Tier 5 - $1,000.00

4. Retail Marijuana Products Manufacturing License - $1,500.00

5. Retail Marijuana Testing Facility License - $1,500.00

E. When License Fees Are Due. All license fees are due at the time an application is submitted.

F. If Application is Denied. If an application is denied, an Applicant may request that the State Licensing Authority refund the license fee after the denial appeal period has lapsed or after the completion of the denial appeal process, whichever is later.

Basis and Purpose – R 209

The statutory authority for this rule is found at subsections 12-43.4-202(2)(a), 12-43.4-202(2)(b), 12-43.4-202(3)(a)(II), and 12-43.4-304(1), 12-43.4-310(2)(a) and 12-43.4-401(1)(a)-(g), and sections 12-43.4-103, 12-43.4-401,12-43.3-501, 12-43.3-502,12-43.4-305, and 12-43.4-501, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(II). The purpose of this rule is to establish basic requirements for all Division applications and help the regulated community understand procedural licensing requirements.

R 209 – Schedule of Business License Renewal Fees: Retail Marijuana Establishments

A. Renewal Fee Amount and Due Date. The renewal fee shall be $300 for each renewal application. Renewal license and processing fees are due at the time the renewal application is submitted.

B. Late Renewal Application and Fee Pursuant to 12-43.4-310(2)(a), C.R.S. A Licensee whose license has been expired for no more than 90 days may file a late renewal

application upon payment of a late renewal fee. The late renewal fee is non-refundable and shall be $500. This late renewal fee must be paid in addition to the $300 renewal fee required pursuant to paragraph A of this rule R 209.

C. Renewal License Fees.

1. Retail Marijuana Store – $1,500.00

2. Retail Marijuana Cultivation Facility License (Tier 1: 1 – 1,800 plants) – $1,500.00

3. Expanded Production Management Renewal Fees for Applicants with an increased production management tier approved by the Division pursuant to rule R 506(E):

a. Expanded Production Management Renewal Fee for Tier 2 (1,801 – 3,600 plants) - $800.00

b. Expanded Production Management Renewal Fee for Tier 3 (3,601 – 6,000 plants) - $1,500.00

c. Expanded Production Management Renewal Fee for Tier 4 (6,001 – 10,200 plants) - $3,000.00

d. Expanded Production Management Renewal Fee for Tier 5 (10,201 – 13,800 plants) - $5,000.00

e. Expanded Production Management Renewal Fee for each additional tier of 3,600 plants over Tier 5 - $800.00

4. Retail Marijuana Products Manufacturing License – $1,500.00

5. Retail Marijuana Testing Facility License – $1,500.00

6. Retail Marijuana Transporter Renewal License Fee - $4,400.00

7. Retail Marijuana Establishment Operator Renewal License Fee - $2,200.00

D. If Renewal Application is Denied. If an application for renewal is denied, an Applicant may request that the State Licensing Authority refund the license fee after the denial appeal period has lapsed or after the completion of the denial appeal process, whichever is later.

Basis and Purpose – R 210

The statutory authority for this rule is found at subsections 12-43.4-202(2)(a), 12-43.3-1101, 12-43.3-1102, 12-43.4-202(2)(b), 12-43.4-202(3)(a)(II), and12-43.4-304(1), and sections 12-43.4-103, 12-43.4-401,12-43.3-501, 12-43.3-502 and 12-43.4-501, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(II). The purpose of this rule is to establish basic requirements for all Division applications and help the regulated community understand procedural licensing requirements.

R 210 – Schedule of Other Application Fees: All Licensees

A. Other Application Fees. The following application fees apply:

1. Transfer of Ownership - New Owners - $1,600.00

2. Transfer of Ownership - Reallocation of Ownership - $1,000.00

3. Change of Corporation or LLC Structure - $800.00/Person

4. Change of Trade Name - $50.00

5. Change of Location Application Fee - Same Local Jurisdiction Only - $500.00

6. Modification of Licensed Premises - $100.00

7. Duplicate Business License - $20.00

8. Duplicate Occupational License - $20.00

9. Off Premises Storage Permit - $1,500.00

10. Retail Marijuana Transporter Off Premises Storage Permit - $2,200.00

11. Responsible Vendor Program Provider Application Fee: $850.00

12. Responsible Vendor Program Provider Renewal Fee: $350.00

13. Responsible Vendor Program Provider Duplicate Certificate Fee: $50.00

B. When Other Application Fees Are Due. All other application fees are due at the time the application and/or request is submitted.

C. Subpoena Fee – See Rule M 106 – Subpoena Fees

Basis and Purpose – R 234

The statutory authority for this rule is found at subsections 12-43.4-202(2)(a), 12-43.4-202(2)(b), 12-43.4-202(2)(e), 12-43.4-202(3)(b)(VIII), 12-43.4-202(3)(b)(IX), 12-43.4-306.5(5)(a)-(b), 12-43.4-309(6), and sections 12-43.4-103, 12-43.4-401, 12-43.3-501, 12-43.3-502, and 12-43.4-501, C.R.S, The purpose of this rule is to establish licensing fees for individuals.

R 234 – Schedule of License Fees: Individuals

A. Individual License Fees

1. Direct Beneficial Interest Owner Fees

a. Colorado Resident Associated Key License - $800.00

b. Non-Resident Associated Key License

i. Upon request for finding of suitability - $5,000.00

ii. Following finding of suitability - $75.00

2. Occupational Key License - $250.00

3. Occupational Support License - $100.00

B. When Fees Are Due. License fees are due at the time Applicant submits application.

Basis and Purpose – R 235

The statutory authority for this rule is found at subsections 12-43.4-202(2)(a), 12-43.4-202(2)(b), 12-43.4-202(2)(e), 12-43.4-202(3)(b)(VIII), 12-43.4-202(3)(b)(IX), 12-43.4-309(6), and sections 12-43.4-401,12-43.3-501, C.R.S., and sections 12-43.4-103, 12-43.4-401 and 12-43.3-501, 12-43.3-502, and 12-43.4-501, C.R.S. The purpose of this rule is to establish renewal license fees for individuals.

R 235 – Schedule of Renewal Fees: Individuals

A. Individual Renewal License Fees

1. Associated Key License Fee - $500.00

2. Occupational License Fee - $75.00

B. When Fees Are Due. Renewal license fees are due at the time Applicant submits application for renewal.

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Emergency Rules:

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Rule M 208 – Schedule of Business License and Registration Fees: Medical Marijuana Businesses

Rule M 209 – Schedule of Business Renewal License and Registration Fees: Medical Marijuana Businesses

Rule M 210 – Schedule of Other Application Fees: All Licensees

Rule M 235 – Schedule of License Fees: Individuals

Rule M 236 – Schedule of Renewal License Fees: Individuals

Revised Rules, Retail Marijuana, 1 CCR 212-2

Rule R 207 – Schedule of Application Fees: Retail Marijuana Establishments

Rule R 208 – Schedule of Business License Fees: Retail Marijuana Establishments

Rule R 209 – Schedule of Business License Renewal Fees: Retail Marijuana Establishments

Rule R 210 – Schedule of Other Application Fees: All Licenses

Rule R 234 – Schedule of License Fees: Individuals

Rule R 235 – Schedule of Renewal Fees: Individuals

Statement of Emergency Justification and Adoption Order

Pursuant to sections 24-4-103, 12-43.3-202, and 12-43.4-202, C.R.S, I, Barbara J. Brohl, Executive Director of the Department of Revenue and State Licensing Authority, hereby adopt the aforementioned revised Medical Marijuana and Retail Marijuana Rules, which are attached hereto.

Section 24-4-103(6), C.R.S., authorizes the State Licensing Authority to issue an emergency rule if the State Licensing Authority finds that the immediate adoption of the rule is imperatively necessary to comply with a state law or for the preservation of public health, safety, or welfare and compliance with the requirements of section 24-4-103, C.R.S., would be contrary to the public interest.

I find: (1) the immediate adoption of these revised rules is necessary to comply with the statutory mandates of the Medical Marijuana Code, sections 12-43.3-101 to -1102, C.R.S., and the Retail Marijuana Code, sections 12-43.4-101 to -1101, C.R.S.; (2) the immediate adoption of these revised rules is necessary to preserve the public health, safety, and welfare; and (3) compliance with the notice and public hearing requirements of section 24-4-103, C.R.S., would be contrary to the public interest.

Statutory Authority

The statutory authority for the attached revised Medical Marijuana Rules is identified in the statement of basis and purpose preceding each rule, and includes subsections 12-43.3-202(1)(a), 12-43.3-202(1)(b)(I), 12-43.3-202(1)(e), 12-43.3-202(2)(a)(XVI), 12-43.3-202(2)(a)(XVIII.5), 12-43.3-202(2)(a)(XX), 12-43.3-301(3), 12-43.3-302(5)(c), 12-43.3-401(1)(a)-(e), and 12-43.3-401(1)(d), and sections 12-43.3-104, 12-43.3-305, 12-43.3-306, 12-43.3-307.5, 12-43.3-310, 12-43.3-311, 12-43.3-313, 12-43.3-401, 12-43.3-501, 12-43.3-502, 12-43.3-1101, 12-43.3-1102, and 24-76.5-103, C.R.S.

The statutory authority for the attached revised Retail Marijuana Rules is identified in the statement of basis and purpose preceding each rule, and includes subsections 12-43.4-104(1)(a)(I), 12-43.4-202(2)(a), 12-43.4-202(2)(b), 12-43.4-202(2)(e), 12-43.4-202(3)(a)(II), 12-43.4-202(3)(a)(XIV.5), 12-43.4-202(3)(b)(VIII), 12-43.4-202(3)(b)(IX); 12-43.4-304(1), 12-43.4-306.5(5)(a)-(b), 12-43.4-309(6), 12-43.4-310(2)(a), and 12-43.4-401(1)(a)-(g), C.R.S., and sections 12-43.4-103, 12-43.4-104, 12-43.4-305, 12-43.4-401, 12-43.3-501, 12-43.3-502, and 12-43.4-501, C.R.S.; and Colorado Constitution Article XVIII, Subsection 16(5)(a)(II).

Purpose

The purpose of the revisions to these rules on an emergency basis is to set fees related to several new types of licenses, registrations and interests in medical marijuana businesses and retail marijuana establishments, and related services, which will become effective January 1, 2017. The new license, registration and interest types were created pursuant to Senate Bill 16-040 and House Bill 16-1211, as well as pre-existing statutory and rule-making authority contained in the Medical and Retail Marijuana Codes, including the statutory provisions identified above.

Section 12-43.3-501, C.R.S., governs the marijuana cash fund, and requires the State Licensing Authority to establish and adjust all fees collected pursuant to both the Medical and Retail Marijuana Codes. Under this statute, the State Licensing Authority is required to establish and adjust the fees that will be collected by the State Licensing Authority to reflect direct and indirect costs of the State Licensing Authority and to avoid exceeding the statutory limit on uncommitted reserves in administrative agency cash funds. The State Licensing Authority must review the fees at least annually.

The fiscal analysis required for attached rule revisions could not be completed until now due to the short timeline for implementation of new types of licenses, registrations and interests that may be held in medical marijuana businesses and retail marijuana establishments, as set forth in Senate Bill 16-040 and House Bill 16-1211, and the time required for the subsequent rulemaking proceeding. Specifically, the Department of Revenue's Office of Budget & Financial Services could not perform its required fiscal analysis to determine appropriate fees for each license, registration, or interest prior to adoption of the implementing rules. The rules were adopted by the State Licensing Authority on October 13, 2016. The contents of those rules were key to performance of the requisite fiscal analysis to determine fee amounts

in accordance with subsection 12-43.3-501, C.R.S., after taking into account the direct and indirect costs of the State Licensing Authority, and the need to avoid exceeding the statutory limit on uncommitted reserves in administrative agency cash funds. The Office of Budget & Financial Services completed its fiscal analysis in mid-December 2016.

Consequently, there is not enough time to undergo a permanent rulemaking process for Rules M 201, M 207, M 208, M 209, M 210, M 235, M 236, 1 CCR 212-1 and Rules R 207, R 208, R 209, R 210, R 234 and R 235, 1 CCR 212-2, prior to January 1, 2017, the date on which the fees must be in place to comply with statute. As a result, these rules were adopted on an emergency basis on December 22, 2016. These emergency rules will expire on April 21, 2017.

The State Licensing Authority filed a permanent rulemaking notice for all of these fee rules, as well as other rules, on December 22, 2016, with an expected effective date of approximately March 30, 2017. That process will include the opportunity for substantial stakeholder and public participation. All fees reflected in the emergency rules are subject to change through permanent rulemaking. Specifically, because the State Licensing Authority, through the Department of Revenue's Marijuana Enforcement Division, has not previously engaged in background investigations related to out of state ownership interests, associated fees reflected in the emergency rules represent best estimates and may be subject to significant change after additional data is obtained following implementation of the emergency rules.

The attached emergency rules are effective immediately upon adoption. The prior versions of Rules M 201, M 207, M 208, M 209, M 210, M 235, and M 236, 1 CCR 212-1, and R 207, R 208, R 209 and R 210, R 234, and R 235, 1 CCR 212-2, are hereby repealed and replaced by the attached emergency rules. These emergency rules will remain in effect until their expiration or until replaced by permanent rules.

Barbara J. Brohl
Executive Director
Colorado Department of Revenue
State Licensing Authority

12/22/2016
Date

CYNTHIA H. COFFMAN
Attorney General

DAVID C. BLAKE
Chief Deputy Attorney General

MELANIE J. SNYDER
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Solicitor General

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Office of the Attorney General

Tracking number: 2016-00663

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

Marijuana Enforcement Division

on 12/22/2016

1 CCR 212-2

RETAIL MARIJUANA RULES

The above-referenced rules were submitted to this office on 12/22/2016 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 04, 2017 16:21:05

Frederick R. Yarger

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

Emergency Rules Adopted

Department

Department of State

Agency

Secretary of State

CCR number

8 CCR 1505-1

Rule title

8 CCR 1505-1 ELECTIONS 1 - eff 12/19/2016

Effective date

12/19/2016

COLORADO SECRETARY OF STATE

[8 CCR 1505-1]

ELECTION RULES

Rules as Adopted - Clean

December 19, 2016

(*Publication instructions/notes*):

Amendments to 8 CCR 1505-1 follow:

New Rule 24:

Rule 24. Presidential Electors

24.1 Oath

24.1.1 As used in section 1-4-304 (1), C.R.S., ª the oath required by law for presidential electorsº must be in substantially the following form:

> ª I, ¼ ¼ ¼ ¼ .., do solemnly swear or affirm that I will support the constitution of the United States and of the state of Colorado, that I will faithfully perform the duties of the office of presidential elector that I am about to enter, and that I will vote for the presidential candidate and vice-presidential candidate who received the highest number of votes at the preceding general election in this state.º

24.1.2 If a presidential elector-elect refuses or otherwise fails to take and subscribe the oath in Rule 24.1.1, the refusal or failure creates a vacancy in the office of presidential elector. A vacancy created in accordance with this rule must be filled by the remaining presidential electors present as specified in section 1-4-304 (1), C.R.S.

24.2 Voting

24.2.1 As specified in section 1-4-304 (5), C.R.S., each presidential elector must vote for the presidential candidate and vice-presidential candidate who received the highest number of votes at the preceding general election in this state.

24.2.2 If a presidential elector-elect refuses or otherwise fails to vote for the presidential candidate and vice-presidential candidate who received the highest number of votes at the preceding general election in this state, the refusal or failure constitutes a ª refusal to actº

as that term is used in section 1-4-304 (1), C.R.S., and creates a vacancy in the office of presidential elector. A vacancy created in accordance with this rule must be filled by the remaining presidential electors present as specified in section 1-4-304 (1), C.R.S.

24.3 Filling Vacancies

24.3.1 As specified in section 1-4-304 (1), C.R.S., the presidential electors present must immediately proceed to fill any vacancy in the electoral college. A quorum is not required to fill a vacancy. In the event of a tie vote, the vacancy will be filled by lot.

24.3.2 If a remaining presidential elector refuses to fill a vacancy in the electoral college, the refusal constitutes a "refusal to act" as that term is used in section 1-4-304 (1), C.R.S., and creates a vacancy in the office of presidential elector. A vacancy created in accordance with this rule must be filled by the remaining presidential electors present as specified in section 1-4-304 (1), C.R.S.

24.3.3 Nominees to fill vacancies must be selected in accordance with section 1-4-302 (2), C.R.S. The party selecting nominees to fill vacancies must select at least one more person than there are vacancies.

STATE OF COLORADO
Department of State
1700 Broadway
Suite 200
Denver, CO 80290

Wayne W. Williams
Secretary of State

Suzanne Staiert
Deputy Secretary of State

Statement of Justification and Reasons for Adoption of Temporary Rules

Office of the Secretary of State
Election Rules
8 CCR 1505-1

December 19, 2016

New Rule 24:

In accordance with Colorado election law,[1] the Secretary of State finds that certain amendments to the existing election rules must be adopted and effective immediately to ensure the uniform and proper administration and enforcement of Colorado election laws.

Temporary adoption is necessary both to comply with law and to preserve the public welfare given the close proximity to the December 19, 2016 meeting of the presidential electors. The Secretary of State must adopt rules to provide clear guidance regarding the presidential elector voting process and potential vacancy procedures.

For these reasons, and in accordance with the State Administrative Procedure Act, the Secretary of State finds that adoption and immediate effect of the amendments to existing election rules is imperatively necessary to comply with state and federal law and to promote public interests.[2]

[1] Sections 1-1-107(1)(c), 1-1-107(2)(a), 1-7.4-104, C.R.S. (2016).
[2] Section 24-4-103(3)(6), C.R.S. (2016).

CYNTHIA H. COFFMAN
Attorney General

DAVID C. BLAKE
Chief Deputy Attorney General

MELANIE J. SNYDER
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Office of the Attorney General

Tracking number: 2016-00661

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

Secretary of State

on 12/19/2016

8 CCR 1505-1

ELECTIONS

The above-referenced rules were submitted to this office on 12/19/2016 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 04, 2017 16:13:49

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

Terminated Rulemaking

Department

Department of Human Services

Agency

Finance and Accounting Rules (Volume 5)

CCR number

11 CCR 2508-1

Tracking number

2016-00570

Termination date

01/13/2017

Reason for termination

Re-noticed 2017-00029 for Executive Director Hearing session on 2/14/17 at CDHS, 1575 Sherman Street, Denver, CO at 11:00 AM

Nonrulemaking Public Notices and other Miscellaneous Rulemaking Notices

Filed on 01/06/2017

Department

Department of Public Health and Environment

Agency

Water Quality Control Commission (1002 Series)

COLORADO
Water Quality
Control Commission
Department of Public Health & Environment

NOTICE OF PUBLIC ADMINISTRATIVE ACTION HEARING
BEFORE THE
COLORADO WATER QUALITY CONTROL COMMISSION

SUBJECT:

At the date, time and location listed below, the Water Quality Control Commission will hold a public Administrative Action Hearing to consider approval of the Water Quality Control Division's proposed submittal of projects for FY17 Section 319 nonpoint source funds.

SCHEDULE OF IMPORTANT DATES:

Initial list of recommended projects available	Feb. 13, 2017	On commission's web at https://www.colorado.gov/pacific/cdphe/wqcc-administrative-action-hearings
Written comments due	Feb. 22, 2017	Additional submittal information below
Final list of recommended projects available	Mar. 1, 2017	On commission's web at https://www.colorado.gov/pacific/cdphe/wqcc-administrative-action-hearings
Public Administrative Action Hearing	March 13, 2017 9:30 a.m.	Florence Sabin Conference Room Department of Public Health and Environment 4300 Cherry Creek Drive South Denver, CO 80246

PROCEDURAL MATTERS:

The commission encourages input from interested persons, either in writing prior to the hearing or orally at the hearing. Interested persons should provide their opinions or recommendations as to whether the proposed list should be approved by the commission and forwarded to EPA.

The commission will receive all written submittals electronically. Submittals must be provided as PDF documents and may be emailed to cdphe.wqcc@state.co.us, provided via an FTP site, on a CD or flash drive, or otherwise conveyed to the commission office so as to be received no later than the due date. Written comments will be available to the public on the commission's web site.

AUTHORITY FOR PUBLIC HEARING:

The provisions of 25-8-202(1)(h), (i) and (2) C.R.S. and Section 21.5 B of the "Procedural Rules", Regulation #21 (5 CCR 1002-21) provide the authority for this hearing.

PARTY STATUS:

This is not a rulemaking hearing; therefore, party status provisions of 25-8-101 et. seq., and 24-4-101 et. seq., C.R.S. do not apply. Party status requests shall not be considered by the Commission.

Dated this 6th day of January 2017 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION

Nancy Horan

Digitally signed by Nancy Horan
DN: cn=Nancy Horan, o=Colorado Department of Public Health and Environment, ou=Water Quality Control Commission, email=nancy.horan@state.co.us, c=US
Date: 2017.01.06 13:45:04 -07'00'

Nancy Horan, Program Assistant

Nonrulemaking Public Notices and other Miscellaneous Rulemaking Notices

Filed on 01/16/2017

Department

Department of Revenue

Agency

Division of Motor Vehicles

COLORADO
Department of Revenue

Department of Motor Vehicle
1881 Pierce Street
Lakewood, CO 80214

Stakeholder Workshop Notification of Future Rule Promulgation

Concerning Rule 1 CCR 204-1 Rule 2
Emission Inspection

There will be a public workshop held for discussion of the above rule on:

Date: **Monday, January 23, 2017**

Time: **11:00a.m.**

Location: **1881 Pierce Street**
Boards/Commissions Conference Room 110
Lakewood, CO 80214

Please enter through Entrance B. The Conference Room is to the left.

The following is the call-in information if you are unable to attend this workshop in person:

Dial In: 1-302-202-1108
Code: 250090

We look forward to seeing you at this workshop.

Calendar of Hearings

Hearing Date/Time	Agency	Location
02/16/2017 10:00 AM	Division of Professions and Occupations - Colorado Medical Board	1560 Broadway, Conference Room 1250C
05/08/2017 10:30 AM	Water Quality Control Commission (1002 Series)	Sabin Conference Room, CDPHE, 4300 Cherry Creek Drive South, Denver, CO 80246
05/08/2017 10:00 AM	Water Quality Control Commission (1002 Series)	Sabin Conference Room, CDPHE, 4300 Cherry Creek Drive South, Denver, CO 80246
05/08/2017 10:30 AM	Water Quality Control Commission (1002 Series)	Sabin Conference Room, CDPHE, 4300 Cherry Creek Drive South, Denver, CO 80246
02/21/2017 09:30 AM	Hazardous Materials and Waste Management Division	Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Bldg. A, Sabin Conference Rm., Denver, CO 80246
02/21/2017 09:30 AM	Hazardous Materials and Waste Management Division	Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Bldg A, Sabin Conference Room, Denver, CO 80246
02/21/2017 09:30 AM	Hazardous Materials and Waste Management Division	Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Bldg. A, Sabin Conference Room, Denver, CO 80246
02/21/2017 09:30 AM	Hazardous Materials and Waste Management Division	Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Bldg. A, Sabin Conf. Rm, Denver, CO 80246
02/14/2017 11:00 AM	Finance and Accounting Rules (Volume 5)	CDHS, 1575 Sherman St., Denver, CO