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38 CR 7

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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

2015-00189

Department

100,800 - Department of Personnel and Administration

Agency

109 - Executive Director of Department of Personnel and Administration

CCR number

1 CCR 109-2

Rule title

STATE ARCHIVES ADMINISTRATIVE RULE

Rulemaking Hearing

Date

05/07/2015

Time

02:30 PM

Location

1525 Sherman St. Room 516, Denver, CO 80203

Subjects and issues involved

Repeal of rule

Statutory authority

24-30-102, C.R.S., 24-80-102(10), C.R.S., SB15-190

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DEPARTMENT OF PERSONNEL AND ADMINISTRATION

Executive Director of Department of Personnel and Administration

STATE ARCHIVES ADMINSTRATIVE RULE

1 CCR 109-2

Repealed 7/1/2015

DEPARTMENT OF PERSONNEL AND ADMINISTRATION

Executive Director of Department of Personnel and Administration

STATE ARCHIVES ADMINSTRATIVE RULE

1 CCR 109-2

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

~~Rule 1. Fees for the Office of the State Archives~~

~~A. Pursuant to per §24-80-102 (10), C.R.S. (2011), the Office of the State Archives is charged with collecting fees for information, research and retrieval requests. The fee schedule is outlined below.~~

~~SERVICE~~

~~Rate~~

~~1. RESEARCH FEE – (Flat rate of $20.00).~~

~~$20.00~~

~~2. CERTIFICATION OF RECORD~~

~~$10.00~~

~~3. LEGISLATIVE HISTORY – ANALOG TO DIGITAL MIGRATION~~

~~$50.00~~

~~4. LEGISLATIVE HISTORY – DIGITAL TO DIGITAL DUPLICATION~~

~~$8.00~~

~~5. PHOTOCOPIES/ EMAILED DOCUMENTS/ FAXED DOCUMENTS~~

~~$1.00~~

~~6. NOTARY SERVICES~~

~~$5.00~~

~~7. SPECIAL RUN /RUSH FEE~~

~~$50.00~~

~~8. MICROFILM TEMPORARY LOAN~~

~~$5.00~~

~~9. PERSONAL CAMERA USE~~

~~$10.00~~

~~10. OTHER SERVICES NOT LISTED~~

~~TIME/RESOURCE COST BASIS~~

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~~Rule 2. Subscription Based Fee~~

~~A. The Office of the State Archives, in an effort to enhance customer service and simplify accounting, will offer a subscription based fee option for high-volume customers. Annual subscription based fees will begin at $5,000 per fiscal year. All available services would be provided under the subscription fee.~~

~~B. Annual subscription based fees will increase in $1,000 increments after the first $5,000.~~

~~C. The Office of the State Archives will assess the services provided under the subscription fee to actual published rates to determine if the subscription fee is reasonable.~~

~~1. If the published rates for the services provided to the client under the subscription fee are determined to be 15% or above the subscription fee rate, the Office of the State Archives will notify the customer that the $1,000 incremental increases will be necessary to complete any outstanding work.~~

~~2. The Office of the State Archives retains the right to cancel services at any time that the amount of services provided unreasonably exceeds the subscription cost.~~

~~D. The subscription based fee is non-refundable.~~

~~E. The Office of the State Archives retains the right to cancel services at any time that the amount of services provided unreasonably exceeds the subscription cost.~~

~~Editor's Notes~~

~~Entire rule emer. rule eff. 07/02/2013.~~

~~Entire rule eff. 10/15/2013.~~

Repealed 7/1/2015

Notice of Proposed Rulemaking

Tracking number

2015-00166

Department

200 - Department of Revenue

Agency

204 - Division of Motor Vehicles

CCR number

1 CCR 204-10

Rule title

TITLES AND REGISTRATIONS

Rulemaking Hearing

Date

04/30/2015

Time

02:00 PM

Location

1881 Pierce Street, Lakewood, CO 80214, Room 110 Boards/Commisions Meeting Room

Subjects and issues involved

Rule 25 - The following rule is promulgated to clarify that an application and renewal form created pursuant to section 42-3-204, C.R.S., is required for the issuance, renewal, and replacement of a person with disabilities parking privileges license plate and/or placard.

Statutory authority

42-1-204 and 42-3-204, C.R.S.

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DEPARTMENT OF REVENUE

Division of Motor Vehicles – Title and Registration Section

1 CCR 204-10

RULE 25. PERSONS WITH DISABILITIES PARKING PRIVILEGES

Basis: The statutory bases for this regulation are ~~12-36-106(3)(i), 12-36-107.4, article 32 of title 12, 12-38-111.5,~~ 42-1-204 and~~,~~ 42-3-204, ~~and 42-4-1208,~~ C.R.S.

Purpose: The following rule~~s and regulations are~~ is promulgated to clarify ~~the criteria for the issuance, renewal, and replacement of a person with disabilities parking privileges placard and/or license plate~~ that an application and renewal form created pursuant to section 42-3-204, C.R.S., is required for the issuance, renewal, and replacement of a person with disabilities parking privileges license plate and/or placard.

1.0 Form Required

1.1 A person applying for the issuance, renewal, or replacement of a persons with disabilities parking privileges license plate and/or placard shall file with the Department a current form DR 2219 Parking Privileges Application.

~~**2.0 Definitions**~~

~~2.1 "CSTARS" means the Colorado State Titling and Registration System used for the issuance of and registration transactions concerning person with disabilities license plates and placards.~~

~~2.2 "Department" means the Department of Revenue of this state acting directly or through its duly authorized officers and agents.~~

~~2.3 "Disabled Veteran Handicap License Plate" means a Colorado issued license plate granting the registered owner person with disability parking privileges and that also indicates the registered owner meets the criteria of being a Disabled Veteran.~~

~~2.4 "Disability" means a physical impairment that meets the standards of 23 CFR 1235, which impairment is verified, in writing, by a professional.~~

~~2.5 "Extended" means a condition that is not expected to change within thirty months after the issuance of an identifying figure, given the current state of medical or adaptive technology.~~

~~2.6 "Minor" for the purpose of this regulation means a person with a disability who is under the age of sixteen years.~~

2.7 "Permanent" means a condition that is not expected to change within a person's lifetime, given the current state of medical or adaptive technology.

2.8 "Person with Disability License Plate" means a Colorado issued license plate, bearing an identifying figure, granting the registered owner person with disability parking privileges.

2.9 "Placard" means a Colorado tag bearing an identifying figure, designed to hang from a vehicle's rear view mirror and granting the registered owner person with disability parking privileges when displayed.

2.10 "Professional" means:

a. A physician licensed to practice medicine or practicing medicine pursuant to section 12-36-106(3)(i), C.R.S., a physician assistant licensed pursuant to section 12-36-107.4, C.R.S., a podiatrist licensed under article 32 of title 12, C.R.S, an advanced practice nurse registered pursuant to section 12-38-111.5, C.R.S., or a physician, physician assistant, podiatrist, or advanced practice nurse authorized to practice professionally by another state that shares a common border with Colorado, and

b. For the purpose of the regulations, Commissioned Medical Officers of the U.S. Armed Forces, the U.S. Public Health Service, and/or the U.S. Veterans Administration.

2.11 "Temporary" means a condition that is not expected to change within ninety days after the issuance of an identifying placard, given the current state of medical or adaptive technology.

3.0 Issuing Person with Disabilities License Plates and Placards

3.1 The Department shall issue person with disability license plates and/or placard(s) to Colorado residents who provide the following:

a. Their disability verified by a professional on forms published by the Department, and

b. A Colorado driver's license or identification card, or a federally issued identification card, or

c. Each parent or guardian of a minor may be issued a person with disability permanent or extended placard upon presentation of:

1. The parent's or guardian's Colorado driver's license or identification card, or

2. The minor's disability identification card.

3. A minor who is under foster child care shall be issued a person with disability placard in the minor's name. The person with disability placard shall remain with the minor when moving between foster care providers.

3.2 Business entities (i.e., nursing home, care facility, etc.) that transport people with disabilities may obtain a permanent person with disabilities placard from the County Motor Vehicle Office in the county where the business entity is located. Business entities may be issued one person with disability permanent placard per vehicle owned by that business entity to transport people with disabilities. At no time shall a person with disability license plate or temporary placard be issued to a business entity. Business entities desiring to be issued a person with disability placard shall submit:

a. A completed DR 2219 Persons with Disabilities Parking Privileges Application, and

b. A letter, on the business entity's letterhead, signed by the executive officer, or equivalent, of the business entity stating the use of the vehicle(s), and

c. Copies of the vehicle(s) registration receipts or titles. Vehicles must be titled in the name of the business entity, and

d. An employee identification number.

3.3 The person with the disability shall present to the Department the completed DR 2219 Persons with Disabilities Parking Privileges Application in order to be issued a person with disability license plate and/or placard. Each instance of new issuance shall require the person with the disability to provide the completed DR 2219 Persons with Disabilities Parking Privileges Application, and a Colorado driver's license or identification card or a federally issued identification card, and certification by a professional verifying physical impairment.

3.4 A person with a permanent or extended disability is eligible for:

a. One person with disability license plate, or

b. One person with disability license plate and one person with disability permanent placard, or

c. Two person with disability permanent placards.

3.5 A person with a temporary disability is eligible to receive one person with disability temporary placard.

3.6 A person with disability license plate may only be issued to a vehicle that is owned by the person with the disability or that is owned by a trust created for the benefit of, and the name of which includes the name of, the person with disability.

3.7 If more than one owner of a vehicle is eligible for issuance of a person with disability license plate, then each owner must meet the issuance requirements and apply individually to the Department. This permits the Department to mark the vehicle records with each qualifying owner to indicate to law enforcement and parking officials who is authorized to use the privileges associated with the person with disability license plate.

3.8 Upon issuance of a person with disability license plate and/or placard the Department shall provide the person with the disability a DR 2574 Registration Receipt pursuant to 42-3-113(2), C.R.S.

3.9 Veterans meeting the criteria of being a Disabled Veteran established in 42-3-213(5) and 42-3-304(3)(a), C.R.S. shall be issued a Disabled Veteran Handicap license plate in lieu of the person with disabilities license plate. The veteran is eligible for:

a. One Disabled Veteran Handicap license plate, or

b. One Disabled Veteran Handicap license plate and one person with disability permanent placard, or

c. Two person with disability permanent placards.

3.10 A veteran who has met the requirements for issuance of a Disabled Veteran Handicap license plate shall not be required to meet the issuance requirements for being issued a person with disability permanent placard. The active CSTARS record shall act as authorization for issuance.

3.11 Upon issuance of any person with disabilities license plate or placard the county shall forward the first page of the DR 2219 Persons with Disabilities Parking Privileges Application to the Department for archiving and electronic scanning. Additional pages and documents shall be properly disposed of by the county.

4.0 Renewing Person with Disabilities License Plates and Placards

4.1 Permanent person with disabilities placards shall expire three years from the date of issuance. Person with disabilities license plates shall expire one year from the date of issuance and shall be renewed annually. Every third year, the person with the disability shall be required to meet the verification requirements listed in section 2.0 above. Failure to meet these requirements shall result in:

a. The person with disability permanent placard registration expiring, and/or

b. The person with disability license plate registration expiring. The return of the license plate shall be required within thirty days of expiration.

4.2 Notification of third year renewal requirements shall be completed via letter to the person with the disability. All other renewal notices shall be completed pursuant to 42-3-113(3) and 42-3-114, C.R.S.

4.3 Veterans issued the Disabled Veteran Handicap license plate are not required to recertify their disability every three years pursuant to 42-3-204(2)(c), C.R.S.

5.0 Replacing Person with Disabilities License Plates and Placards

5.1 Replacement of lost, damaged, or stolen person with disabilities license plates shall be completed upon presentation of the DR 2283 Lost or Stolen License Plate / Permit Affidavit to the Department. Stolen license plates require a copy of a filed police report to be attached to the form. If the vehicle registration is current, replacement shall be completed pursuant to 42-3-205, C.R.S. If the registration has expired the person with the disability shall complete the issuance process outlined in section 2 of this rule.

5.2 Replacement of lost, damaged, or stolen person with disabilities placards shall be completed as listed below. The placard expiration date shall remain the same for the replacement placard.

a. If the person with the disability, the parent or guardian of a minor, or a business entity that transports people with disabilities for hire, has an active placard record in CSTARS, replacement is completed using the active CSTARS record as authorization, or

b. The person with the disability, the parent or guardian of a minor, or a business entity that transports people with disabilities for hire, may provide a current copy of the DR 2574 Registration Receipt for the placard being replaced, or

c. The person with the disability, the parent or guardian of a minor, or a business entity that transports people with disabilities for hire, may opt to reset the expiration and re-certification date. If this option is elected, then a completed DR 2219 Persons with Disabilities Parking Privileges Application and the requirements of section 2.1 or 2.2 of this rule must be met in order for the placard previously issued pursuant to section 2.0 of this rule to be replaced.

6.0 Additional Requirements

6.1 The privileges granted for issuance, renewal, or replacement of a person with disability license plate and/or placard shall be discontinued and the Person with Disability license plate or placard, or the Disabled Veteran Handicap license plate shall no longer be valid when:

a. The person with the disability to whom the person with disability license plate and/or placard was issued is no longer a Colorado resident, or

b. The person with the disability is deceased, or

c. The registered owner of a vehicle issued the person with disability license plate and/or placard ceases to be a person with a disability or disabled.

6.2 Surviving spouses, relatives, friends, or other people that do not qualify for person with disability parking privileges are not entitled to use, apply for, renew, or request replacement of person with disability license plates or placards.

5.3 Volunteers transporting people with disabilities in their personal vehicles shall not be issued person with disabilities license plates or placards. Volunteers may display a person with disabilities placard for the individual they are transporting in order to have access to person with disabilities parking privileges.

DEPARTMENT OF REVENUE

Division of Motor Vehicles – Title and Registration Section

1 CCR 204-10

RULE 25. PERSONS WITH DISABILITIES PARKING PRIVILEGES

Basis: The statutory bases for this regulation are 42-1-204 and 42-3-204, C.R.S.

Purpose: The following rule is promulgated to clarify that an application and renewal form created pursuant to section 42-3-204, C.R.S., is required for the issuance, renewal, and replacement of a person with disabilities parking privileges license plate and/or placard.

1.0 Form Required

1.1 A person applying for the issuance, renewal, or replacement of a persons with disabilities parking privileges license plate and/or placard shall file with the Department a current form DR 2219 Parking Privileges Application.

Notice of Proposed Rulemaking

Tracking number

2015-00175

Department

200 - Department of Revenue

Agency

204 - Division of Motor Vehicles

CCR number

1 CCR 204-10

Rule title

TITLES AND REGISTRATIONS

Rulemaking Hearing

Date

05/05/2015

Time

01:00 PM

Location

1881 Pierce Street, Lakewood, CO 80214, Room 110 Boards/Commissions Meeting Rm

Subjects and issues involved

The purpose of this regulation is to establish a process to retire Group Special License Plates, Optional License Plates, and Alumni License Plates.

Statutory authority

42-1-204, 42-3-207(1) (b) (II), 42-3-212(7), 42-3-214(7), 42-3-221(6), 42-3-222(6), 42-3-223(6), 42-3-224(2)(a), 42-3-225(2)(b), 42-3-226(2)(a), 42-3-227(6), 42-3-228(6), 42-3-229(2)(a), 42-3-230(6),

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DEPARTMENT OF REVENUE

Division of Motor Vehicles – Title and Registration Section

1 CCR 204-10

RULE 20. LICENSE PLATE RETIREMENT

BASIS: The statutory bases for this regulation are sections ~~42-1-102 (24), 42-1-102 (41.5),~~ 42-1-204, 42-3-207(1) (b) (II), 42-3-212(7), 42-3-214(7), ~~42-3-215(7), 42-3-216(7),~~ 42-3-221(6), 42-3-222(6), 42-3-223(6), 42-3-224(2)(a)~~(b), and~~ 42-3-225(2)(b), 42-3-226(2)(a), 42-3-227(6), 42-3-228(6), 42-3-229(2)(a), 42-3-230(6), 42-3-231(6)(a), 42-3-232(6)(a), 42-3-233(6), 42-3-234(6)(a), 42-3-237(6), 42-3-238(2)(a), 42-3-239(2)(a), 42-3-240(2)(a), 42-3-241(2)(a), 42-3-242(2)(a), 42-3-243(2)(a), 42-3-244(2)(a), 42-3-245(2)(a), 42-3-246(2)(a) and 42-3-247(2)(a), C.R.S.

PURPOSE: The purpose of this regulation is to establish a process ~~to be followed~~ to retire Group Special License Plates, Optional License Plates, and Alumni License Plates ~~license plate types due to the statutory threshold of issued plates not being met, adverse audit findings or any other statutorily supported eligibility for plate retirement as determined by the department~~.

1.0 Definitions

~~1.1 "Group Special License Plate" – means a special license plate that is not a distinctive plate and issued to a group of people because such people have a common interest or affinity.~~

~~1.2 "Optional License Plate" – means a special plate that has a background consisting of a graphic design representing the state flag of Colorado (commonly referred to as Designer License Plates).~~

~~1.3 "Alumni License Plate" – means a special plate that is issued to an alumni association for a private or public college or university located within Colorado.~~

1.14 "Issued" – means ~~the total number of vehicles that are currently registered with the defined license plate or within the one-month grace period~~ a defined license plate has been assigned to a vehicle that is ~~or has been~~ registered or the registration is within theone-month grace period provided in 42-3-114, C.R.S.

1.2~~5~~ "Retirement" – for the purpose of this regulation means the ~~discontinuing~~ discontinuation of the production and issuance of the Group Special, Optional, or Alumni license plate. ~~manufacture, shipment, new registration, replacement registration and issuance of the defined license plate.~~

1.3 "Sponsoring Organization" – means the group applying for creation of the Group Special License Plate, or the alumni association applying for creation of the Alumni License Plate.

~~1.6 "Department" – means the department of revenue of this state acting directly or through its duly authorized officers and agents.~~

2.0 Requirements

2.1 ~~To be eligible for retirement, a group special, optional, or alumni license plate must be issued to less than the statutorily defined threshold on the statutorily defined date.~~ A Group Special License Plate, Optional License Plate, or Alumni License Plate is subject to retirement if the minimum number of license plates, based on the date established in the respective statute for the special plate, have not been issued.

2.2 A ~~group special license plate~~ Group Special License Plate may be retired based on adverse audit findings as a result of an ~~the annual~~ audit performed pursuant to ~~established in~~ 1 CCR 204-140 Rule 16. Group Special License Plate paragraph 3.10~~regulation~~.

~~2.3 The determination to retire a group special license plate due to the required number of license plates issued is less than the statutory requirement, is an annual review to occur on the effective date as defined in statute and every year after.~~

3.0 Process

~~3.1 The retirement of group special, optional, and alumni license plates that have not met the statutorily required threshold shall be conducted annually based on the effective date and current level of issued plates.~~

3.~~2~~1 ~~At the effective date, the department will perform a statewide query into registrations systems to determine the total number of vehicles registered and plated with issued the license plate designated to be due for review of retirement.~~ Annually, the Department will perform a statewide query for license plates scheduled to be evaluated for retirement to determine the total number of license plates issued under each respective statute.

3.~~3~~2 If the query results indicates ~~the outcome of the review is~~ that the license plate ~~is~~ has been issued to the minimum number of vehicles specified ~~more vehicles than required~~ by statute, no further action is required~~. and normal manufacturing, registering, and plating of vehicles will continue~~.

3.~~4~~3 If the query results indicates ~~the outcome of the review is~~ that the license plate ~~is~~ has not been issued to the minimum number of vehicles ~~issued to the number of vehicles~~ required by statute, ~~at the date of review, it will be established as~~ the plate is subject to ~~eligible for~~ retirement and the process below will be followed.

A. A complete list of vehicles registered ~~and plated~~ with the license plate ~~that has been deemed eligible~~ identified for retirement will be generated to identify~~ing~~ the license plate number, county of residence, name and address of all registered owners.

B. At the time the above list is generated, registration and plating systems will be programmed to prohibit new manufacturing, shipping, issuing, or replacement of the plate.

1. ~~Vehicles registered with a license plate that has been deemed required to be retired may retain the license plates until the registrant desires to replace the plate with a non-retired license plate or upon replacement of lost, stolen and/or damaged plates. The department shall not grant request for or manufacturer similar replacement plates. that have been retired, complete replacement with a non-retired license plate shall be the only option given.~~ A letter will be mailed to each registered owner detailing the retirement of the license plate and any information the Department may deem necessary.

2. ~~A letter will be mailed to each registered owner detailing the retirement of the plate, listing the owners' options and any other information the department may deems~~

~~necessary.~~ Vehicles registered with a license plate that has been identified to be retired may retain the license plates until the registrant replaces the plate with a non-retired license plate or upon replacement of lost, stolen and/or damaged plates. The Department will not grant requests for or manufacture replacement plates for the retired plates.

~~C. The department shall notify the license plate sponsor/organization of the retirement of the license plate via certified mail. This letter will contain at a minimum the retirement date, instructions to cease the certification and validation process, discontinue issuing vouchers, instructions that all references about obtaining or any reference to sponsorship of the license plates shall be removed from all organization documentation, newsletters, mailing, websites or any other type of media they maintain. This notification will inform them that their status as the representative and certifying official for the license plate has been terminated~~

~~D. Plates that are required to be retired shall be removed from all license plate inventories and shall be eliminated from the license plate inventory management systems. Retired plates that are in inventory will be destroyed pursuant to the destruction, recycling, or other permanent disposal of license plates in section 42-3-201(6)(a), C.R.S.~~

~~E~~C. The ~~d~~Department will ~~shall~~ not refund membership fees and/or donations collected by the sponsoring organization, nor ~~use~~ apply them as a credit toward~~s~~ the registration fees charged for ~~the~~ new or replacement license plates.

3.~~54~~ ~~Sponsoring organizations representing retired license plates may request to re-establish the license plate, six years from the date the plate is deemed retired. and must follow the process and procedures as established by rule for group special and alumni license.~~

3.~~65~~ Sponsoring organizations may verify the number of ~~group special~~Group Special, ~~optional~~Optional, or ~~alumni~~ Alumni license plates issued ~~for their organization~~ by ~~contacting the State Registrations office~~ accessing the monthly report posted to the Departments' website.

3.6 Sponsoring organizations may appeal the Department's decision to retire a license plate by ~~following the Enforcement and Hearing Procedures established in 1 CCR 204-14.~~requesting a hearing, in writing, within thirty days of mailing of the notice of retirement. Written hearing requests shall be submitted to the Department of Revenue, Hearings Division, 1881 Pierce Street, Room #106, Lakewood, CO 80214.

DEPARTMENT OF REVENUE

Division of Motor Vehicles – Title and Registration Section

1 CCR 204-10

RULE 20. LICENSE PLATE RETIREMENT

BASIS: The statutory bases for this regulation are sections 42-1-204, 42-3-207(1) (b) (II), 42-3-212(7), 42-3-214(7), 42-3-221(6), 42-3-222(6), 42-3-223(6), 42-3-224(2)(a), 42-3-225(2)(b), 42-3-226(2)(a), 42-3-227(6), 42-3-228(6), 42-3-229(2)(a), 42-3-230(6), 42-3-231(6)(a), 42-3-232(6)(a), 42-3-233(6), 42-3-234(6)(a), 42-3-237(6), 42-3-238(2)(a), 42-3-239(2)(a), 42-3-240(2)(a), 42-3-241(2)(a), 42-3-242(2)(a), 42-3-243(2)(a), 42-3-244(2)(a), 42-3-245(2)(a), 42-3-246(2)(a) and 42-3-247(2)(a), C.R.S.

PURPOSE: The purpose of this regulation is to establish a process to retire Group Special License Plates, Optional License Plates, and Alumni License Plates.

1.0 Definitions

1.1 "Issued" – means a defined license plate has been assigned to a vehicle that is registered or the registration is within the one-month grace period provided in 42-3-114, C.R.S.

1.2 "Retirement" – for the purpose of this regulation means the discontinuation of the production and issuance of the Group Special, Optional, or Alumni license plate.

1.3 "Sponsoring Organization" – means the group applying for creation of the Group Special License Plate, or the alumni association applying for creation of the Alumni License Plate.

2.0 Requirements

2.1 A Group Special License Plate, Optional License Plate, or Alumni License Plate is subject to retirement if the minimum number of license plates, based on the date established in the respective statute for the special plate, have not been issued.

2.2 A Group Special License Plate may be retired based on adverse audit findings as a result of an audit performed pursuant to 1 CCR 204-140 Rule 16. Group Special License Plate paragraph 3.10.

3.0 Process

3.1 Annually, the Department will perform a statewide query for license plates scheduled to be evaluated for retirement to determine the total number of license plates issued under each respective statute.

3.2 If the query result indicates that the license plate has been issued to the minimum number of vehicles specified by statute, no further action is required.

3.3 If the query result indicates that the license plate has not been issued to the minimum number of vehicles required by statute, the plate is subject to retirement and the process below will be followed.

A. A complete list of vehicles registered with the license plate identified for retirement will be generated to identify the license plate number, county of residence, name and address of all registered owners.

B. At the time the above list is generated, registration and plating systems will be programmed to prohibit new manufacturing, shipping, issuing, or replacement of the plate.

1. A letter will be mailed to each registered owner detailing the retirement of the license plate and any information the Department may deem necessary.

2. Vehicles registered with a license plate that has been identified to be retired may retain the license plates until the registrant replaces the plate with a non-retired license plate or upon replacement of lost, stolen and/or damaged plates. The Department will not grant requests for or manufacture replacement plates for the retired plates.

C. The Department will not refund membership fees and/or donations collected by the sponsoring organization, nor apply them as a credit toward the registration fees charged for new or replacement license plates.

3.4 Sponsoring organizations may verify the number of Group Special, Optional, or Alumni license plates issued by accessing the monthly report posted to the Departments' website.

3.5 Sponsoring organizations may appeal the Department's decision to retire a license plate by requesting a hearing, in writing, within thirty days of mailing of the notice of retirement. Written hearing requests shall be submitted to the Department of Revenue, Hearings Division, 1881 Pierce Street, Room #106, Lakewood, CO 80214.

Notice of Proposed Rulemaking

Tracking number

2015-00167

Department

200 - Department of Revenue

Agency

204 - Division of Motor Vehicles

CCR number

1 CCR 204-10

Rule title

TITLES AND REGISTRATIONS

Rulemaking Hearing

Date

04/30/2015

Time

02:00 PM

Location

1881 Pierce Street, Lakewood, CO 80214, Room 110 Boards/Commissions Meeting Room

Subjects and issues involved

The purpose of this regulation is to define certain records and provide further clarification regarding record information that may be provided by the county clerk as an agent for the department.

Statutory authority

24-72-202, 24-72-204, 38-29-102, 42-1-102, 42-1-204, 42-1-206, 42-2-121, 42-6-102 and 42-6-122 C.R.S. and 18 U.S.C. sec. 2721, et seq.

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DEPARTMENT OF REVENUE

Division of Motor Vehicles – Title and Registration Section

1 CCR 204-10

RULE 27. RECORDS OPEN TO INSPECTION

BASIS: The bases for this regulation are: 24-72-202, 24-72-204, 38-29-102, 42-1-102, 42-1-204, 42-1-206, 42-2-121, 42-6-102 and 42-6-122 C.R.S. and 18 U.S.C. sec. 2721, et seq.

PURPOSE: The purpose of this regulation is to define "certain records" and provide further clarification regarding record information that may be provided by the county clerk as an agent for the department.

1.0 Definitions

1.1 "Official Documents" means records of and documents relating to the ownership, registration, transfer and licensing of vehicles.

1.2 "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in a perceivable form.

1.3 "Certain Records" means vehicle and manufactured home records.

1.4 "Vehicle" means any motor vehicle as defined in the definition of motor vehicle cited in 42-6-102 (10) CRS.

1.5 "Motor Vehicle" means any self propelled vehicle that is designed primarily for travel on the public highways and is generally and commonly used to transport persons and property over the public highways, including trailers, semitrailers and trailer coaches, without motive power.

1.6 "Manufactured Home" means a preconstructed building unit or combination of preconstructed building units without motive power designed and commonly used for residential occupancy by persons in either temporary or permanent locations, which unit or units are manufactured in a factory or at a location other than the residential site of the completed home.

1.7 "Department" means the department of revenue of this state acting directly or through its duly authorized officers and agents.

1.8 "Authorized Agents" means the officer of a county or city and county designated by law to issue annual registrations of vehicles and to collect any registration or license fee imposed theron by law.

1.9 "Person in interest" means and includes the person who is the subject of a record or any representative designated by said person; except that, if the subject of the record is under legal disability, "person in interest" means and includes his parent or duly appointed legal representative.

2.0 Requirements

2.1 The department is the responsible agency to maintain all motor vehicle records for vehicles titled and registered in the State of Colorado.

2.2 The authorized agent is the responsible agency to file all mortgage documents that reflect a lien on a motor vehicle titled in the State of Colorado.

2.3 The department may provide vehicle record information within the provisions specified by the "Driver's Privacy Protection Act of 1994" and the Colorado Revised Statute.

2.4 Records of mortgages affecting motor vehicles shall be public records which may be inspected and copies provided by the authorized agent using the filing system utilized by the authorized agent to index and cross-index the mortgage records.

2.5 The authorized agent is prohibited from providing motor vehicle record information from records that are maintained in the department's motor vehicle title and registration database.

2.6 In no event are motor vehicle records to be sold by the authorized agent.

2.7 The department may provide title and registration information to a party of interest or any other person approved through the Driver Privacy Protection Act as a party eligible to obtain motor vehicle record information by following the established process set forth by the department.

2.8 The department shall not sell, permit the sale of or release to anyone other than the person in interest any photograph, digitized image, fingerprint or social security number filed with, maintained by or prepared by the department.

3.0 Process

3.1 Upon submitting the following documents, the department may provide motor vehicle title and registration information to any person eligible to receive such information.

A. Written application - The person requesting motor vehicle record information must submit a written application either on a department approved form designed for the purpose of requesting motor vehicle record information or by written request.

B. Requestor Release - If the requestor is anyone other than the party of interest or a federal, state, or local government carrying out its official function, a requester release form shall be submitted with the application. The requestor release form requires the requestor to identify the intended use of the record(s) being requested. The requestor and the intended use of the record must comply with those identified in 24-72-204 C.R.S.

C. Fee - The requestor must remit the fee specified in 42-1-206 (2) (a) C.R.S.

3.2 The motor vehicle record information may be requested by mail or in person.

3.3 Upon receipt of application and verification of compliance with the requirements of 24-72-204 C.R.S., the department shall provide motor vehicle title and/or registration information as identified in the department's database.

3.4 There shall be no refunds of the specified fee in the event that the department's records are searched and no motor vehicle record is found.

~~3.5 The authorized agent may provide information regarding records of mortgages on motor vehicles, utilizing the system maintained by the authorized agent to index and cross index motor vehicle mortgage records filed in the office of the county clerk.~~

~~These records may be provided under the law regarding public records on real property.~~

~~3.6 Motor vehicle mortgage records may be electronic images or a photocopy of the mortgage document.~~

~~3.7 Motor vehicle record information from the department's database shall not be provided by the authorized agent.~~

Notice of Proposed Rulemaking

Tracking number

2015-00193

Department

200 - Department of Revenue

Agency

204 - Division of Motor Vehicles

CCR number

1 CCR 204-12

Rule title

RULES AND REGULATIONS FOR COMMERCIAL DRIVER'S LICENSE (CDL)

Rulemaking Hearing

Date

05/01/2015

Time

01:00 PM

Location

1881 Pierce Street, Lakewood, CO 80214, Room 110 Boards/Commissions Meeting Room

Subjects and issues involved

The purpose of these rules is to ensure compliance with state and federal requirements to promote the safety and welfare of the citizens of Colorado.

Statutory authority

The Department is authorized to adopt rules and regulations as necessary for the Commercial Drivers License Program in accordance with Sections 24-4-103, 42-2-111(1)(b), 42-2-403, 42-2-407(8), CRS.

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DEPARTMENT OF REVENUE

Division of Motor Vehicles
RULES AND REGULATIONS FOR THE COMMERCIAL DRIVER'S LICENSE (CDL) PROGRAM
1 CCR 204-12 (Recodified as 204-30 Rule 7) Permanent Rule

A. BASIS, PURPOSE AND STATUTORY AUTHORITY

(1) The Department is authorized to adopt rules and regulations as necessary for the Commercial Driver's License Program in accordance with Sections 24-4-103, 42-2-111(1)(b), 42-2-403~~(2)(a)~~, 42-2-407(8), CRS.

(2) The purpose of these rules is to ensure compliance with state and federal requirements to promote the safety and welfare of the citizens of Colorado.

B. INCORPORATION BY REFERENCE OF FEDERAL RULES

(1) Adoption: The Department incorporates by reference the Federal Motor Carrier Safety Regulations ("FMCSR"), 49 CFR Parts ~~383, 384, 390, and 391~~350 - 399, Qualifications and Disqualification of Drivers. *

(2) The Federal Regulations incorporated or referenced by this rule are published in the Code of Federal Regulations ("CFR"), Title 49, Part 383, 384, 390, and 391. The Federal rules and regulations referenced or incorporated in these rules are on file and available for inspection by contacting the ~~Motor Carrier Services Division~~Driver License Section of the Department of Revenue, 1881 Pierce Street, Room 128~~114~~, Lakewood, Colorado, 80214, 303-205-5600, and copies of the materials may be examined at any state publication depository library.

C. DEFINITIONS

(1) AAMVA: American Association of Motor Vehicle Administrators is a voluntary, nonprofit, tax exempt, educational unit that represents state and provincial officials in the United States and Canada who administer and enforce motor vehicle laws.

~~(2) CDL: Commercial Driver's License means a license issued to an individual in accordance with the requirements of the "Ffederal "Commercial Motor Carrier Vehicle Safety Act of 1986 ("FMCSA")." The document issued by the Department entitles the holder while having such document in his/her immediate possession, to drive a commercial motor vehicle of certain classes and endorsements and the operation of a non-CMV including a motorcycle with the appropriate motorcycle endorsement on the license upon the highways without supervision.~~

(~~3~~2) ~~CDL Instruction Permit~~CLP – Commercial Learners Permit: The permit issued by the Department entitling the driver, while having such permit in his/her immediate possession, to drive a commercial motor vehicle of certain classes and/or endorsements upon the highways with a driver that possesses a CDL with the same class and/or endorsements or higher, as the ~~CDL~~ CLP ~~Instruction Permit driver~~holder.

(~~4~~3) CDL Vehicle Class: A group or type of vehicle with certain operating characteristics.

~~(5) CDLIS: Commercial Driver's License Information System is the central database that stores the list of CDL drivers, in addition, the drivers' state of record.~~

~~(6) CDL driving tester or driving tester: An individual licensed by the Department under the provisions of Section 42-2-407, CRS to administer CDL Skills Test.~~

~~(7) CDL testing unit or testing unit: A business, association, or governmental entity licensed by the Department under the provisions of 42-2-407, CRS to administer CDL Skills Test.~~

~~(8) CMV: Commercial Motor Vehicle (as defined in CFR 383.5) means a motor vehicle designed or used in commerce to transport passengers or property, if the vehicle, has a gross vehicle weight rating of 26,001 or more~~

~~pounds or such lesser rating determined by federal regulation; or is designed to transport sixteen or more passengers, including the driver; or is transporting hazardous materials and is required to be placarded.~~

~~(9) Complete CDL Test: A Full CDL Skills Test in that the driver successfully completes all three (3) portions of the CDL Skills Test or a test in which a driver that successfully completes the Vehicle Inspection test and the Basic Control Skills test but fails during the Road Test portion.. due to a point accumulation..~~

(~~10~~4) CRS: Colorado Revised Statutes.

~~(11) Department: Colorado Department of Revenue.~~

(~~12~~5) Disqualifications: The suspension, revocation, cancellation, or any other withdrawal by the Department of a person's privilege to drive a CMV or a determination by the ~~FHWA~~FMCSA under the rules of practice for motor carrier safety contained in Part 386, that a person is no longer qualified to operate a CMV under Part 391; or the loss of qualification that automatically follows conviction of an offense listed in FMCSR 383.51

~~(13) DPOS: Division of Private Occupational School, a division of the Colorado Department of Higher Education.~~

(~~14~~6) Designed to Transport: The manufacturer's original rated capacity of the vehicle.

(~~15~~7) Endorsements: The letter indicators below ~~This is a letter indicator~~ added to a CDL and/or CLP~~CDL Instruction Permit that~~ indicate~~s~~ successful completion of the appropriate knowledge, and if applicable, the CDL Skills Test, ~~that~~ allow~~s~~ the operation of a special configuration of vehicle(s):~~.~~

(a) T = Double/triple trailers (not allowed on a CLP per 49 CFR §383.93(2) on a, d, f, g, and h)

(b) P = CDL Passenger vehicle

(c) N = Tank vehicles

(d) H = Hazardous materials (Not allowed on a CLP per 49 CFR §383.93(2) on a, d, f, g, and h)~~indicated on permit)~~

(e) S = School buses

(f) X = Combination of tank vehicle and hazardous materials (Not allowed on a CLP per 49 CFR §383.93(2) on a, d, f, g, and h)~~indicated on permit)~~

(g) M = Motorcycle (not allowed on a CLP per 49 CFR §383.93(2) on a, d, f, g, and h)

(h) 3 = Three wheel motorcycle (not allowed on a CLP per 49 CFR §383.93(2) on a, d, f, g, and h)

(~~16~~8) Exemptions: Regulatory relief given to a person or class of persons normally subject to regulations without the exception.

~~(17) FHWA: Federal Highway Administration is an agency within the USDOT.~~

(~~18~~9) FMCSA: Federal Motor Carrier Safety Administration is an agency within the USDOT.

(~~19~~10) FMCSR: Federal Motor Carrier Safety Regulations (49 CFR Parts 350-399).

(~~20~~11) ~~Full~~ CDL Skills Test ~~(or Full Test)~~: Means "driving tests" as provided in section 42-2-402, CRS and consists of ~~All three portions of the CDL Skills Test that consists of~~ the Vehicle Inspection, Basic Control Skills and the Road Test. ~~This does not include the Special Test.~~

(~~21~~12) GCWR: Gross Combination Weight Rating is the value specified by the manufacturer as the maximum loaded weight of the combination ~~(articulated)~~ vehicle. ~~In the absence of a value specified by the manufacturer, GCWR will be determined by adding the GVWR of the power unit and the total weight of the towed unit and any weight thereon.~~

(~~22~~13) Government agency: A state, county, city and county, municipality, school district, special improvement district, and every other kind of district, agency, instrumentality, or political subdivision thereof organized pursuant to law and any separate entity created by intergovernmental contract cooperation only between or among the state, county, city and county, municipality, school district, special improvement district, and every other kind of district, agency, instrumentality, or political subdivision thereof.

~~(23) GVWR: Gross Vehicle Weight Rating is the value specified by the manufacturer as the loaded~~maximum loaded ~~weight of a single vehicle.~~

(~~2~~14) Intrastate Driver: A driver restricted to operating ~~authorized to operate~~ a CMV within the boundaries of Colorado, and not authorized to transport items of interstate commerce or hazardous materials.

(~~2~~15) Interstate Commerce: Trade, traffic or transportation in the United States between a place in the state and a place outside of such state, including outside of the United States or between two places in a state as part of trade, traffic, or transportation originating or terminating outside the state or the United States.

(~~2~~16) Interstate Driver: A CDL holder authorized to cross state lines and transport interstate commerce while operating a CMV.

(17) Intrastate Commerce: Trade, traffic or transportation in the United States between two places in a state.

(18) Knowledge Test: A written test that meets the federal standards contained in 49 CFR 383, subparts F, G, and H.

~~(27) NDR: National Driver Register maintains the national database of driver histories. Each driver's driving history shall clear NDR prior to the issuance of a CDL.~~

(~~28~~19) Non-Profit: An organization filing with the United States Code 26USC Section 501(c).

(2~~0~~9) CDL Passenger Vehicle: For the purposes of these rules a passenger vehicle designed to transport 16 or more passengers, including the driver.

(~~30~~21) Paved Area: For the purpose of these rules, a paved area is a surface made up of materials and adhesive compounds of a sufficient depth and strength prepared to provide a durable, solid, smooth surface upon which a driver will demonstrate basic vehicle control skills.

(~~31~~22) Public Transportation Entity: A mass transit district or~~,~~ mass transit authority~~, or any other public entity~~ authorized under the laws of this state to provide transportation services to the general public

~~(32) Representative Vehicle: A motor vehicle, that represents the group or type of motor vehicle that a driver operates or expects to operate.~~

(~~3~~23) Restrictions: Prohibits the operation of certain types of vehicles or restricts operating a CMV within designated boundaries.

(a) L = No~~t~~ Air Brake equipped CMV

(b) K = Intrastate only

(c) E = No Manual ~~Transmision~~Transmission

(d) M = No Class A Passenger Vehicle

(e) N = No Class A and B Passenger Vehicle

(f) O = ~~5th Wheel Coupling~~No Tractor-Trailer

(g) P = No Passenger

(h) X = No Liquid in Tank

(i) V = Medical Variance (49 CFR §383.95(g) and 383.153(a)(10)(viii))

(ij) Z = ~~Air Over Hydraulic brake~~Not ~~F~~full air brake equipped CMV

~~(34) Salaried: A paid employee.~~

(~~35~~24) Self Certification Choice:

- **Non-excepted interstate**. A person must certify that he or she operates or expects to operate in interstate commerce~~*~~, is both subject to and meets the qualification requirements under 49 CFR part 391, and is required to be medically examined and certified~~obtain a medical examiner's certificate~~ pursuant to ~~by~~ 49 CFR §391.45
- **Excepted interstate**. A person must certify that he or she operates or expects to operate in interstate commerce, but engages exclusively in transportation or operations excepted under 49 CFR §§390.3(f),391.2, 391.68 or 398.3 from all or parts of the qualification requirements of 49 CFR part 391, and is therefore not required to be medically examined and certified pursuant to ~~obtain a medical examiner's certificate by~~ 49 CFR §391.45
- **Non-excepted intrastate**. A person must certify that he or she operates only in intrastate commerce and therefore is subject to State driver qualification requirements
- **Excepted intrastate**. A person must certify that he or she operates in intrastate commerce, but engages exclusively in transportation or operations excepted from all or parts of the State driver qualification.

~~(35) Special CDL Skills Test or Special Test: The abbreviated CDL Skills Test which is administered strictly to remove the Air Brake ("L") Restriction or add the School Bus ("S") Endorsement. This test consists of specific abbreviated versions of the Vehicle Inspection, Basic Control Skills and Road Test.~~

(~~3~~25) USDOT: United States Department of Transportation.

(26) CSTIMS: Commercial Skills Test Information Management System. Web-based system ~~S~~states use to manage the skills test portion of the CDL process.

D. DRIVER LICENSING REQUIREMENTS

(1) Each driver applying for a CDL or instruction permit shall be a resident of Colorado, at least 18 years of age, and comply with the testing and licensing requirements of the Department.

(a) The CDL and ~~instruction permit~~CLP will indicate the class of license, any endorsements and any restrictions for that individual driver. The CDL is valid for the operation of a non-CMV including a motorcycle with the appropriate motorcycle endorsement on the license.

(b) A Colorado CDL may be issued upon surrender of a valid CDL~~ may be transferred~~ from another state without additional testing except that the applicant must test for a hazardous material endorsement and school bus endorsement~~ authorized to issue a CDL~~.

(c) An individual with an out-of-state CLP's~~s~~ cannot ~~be~~ transfer that CLP to Colorado ~~red from another state~~ and~~but must requires the individual to~~ apply for a Colorado CLP and ~~re~~take all applicable CDL knowledge tests (49 CFR §383.73(a)(2)~~.~~

~~(2) Prior to the issuance of a CDL or instruction permit, each driver shall provide evidence of his/her social security number (SSN) in accordance with Department procedures~~.

(~~3~~2) Each driver applying is required to m~~M~~ake one of the following applicable self-certifications for the type of commercial driving the individual intends to do (49 CFR §383.73(a)(2)(vii):

- **Non-excepted interstate**.
- **Excepted interstate**.
- **Non-excepted intrastate**.

- **Excepted intrastate.**

(3) Each driver shall meet the medical and physical qualifications under FMCSR Part 391.41 * ~~and have this examination verified on a DOT medical examination form. Unless the following exceptions apply,~~ E~~e~~ach driver shall ~~carry~~ submit ~~this~~ their medical ~~examination form or the medical~~ examiner's certificate and if applicable any federal variance or state medical ~~variance~~/waiver or Skills Performance Evaluation to a Driver License Office~~on his/her person when operating a CMV:~~ (49 CFR §383.71(h)(1 through 3~~&~~2) and 383.73(o)

~~(a) Individuals holding a waiver issued by the Colorado State Patrol or the FMCSA.~~

E. ENDORSEMENTS

(1) T-Double/Triple Trailers: Required to operate a CMV used for drawing two or more vehicles or trailers with a GCWR that is 26,001 lbs. or more and combined GVWR of the vehicles being towed are in excess of 10,000 lbs.

(2) P-Passenger: Required to operate a vehicle designed by the manufacturer to transport 16 or more passengers, including the driver.

(3) N-Tank Vehicles: Required to operate a vehicle to haul liquid or liquid gas in a permanently mounted cargo tank rated at 119 gallons or more or a portable tank rated at 1,000 gallons or more.

(4) H-Hazardous Materials: Required to transport materials that require the motor vehicle to display a placard under the hazardous materials regulations.

(5) S-School Buses: Required to operate a school bus as defined in section 42-1-102(88)~~used to transport public, private, parochial or any other type of pre-primary, primary, or secondary students from home to school, from school to home or to and from school sponsored events~~ CRS.

(6) X-Combination Tank/Hazmat: Required to operate vehicles that meet the definition of (3) and (4) above.

F. RESTRICTIONS

(1) Intrastate: The letter "K" is added to the CDL of a driver between the ages of 18 through 20, ~~and/or a driver~~ to an individual who has been issued a valid medical waiver from the Colorado State Patrol (8 CCR 1507-1)~~.~~ or self certifies to excepted~~expected~~ or not excepted~~expected~~ intrastate driving (49 CFR §383.71(b)(1)(iii-iv)~~4.107~~).
Under this CDL restriction, the driver shall not:

(a) Operate a CMV outside the state boundaries;

(b) Transport interstate commerce as defined in the 49 CFR~~FMCSR~~ 390.5*; or

(c) ~~Transport hazardous materials requiring a placard or commodities with a hazard class or subject to the "poison by inhalation hazard" shipping description.~~The waiver is valid only while the driver is transporting commodities OTHER THAN bulk hazardous materials, as defined in 49 CFR 171.8 or commodities with a hazard class identified in 49 CFR 172.504 Table 1, or subject to the "Poison by Inhalation Hazard" shipping description in 49 CRF 172.203(m)(3).

(2) Air brake: The letter "L" is added to the CDL/CLP of an individual restricted from operating vehicles equipped ~~with~~ with air brake~~s~~s. ~~Air over hydraulic or assisted brake systems are not considered full air brake systems.~~

(a) An individual may apply for removal of t~~T~~he "L" restriction ~~is removed~~ after having ~~by~~ successfully complete~~d~~d~~ing~~ the air brake knowledge test and the driving skills ~~test's~~test in a vehicle equipped with air brakes that~~and~~ is representative of the CDL vehicle class.

(b) Before taking the driving skills tests in a vehicle equipped with air brakes, the individual shall have in his/her possession a CLP~~CDL instruction permit~~ without the "L" restriction.

~~(3) No Tractor Trailer: The letters No Trctr Trlr, restrict operation of a truck tractor unit (laden or unladed) designed and used to draw a semi-trailer or tractor. A "NO TRCTR TRLR" will be placed on the Class A CDL restricting the driver from operating a Class A vehicle with a power unit that has a GVWR of 26,001 lbs. or more.~~

~~(a) The "NO TRCTR TRLR" restriction can be removed by successfully completing the driving skills tests in a Class A vehicle with a power unit that has a GVWR of 26,001 lbs. or more.~~

~~(b) Before taking the driving skills tests in a Class A vehicle with a power unit that has a GVWR of 26,001 lbs. or more, the driver shall have in their possession a CDL Instruction permit without the "NO TRCTR TRLR" restriction.~~

(3) Transmission: The letter "E" is added to the CDL of an individual restricted from operating vehicles equipped with a standard transmission.

(a) An individual may apply for removal of t~~T~~he "E" restriction ~~is removed by~~ after having successfully completed~~ing~~ the driving skills test in a vehicle equipped with a standard transmission that ~~and~~ is representative of the CDL vehicle class.

(b) Before taking the driving skills test in a vehicle equipped with a standard transmission, the individual shall have in his/her possession a CLP~~CDL instruction permit~~ without the "E" restriction.

(4) Class A Bus: The letter "M" is added to the CDL of an individual restricted from operating a Class A Passenger vehicle.(49 CFR 383.91)

(a) An individual may apply for removal of t~~T~~he "M" restriction ~~is removed by~~ after having successfully completed~~ing~~ the driving skills test in a Class A Passenger vehicle.

(b) Before taking the driving skills test in a C~~c~~lass A Passenger vehicle, the individual shall have in his/her possession a CLP ~~CDL instruction permit~~ without the "M" restriction.

(5) Class B Bus: The letter "N" is added to the CDL of an individual restricted from operating a Class B Passenger vehicle.(49 CFR 383.91)

(a) An individual may apply for removal of t~~T~~he "N" restriction ~~is removed by~~after having successfully completed~~ing~~ the driving skills test in a Class B Passenger vehicle.

(b) Before taking the driving skills test in a C~~c~~lass B Passenger vehicle, the individual shall have in his/her possession a CLP~~CDL instruction~~ permit without the "N" restriction.

(6) No Tractor-Trailer: The letter "O" is added to the CDL of an individual restricted from operating a vehicle equipped with a 5th ~~W~~wheel type coupling system.(49 CFR 383.95)

(a) An individual may apply for removal of t~~T~~he "O" restriction after having ~~is removed by successfully~~ completed~~ing~~ the driving skills test in a tractor/semi-trailer combination vehicle equipped with a 5th w~~W~~heel type coupling system.

(b) Before taking the driving skills test in a tractor/semi-trailer combination vehicle equipped with a 5th w~~W~~heel type coupling system, the individual shall have in his/her possession a CLP~~CDL instruction permit~~ without the "O" restriction.

(7) No Passengers: The letter "P" is added to the CLP of an individual restricted from operating a Passenger vehicle with Passengers.

(a) The "P" restriction is removed by successfully completing the driving skills test in a Passenger vehicle.

(8) No Cargo in a Tank Vehicle: The letter "X" is added to the CLP of an individual restricted from operating a Tank vehicle ~~filled~~containing ~~with~~ liquid or gas.

(a) An individual may apply to have t~~T~~he "X" restriction ~~is~~ removed after having ~~by~~ successfully completed~~ing~~ the driving skills test.

(9) Medical, ~~Variance~~Variance/Skills Performance Evaluation: ~~.~~ The letter V will be added to any CLP or CDL for individuals who have been issued a federal medical ~~variance~~variance ~~or Skills Performance Evaluation~~ (49 CFR §383.153(a)(10)(viii), ~~and~~ 383.95(g), and 391.41).

(10) Air brake: The letter "Z" is added to the CDL/CLP of an individual restricted from operating vehicles equipped with full air brakes.

(a) The "Z" restriction is removed by successfully completing the air brake knowledge test and the driving skills test in a vehicle equipped with air brakes and is representative of the CDL vehicle class.

(b) Before taking the driving skills test in a vehicle equipped with air brakes, the individual shall have in his/her possession a CLP~~CDL instruction permit~~ without the "Z" restriction~~.~~

G. EXEMPTIONS

(1) FMCSR 49 CFR ~~Part~~ 383.3. Applicability authorizes the state to grant certain groups exceptions from the CDL requirements.

(a) FMCSR – 49 CFR~~Part~~~~k~~ 383.3 C: Exception for individuals who operate CMV's for military purposes.~~certain military drivers.~~

(b) FMCSR – 49 CFR~~Part~~ 383.3 (d)(1 and 2): Exception for operators of farm vehicles, as defined at section 42-2-402(4)(b)(III), ~~farmers~~ and firefighters and other persons who operate CMV's which are necessary to the preservation of life or property, or the execution of emergency governmental functions, are equipped with audible and visual signals and are not subject to normal traffic regulation.~~are applicable to CRS 42-2-402 (4)(b)(III) and (IV).~~

(c) FMCSR – 49 CFR~~Part~~ 383.3 (d)(3): Exception for drivers employed by an eligible unit of local government, removing snow or~~and~~ ice from a roadway.

(d) FMCSR – 49 CFR~~Part~~ 383.3 (f): Restricted CDL for certain drivers in farm-related service industries.

(2) FMCSR 49 CFR~~Part~~ 391.2 specifies the exceptions to the physical qualifications for individuals engaged in custom harvesting operations in FMCSR 49 CFR 391.2*.

H. ENTITY ELIGIBLE TO APPLY FOR A TESTING UNIT LICENSE

(1) The Department may authorize a testing unit to administer the CDL Skills Test on behalf of the Department if such training and testing is equal to the training and testing of the Department.

(2) A Testing Unit must e~~E~~nter into a written contract with the Department and agree to:

(a) Maintain an established place of business in Colorado with a vehicle fleet of no less than three CMV's owned, leased or registered to the testing unit, the business owner, or an employee of the business; or

(b) Maintain an adult education occupational business license with the Division of Private Occupational School, a division of the Colorado Department of Higher Education; or

(c) Be a government ~~an~~ agency ~~of government~~, public school district, private or parochial school, or other type of pre-primary, primary, or secondary school transporting students from home to school or from school to home.

I. TESTING UNIT REQUIREMENTS

(1) An entity shall apply for and receive a CDL testing unit license from the Department in order to administer CDL Skills Test. ~~for the licensing period.~~ The CDL testing license expires on June 30th of each year. The license~~(s)~~ for both the testing unit and driving tester(s) shall be displayed in the place of business.

(a) Testing unit license fees are: Three hundred dollars ($300.00) initial license; One hundred dollars ($100.00) annual ~~renewal~~ fee;

(b) Driving Tester License fees are: One hundred dollars ($100.00) initial license; Fifty dollars ($50.00) annual ~~renewal~~ fee.

~~(c) Driving tester license transfer fee: Fifty dollars ($50.00), Transferring from testing one unit to another testing unit within three months of leaving a testing unit.~~

(~~d~~c) Fees are waived for non-commercial units and testers that only provide public transportation, and do not test outside of their unit.

(~~e~~d) Public transportation entities~~units~~ that test outside of their unit and do not provide public transportation only, shall submit the appropriate fees.

(e) If a license is not renewed on or before June 30th of each year, the initial fees will apply. Testing u~~U~~nit and driving tester license(s) may be suspended or inactivated until appropriate fees and documentation are submitted.

(~~f~~f) Licenses can be renewed 60 days prior to June 30th of each year.

(2) The testing unit is not permitted to guarantee issuance of a Commercial Driver's License or to suggest that training will guarantee issuance of a Commercial Driver's License.

(3) Testing units shall only test if they have ~~with~~ a current ~~valid~~ testing unit license issued by the Department.

(4) Testing units shall ensure that each driving tester has a valid tester license issued by the Department to administer the CDL Skills Test.

~~(a) Testing units shall ensure that each driving tester has completed the nationwide criminal background check prior to being licensed to test. FMCSR 384.228~~

(5) The testing unit shall notify the Department in writing within 3 business~~working~~ days of the termination or departure from the testing unit ~~separation~~ of any driving tester.

(6) The place of business shall be a separate establishment and may not be part of a home. The CDL testing unit shall comply with city zoning and code requirements. The unit's physical address shall not be a post office box.

(7) The testing unit shall have written permission from the landowner to administer the CDL vehicle basic control skills exercises on areas not owned by the testing unit. This written permission shall be submitted to the Department for approval prior to testing.

(8) The testing unit shall maintain at least one ~~salaried~~ employee who is licensed ~~and designated~~ as a CDL driving tester.

(9) The testing unit shall ensure that the unit's driving tester(s) follow the Department's standards for administering the CDL Skills Test. ~~as outlined by the Department~~.

(10) The testing unit shall ensure that the unit's driving tester(s) complete all CDL Third Party Testing forms correctly.

(11) The testing unit shall ensure that the unit's driving tester(s) administer the CDL Skills Test to drivers in a~~the~~ vehicle equal to, or lower than, the ~~in~~ class and/or endorsement(s) t~~hat the~~ on driver's ~~has on his or her~~ instruction permit or CDL.

(12) Once a new tester candidate has ~~completed and~~ passed the required ~~five (5) day~~ tester training course, the testing unit shall ensure that the new tester candidate(s) applies for his/her Third Party Testers license and completes the fingerprint/background check application within thirty (30) days of completing and passing the tester training course. The licensing fees are the responsibility of the tester candidate.

(13) The testing unit is responsible for ensuring that ~~the~~ testers attend all mandated training provided by the CDL Compliance ~~Section~~Unit. Failure of ~~the~~ tester~~s~~ to attend scheduled training may result in the suspension of testing privileges for the testing unit and the tester.

(14) The testing unit shall ~~submit a weekly testing~~ schedule all tests utilizing the Commercial Skills Test Information Management System (CSTIMS). ~~to the CDL Compliance section. This weekly testing schedule will start on Monday and conclude on Sunday. Weekly schedules shall be submitted by electronic mail or faxed no later than the Friday prior to the week of testing. The weekly testing schedule shall include the:~~

~~- Unit's name~~
~~- Unit's number~~
~~- Week of~~
~~- Outside test (Yes or No)~~
~~- Test date~~
~~- Test time~~
~~- Driver's name~~
~~- Type of test (Class/Endorsements)~~
~~- Tester's name and number~~
~~- Location of test (where the Vehicle Inspection is administered)~~

~~The CDL Compliance section shall be notified of all canceled tests via CSTIMS~~ The testing unit or tester shall notify the CDL Compliance Unit of all canceled tests via CSTIMS ~~at least four (4) hours prior to the scheduled test or~~ as soon as the testing unit or driving tester is aware of the cancellation~~change~~. CDL Compliance shall be notified ~~of any additions and or changes~~of all tests scheduled or schedule change~~s~~d via CSTIMS ~~to the CDL Weekly Testing Schedule~~ at least three (3) days in advance of the test. ~~No changes are allowed within the 3 days of the scheduled test.~~ Tests not administered due to weather conditions or a vehicle failure ~~shall require~~ may be rescheduled with ~~at~~ a minimum one (1) day notification by the testing unit.

(a) The testing unit is not permitted to schedule an applicant ~~driver~~ more than once within any three (3) day period.

(b) The test shall begin within 15 minutes before and no later than 15 minutes after its scheduled time. The test begins when the driving tester reads ~~the tester candidate driver~~ the Vehicle Inspection Overview to the applicant.

~~(15) Driving testers within a testing unit shall administer a minimum of four (4) complete CDL Skills Test's~~Tests ~~during the previous licensing period and a minimum of ten (10) CDL Skills Test's~~Tests ~~with different tester candidates applicants to be eligible for renewal.~~

~~(a) A driving tester licensed under more the one (1) testing unit, must administer a minimum of four (4) complete CDL Skills Tests at each testing unit.~~

(15~~16~~) The testing unit shall ensure that the driving tester shall only issue the Colorado CDL Driving Skill Test Completion form (DR2736) for the class of vehicle in which the driver has successfully completed the driving skills test.

~~The testing unit shall ensure that the unit's driving testers only issues the Colorado CDL Driving Skill Test Completion form only for the class of vehicle in which that a the tester candidate driver has successfully completed the CDL Skills Test in~~.

(16~~17~~) The testing unit will allow CDL Skills Test only on Department approved testing areas and routes.

(17~~18~~) The testing unit shall ensure all three portions of the CDL Skills Test are~~shall be~~ conducted during daylight hours.

(18~~19~~) The testing unit shall ensure the vehicle being used for testing does ~~shall~~ not have any labels or markings that ~~would give the driver an~~ indicat~~e~~ion ~~of~~ which components are to be ~~to~~ inspected by an applicant ~~tester candidate~~ during the Vehicle Inspection portion of the CDL Skills Test. Manufacturer labels and/or markings are permitted.

(1920) The testing unit shall enter into an agreement with the Department containing, at a minimum, provisions that:

(a) allow the FMCSA, the Department and their representatives to conduct random inspections and audits without prior notice;

(b) require allow the Department to conduct on-site inspections at least annually;

(c) require all driving testers to meet the same training and qualifications as state examiners, to the extent necessary to conduct CDL Skills Test in compliance with these rules and regulations;

(d) allowrequire that, at least on an annual basis, Department employees toshall take the tests administered by the testing unit as if the state employee were a test driver, or the Department mayshall test a sample driver(s) who was tested by the third party to compare pass-fail results; and

(e) reserve to allow the Department the right to take prompt and appropriate action against any testing unit or driving tester when such driving tester fails to comply with Department or federal standards or any other items of the contract or the rules and regulations.

(f) ensure ensure that driving testers who that test applicants from outside the driving tester'soutside of their unit obtain the AAMVA CDL third party tester certification after completing one (1) full year of testing and renew their certification , by December 31st of each year, as required by the Department. AAMVA membership fees are the responsibility of the driving tester.

(2021) Charge fees only in accordance with 42-2-406, CRS. A tester and a testing unit shall only charge for tests administered.

(a) The fees for the administration of CDL Skills Test for commercial drivers shall not exceed the sum of two hundred twenty-five dollars ($225.00).

(b) The fees for the administration of driving skill tests for commercial drivers to any employee or volunteer of a nonprofit organization that provides specialized transportation services for the elderly and for persons with disabilities, to any individual employed by a school district, or to any individual employed by a board of cooperative services shall not exceed one-hundred forty one hundred dollars ($100.00100.00) ($40.00) .

(c) The fees for the administration of a retest for a commercial driver after failing all or any of the driving tests shall not exceed two hundred twenty -five dollars ($225.00).

(d) The fees for the administration of a retest for commercial drivers to any employee or volunteer of a nonprofit organization that provides specialized transportation services for the elderly and for persons with disabilities, to any individual employed by a school district, or to any individual employed by a board of cooperative services shall not exceed one hundred dollars ($100.00).

(2122) Make all CDL testing records available for inspection during regular normal business hours.

(2223) Hold the state harmless from liability resulting from the administration of the CDL program.

(2324) Make annual application for renewal of the unit's testing license and individual tester license(s) before the license expires on June 30th of each year.

J. DRIVING TESTER REQUIREMENTS

(1) The driving tester shall possess a valid USDOT medical card and a valid CDL with the appropriate class and endorsement(s) to operate the vehicle(s) in which the CDL Skills Test is administered.

~~(a) The driving tester shall have completed a nationwide criminal background check prior to being licensed to test. FMCSA 384.228~~

(2) The driving tester shall conduct the full CDL Skills Test in accordance with Department procedures and shall use the Colorado CDL Skill Test Score Form.

~~(3) The driving tester shall conduct the Special Skills Test in accordance with Department procedures and shall use the Colorado Special CDL Skill Test Score form.~~

(3~~4~~) The driving tester shall complete all CDL Third Party Testing forms correctly.

(4~~5~~) The driving tester shall administer all portions of the CDL Skills Test in English.

(5~~6~~) Interpreters are not allowed for any portion of the CDL Skills Test.

(6~~7~~) ~~The driving tester shall administer the CDL Skills Test as outlined by the Department.~~

(7~~8~~) The driving tester agrees ~~as part of the application~~ to hold the State harmless from any~~the~~ liability~~-~~ arising from or in connection with ~~of~~ a CDL Skills Tes~~t~~t~~ing~~.

(8~~9~~) The driving tester shall only test if the driving tester has ~~with~~ a valid tester license issued by the Department.

(9~~10~~) The driving tester shall test in the CDL class of vehicle or endorsement(s) group authorized by the Department.

(10~~11~~) Prior to administering the CDL Skills Test, the tester shall ensure that the driver has in his/her immediate possession, a valid USDOT medical card, a valid ~~CDL instruction permit or a valid CDL~~ CLP for operating the class and endorsement(s) of the vehicle being used for testing. ~~The tester shall also ensure the driver has in his/her immediate possession, a valid Drivers License.~~

(a) The driving tester shall ensure that the instruction permit has been held for fourteen (14) days prior to taking the skills test.~~if it is the first instruction permit for the driver.~~

(b) The tester shall also ensure the applicant~~driver~~ has in his/her immediate possession~~,~~ a valid Driver's License and shall compare the photo ~~of~~on~~-~~ the license to the applicant~~driver~~ to verify identity.

(11~~2~~) Prior to issuing a Colorado CDL Driving Skill Test Completion Form (DR2736), the driving tester shall ensure that the driver has in his/her immediate possession, a valid USDOT medical card, a valid ~~CDL instruction permit or a valid CDL~~CLP for operating the class and endorsement(s) of vehicle being used for testing. The tester shall also ensure the applicant~~driver~~ has in his/her immediate possession~~,~~ a valid current Driver's License.

(12~~3~~) The driving tester shall administer the CDL Skills Test to appliants~~drivers~~ in a vehicle equal to or lower in class and/or endorsement(s) than the driver has on his or her ~~instruction permit~~ CLP.~~ or CDL.~~

(13~~4~~) The driving tester shall administer the CDL Skills Test only on Department approved testing areas and routes.

(14~~5~~) The driving tester shall administer all three portions of the CDL Skills Test during daylight hours.

(15~~6~~) The driving tester shall ensure that the vehicle in which the CDL Skills Test will be administered ~~shall~~is ~~be~~ in proper working and mechanical order.

(16~~7~~) A driving tester removed from performing a safety sensitive function, shall not perform any functions under the CDL Third Party Testing Program.

(178) The vehicle inspection, the basic vehicle control skills and the on-road driving test shall be administered by the same tester in sequential order with no more than a 15-minute break between each portion of the Skills Test. Skills Test shall be scheduled to avoid a lunch break.

(189) The driving tester shall be employed by a licensed testing unit ~~a minimum of one (1) year~~ prior to attending a new CDL Third Party tester's training class.

~~(a) driving tester shall have a minimum of one (1) year driver training experience when applying with a new unit.~~

(1920) The driving tester shall inform the driver that he/she may be randomly selected for a retest as mandated by the FMCSR 383.75(a) (2) (iv)*. The driving tester shall ensure that the driver reads and signs the DR2736 (Colorado CDL Driving Skill Test Completion form).

(201) The driving tester may administer CDL Skills Test as an employee of, and on behalf of, the licensed testing unit. The driving tester may administer tests for more than one unit. However the driving tester shall be licensed under each unit to conduct testing on his/her behalf. The tester shall keep all CDL records separate for each testing unit. License fees shall apply.

(212) If an applicant~~driver~~ fails any portion(s) of the CDL driving skill tests he or she ~~they~~ shall return on a different day and perform all three (3) portions of the CDL Skills Test over.

(223) The driving tester shall administer ~~at least four (4) complete CDL Skills Test's~~Tests ~~and~~ a minimum of ten (10) CDL Skills ~~Test's~~Tests with different applicants within the twelve-month period preceding the application for renewal from the Department. ~~A driving tester licensed under more than one (1) testing unit, must administer a minimum of four (4) complete CDL Skills Test for each testing unit.~~

~~(234) The driving tester shall verify the identity of the driver by comparing the photo on a drivers' license with the driver~~.

(235) The driving tester shall only issue the Colorado CDL Driving Skill Test Completion form (DR2736) for the class of vehicle in which ~~that~~ the applicant~~driver~~ has successfully completed the CDL Driving Skill ~~driving skills~~ T~~t~~est.

(246) Upon leaving a testing unit, the driving tester's license may be transferred to another testing unit within three (3) months. If the tester is not employed at a licensed testing unit within three (3) months, the tester will be required to attend a new tester training class in order to be licensed by the Department. All training and license fees shall apply and are the responsibility of the tester.

(257) The driving tester cannot administer the CDL skills test~~s~~ to a driver ~~that~~ with whom he/she has conducted in-vehicle skills training.~~trained~~ ~~outside of the classroom~~within the same day.

K. COURSE AND ROUTE REQUIREMENTS

(1) A testing unit shall have a paved area for the CDL vehicle inspection and the basic control skills exercises that is large enough to administer all of the required CDL basic control exercises. ~~These include:~~

(a) Solid painted lines and traffic cones shall be used to mark the testing boundaries in accordance with Department standards.

(i) Traffic cones used to mark the testing boundaries shall be a minimum of twelve inches in height and the same size traffic cones shall be used for each exercise. Traffic cones shall be replaced when they are no longer retain~~ing~~ their original shape and color.

(b) Boundary lines and cones must be clearly visible in t~~T~~he basic control skill exercise testing area. ~~shall be cleared to a condition that allows the driver to readily determine the boundary lines and cones during the test~~.

(i) The testing area boundaries shall be cleared of snow, debris, or vehicles that would obstruct the driver's view during the vehicle control maneuvers.

(ii) Testing on dirt, sand or gravel~~ed area~~ is not allowed.

(c) The testing unit shall request and receive approval from the Department for any change(s) to the approved road test route prior to administering a CDL road test.

L. RIGHTS

(1) The driving tester or testing unit may refuse to test a driver. The tester or testing unit contact person shall notify the CDL Compliance Unit~~section~~ if a driver is refused a test and refer that driver to the CDL Compliance Unit~~Section~~.

(2) Government~~al~~ driving testers who want to test outside of their governmental testing ~~own~~ unit may make a ~~shall request, in writing, and~~written request to the CDL Compliance Unit, and must receive approval from the CDL Compliance Unit~~Section~~ prior to administering CDL Skills Tests. ~~shall meet all requirements~~.

M. RECORDING AND AUDITING REQUIREMENTS

(1) An applicant ~~driver~~ who has successfully completed the driving skill tests shall be issued the "Colorado CDL Driving Skill Test Completion" form (DR2736). The testing unit and/or tester shall retain the carbon copy of this form and attach it to all of the applicant~~driver~~'s score form(s) for the testing unit's records. This form is not authorization to the applicant~~driver~~ to drive unsupervised.

(2) The CDL Compliance ~~Section~~Unit shall be notified in writing after a driver fails the road test portion of the driving test. T~~All failures shall be reported entered on the STAR CSTIMS (Skill Test Activity ReportCommercial Skills Test Information Management System) monthly report and t~~Testers shall fax or send electronically the failed road test (front and back) score form to the CDL Compliance ~~Section~~Unit ~~no later than 5 p.m. of the following business day~~ immediately~~within 24 hours~~ upon failure.

(3) The testing unit shall maintain all pass/fail records for three years. These shall include the CDL Skills Testing records for each driver tested, the dates of the testing, the driver's identification information, the vehicle information and the name and state assigned tester number for the tester who administered the test. If a testing unit is no longer licensed ~~becomes unlicensed~~, the unit shall return all testing records to the Department within 30 days.

(a) After three years, testing units may destroy all pass/fail records (shred, burn).

(4) A testing unit shall ~~prepare and submit a STAR monthly report of testing results to the Department. The report shall include the:~~enter all (pass and fail) Skills Test results into the CSTIMS (Commercial Sk~~K~~ills Test Information Management System) within 24 hours of completion of ~~ng~~ the test.

~~- Testing Unit's name~~
~~- Testing Unit's number~~
~~- Colorado CDL Driving Skill Test Completion Form Control Number~~
~~- Name of each driver tested~~
~~- CDL permit Number~~
~~- Date of the test~~
~~- Tester's number~~
~~- Test results (Pass, Special, or which portion the driver failed)~~
~~- Class~~
~~- Endorsements (Indicate passenger only)~~
~~- Restrictions~~
~~- Test start time~~
~~- Test end time~~
~~These reports shall be submitted to CDL Compliance Section by the **fifth day of each month.**~~

(5) During CDL compliance audits and/or inspections, driving testers shall cooperate with the Department and/or FMCSA, by allowing access to testing areas and routes, furnishing CDL Skills Testing records and results, and other items pertinent to the mandated audit and/or inspection. The tester must surrender testing records upon request. The tester may make copies and retain copies of such records.

(6) If the testing unit provided the vehicle for the skills test, the testing unit will furnish the vehicle for a driver selected for a retest. No fees, including any vehicle rental fees required for testing will be collected for this mandatory evaluation. The Department shall not be held liable during retests for any damage, injury or expense incurred.

(7) If the driver tested in his/her own vehicle, the driver ~~selected~~ shall supply the vehicle for any ~~the~~ skills re-test.

~~(8) The testing unit will not be authorized to conduct any further testing if the CDL Compliance Section determines that the testing unit is not cooperating with the audit and/or inspection requirements.~~

N. BOND

(1) A testing unit that is not an agency of government, or any Colorado school district, shall maintain a bond in the amount of $20,000.00 with the Department pursuant 49 CFR 383.75(8)(v). A surety company authorized to do business within the State of Colorado shall execute the bond.

(a) The bond shall be for the use and benefit of the Department in the event of a monetary loss within the limitations of the bond, attributable to the willful, intentional or negligent conduct of the testing unit or its agent(s) or employee(s).

(b) If the amount of the bond is decreased or terminated, or if there is a final judgment outstanding on the bond, the testing unit cannot test outside their unit~~'s license shall be suspended. The suspension shall continue until satisfactory steps are taken to restore the original amount of the bond required by the Department~~.

(c) The Department shall be named on the bond as the beneficiary or held in the name of the Department.

(2) A testing unit that is an agency of government, or any Colorado school district, that will administer CDL driving tests outside of their unit, shall maintain a bond in the amount of $5,000.00 with the Department. A surety company authorized to do business within the State of Colorado shall execute the bond.

(a) The bond shall be for the use and benefit of the Department in the event of a monetary loss within the limitations of the bond, attributable to the willful, intentional or negligent conduct of the testing unit or its agent(s) or employee(s).

(b) If the amount of the bond is decreased or terminated, or if there is a final judgment outstanding on the bond, the testing unit cannot test outside their unit~~'s license shall be suspended. The suspension shall continue until satisfactory steps are taken to restore the original amount of the bond required by the Department~~.

(c) The Department shall be named on the bond as the beneficiary or held in the name of the Department.

~~O. ETHICAL REQUIREMENTS FOR THIRD PARTY TESTING UNITS~~

~~(1) No advertisement shall imply that a unit can issue or guarantee the issuance of a CDL.~~

~~(2) No advertisement shall imply that the unit has any influence over the Department in the issuance of a license.~~

~~(3) No tester, employee, or agent for the testing unit will be permitted to solicit on the premise of a Colorado State Driver License Office.~~

~~(4) No test can be administered unless the driver is present.~~

~~(5) A fee cannot be collected unless a driver is present.~~

OP. REVOCATION, CANCELLATION OR SUSPENSION OF TESTING UNITS AND TESTERS.

(1) The license of a testing unit or driving tester may be suspended or revoked for willful or negligent actions that may include but are not limited to any of the following:

(a) Misrepresentations on the application to be a testing unit or a driving tester;

(b) Improper testing and/or certification of a driver who has applied for a CDL;

(c) Falsification of test documents or results;

(d) Violations of ~~the provision of the~~ CDL rules for ~~related to the~~ testing units or ~~and~~ driving testers;

(e) Failure to employ a minimum of at least one licensed CDL tester;

(f) ~~Willful action to avoid or the R~~refusal~~Failure~~ to comply or cooperate in a CDL Compliance audit and record review; ~~and~~

(g) Violations of the contract terms and conditions; ~~and~~

(h) For any other violation of this rule or applicable state statute or federal regulation. ~~cause~~.

(2) A Testing Unit or driving tester that is suspended shall not perform any duties related to CDL Third Party Testing. ~~program.~~

(3) Summary Suspension: Where the Department has objective and reasonable grounds to believe and finds that a testing unit or driving tester has been guilty of deliberate and willful violation or that the public health, safety, or welfare imperatively requires emergency action and incorporates the findings in its order, it may summarily suspend the license pending proceedings for suspension or revocation which shall be promptly instituted and determined. Testing is not permitted while the license is suspended.

~~The Department may issue an immediate cease testing notice if it has reasonable grounds to believe that a testing unit or driving tester has deliberately and willfully violated the provisions of these rules or the law, or that the public health, safety or welfare imperatively requires emergency action. The cease testing notice shall operate as a summary suspension of the license, and testing shall not be permitted until the issue is resolved. The notice shall state the reason(s) for the order, shall offer the tester or testing unit a hearing, and shall be sent to the tester or testing unit at issue. If the tester or testing unit requests a hearing, proceedings for suspension or revocation of the license shall be promptly instituted and determined.~~

(4) Appeal Process: ~~A testing unit or driving tester may contest a cease testing notice, notice of suspension or a~~ Any person aggrieved by the denial of issuance, denial of renewal, suspension, or revocation of a testing unit license or driving tester license shall be entitled to a hearing ~~notice of violation by requesting a hearing~~pursuant to section 42-2-407(7), CRS. The request for hearing must be submitted in writing and appropriately labeled, such as "CDL Cease Testing Appeal," to the Department of Revenue, Hearings Division, 1881 Pierce Street, Room 106, Lakewood, Colorado, 80214. Subsequent appeal may be had as provided by law.

(5) Material incorporated by reference in this rule does not include later amendments to or editions of the incorporated material. Copies of the material incorporated by reference may be obtained by contacting the Division of Motor Vehicles, Driver License ~~Sectiion~~Section~~Division of MCS~~ of the Department of Revenue, 1881 Pierce Street, Room 128~~114~~, Lakewood, Colorado, 80214, 303-205-5600, and copies of the materials may be examined at any state publication depository library.

Editor's Notes

History

Entire Rule Eff. 11/30/2008.

Entire Rule Eff. 12/15/2011.

DEPARTMENT OF REVENUE

Division of Motor Vehicles

RULES AND REGULATIONS FOR THE COMMERCIAL DRIVER'S LICENSE (CDL) PROGRAM

1 CCR 204-12 (Recodified as 204-30 Rule 7) Permanent Rule

A. BASIS, PURPOSE AND STATUTORY AUTHORITY

(1) The Department is authorized to adopt rules and regulations as necessary for the Commercial Driver's License Program in accordance with Sections 24-4-103, 42-2-111(1)(b), 42-2-403, 42-2-407(8), CRS.

(2) The purpose of these rules is to ensure compliance with state and federal requirements to promote the safety and welfare of the citizens of Colorado.

B. INCORPORATION BY REFERENCE OF FEDERAL RULES

(1) Adoption: The Department incorporates by reference the Federal Motor Carrier Safety Regulations ("FMCSR"), 49 CFR Parts 350 - 399, Qualifications and Disqualification of Drivers.

(2) The Federal Regulations incorporated or referenced by this rule are published in the Code of Federal Regulations ("CFR"), Title 49, Part 383, 384, 390, and 391. The Federal rules and regulations referenced or incorporated in these rules are on file and available for inspection by contacting the Driver License Section of the Department of Revenue, 1881 Pierce Street, Room 128, Lakewood, Colorado, 80214, 303-205-5600, and copies of the materials may be examined at any state publication depository library.

C. DEFINITIONS

(1) AAMVA: American Association of Motor Vehicle Administrators is a voluntary, nonprofit, tax exempt, educational unit that represents state and provincial officials in the United States and Canada who administer and enforce motor vehicle laws.

(2) CLP – Commercial Learners Permit: The permit issued by the Department entitling the driver, while having such permit in his/her immediate possession, to drive a commercial motor vehicle of certain classes and/or endorsements upon the highways with a driver that possesses a CDL with the same class and/or endorsements or higher, as the CLP holder.

(3) CDL Vehicle Class: A group or type of vehicle with certain operating characteristics.

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(4) CRS: Colorado Revised Statutes.

(5) Disqualifications: The suspension, revocation, cancellation, or any other withdrawal by the Department of a person's privilege to drive a CMV or a determination by the FMCSA under the rules of practice for motor carrier safety contained in Part 386, that a person is no longer qualified to operate a CMV under Part 391; or the loss of qualification that automatically follows conviction of an offense listed in FMCSR 383.51

(6) Designed to Transport: The manufacturer's original rated capacity of the vehicle.

(7) Endorsements: The letter indicators below added to a CDL and/or CLP indicate successful completion of the appropriate knowledge, and if applicable, the CDL Skills Test, allow the operation of a special configuration of vehicle(s):

(a) T = Double/triple trailers (not allowed on a CLP per 49 CFR §383.93(2) on a, d, f, g, and h)

(b) P = CDL Passenger vehicle

(c) N = Tank vehicles

(d) H = Hazardous materials (Not allowed on a CLP per 49 CFR §383.93(2) on a, d, f, g, and h)

(e) S = School buses

(f) X = Combination of tank vehicle and hazardous materials (Not allowed on a CLP per 49 CFR §383.93(2) on a, d, f, g, and h)

(g) M = Motorcycle (not allowed on a CLP per 49 CFR §383.93(2) on a, d, f, g, and h)

(h) 3 = Three wheel motorcycle (not allowed on a CLP per 49 CFR §383.93(2) on a, d, f, g, and h)

(8) Exemptions: Regulatory relief given to a person or class of persons normally subject to regulations without the exception.

(9) FMCSA: Federal Motor Carrier Safety Administration is an agency within the USDOT.

(10) FMCSR: Federal Motor Carrier Safety Regulations (49 CFR Parts 350-399).

(11) CDL Skills Test: Means “driving tests” as provided in section 42-2-402, CRS and consists of the Vehicle Inspection, Basic Control Skills and the Road Test .

(12) GCWR: Gross Combination Weight Rating is the value specified by the manufacturer as the maximum loaded weight of the combination vehicle.

(13) Government agency: A state, county, city and county, municipality, school district, special improvement district, and every other kind of district, agency, instrumentality, or political subdivision thereof organized pursuant to law and any separate entity created by intergovernmental contract cooperation only between or among the state, county, city and county, municipality, school district, special improvement district, and every other kind of district, agency, instrumentality, or political subdivision thereof.

(14) Intrastate Driver: A driver restricted to operating a CMV within the boundaries of Colorado, and not authorized to transport items of interstate commerce or hazardous materials.

(15) Interstate Commerce: Trade, traffic or transportation in the United States between a place in the state and a place outside of such state, including outside of the United States or between two places in a state as part of trade, traffic, or transportation originating or terminating outside the state or the United States.

(16) Interstate Driver: A CDL holder authorized to cross state lines and transport interstate commerce while operating a CMV.

(17) Intrastate Commerce: Trade, traffic or transportation in the United States between two places in a state.

(18) Knowledge Test: A written test that meets the federal standards contained in 49 CFR 383, subparts F, G, and H.

(19) Non-Profit: An organization filing with the United States Code 26USC Section 501(c).

(20) CDL Passenger Vehicle: For the purposes of these rules a passenger vehicle designed to transport 16 or more passengers, including the driver.

(21) Paved Area: For the purpose of these rules, a paved area is a surface made up of materials and adhesive compounds of a sufficient depth and strength prepared to provide a durable, solid, smooth surface upon which a driver will demonstrate basic vehicle control skills.

(22) Public Transportation Entity: A mass transit district or mass transit authority authorized under the laws of this state to provide transportation services to the general public

(23) Restrictions: Prohibits the operation of certain types of vehicles or restricts operating a CMV within designated boundaries.

(a) L = No Air Brake equipped CMV

(b) K = Intrastate only

(c) E = No Manual Transmission

(d) M = No Class A Passenger Vehicle

(e) N = No Class A and B Passenger Vehicle

(f) O = No Tractor-Trailer

(g) P = No Passenger

(h) X = No Liquid in Tank

(i) V = Medical Variance (49 CFR §383.95(g) and 383.153(a)(10)(viii))

(j) Z = No Full air brake equipped CMV

(24) Self Certification Choice:

- **Non-excepted interstate**. A person must certify that he or she operates or expects to operate in interstate commerce, is both subject to and meets the qualification requirements under 49 CFR part 391, and is required to be medically examined and certified pursuant to 49 CFR §391.45
- **Excepted interstate**. A person must certify that he or she operates or expects to operate in interstate commerce, but engages exclusively in transportation or operations excepted under 49 CFR §390.3(f),391.2, 391.68 or 398.3 from all or parts of the qualification requirements of 49 CFR part 391, and is therefore not required to be medically examined and certified pursuant to 49 CFR §391.45
- **Non-excepted intrastate**. A person must certify that he or she operates only in intrastate commerce and therefore is subject to State driver qualification requirements
- **Excepted intrastate**. A person must certify that he or she operates in intrastate commerce, but engages exclusively in transportation or operations excepted from all or parts of the State driver qualification.

(25) USDOT: United States Department of Transportation.
(26) CSTIMS: Commercial Skills Test Information Management System. Web-based system states use to manage the skills test portion of the CDL process.

D. DRIVER LICENSING REQUIREMENTS

(1) Each driver applying for a CDL or instruction permit shall be a resident of Colorado, at least 18 years of age, and comply with the testing and licensing requirements of the Department.

(a) The CDL and CLP will indicate the class of license, any endorsements and any restrictions for that individual driver. The CDL is valid for the operation of a non-CMV including a motorcycle with the appropriate motorcycle endorsement on the license.

(b) A Colorado CDL may be issued upon surrender of a valid CDL from another state without additional testing except that the applicant must test for a hazardous material endorsement and school bus endorsement.

(c) An individual with an out-of-state CLP cannot transfer that CLP to Colorado but must apply for a Colorado CLP and take all applicable CDL knowledge tests (49 CFR §383.73(a)(2)

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(2) Each driver applying is required to make one of the following applicable self-certifications for the type of commercial driving the individual intends to do (49 CFR §383.73(a)(2)(vii):

- **Non-excepted interstate**.
- **Excepted interstate**.
- **Non-excepted intrastate**.
- **Excepted intrastate**.

(3) Each driver shall meet the medical and physical qualifications under FMCSR Part 391.41 * ~~a~~Each driver shall submit their medical examiner's certificate and if applicable any federal variance or state medical waiver or Skills Performance Evaluation to a Driver License Office (49 CFR §383.71(h)(1 through 3) and 383.73(o)

E. ENDORSEMENTS

(1) T-Double/Triple Trailers: Required to operate a CMV used for drawing two or more vehicles or trailers with a GCWR that is 26,001 lbs. or more and combined GVWR of the vehicles being towed are in excess of 10,000 lbs.

(2) P-Passenger: Required to operate a vehicle designed by the manufacturer to transport 16 or more passengers, including the driver.

(3) N-Tank Vehicles: Required to operate a vehicle to haul liquid or liquid gas in a permanently mounted cargo tank rated at 119 gallons or more or a portable tank rated at 1,000 gallons or more.

(4) H-Hazardous Materials: Required to transport materials that require the motor vehicle to display a placard under the hazardous materials regulations.

(5) S-School Buses: Required to operate a school bus as defined in section 42-1-102(88) CRS.

(6) X-Combination Tank/Hazmat: Required to operate vehicles that meet the definition of (3) and (4) above.

F. RESTRICTIONS

(1) Intrastate: The letter "K" is added to the CDL of a driver between the ages of 18 through 20, to an individual who has been issued a valid medical waiver from the Colorado State Patrol (8 CCR 1507-1) or self certifies to excepted or not excepted intrastate driving (49 CFR §383.71(b)(1)(iii-iv)). Under this CDL restriction, the driver shall not:

(a) Operate a CMV outside the state boundaries;

(b) Transport interstate commerce as defined in the 49 CFR 390.5*; or

(c) The waiver is valid only while the driver is transporting commodities OTHER THAN bulk hazardous materials, as defined in 49 CFR 171.8 or commodities with a hazard class identified in 49 CFR 172.504 Table 1, or subject to the “Poison by Inhalation Hazard” shipping description in 49 CRF 172.203(m)(3).

(2) Air brake: The letter "L" is added to the CDL/CLP of an individual restricted from operating vehicles equipped with air brakes.

(a) An individual may apply for removal of the "L" restriction after having successfully completed the air brake knowledge test and the driving skills test in a vehicle equipped with air brakes that is representative of the CDL vehicle class.

(b) Before taking the driving skills test in a vehicle equipped with air brakes, the individual shall have in his/her possession a CLP without the "L" restriction.

(3) Transmission: The letter "E" is added to the CDL of an individual restricted from operating vehicles equipped with a standard transmission.

(a) An individual may apply for removal of the "E" restriction after having successfully completed the driving skills test in a vehicle equipped with a standard transmission that is representative of the CDL vehicle class.

(b) Before taking the driving skills test in a vehicle equipped with a standard transmission, the individual shall have in his/her possession a CLP without the "E" restriction.

(4) Class A Bus: The letter "M" is added to the CDL of an individual restricted from operating a Class A Passenger vehicle.(49 CFR 383.91)

(a) An individual may apply for removal of the "M" restriction after having successfully completed the driving skills test in a Class A Passenger vehicle.

(b) Before taking the driving skills test in a Class A Passenger vehicle, the individual shall have in his/her possession a CLP without the "M" restriction.

(5) Class B Bus: The letter "N" is added to the CDL of an individual restricted from operating a Class B Passenger vehicle.(49 CFR 383.91)

(a) An individual may apply for removal of the "N" restriction after having successfully completed the driving skills test in a Class B Passenger vehicle.

(b) Before taking the driving skills test in a Class B Passenger vehicle, the individual shall have in his/her possession a CLP permit without the "N" restriction.

(6) No Tractor-Trailer: The letter "O" is added to the CDL of an individual restricted from operating a vehicle equipped with a 5th wheel type coupling system.(49 CFR 383.95)

(a) An individual may apply for removal of the "O" restriction after having completed the driving skills test in a tractor/semi-trailer combination vehicle equipped with a 5th wheel type coupling system.

(b) Before taking the driving skills test in a tractor/semi-trailer combination vehicle equipped with a 5th wheel type coupling system, the individual shall have in his/her possession a CLP without the "O" restriction.

(7) No Passengers: The letter "P" is added to the CLP of an individual restricted from operating a Passenger vehicle with Passengers.

(a) The "P" restriction is removed by successfully completing the driving skills test in a Passenger vehicle.

(8) No Cargo in a Tank Vehicle: The letter "X" is added to the CLP of an individual restricted from operating a Tank vehicle containing liquid or gas.

(a) An individual may apply to have the "X" restriction removed after having successfully completed the driving skills test.

(9) Medical, Variance/Skills Performance Evaluation: The letter V will be added to any CLP or CDL for individuals who have been issued a federal medical variance (49 CFR §383.153(a)(10)(viii), 383.95(g), and 391.41).

(10) Air brake: The letter "Z" is added to the CDL/CLP of an individual restricted from operating vehicles equipped with full air brakes.

(a) The "Z" restriction is removed by successfully completing the air brake knowledge test and the driving skills test in a vehicle equipped with air brakes and is representative of the CDL vehicle class.

(b) Before taking the driving skills test in a vehicle equipped with air brakes, the individual shall have in his/her possession a CLP without the "Z" restriction

G. EXEMPTIONS

(1) FMCSR 49 CFR 383.3. Applicability authorizes the state to grant certain groups exceptions from the CDL requirements.

(a) FMCSR – 49 CFR 383.3 C: Exception for individuals who operate CMV's for military purposes.

(b) FMCSR – 49 CFR 383.3 (d)(1 and 2): Exception for operators of farm vehicles, as defined at section 42-2-402(4)(b)(III), and firefighters and other persons who operate CMV's which are necessary to the preservation of life or property, or the execution of emergency governmental functions, are equipped with audible and visual signals and are not subject to normal traffic regulation.

(c) FMCSR – 49 CFR 383.3 (d)(3): Exception for drivers employed by an eligible unit of local government, removing snow or ice from a roadway.

(d) FMCSR – 49 CFR 383.3 (f): Restricted CDL for certain drivers in farm-related service industries.

(2) FMCSR 49 CFR 391.2 specifies the exceptions to the physical qualifications for individuals engaged in custom harvesting operations in FMCSR 49 CFR 391.2*.

H. ENTITY ELIGIBLE TO APPLY FOR A TESTING UNIT LICENSE

(1) The Department may authorize a testing unit to administer the CDL Skills Test on behalf of the Department if such training and testing is equal to the training and testing of the Department.

(2) A Testing Unit must enter into a written contract with the Department and agree to:

(a) Maintain an established place of business in Colorado with a vehicle fleet of no less than three CMV's owned, leased or registered to the testing unit, the business owner, or an employee of the business; or

(b) Maintain an adult education occupational business license with the Division of Private Occupational School, a division of the Colorado Department of Higher Education; or

(c) Be a government agency, public school district, private or parochial school, or other type of pre-primary, primary, or secondary school transporting students from home to school or from school to home.

I. TESTING UNIT REQUIREMENTS

(1) An entity shall apply for and receive a CDL testing unit license from the Department in order to administer CDL Skills Test. The CDL testing license expires on June 30th of each year. The licenses for both the testing unit and driving tester(s) shall be displayed in the place of business.

(a) Testing unit license fees are: Three hundred dollars ($300.00) initial license; One hundred dollars ($100.00) annual fee;

(b) Driving Tester License fees are: One hundred dollars ($100.00) initial license; Fifty dollars ($50.00) annual fee.

c) Fees are waived for non-commercial units and testers that only provide public transportation, and do not test outside of their unit.

(d) Public transportation entities that test outside of their unit and do not provide public transportation only, shall submit the appropriate fees.

(e) If a license is not renewed on or before June 30th of each year, the initial fees will apply. Testing unit and driving tester license(s) may be suspended or inactivated until appropriate fees and documentation are submitted.

(f) Licenses can be renewed 60 days prior to June 30th of each year.

(2) The testing unit is not permitted to guarantee issuance of a Commercial Driver's License or to suggest that training will guarantee issuance of a Commercial Driver's License.

(3) Testing units shall only test if they have a current testing unit license issued by the Department.

(4) Testing units shall ensure that each driving tester has a valid tester license issued by the Department to administer the CDL Skills Test.

(5) The testing unit shall notify the Department in writing within 3 business days of the termination or departure from the testing unit of any driving tester.

(6) The place of business shall be a separate establishment and may not be part of a home. The CDL testing unit shall comply with city zoning and code requirements. The unit's physical address shall not be a post office box.

(7) The testing unit shall have written permission from the landowner to administer the CDL vehicle basic control skills exercises on areas not owned by the testing unit. This written permission shall be submitted to the Department for approval prior to testing.

(8) The testing unit shall maintain at least one employee who is licensed as a CDL driving tester.

(9) The testing unit shall ensure that the unit's driving tester(s) follow the Department's standards for administering the CDL Skills Test..

(10) The testing unit shall ensure that the unit's driving tester(s) complete all CDL Third Party Testing forms correctly.

(11) The testing unit shall ensure that the unit's driving tester(s) administer the CDL Skills Test to drivers in a vehicle equal to, or lower than, the class and/or endorsement(s) t on driver's instruction permit or CDL.

(12) Once a new tester candidate has passed the required tester training course, the testing unit shall ensure that the new tester candidate(s) applies for his/her Third Party Testers license and completes the fingerprint/background check application within thirty (30) days of completing and passing the tester training course. The licensing fees are the responsibility of the tester candidate.

(13) The testing unit is responsible for ensuring that testers attend all mandated training provided by the CDL Compliance Unit. Failure of testers to attend scheduled training may result in the suspension of testing privileges for the testing unit and the tester.

(14) The testing unit shall schedule all tests utilizing the Commercial Skills Test Information Management System (CSTIMS).

The testing unit or tester shall notify the CDL Compliance Unit of all canceled tests via CSTIMS as soon as the testing unit or driving tester is aware of the cancellation. CDL Compliance shall be notified of all tests scheduled or schedule changes via CSTIMS at least three (3) days in advance of the test. Tests not administered due to weather conditions or a vehicle failure may be rescheduled with a minimum one (1) day notification by the testing unit.

(a) The testing unit is not permitted to schedule an applicant more than once within any three (3) day period.

(b) The test shall begin within 15 minutes before and no later than 15 minutes after its scheduled time. The test begins when the driving tester reads the Vehicle Inspection Overview to the applicant.

(15) The testing unit shall ensure that the driving tester shall only issue the Colorado CDL Driving Skill Test Completion form (DR2736) for the class of vehicle in which the driver has successfully completed the driving skills test.

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(16) The testing unit will allow CDL Skills Test only on Department approved testing areas and routes.

(17) The testing unit shall ensure all three portions of the CDL Skills Test are conducted during daylight hours.

(18) The testing unit shall ensure the vehicle being used for testing does not have any labels or markings that indicate which components are to be inspected by an applicant during the Vehicle Inspection portion of the CDL Skills Test. Manufacturer labels and/or markings are permitted.

(19) The testing unit shall enter into an agreement with the Department containing, at a minimum, provisions that:

(a) allow the FMCSA, the Department and their representatives to conduct random inspections and audits without prior notice;

(b allow the Department to conduct on-site inspections at least annually;

(c) require all driving testers to meet the same training and qualifications as state examiners, to the extent necessary to conduct CDL Skills Test in compliance with these rules and regulations;

(d) allow, at least on an annual basis, Department employees to take the tests administered by the testing unit as if the state employee were a test driver, or the Department may test a sample driver(s) who was tested by the third party to compare pass-fail results; and

(e) reserve to the Department the right to take prompt and appropriate action against any testing unit or driving tester when such driving tester fails to comply with Department or federal standards or any other items of the contract or the rules and regulations.

(f) ensure that driving testers who test applicants from outside the driving tester's unit obtain the AAMVA CDL third party tester certification after completing one (1) full year of testing and renew their certification by December 31st of each year, as required by the Department. AAMVA membership fees are the responsibility of the driving tester.

(20) Charge fees only in accordance with 42-2-406, CRS. A tester and a testing unit shall only charge for tests administered.

(a) The fees for the administration of CDL Skills Test for commercial drivers shall not exceed the sum of two hundred twenty-five dollars ($225.00).

(b) The fees for the administration of driving skill tests for commercial drivers to any employee or volunteer of a nonprofit organization that provides specialized transportation services for the elderly and for persons with disabilities, to any individual employed by a school district, or to any individual employed by a board of cooperative services shall not exceed one-hundred dollars ($100.00) .

(c) The fees for the administration of a retest for a commercial driver after failing all or any of the driving tests shall not exceed two hundred twenty -five dollars ($225.00).

(d) The fees for the administration of a retest for commercial drivers to any employee or volunteer of a nonprofit organization that provides specialized transportation services for the elderly and for persons with disabilities, to any individual employed by a school district, or to any individual employed by a board of cooperative services shall not exceed one hundred dollars ($100.00).

(21) Make all CDL testing records available for inspection during normal business hours.

(22) Hold the state harmless from liability resulting from the administration of the CDL program.

(23) Make annual application for renewal of the unit's testing license and individual tester license(s) before the license expires on June 30th of each year.

J. DRIVING TESTER REQUIREMENTS

(1) The driving tester shall possess a valid USDOT medical card and a valid CDL with the appropriate class and endorsement(s) to operate the vehicle(s) in which the CDL Skills Test is administered.

(2) The driving tester shall conduct the full CDL Skills Test in accordance with Department procedures and shall use the Colorado CDL Skill Test Score Form.

(3) The driving tester shall complete all CDL Third Party Testing forms correctly.

(4) The driving tester shall administer all portions of the CDL Skills Test in English.

(5) Interpreters are not allowed for any portion of the CDL Skills Test.

(6) (7) The driving tester agrees to hold the State harmless from any liability arising from or in connection with a CDL Skills Test.

(8) The driving tester shall only test if the driving tester has a valid tester license issued by the Department.

(9) The driving tester shall test in the CDL class of vehicle or endorsement(s) group authorized by the Department.

(10) Prior to administering the CDL Skills Test, the tester shall ensure that the driver has in his/her immediate possession, a valid USDOT medical card, a valid CLP for operating the class and endorsement(s) of the vehicle being used for testing.

(a) The driving tester shall ensure that the instruction permit has been held for fourteen (14) days prior to taking the skills test.

(b) The tester shall also ensure the applicant has in his/her immediate possession a valid Driver's License and shall compare the photo on the license to the applicant to verify identity.

(11) Prior to issuing a Colorado CDL Driving Skill Test Completion Form (DR2736), the driving tester shall ensure that the driver has in his/her immediate possession, a valid USDOT medical card, a valid CLP for operating the class and endorsement(s) of vehicle being used for testing. The tester shall also ensure the applicant has in his/her immediate possession a valid current Driver's License.

(12) The driving tester shall administer the CDL Skills Test to appliants in a vehicle equal to or lower in class and/or endorsement(s) than the driver has on his or her CLP.

(13) The driving tester shall administer the CDL Skills Test only on Department approved testing areas and routes.

(14) The driving tester shall administer all three portions of the CDL Skills Test during daylight hours.

(15) The driving tester shall ensure that the vehicle in which the CDL Skills Test will be administered is in proper working and mechanical order.

(16) A driving tester removed from performing a safety sensitive function, shall not perform any functions under the CDL Third Party Testing Program.

(17) The vehicle inspection, the basic vehicle control skills and the on-road driving test shall be administered by the same tester in sequential order with no more than a 15-minute break between each portion of the Skills Test. Skills Test shall be scheduled to avoid a lunch break.

(18) The driving tester shall be employed by a licensed testing unit prior to attending a new CDL Third Party tester's training class.

(19) The driving tester shall inform the driver that he/she may be randomly selected for a retest as mandated by the FMCSR 383.75(a) (2) (iv)*. The driving tester shall ensure that the driver reads and signs the DR2736 (Colorado CDL Driving Skill Test Completion form).

(20) The driving tester may administer CDL Skills Test as an employee of, and on behalf of, the licensed testing unit. The driving tester may administer tests for more than one unit. However the driving tester shall be licensed under each unit to conduct testing on his/her behalf. The tester shall keep all CDL records separate for each testing unit. License fees shall apply.

(21) If an applicant fails any portion(s) of the CDL driving skill tests he or she shall return on a different day and perform all three (3) portions of the CDL Skills Test over.

(22) The driving tester shall administer a minimum of ten (10) CDL Skills Tests with different applicants within the twelve-month period preceding the application for renewal from the Department.

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(23) The driving tester shall only issue the Colorado CDL Driving Skill Test Completion form (DR2736) for the class of vehicle in which the applicant has successfully completed the CDL Driving Skill Test.

(24) Upon leaving a testing unit, the driving tester's license may be transferred to another testing unit within three (3) months. If the tester is not employed at a licensed testing unit within three (3) months, the tester will be required

to attend a new tester training class in order to be licensed by the Department. All training and license fees shall apply and are the responsibility of the tester.

(25) The driving tester cannot administer the CDL skills test to a driver with whom he/she has conducted in-vehicle skills training.

K. COURSE AND ROUTE REQUIREMENTS

(1) A testing unit shall have a paved area for the CDL vehicle inspection and the basic control skills exercises that is large enough to administer all of the required CDL basic control exercises.

(a) Solid painted lines and traffic cones shall be used to mark the testing boundaries in accordance with Department standards.

(i) Traffic cones used to mark the testing boundaries shall be a minimum of twelve inches in height and the same size traffic cones shall be used for each exercise. Traffic cones shall be replaced when they are no longer retain their original shape and color.

(b) Boundary lines and cones must be clearly visible in the basic control skill exercise testing area..

(i) The testing area boundaries shall be cleared of snow, debris, or vehicles that would obstruct the driver's view during the vehicle control maneuvers.

(ii) Testing on dirt, sand or gravel is not allowed.

(c) The testing unit shall request and receive approval from the Department for any change(s) to the approved road test route prior to administering a CDL road test.

L. RIGHTS

(1) The driving tester or testing unit may refuse to test a driver. The tester or testing unit contact person shall notify the CDL Compliance Unit if a driver is refused a test and refer that driver to the CDL Compliance Unit.

(2) Government driving testers who want to test outside of their governmental testing unit may make a written request to the CDL Compliance Unit, and must receive approval from the CDL Compliance Unit prior to administering CDL Skills Tests..

M. RECORDING AND AUDITING REQUIREMENTS

(1) An applicant who has successfully completed the driving skill tests shall be issued the "Colorado CDL Driving Skill Test Completion" form (DR2736). The testing unit and/or tester shall retain the carbon copy of this form and attach it to all of the applicant's score form(s) for the testing unit's records. This form is not authorization to the applicant to drive unsupervised.

(2) The CDL Compliance Unit shall be notified in writing after a driver fails the road test portion of the driving test. Testers shall fax or send electronically the failed road test (front and back) score form to the CDL Compliance Unit immediately upon failure.

(3) The testing unit shall maintain all pass/fail records for three years. These shall include the CDL Skills Testing records for each driver tested, the dates of the testing, the driver's identification information, the vehicle information and the name and state assigned tester number for the tester who administered the test. If a testing unit is no longer licensed, the unit shall return all testing records to the Department within 30 days.

(a) After three years, testing units may destroy all pass/fail records (shred, burn).

(4) A testing unit shall enter all (pass and fail) Skills Test results into the CSTIMS (Commercial Skills Test Information Management System) within 24 hours of completion of the test.

(5) During CDL compliance audits and/or inspections, driving testers shall cooperate with the Department and/or FMCSA, by allowing access to testing areas and routes, furnishing CDL Skills Testing records and results, and other items pertinent to the mandated audit and/or inspection. The tester must surrender testing records upon request. The tester may make copies and retain copies of such records.

(6) If the testing unit provided the vehicle for the skills test, the testing unit will furnish the vehicle for a driver selected for a retest. No fees, including any vehicle rental fees required for testing will be collected for this mandatory evaluation. The Department shall not be held liable during retests for any damage, injury or expense incurred.

(7) If the driver tested in his/her own vehicle, the driver shall supply the vehicle for any skills retest.

N. BOND

(1) A testing unit that is not an agency of government, or any Colorado school district, shall maintain a bond in the amount of $20,000.00 with the Department pursuant 49 CFR 383.75(8)(v). A surety company authorized to do business within the State of Colorado shall execute the bond.

(a) The bond shall be for the use and benefit of the Department in the event of a monetary loss within the limitations of the bond, attributable to the willful, intentional or negligent conduct of the testing unit or its agent(s) or employee(s).

(b) If the amount of the bond is decreased or terminated, or if there is a final judgment outstanding on the bond, the testing unit cannot test outside their unit..

(c) The Department shall be named on the bond as the beneficiary or held in the name of the Department.

(2) A testing unit that is an agency of government, or any Colorado school district, that will administer CDL driving tests outside of their unit, shall maintain a bond in the amount of $5,000.00 with the Department. A surety company authorized to do business within the State of Colorado shall execute the bond.

(a) The bond shall be for the use and benefit of the Department in the event of a monetary loss within the limitations of the bond, attributable to the willful, intentional or negligent conduct of the testing unit or its agent(s) or employee(s).

(b) If the amount of the bond is decreased or terminated, or if there is a final judgment outstanding on the bond, the testing unit cannot test outside their unit.

(c) The Department shall be named on the bond as the beneficiary or held in the name of the Department.

O. REVOCATION, CANCELLATION OR SUSPENSION OF TESTING UNITS AND TESTERS.

(1) The license of a testing unit or driving tester may be suspended or revoked for willful or negligent actions that may include but are not limited to any of the following:

(a) Misrepresentations on the application to be a testing unit or a driving tester;

(b) Improper testing and/or certification of a driver who has applied for a CDL;

(c) Falsification of test documents or results;

(d) Violations of CDL rules for testing units or driving testers;

(e) Failure to employ a minimum of at least one licensed CDL tester;

(f) Failure to comply or cooperate in a CDL Compliance audit and record review;

(g) Violations of the contract terms and conditions;

(h) For any other violation of this rule or applicable state statute or federal regulation..

(2) A Testing Unit or driving tester that is suspended shall not perform any duties related to CDL Third Party Testing.

(3) Summary Suspension: Where the Department has objective and reasonable grounds to believe and finds that a testing unit or driving tester has been guilty of deliberate and willful violation or that the public health, safety, or welfare imperatively requires emergency action and incorporates the findings in its order, it may summarily suspend the license pending proceedings for suspension or revocation which shall be promptly instituted and determined. Testing is not permitted while the license is suspended.

(4) Appeal Process: Any person aggrieved by the denial of issuance, denial of renewal, suspension, or revocation of a testing unit license or driving tester license shall be entitled to a hearing pursuant to section 42-2-407(7), CRS. The request for hearing must be submitted in writing and appropriately labeled, such as "CDL Cease Testing Appeal," to the Department of Revenue, Hearings Division, 1881 Pierce Street, Room 106, Lakewood, Colorado, 80214. Subsequent appeal may be had as provided by law.

(5) Material incorporated by reference in this rule does not include later amendments to or editions of the incorporated material. Copies of the material incorporated by reference may be obtained by contacting the Division of Motor Vehicles, Driver License Section of the Department of Revenue, 1881 Pierce Street, Room 128, Lakewood, Colorado, 80214, 303-205-5600, and copies of the materials may be examined at any state publication depository library.

Editor's Notes

History

Entire Rule Eff. 11/30/2008.

Entire Rule Eff. 12/15/2011.

Notice of Proposed Rulemaking

Tracking number

2015-00202

Department

200 - Department of Revenue

Agency

204 - Division of Motor Vehicles

CCR number

1 CCR 204-30

Rule title

DRIVER'S LICENSE-DRIVER CONTROL

Rulemaking Hearing

Date

04/30/2015

Time

09:00 AM

Location

1881 Pierce Street, Lakewood, CO 80214, Room 110 Boards/Commissions Meeting Room

Subjects and issues involved

The Department of Revenue, Division of Motor Vehicles, Driver Testing and Education Section developed rules, regulations and certification requirements to establish the working and operational instructions for the conduct of certified Commercial Driving Schools, Commercial Driver Education programs, Basic Operators Skills Testing Organizations, and third party testers.

Statutory authority

Sections: 12-15-101, 114, 116, and 120, 24-4-103, 42-1-204, 42-2-106 and 42-2-111 C.R.S and in adopting such rules, the Department shall use the guidelines concerning Commercial Driving Schools promul

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DEPARTMENT OF REVENUE

Division of Motor Vehicles

DRIVER TESTING AND EDUCATION PROGRAM RULES AND REGULATIONS

1 CCR 204-30 Rule 8

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

PURPOSE

The Department of Revenue, Division of Motor Vehicles, Driver Testing and Education Section developed rules, regulations and certification requirements to establish the working and operational instructions for the conduct of certified Commercial Driving Schools, Commercial Driver Education programs, Basic Operators Skills Testing Organizations, and third party testers.

The rules, regulations and requirements will furnish guidelines as necessary for certified Commercial Driving Schools to remain current with changing laws and new programs promoting the safety and welfare of the citizens of Colorado and to aid in the detection of fraudulent activities.

STATUTORY AUTHORITY

Sections: 12-15-101, 114, 116, and 120, 24-4-103, 42-1-204, 42-2-106 and 42-2-111 C.R.S and in adopting such rules, the Department shall use the guidelines concerning Commercial Driving Schools promulgated by the United States Department of Transportation. Section 12-15-116(3) C.R.S.

(100) DEFINITIONS

a) **BOST: (Basic Operators Skills Test):** Means either the Basic Operator Skills Drive Test (BOSD) or the Basic Operators Skills Written Knowledge Test (BOSW) or both.

b) **Basic Operator Skills Tester:** An individual employed by a certified Commercial Driving School who has successfully passed the training required by the Department, has successfully met the additional company training requirements, and is certified to administer the BOSD~~T~~.

c) **Basic Operator's skill testing Organization (BOSTO):** A certified Commercial Driving School certified by the Department to conduct the BOST for a permit or driver's license.

d) **Behind-the-Wheel training (BTW):** An extension of classroom instruction that provides students with opportunities for traffic experiences under real conditions.

e) **Behind-the-Wheel instructor (BTWI):** An instructor employed by an approved Commercial Driving School who is certified by the Department for behind-the-wheel training.

f) **Clock Hours:** Full hour consisting of sixty (60) minutes. Section 12-15-101 (1), C.R.S.

g) **CMV:** Commercial motor vehicle.

h) **Certified Commercial Driving School (CDS):** Any business or any person who, for compensation, provides or offers to provide training or examinations that are statutorily-mandated for a driver's license or instruction permit~~instruction in the operation of a motor vehicle, and is must be certified by the Driver Testing Education Section of the Motor Vehicle Division~~.The aforementioned does not include secondary schools and institutions of higher education offering programs approved by the Department of Education and/or private occupational schools offering programs approved by the private occupational school division.

i) **Commercial driving instructor:** An individual employed by a ~~Commercial Driving School~~certified Commercial Driving School (CDS) as an instructor~~tester~~ of students.

j) **Curriculum Content:** The content of a course of instruction set by the Department that meets the minimum requirements to obtain a driving permit.

k) **Department:** The Department of Revenue.

l) **DTES:** Driver Testing and Education Section.

m) **Expanded Driver Awareness Program / Driver Awareness Program (EDAP/DAP):** A four-hour pre-qualification driver awareness program approved by the Department. Section 42-2-106(1)(d) (I), C.R.S.

n) **Instruction Permit:** A driving document issued by the Department to allow an individual to drive a motor vehicle or motorcycle, as provided for in section 42-2-106, C.R.S., prior to receiving a Colorado driver's license.

o) **Revocation of testing certification:** The permanent withdrawal of a BOST tester's or a BOSTO's testing privileges by the Department.

p) **Shadow drive:** Additional practice in drive testing before certification or re-certification.

q) **Suspension of testing certification:** An action taken by the Department against a BOST tester or a BOSTO whereby testing privileges are withdrawn for a specified period of time.

r) **Service Dogs:** Dogs that are individually trained to do work or perform tasks for people with disabilities. Dogs whose sole function is to provide comfort or emotional support do not qualify as service animals under the ADA.

(150) APPLICABILITY

This Rule 8 applies only to CDSs that offer ~~that offer~~ statutorily-mandated examinations or statutorily-mandated training for a driver's license or instruction permit.

(200) GENERAL REQUIREMENTS FOR COMMERCIAL DRIVING SCHOOL CERTIFICATION

~~a) Commercial Driving Schools[].~~

a~~b~~) In order for a Commercial Driving School to be certified by the Department as a CDS, such school must:

1. ~~Commercial Driving School~~Es ~~(CDS) shall e~~nter into a written contract with the Department;

2. H~~. b) The CDS shall h~~ave a 30-hour commercial driver education course of instruction approved by the ~~De~~Department.

b~~c~~) Application for certification must be submitted on forms provided by the Department and must indicate on the form the type of certification being requested.

c~~d~~) A copy(s) of the CDS's state, county, or municipal business license(s) or waivers, registration with the Secretary of State, along with any other documentation required by the county or city, must be submitted with an application. Section 12-15-116(2), C.R.S.

d~~e~~) A CDS's place of business shall be a separate establishment and not part of a residence.

1. All CDSs shall comply with city zoning and code requirements.

2. All CDSs are required to have a mailing address that is not a post office box.

3. A CDS must request and receive approval from the Department for recordkeeping in a residential home office.

ef) Each new owner/manager must complete "Records Management"/BOSW training prior to certification. .

fg) **Insurance:** All CDSs must have: proof of current and valid vehicle insurance, vehicle registration, general liability insurance, surety bond, and worker's compensation insurance on file with the Department at all times.

1. The Department must be listed on the general liability and vehicle insurance policies as a secondary insured.

2. It is the CDS owner's responsibility to ensure that the insurance company sends the required information to the Department.

3. Failure to provide updated insurance and registration information to the Department within 30 days of expiration is grounds for suspension, and such suspension may be in effect until current insurance and/or registration is received.

4. A CDS is required to provide an inventory of all vehicles used for testing/training, and proof of second brake installation to the Department. Changes to vehicle inventory shall be reported, in writing, to the Department within 30 days of the change.

gh) **Bond:** All CDSs shall maintain a surety bond, executed by a surety company authorized to do business in Colorado, in the amount of $10,000 with the Department.

1. The bond shall be for the use and benefit of the Department in the event of a monetary loss within the limitations of the bond attributable to the willful, intentional, or negligent conduct of the CDS, or its agents or employees.

2. The bond may be used to indemnify against loss or damage arising out of the CDS's breach of contract between the CDS and the student.

3. If the amount of the bond is decreased or terminated, or if there is a final judgment outstanding on the bond, the ~~CDS's~~BOSTO certification ~~shall~~ may be suspended. The suspension ~~shall~~ may continue until satisfactory steps are taken to restore the original amount of the bond.

4. The Department shall be named as the beneficiary on the bond.

hi) **Physical facilities:** Each CDS requesting certification by the Department must have a place of business with adequate facilities to conduct classes and to maintain all required files and records:

1. All forms issued by the Department shall be kept in locked and limited access areas.

2. A CDSs shall obtain written permission from property owners, on a Department approved form, prior to conducting driver education training on the property. The written permission must be submitted to the Department prior to the commencement of training on the property.

3. Each CDS shall post its hours of operation in a conspicuous place and be available to the public during those hours.

4. If a CDS uses approved public facilities as a place of business, then commercial driving instructors for the CDS must maintain a copy of the school's CDS certification and classroom waiver in their possession.

~~j)~~ ~~A new CDS may not have a name that is substantially similar to a previously certified CDS. The Department reserves the right to determine if a name is substantially similar.~~

i~~k~~) CDSs shall monitor and ensure their employees are following all rules, regulations, and statutes.

j~~l~~) The Department must receive notice in writing within 3 days of any change in the place of business, directors, owners, or managers of any CDS. Certifications are not transferable.

k~~m~~) If a CDS has any change in ownership, then the new owner must file a new application for certification, sign a new contract with the Department and be approved by the Department before beginning operation under the new ownership. Failure to inform the Department of any ownership change shall be grounds for revocation or suspension of CDS certification.

(201) CURRICULUM

a) CDSs that train using behind-the-wheel ride along, simulator, range driving, or homework, may not use this time towards the 6 hours behind-the-wheel training, but may count up to 2 hours towards classroom hours.

b) Any change in a CDS's course~~.~~ of instruction requires resubmission and recertification.

c) When a course of instruction is submitted for approval, the course of instruction shall include a lesson plan with an instructor guide, course outline, and course content, all in the format required by the Department.

d) A CDS shall teach the approved course of instruction at all times. Failure to teach the approved course of instruction or changing a course of instruction without prior submission and recertification may result in a suspension or revocation of certification of the CDS.

e) Driver education courses must be equal to, or exceed the requirements, for hours of instruction (excluding ~~lunches~~meal times/breaks) and course content as determined by the Department.

f) The course of instruction requirements for a driver education course, Expanded Driver Awareness program, or behind-the-wheel training are available on the Department's official website.

(202) CURRICULUM WITHDRAWAL

a) ~~Approval of a~~ A CDS's course of instruction may be withdrawn for failure to teach the approved content or the required number of hours.~~comply with BOST rules and regulations~~.

b) If a CDS is notified that approval for its course of instruction has been withdrawn, the CDS shall cease instructing and signing all forms that allow an applicant to obtain a permit or license.

c) A CDS may appeal withdrawal of approval for its course of instruction by filing a written appeal within 10 calendar days after receiving notice of withdrawal of approval, with the Department's Hearings Division, whose decision shall be final.

(203) CLASSROOM REQUIREMENTS

a) With the exception of internet and home study, a CDS must provide a classroom that meets the following requirements:

1. has a large enough space to seat all students comfortably, containing at least one adequate~~,~~ seating and desk/table space for each student, and one program instructor's desk, table, or podium;

2. has curricula presentation equipment for the class;

3. has appropriate clean restroom facilities; and

4. has adequate parking available in close proximity to the classroom.

b) Approval of the classroom by the Department is required prior to scheduling the first class.

c) Modular units must be inspected and approved in writing by the Department prior to any classes being taught at the unit. Motorized mobile units will not be approved.

d) CDS, EDAP, and DAP programs shall not be part of a home, mobile home, apartment, or living quarters of any kind. ~~Classrooms must project a professional image and provide students with the proper learning environment.~~

(300) ~~COMMERCIAL DRIVING SCHOOL~~CERTIFIED COMMERCIAL DRIVING SCHOOL OPERATING REQUIREMENTS

a) All CDSs shall comply with applicable Colorado revised statutes, Department rules and regulations~~, and BOST standards~~.

b) All CDSs shall cooperate with any investigation of a written complaint against a tester or a CDS.

c) While a CDS may provide information to applicants regarding documentation required by the Department for the issuance of instruction permits, licenses, or identification cards, a CDS may not act as a liaison between the applicant and the Department.

d) All instructors shall be physically and mentally able to safely operate a motor vehicle and to train others in the operation of a motor vehicle.

e) All employees of a CDS must:

1. have a CBI background check and an original signature on a Department approved form on file with the Department;

2. submit a new background check and an original signature, on a Department approved form, with each renewal packet;

3. submit paperwork for any new hire within 10 days of employment;

4. have a valid Colorado driver's license that has not been suspended, revoked, forfeited, or denied within the last three years; and

5. must ensure that testing/training forms are fully and accurately completed.

f) If the Department has reason to believe or receives information that an employee has been convicted of or pled guilty or nolo contendere to a felony or received a deferred sentence to a felony charge, the Department may deny certification. ~~or suspend or revoke testing certification.~~

g) A CDS must:

1. have a valid tester number on file with the Department; and

2. account for all forms in his/her possession.

h~~g~~) Signing a form that represents ~~confirmation~~ that training/testing has been successfully completed, when a student has not successfully completed the testing/training, ~~will~~ may result in suspension or

revocation of the employee's certification, and the certification of the CDS employing the instructor may be suspended or revoked.

ih) If an employee of a CDS drives with students, the employee may not have a personal driving record showing the accumulation of 8 or more points in the past three-year period. The Department will randomly audit motor vehicle records (MVR) of all CDS employees. If upon random audit, it is determined that an employee has accumulated more than 8 points within a 3-year period, or his/her license has been suspended, revoked, forfeited, or denied, the employee's certification will may be suspended or revoked. If a CDS fails to report a change of status with the driving license of one of its employees, the CDS's certification may be suspended or revoked.

ji) A CDS must notify the Department of the location of all branch offices. Branch opening notices must include copies of the business license(s)/waivers. A notice must be mailed to the Department within 10 days of opening or closing any branch office, and the notice must include the names of all employees to be added or deleted from the CDS's certification and the date the branch office was opened or closed. A branch office is required to meet all classroom and physical facilities requirements applicable to the main facility.

kj) A CDS must keep their its current physical and mailing addresses, contact phone numbers, and the name of one contact person who is an employee or principal of the CDS on file with the Department.

lk) The Department will not accept forms that show evidence of alteration. Forms containing an alteration shall be voided. and a new form issued. and a new form issued.

ml) A CDS shall notify the Department in writing within 3 business days of an employee's change of driving status or departure from the CDS.

nm) Home Study programs:

1. must meet minimum curriculum requirements;

2. must provide, in person or online, a final test that is administered prior to sending a completion statement. Test questions must come from a pool of questions that are scrambled each time a student takes a test or quiz;

3. must, if the provider's main facility is out of state, maintain a branchsatellite office in Colorado containing student files for audits and maintain copies of completion statements with the student files;

4. must forward completion statements containing an original signature to students (electronic, photocopied, or faxed signatures do not meet this requirement); and

5. must NOT issue a completion statement to a student unless the student receives a correct score of at least 9 correct answers or 80% or higher on the final test.

(301) BEHIND-THE-WHEEL TRAINING

a) Vehicles used by a CDS for behind-the-wheel (BTW) instruction must:

1. be equipped as defined required in section 12-15-114 C.R.S.;

2. be registered and insured as required in article 3 of tTitle 42 and article 4 of tTitle 10;

3. be available for inspection and~~t~~ audit and, if found to be out of compliance with requirements, may result in suspension of certification until such time as requirements are met; and

4. be available for inspection by the Department prior to certification of a CDS, or if obtained after certification, be inspected prior to use by the CDS for BTW instruction.

b) All BTW lessons must be in vehicles owned/leased by the CDS. BTW instruction shall not be administered in a student's private vehicle.

c) ~~Behind-the-wheel~~BTW training shall be recorded on a Department approved form, which form shall be attached to the BTW completion statement.

d) If a second student is in the back seat of the vehicle during BTW training, the second student shall not be given credit towards ~~their~~ his/her 6 hours of BTW; and

e) ~~and t~~The CDS must have a ~~waiver or stipulation~~notification with permission, signed by the parent or guardian of the second student, stating that the parent or guardian is aware the second student will be in a vehicle driven by another student.

(302) CERTIFIED COMMERCIAL DRIVING SCHOOLS OFFERING INTERNET PROGRAMS

a) ~~Internet providers~~ CDSs offering internet programs ~~shall~~ must use the name they registered with the Colorado Secretary of State in any advertising within Colorado

b) The c~~C~~urriculum of CDSs offering internet programs must equal or exceed the current minimum standards of the Department and be approved by the Department prior to being sold in the State of Colorado.

c) All ~~out of state~~ CDS's offering only internet programs ~~Internet providers~~ must enter into a contract with the Department and ~~in order to~~ be ~~an approved school~~certified as a CDS, and ~~but~~ are not eligible to be certified ~~come~~as a BOSTO or basic operator skills tester.

d) All CDSs offering internet programs must maintain an ~~satellite~~ office in Colorado containing student files available for audits. Copies of completion statements must be maintained with the student files.

e) CDSs offering internet programs ~~are required to~~must ~~forward~~ provide completion statements containing an original signature to students. Electronic, photocopied, or faxed signatures do not meet this requirement.

f) To be eligible for renewal of certification, a CDS offering ~~i~~internet programs approved by the ~~State of Colorado~~ Department~~,~~ must issue ~~Affidavits of~~ a Department Completion Form ~~of~~for a Driver Education course to at least 50 students in the ~~S~~state of Colorado each year.

g) If a CDS contracts with another CDS to sell an online product, the new seller ~~contract~~ must ~~be~~ submit~~ted~~ a copy of their executed contract to~~to~~ the Department within 10 days of the date on which the contract was fully executed.

h) Each CDS ~~shall~~ must issue t~~T~~he Driver Testing and Education ~~Section~~ (DTE~~S~~) manager and auditor ~~will be issued~~ a user name and password so random audits of student records, test scores, curriculum, and security protocols can be performed.

i) All internet material must contain an explanation of current Colorado laws including:

1. ~~teen~~ minor permit issuance;

2. behind-the-wheel requirements; and

3. requirements for licensure.

j) Internet programs shall be monitored to ensure applicants had the opportunity to review the curriculum for the required number of hours prior to issuance of a completion statement.

k) Each internet chapter/section must have a question imbedded within it that does not allow progression if a student does not correctly answer the question pertaining to that chapter/section.

l) After two failed attempts to pass a test/quiz, students must review previous material.

m) A final test must be administered prior to sending a completion statement. Test questions must come from a pool of questions that are scrambled each time a student takes a test or quiz.

n) Students must be shown the correct answers to questions they missed on tests and quizzes prior to re-testing.

o) Students must receive a correct score of at least 80% or higher ~~correct answers~~ before being allowed to go to the next module/section, or being issued a completion certificate.

(303) EDAP/DAP PROGRAMS

a) All entities that teach the Expanded Driver Awareness ("EDAP") program for the purpose of qualifying students for a Colorado instruction permit must be ~~certified as~~ a CDS and meet CDS curriculum and statutory requirements.

b) An approved Driver Awareness Program (DAP) must be approved through the National Safety Council and remain in good standing with the NSC rules, regulations, and teaching standards, and must be provided by ~~certified as~~ a CDS and meet CDS curriculum and statutory requirements.

c) Students must be 15 years and 6 months of age before completing an approved Expanded Driver Awareness program or a Driver Awareness Program.

d) EDAP and DAP completion statements are valid for 6 months from the time of issuance.

(304) ADVERTISING

a) Advertisements shall not imply that a CDS can issue or guarantee the issuance of a Colorado driver's license or permit.

b) Advertisements and CDS employees shall not imply that a CDS or the employee has influence over the Department in the issuance of a Colorado driver's license or permit.

c) No CDS, basic operator skills tester, BOSTO or CDS employee or ~~CDS~~ agent is permitted to solicit or advertise on the premises of a Colorado driver's license office.

d) Use of the Colorado State seal by a CDS is strictly prohibited.

e) CDSs ~~cannot~~ shall not advertise a business practice that violates any statute, rule, or regulation.

(305) CONTRACTS

a) All contracts for driver education ~~and testing~~ between a CDS and any individual or entity must contain, at a minimum, the following:

1. CLASSROOM INSTRUCTION: package rate, the available dates, times and length of each lesson, and the total number of hours of instruction;

2. INTERNET OR HOME STUDY: mandated completion date if any, the total cost, and a telephone contact number ~~for~~ and the times technical and/or informational help is available.

3. BEHIND-THE-WHEEL LABORATORY: package rate, the length of each lesson, the total number of hours, and the rate for any vehicle charges. Cancellation or rescheduling policies must be included in simple language. Contracts shall extend for at least 12 months from the date of permit issuance.

b) All contracts for driver education and testing must contain:

1. A statement that reads: "This agreement constitutes the entire contract between the school and the student, and any verbal assurances or promises not contained herein are not binding on either the school or the student."

2. A statement that reads: "Under this agreement an instructor may not provide behind-the-wheel training to more than two individual students per session."

~~**(400) CODE OF CONDUCT**~~

~~a) Every CDS and its BOST testers, employees, and agents recognize that they have a position of high public trust and agree to adhere to the following code of conduct:~~

~~1. Impartially administer all official duties without regard to race, gender, creed, national origin, position or influence.~~

~~2. Conduct all examinations in a manner reflecting their importance to public safety.~~

~~3. serve the public with all possible promptness and courtesy and not bully, threaten, degrade, put down, or disgrace any student or any other CDS.~~

~~4. Refuse any additional payment, bribe or favor.~~

~~5. Convey only accurate information to the public with regard to licensing requirements and BOST examinations.~~

~~6. Work only by official BOST testing standards – never substituting personal ideas for prescribed methods.~~

~~7. Maintain a professional appearance and demeanor.~~

~~8. Uphold the honor and dignity of the profession by reporting any fraudulent or illegal activities related to a CDS employee, BOST tester or agent of a CDS.~~

~~9. Carry out all duties not specifically covered by this code with the safety and welfare of the public as the controlling motive.~~

~~Failure to adhere to the aforementioned standards will result in an investigation and may lead to disciplinary action up to and including curriculum withdrawal, employee or CDS suspension, or revocation.~~

(~~500~~400) BOSTO AND BOST CERTIFICATION

a) A CDS that is listed as a full time school (teaches required 30 hours of curriculum and offers 6 hours of BTW instruction) with the Department may apply for certification as a ~~to administer~~ BOSTO~~-tests~~. Testing must be equal to the training and examination offered by~~of~~ the Department. Section 42-2-111(1) (b), C.R.S.

b) Before applying for BOSTO certification, a CDS must submit copies of 25 student classroom completion statements and ten 6-hour~~s~~ BTW completion statements for students under the age of 18 to the Department.

c) BOSTO certification~~s are valid for one year from July 1st through June 30th of the following calendar year. (These dates are from (800) a., but would this mean that a certification cannot be issued on any other date than July 1st?) and~~ must be renewed annually before the current certification expires.

d) To renew a BOSTO certification, a CDS must provide ~~statements~~ documentation ~~reflecting~~ demonstrating class completion for 50 students and 6-hours BTW completion for 25 students under the age of 18 for the preceding year. Any CDS that does not meet this requirement may~~will~~ have its BOSTO written and drive testing privileges suspended. A CDS may re-apply for testing privileges with their ~~next yearly~~ renewal application~~packet~~, if the minimum teaching requirements listed above have been met. A CDS in a r~~R~~ural area ~~schools~~ with limited population may apply for a variance.

e) Owning or operating a CDS does not confer certification to administer the BOST written knowledge or drive test for the State of Colorado. BOST written knowledge or drive tests can~~may~~ only be administered by a CDS certified as BOSTO by the Department.

f) BOST testers who do not follow Department standards, or who sign completion statements for students who have failed written knowledge or drive tests ~~will~~ may have their certification as BOST testers revoked or suspended, and the certification of the BOSTO~~CDS~~ employing such BOST testers may be suspended or revoked.

g) Requests for ~~training and~~training and certification as a BOSTO:

1. must be submitted in writing on a Department approved form;

2. must list all employees for BOST ~~training and~~ training and certification; and

3. each employee seeking ~~training and~~ training and certification must:

~~3.~~ i) ~~employees must~~ be at least 21 years of age; and

~~4.~~ ii) have a valid Colorado driver license.

h) All forms submitted for BOSTO certification shall be kept by the CDS in a secure location and remain under the control of the CDS.

i) Upon successful completion of the driving skills tester training course by a CDS's employee, and a CDS having met all additional company training and Department requirements, the Department may certify a~~the~~ CDS as a BOSTO and a CDS's employee as a BOST tester. ~~The Department will issue a separate BOST number and certification to each employee successfully completing the required training.~~

j) A CDS must have at least one employee certified as a BOST tester to maintain BOSTO certification.

k) In the event the BOSTO certification for a CDS is not renewed, or is revoked or suspended, all individual BOST tester certifications for that BOSTO ~~within that CDS~~ will be cancelled.

l) A CDS may ~~cancel~~ request their BOSTO certification or the BOST certification of any employee be canceled by notifying the Department in writing. Cancellation of a certification does not nullify any

of the terms of the contract between the CDS and the Department.

m) CDSs must ensure that all their BOST testers continue to meet the training and qualification standards required to conduct BOST tests. Failure of a tester to attend scheduled training may result in suspension of testing privileges.

n) CDSs shall ensure that each BOST tester they employ follows the Department's standards for administering BOST tests.

o) Written knowledge and driving skill tests administered by BOST testers must be equal to the ~~training and~~ training and examination conducted by the Department. Section 42-2-111(1)(b) C.R.S.

p) A CDS may be suspended from BOST drive testing, ~~may also be suspended from~~ written knowledge testing~~.~~ or both. ~~(And vice versa?)~~

q) A BOST tester may be employed by more than one CDS certified as a BOSTO. A BOST tester employed by more than one CDS certified as a BOSTO will be issued a separate certification number for each CDS employing the BOST tester. A BOST tester certification is valid only while the tester is employed by the CDS listed on the certificate.

r) The Department reserves the right to retest any student/applicant if an audit indicates that the test was not administered properly or not at all. ~~at any time.~~

s) The Department shall issue a unique tester number to each BOST tester. BOST testers shall use only their assigned number. Unauthorized use of a certificate number~~s~~ may~~will~~ result in revocation or suspension of an individual's BOST certification and may result in revocation of BOSTO certification for the ~~organization~~ CDS employing the BOST tester.

t) BOST testers shall refer the following applicants to a Colorado driver license office:

1. an applicant requesting a required skills test upon completion of a rehabilitation program;

2. an applicant requesting a drive test after having failed 4 previous drive tests;

3. an applicant requesting a written knowledge test after 2 failed attempts;

4. an applicant whose drivers license is currently under restraint ~~action~~;

5. an applicant requesting a re-exam test without a corresponding letter from the Department;

6. an applicant using a one-day permit; and

7. an applicant unable to produce a photo ID.

(~~54~~01) THE BOST DRIVE TEST

a) Drive test routes must be approved in writing by the Department prior to certification of a CDS as a BOSTO. BOST testers shall administer the BOST drive test only on routes approved by the Department for the BOSTO~~CDS~~ employing the tester. BOSTO~~CDS~~s must request and receive approval from the Department in writing for any changes to an approved drive route prior to administering a road test.

b) A ~~CDS certified as a~~ BOSTO that has multiple physical locations must request approval for each route prior to testing. Testing on an approved test route must begin from an approved teaching/public location.

c) Two approved drive test routes are required for each testing location

d) BOSTO~~CDS~~s are required to maintain copies of approved drive routes in their files.

e) ~~All BOSTO drive testing must be conducted on one of the approved routes~~. BOST testers must use all routes on a regular basis. Any testing on a route not previously approved may result in suspension or revocation of BOST tester certification.

f) Using approved testing routes as a "pre-test" or as BTW practice for students may~~will~~ result in suspension or revocation of the tester(s) certification.

g) Only BOST testers may administer the drive test and sign the (DR2735) Basic Operators Driving Skill test completion statement. The DR2735 will remain valid for ~~60~~180 days from the date of completion.

h) It is the responsibility of the BOSTO~~CDS~~ to ensure BOST testers complete all testing forms correctly.

i) A BOST tester's signature on a driver completion statement constitutes a representation by the BOST tester that the applicant whose name is on the completion statement took and passed the drive test.

j) All BOSTO~~CDS~~s shall hold the State harmless from liability resulting from the BOSTO~~CDS~~'s administration of the BOST drive test.

k) Prior to administering any test, BOST testers shall ensure applicants have a valid driving permit in their immediate possession.~~, a valid permit.~~

l) A road test is not allowed if an applicant does not meet statutory licensing requirements. Testing an applicant before they meet the statutory requirements and/or postdating a BOST completion statement constitutes fraudulent activity and is grounds for suspension or revocation of BOST tester certification.

m) BOST testers must verify that any vehicle used for testing:

1. is properly registered and insured. Both the insurance and the registration cards must be in the vehicle and match the vehicle identification numbers;

2. has both front and rear license plates ~~must be~~ attached to the outside of the vehicle; or temporary tags must be visible in the back window of the vehicle.

3. has passed a safety inspection by the BOST tester to ensure all necessary equipment is in safe operating order, and that the vehicle meets all applicable state statutes for operation on a public roadway ~~city street~~;

4. has been inspected for compliance with this subsection prior to every drive test, regardless of who owns the vehicle; and

5. is either registered to the BOSTO~~/CDS~~ as a training vehicle for BTW training or a vehicle provided by the applicant.

n) Prior to administering a BOST drive test, testers shall complete the information section of the (DR2732) score sheet including the date of the test, the name of the applicant, the vehicle, the organization, the tester information, and, after the instructions have been read, fill in the start time on the score sheet. Once the car has been secured at the end of the test, the finish time and applicant's score shall be written on the score sheet, even if the applicant has failed the test.

o) Applicants and testers are prohibited from smoking, drinking, or eating during a drive test. All electronic devices and cell phones must be turned off during the test.

p) Testers must conduct a full driving test in accordance with statutes, rules, contract, and BOST standards. All tests shall be recorded on forms provided by the Department.

q) BOST drive tests can~~may~~ only be administered during daylight hours.

r) After a drive test is completed, testers shall immediately critique the applicant's performance on the test in a location outside of the vehicle. If the applicant is a minor, the critique shall be done in the presence of the parent/guardian if the parent/guardian is present.

s) Upon successful completion of a BOST drive test, testers shall complete the DR2735, Basic Operator's Driving Skills Test completion statement. Tester and applicant shall sign the form. Tester shall staple the pink copy of the DR2735 to the score sheet (DR2732).

t) BOST testers shall note all failures on an applicant's drive test score sheet and fax or email a failed score sheet to DTES within 24 hours of the test.

u) If an applicant fails a drive test, BOST testers are to write "fail" and the date on the back of the applicant's permit with a permanent marker.

v) An applicant under 18 years of age holding an out of state instruction permit may take one drive test with a BOSTO on the permit if the minor has met the statutory requirements. An applicant 18 years of age or older with an out of state instruction permit may not be tested by a BOSTO~~CDS~~.

w) A tester shall not administer more than one complete driving test per day to any applicant. Giving an applicant more than one test per day ~~will~~ may result in ~~an automatic~~ suspension of the tester's certification.

x) No passengers, pets (service dogs excluded), or interpreters may be in a vehicle during a drive test. Occupants in a vehicle during a driving test are limited to the applicant(s) and the tester, with the following exceptions:

1. A Department representative may be in ~~a~~the vehicle when an audit is being performed for quality assurance purposes.

2. Another BOST tester may be in ~~a~~the vehicle for training and evaluation purposes with prior notification to the Department.

(~~5~~402) THE BOST WRITTEN KNOWLEDGE TEST

a) BOST testers administering the written knowledge test shall issue the BOST written knowledge completion statement (DR2238) to the applicant upon successful completion of the written test. The DR2238 form is valid for ~~30~~180 days from the date of issue. Only certified BOST testers may sign this form.

b) BOST written knowledge testers:

1. shall administer and proctor tests only at an established place of business;

2. shall ensure that applicants do not ~~are not to be allowed~~ access ~~to~~ any unauthorized assistance, including, but not limited to, written material, cell phones, any person, or electronic device~~s~~ while testing;

3. shall require applicants to write their full name, date of birth, and the date of the test in the information box provided on the BOST written knowledge test;

4. shall require a correct score of 80% or higher ~~(0 to 5 incorrect answers)~~ to pass;

5. shall grade correctly using the score key and a red pen;

6. shall provide only two tests per applicant. If an applicant fails two written tests, all subsequent tests shall be taken at a Department driver license office; and

7. shall ensure that if an applicant fails the first test with the BOST organization, then the second test must be a different version ~~of~~than the first test. If an applicant misses more than 10 questions on a first test attempt, the applicant must wait until the next day to test again.

c) An applicant's interpreter shall not be allowed to interpret the BOST written knowledge test. The BOST tester can interpret in the required language and can only interpret the questions and answer choices.

d) The BOST written knowledge test shall not be given to any applicant under the age of 14 years and 11 months.

e) BOST written knowledge tests shall not be used as "practice" or "pre" tests.

f) BOST written knowledge tests may not be copied outside the physical facilities unless the BOST written knowledge tests remain under the direct supervision and control of a BOSTO~~CDS~~.

g) Written completion statements shall not be partially or fully completed until after a student has completed and passed the written test.

h) BOST testers administering the written knowledge test shall periodically check with the Department to confirm they have the most current version of tests/keys.

i) Tests must be proctored and graded by a BOST tester with a ~~BOST~~BOSW ~~written~~ certification.

j) The BOST tester signing the DR2238 is responsible for the accurate grading of the test. Tests graded incorrectly may result in a suspension of the signing BOST tester's certification. Repeated incorrect grading of written knowledge tests will result in a revocation of BOST written testing certification.

(~~54~~03) BOST TESTER REQUIREMENTS

a) BOST testers shall administer ~~at least~~ a minimum of 24 drive tests per year. Failure to complete the minimum number of tests ~~will~~ may result in suspension of a tester's certification.

~~b) Only testers certified by the Department to give the BOST drive test are authorized to administer the drive test and sign the BOST completion statement (DR2735).~~

b~~c~~) All BOST testers must have had a valid driver's license for at least 4 years and be at least 21 years of age.

c~~d~~) BOST drive testers must attend at least one continuing education class for updated testing practices every two years. Failure to attend a Department continuing education class within a two year period ~~will~~ may result in ~~a~~ suspension of a ~~for the~~ tester's certification until continuing education has been successfully completed. Proof of continuing education must be kept by a BOSTO~~CDS~~ in the tester's file for periodic review by the Department.

d~~e~~) BOST testers cannot administer any BOST test to a member of their immediate family. "Immediate family" is defined at section 42-1-102(43.5), C.R.S.

ef) A potential BOST tester:

1. must complete and pass the BOST training class;

2. must show proof of four shadow drives on each route the tester will be using for drive teststesting on (all within 3 errors as documented by of another certified tester); and

3. must complete all shadow drives within 6 weeks of passing the BOST training class.

fg) To be eligible for a BOST class, a potential BOST tester must have conducted at least 24 hours of BTW training or been employed by the BOSTOschool for at least a year.

gh) Applicants failing the BOST drive test with a certified BOST tester shall only be re-tested by a different certified BOST tester (unless the Department determines that this would be a hardship).

hi) An expired completion statement, DR 2735 form (after 6180-days) will require the applicant to retake the test.

ij) Postdating, pre-dating, or partially completioningion of of any form is not allowed. A form with only a signature and a tester number on it is a form that may be deemed fraudulently used.

(6500) RECORDKEEPING AND REPORTING

a) CDSs and BOSTOs shall use only the Department's forms and shall account for all controlled numbered forms issued to them.

b) Issued forms shall be used in control number order. Each series of assigned completion statements must be completed before a new series is started

c) Records must be stored securely for a period of three years. Records include all contracts, records of student enrollment, BTW logs, written tests, progress reports, student completion statements, controlled numbered forms issued by the Department, and BOST forms.

d) After three years all testing records shall be shredded.

e) All forms issued, including those for passed and failed examinations, shall be logged on a CDS's and BOSTO's monthly report.

f) CDSs and BOSTO's shall submit monthly reports on Department approved forms. Reports shall be submitted electronically to the Department by the 10th day of each month for the previous month's activity, even if there was no activity. Incomplete reports will not be accepted.

g) All voided control numbered forms should be logged on monthly reports, filed in numeric order, with a note stating why the document was voided and the number of the replacement form. All replacement forms must be dated using the same date as the original form, with the exception of a drive retest.

h) Monthly reports submitted by a CDS and by a BOSTO to the Department should report all student and testing activity including, but not limited to, monthly classroom schedules, class completion statements, BTW completion statements, written knowledge completion statements, and drive test completion statements.

i) CDSs, BOSTOs, and testers are responsible for securing both blank and completed forms.

(7600) AUDITING

a) CDSs shall allow the Department to observe classroom instruction and/or BTW training.

b) CDSss certified as BOSTOs are required to allow onsite inspections, examinations and audits by a Department representative without prior notice in order to:

1. review all required documentation, including, but not limited to, student completion statements, BTW logs, BOST written knowledge and drive testing records;

2. observe classroom instruction;

3. observe BTW instruction;

4. iInspect vehicles;

5. observe and score live road testing by a BOST tester and compare pass/fail scores;

6. test the skills of BOST testers who administer the drive test; and

7. audit monthly reports for supporting data, advertising, and continuing education certificates.

c) A CDS/BOST tester must surrender all required documentation testing records to the Department upon request. The CDS/ BOST tester may make copies and retain copies of such documentationrecords.

d) Audits may be conducted at the CDS's or BOSTO's office, the Department's office, or at another location as determined by the auditor.

e) To assure that CDSs and BOSTO's continue to meet the standards established by the Department, a Department representative will conduct on-site or virtual (for internet providers only) compliance inspections as often as the Department deems necessary, to review all required documentation, including but not limited to, contracts, student enrollment and progress records, BTW logs, student completion records, classroom facilities, vehicle and testing records. RTesting records will be checked for accuracy and completeness, including, but not limited to, missing or voided records and, in the case of control numbered documents, for— numerical filing sequence.

f) During Department compliance audits, CDS's and BOSTO's shall cooperate with the Department, allow access to testing areas and routes, and supply student names and testing records, results, and any other items as requested by the Department.

g) BOST drive testers will be evaluated either during an actual drive test or a drive test with a Department representative as the driver. BOST testers must follow Department procedures, meet Department standards, and must pass the evaluation with a score of 80% or higher. Failure to pass the evaluation will be grounds for the Department to require additional continuing education or suspension of BOST tester certification.

h) All CDS, BOSTO, and BOST records must be accessible during normal business hours and made available to a Department representative upon request.

(87)00) CERTIFICATION RENEWAL

a) CDS curriculum approval and BOST certification are valid from July 1st through June 30th of the following calendar year. The Department shall determine when curriculum review is required. Curriculum review will not be conducted more frequently than annually, unless course content changes.

b) BOST certifications, CDS certifications as BOSTOs, and CDS contracts with the Department are subject to annual renewal.

c) Renewal applications are due on June 1 of each calendar year. Applications not received and approved by June 30 will result a CDS's or BOSTO's certification not being renewed.~~in placement of a CDS in "not renewed" status, meaning the~~ and the Department will not honor completion forms or driver education certificates from the CDS or BOSTO.

d) Incomplete renewal applications shall be returned to the~~a~~ CDS or BOSTO submitting the application.

e) Renewal applications~~s~~ shall include a breakdown of the ~~hourly~~ costs of each package offered by the CDS or BOSTO.

(~~9~~8~~0~~0) SUSPENSION/ REVOCATION/ CESSATION OF BUSINESS

a) CDSs and BOSTO's must return all copies of written knowledge tests and keys, certifications, and any control numbered documents within ten days of cessation of business.

b) Monthly reports not received by the 10th of the month for the previous month may result in a suspension of testing privileges for 30 days, unless a hardship is determined by the Department.

c) Refusing to be audited ~~will~~ may result in the suspension of a CDS's or BOSTO's training and/or testing privileges.

d) Failure of a CDS or a BOSTO to address and/or correct problems found in a~~the~~ previous audit may result in suspension of certification. Failure of the Department to take action based ~~u~~pon an audit does not waive the Department's authority to ~~later~~ take action later based ~~u~~pon that audit.

~~e) Fraudulent or criminal activity involving licensure by any CDS or CDS employee will be grounds for revocation. Such activity may be reported to appropriate State/Federal authorities.~~

e~~f~~) A CDS or BOST tester who supplies~~ying~~ false information to the Department may~~will~~ have their CDS certification or BOST tester certification suspended or revoked. Fraudulent testing or the fraudulent use of the forms and/or completion statements may~~shall~~ result in the suspension and/or revocation of BOST certification.

f~~g~~) The certification of a CDS, BOSTO, or BOST tester may be suspended or revoked for failure to comply with these rules and regulations, BOST standards, or contract obligations.

g~~h~~) Any BOSTO or BOST tester who omits any test requirement from a written knowledge or driving skill test, or participates in any illegal activity related to driver licensing, may be subject to penalties including loss of testing certification or~~,~~ criminal prosecution.~~, and restitution for costs and fees incurred by the test applicant and/or the Department.~~

h~~i~~) Any information concerning illegal or fraudulent activity concerning, but not limited to written knowledge or driving skills testing, will be referred by the Department to the appropriate law enforcement authority.

i~~j~~) If an applicant's testing was improper, illegal, or fraudulent, the applicant may have ~~their~~ his/her driver's license canceled. ~~The BOSTO employing the BOST tester administering such test~~ may~~will be liable for the costs associated with retesting.~~

~~k~~) ~~Repeated violations of these rules and regulations by a CDS, BOSTO, or BOST tester will result in a review of testing privileges by the Department.~~

j~~l~~) The Department may issue a summary suspension ~~letter~~ to any CDS, BOSTO, or BOST tester if the Department has ~~credible evidence~~ objective and reasonable grounds to believe that a CDS or

BOST tester has violated the provisions of these rules and regulations, state statutes, or that the public health, safety, or welfare requires emergency action. A summary suspension ~~letter~~ shall serve as notice to immediately cease testing and training until an investigation or hearing is complete.

k~~m~~) Upon receipt of a summary suspension ~~letter~~, a CDS, BOSTO, and/or BOST tester must immediately stop all BOST testing and/or training. A CDS, BOSTO, or BOST tester may file a written appeal with the Department's Hearings Division within ~~10~~ 60 calendar days after the giving of such notice~~receipt the summary suspension letter~~. The decision of the Department's Hearings Division constitutes final agency action.

l~~n~~) Written complaints about a CDS, BOSTO, or BOST tester received by the Department regarding the requirements of these rules and regulations may result in an investigation through the Department or the Motor Vehicle Investigative Unit. Section 42-1-222 CRS.

m~~e~~) If a CDS is found to be in violation of the terms of its contract with the Department, then the contract between the Department and the CDS may be terminated.

(~~10~~900) GRANDFATHER PROVISIONS

Law enforcement agencies and rehabilitation providers who are licensed as BOSTO's are exempt from the requirements for approval as a CDS.

All publications and statutes incorporated by reference in these Rules and Regulations are on file and available for public inspection by contacting the Department of Revenue, Division of Motor Vehicles, Driver Testing and Education Section, 1881 Pierce Street, Room 114, Lakewood, Colorado, 80214. This rule does not include later amendments to or additions of any materials incorporated by reference.

*Materials incorporated by reference may be examined at any State publication depository library.

Editor's Notes

History

Entire rule eff. 06/30/2014.

Notice of Proposed Rulemaking

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206 - Lottery Commission

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LOTTERY RULES AND REGULATIONS

Rulemaking Hearing

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720 S Colorado Blvd, Denver CO 80246

Subjects and issues involved

Colorado Lottery Powerball and Powerball add-on

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DEPARTMENT OF REVENUE

Lottery Commission

1 CCR 206-1 RULES AND REGULATIONS

AMENDED RULE14.B COLORADO LOTTERY MULTI-STATE JACKPOT GAME, "POWERBALL®" - "POWER PLAY OPTION"

BASIS AND PURPOSE OF AMENDED RULE 14.B

The purpose of Amended Rule 14.B is to provide specific game details and requirements for the Colorado Lottery Multi-State Jackpot Game “POWERBALL®" "POWER PLAY OPTION" such as type of play, prizes, method of selecting winning numbers and drawings. The statutory basis for Amended Rule 14.B is found in C.R.S. 24-35-201, 24-35-208 (1) (a) and (2), and 24-35-212.

14.B.1 General Provisions

~~Amended Rule 14. B, Colorado Lottery Multi-State Jackpot Game, “Powerball” – “Power Play Option”, will be effective with sales beginning January 19, 2014 with the first Power Play drawing January 22, 2014.~~

A. A Colorado Lottery (Lottery) multi-state Jackpot game known as "POWERBALL®" shall have a game option known as "POWER PLAY", which allows players the option to pay an additional one dollar ($1) for a chance to increase any Set Prize they may win on that purchase. This game option is authorized to be conducted by the Colorado Lottery Director (Director) under the following Rules and Regulations and under such further instructions and directives as the Director may issue in furtherance thereof. If a conflict arises between Rule 14 and this Rule 14.B, Rule 14.B shall apply.

B. The Lottery and the Lottery Commission, prior to implementation, must approve all the Multi-State Lottery Association (MUSL) guidelines and the MUSL Board decisions associated with this "POWER PLAY OPTION".

C. The Director will be a voting member of the MUSL Board during the timeframe in which the Lottery shall be a member of the MUSL. The Director will also be a voting member of any MUSL Specific Product Group the Lottery joins.

D. At any time the Director determines that any provisions of the MUSL or of the MUSL’s Specific Game Playing Rules do not sufficiently provide for the security and integrity necessary to protect the Lottery, the Director shall recommend to the Lottery Commission that the Lottery end its membership with the MUSL or with the Specific Product Group. Upon concurrence by the Lottery Commission, membership can end at any time.

14.B.2 Definitions

Refer to the definitions provided in Paragraph 1.2 of Rule 1, Paragraph 14.2 of Rule 14, and Paragraph 14.A.2 of Rule 14.A.

14.B.3 Price of "POWER PLAY OPTION"

The price of each "POWER PLAY OPTION"" play selected shall be $1.00. A player will have the licensee manually enter the "POWER PLAY OPTION" into the Jackpot Game terminal to purchase up to ten POWERBALL® plays with ten "POWER PLAY OPTIONS" for a single draw as follows:

Number of Powerball® plays	Number of Powerball® boards	Cost of Powerball® boards	Number of "POWER PLAY OPTION" boards	Cost of "POWER PLAY OPTION" boards	Total cost Powerball® boards with "POWER PLAY OPTION"
1	One Board	$2.00	One Board	$1.00	$3.00
2	Two Boards	$4.00	Two Boards	$2.00	$6.00
3	Three Boards	$6.00	Three Boards	$3.00	$9.00
4	Four Boards	$8.00	Four Boards	$4.00	$12.00
5	Five Boards	$10.00	Five Boards	$5.00	$15.00
6	Six Boards	$12.00	Six Boards	$6.00	$18.00
7	Seven Boards	$14.00	Seven Boards	$7.00	$21.00
8	Eight Boards	$16.00	Eight Boards	$8.00	$24.00
9	Nine Boards	$18.00	Nine Boards	$9.00	$27.00
10	Ten Boards	$20.00	Ten Boards	$10.00	$30.00

The "POWER PLAY OPTION" is an add-on to the POWERBALL 5/59 + 1/35 game. Players who elect to pay an extra $1 per POWERBALL® play will have the opportunity to increase their set prizes (all prizes except the Grand Prize).

14.B.4 Ticket Purchases

POWERBALL® tickets with the "POWER PLAY OPTION" may be purchased only from a Lottery licensee authorized by the Director to sell multi-state Jackpot Game tickets.

A. POWERBALL® tickets with the "POWER PLAY OPTION" shall show, at a minimum, the player's selection of numbers, the boards played, drawing date, "POWER PLAY OPTION" chosen and validation and reference numbers.

B. A purchaser of a POWERBALL® ticket must choose, at the time of purchase, whether or not he/she wants the "POWER PLAY OPTION". If the purchaser chooses the "POWER PLAY OPTION" for the ticket, the cost of the "POWER PLAY OPTION" will be $1.00 per board. (See Paragraph 14.B.3 of this Rule 14.B for detailed Power Play costs.) The Option applies to all boards on a single ticket and cannot be purchased on a board-by-board basis.

14.B.5 Method of play

There will be no change in play for the POWERBALL® 5/59 + 1/35 game. The "POWER PLAY OPTION" is effective only for players who choose the “POWER PLAY OPTION” at time of purchase and pay an additional $1.00 per board.

A. The POWERBALL® “POWER PLAY” drawings shall be held twice each week on Wednesday and Saturday.

B. Each "POWER PLAY" drawing shall determine, at random, a single number in accordance with drawing guidelines. Any number drawn is not declared a winning number until the drawing is certified in accordance with the POWERBALL® drawing guidelines. The number drawn shall be used to determine all POWERBALL® "POWER PLAY" prize amounts for that drawing. If a POWERBALL® drawing is not certified, the “POWER PLAY” number for the drawing defaults to “5”.

C. "POWER PLAY" multipliers are weighted as follows:

	POWER PLAY "5"	POWER PLAY "4"	POWER PLAY "3"	POWER PLAY "2"	TOTAL
Frequency	2	3	5	7	17
Percentage	11.76%	17.65%	29.41%	41.18%	100%

D Each "POWER PLAY" drawing shall be witnessed by an auditor, as required in C.R.S 24-35-208 (2)(d). All drawing equipment used shall be examined by the auditor immediately prior to, but no sooner than thirty (30) minutes before, a drawing and immediately after, but no later than thirty (30) minutes following the drawing.

E. The drawing shall not be invalidated due to the numbers drawn creating an excessive prize liability for the Lottery.~~The drawing shall not be invalidated based on the liability of a Party Lottery.~~

F. All "POWER PLAY" drawings shall be open to the public.

G. All drawings, inspections and tests shall be recorded on videotape.

14.B.6 Prizes For POWERBALL® with "POWER PLAY OPTION" Selected

A. Players who choose the "POWER PLAY OPTION" and pay the extra $1.00 per board will have their set prizes multiplied. The Second set prize will be multiplied by two (2X) and the Third through Ninth set prize will receive an amount equal to the set prize multiplied by a drawn POWER PLAY multiplier. See the following table for prizes won if "POWER PLAY OPTION" is chosen and the set prizes are not pari-mutuel as defined in Paragraph 14.A.6 b) of Rule 14.A.

POWERBALL Prize Category	POWERBALL Prize Amounts	POWER PLAY® “2” Drawn	POWER PLAY® “3” Drawn	POWER PLAY® “4” Drawn	POWER PLAY® “5” Drawn

Grand Prize	Jackpot	Jackpot	Jackpot	Jackpot	Jackpot
Second Prize	$1,000,000	$ 2,000,000	$ 2,000,000	$ 2,000,000	$ 2,000,000
Third Prize	$10,000	$20,000	$30,000	$40,000	$50,000
Fourth Prize	$100	$200	$300	$400	$500
Fifth Prize	$100	$200	$300	$400	$500
Sixth Prize	$7	$14	$21	$28	$32
Seventh Prize	$7	$14	$21	$28	$32
Eighth Prize	$4	$8	$12	$16	$20
Ninth Prize	$4	$8	$12	$16	$20

B. If the set prizes are pari-mutuel as defined in Paragraph 14.A.6 d) of Rule 14.A, and the player has selected and paid for the "POWER PLAY OPTION", the amount of the pari-mutuel set prize will become pari-mutuel for that drawing.

C. The prize pool contribution for all "POWER PLAY OPTION" prize categories shall consist of a percent of sales to be determined by the MUSL Board.

14.B.7 Prize Payment

A. ~~Set Prizes~~

All set prizes (all prizes except the Grand Prize) with the "POWER PLAY OPTION" shall be paid by the Lottery. The Lottery may begin paying set prizes after receiving authorization to pay from the MUSL central office.

B. ~~Prizes Rounded~~

All prizes, including those with the "POWER PLAY OPTION", other than the Grand Prize, which, under these rules, may become pari-mutuel prizes, may be rounded down so that prizes can be paid in multiples of whole dollars. Breakage resulting from rounding these prizes shall be carried forward to the prize pool for the next drawing.

14.B.8 Advance Play

Advance play provides the facility to purchase POWERBALL® tickets for more than one drawing. A purchaser of POWERBALL® tickets may also purchase the "POWER PLAY OPTION" for all Advance Play plays. At the discretion of the Director advance play tickets shall be available for purchase in increments up to and including 26 drawings. The cost of each Power Play ticket shall be an additional $1.00 per board per drawing. E.g.: one POWERBALL® play for two drawings with "POWER PLAY OPTION", $6.00, one POWERBALL® play for four drawings with "POWER PLAY OPTION", $12.00. The Option applies to all drawings for which the ticket is purchased and the "POWER PLAY OPTION" is

selected. Players cannot elect the option on a drawing-by-drawing basis when purchasing Advance Play tickets.

14.B.9 Powerball® Power Play Promotion

With the Lottery Commission's and Director's approval, the Lottery will from time to time participate in a POWERBALL® Power Play promotion (i.e. a ten times (10X) multiplier for a limited promotion). The times and dates of the POWERBALL® Power Play promotion will be announced by the MUSL board in conjunction with existing rules and regulations pertaining to POWERBALL®.

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1 CCR 206-1

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LOTTERY RULES AND REGULATIONS

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720 S Colorado Blvd, Denver CO 80246

Subjects and issues involved

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Statutory authority

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DEPARTMENT OF REVENUE

Lottery Commission

1 CCR 206-1 RULES AND REGULATIONS

RULE10.E COLORADO LOTTERY JACKPOT GAME, "CASH 5" - "EZ MATCH™"

BASIS AND PURPOSE OF RULE 10.E

The purpose of Rule 10.E is to provide specific game details and requirements for the Colorado Lottery Jackpot Game "CASH 5" "EZ MATCH™" such as type of play, prizes, method of selecting winning numbers and drawings. The statutory basis for Rule 10.E is found in C.R.S. 24-35-201, 24-35-208 (1) (a) and (2), and 24-35-212.

10.E.1 General Provisions

Colorado Lottery (Lottery) Jackpot game known as "CASH 5" shall have a game option known as " EZ MATCH™ ", which allows players the option to pay an additional one dollar ($1) for a chance to win an instant prize. This game option is authorized to be conducted by the Colorado Lottery Director (Director) under the following Rules and Regulations and under such further instructions and directives as the Director may issue in furtherance thereof. If a conflict arises between Rule 10.D and this Rule 10.E, Rule 10.E shall apply.

10.E.2 Definitions

Refer to the definitions provided in Paragraph 1.2 of Rule 1, Paragraph 10.2 of Rule 10, and Paragraph 10.A.2 of Rule 10.A.

10.E.3 Price of "EZ MATCH™"

A. The price of each "EZ MATCH™"" play selected shall be $1.00. A licensee will manually enter the "EZ MATCH™" into the Jackpot Game terminal to purchase up to ten CASH 5 plays with ten "EZ MATCH™" plays for a single draw as follows:

Number of Cash 5 plays	Number of Cash 5 boards	Cost of Cash 5 boards	Number of "EZ MATCH™" boards	Cost of "EZ MATCH™" boards	Total cost Cash 5 boards with "EZ MATCH™"
1	One Board	$1.00	One Board	$1.00	$2.00
2	Two Boards	$2.00	Two Boards	$2.00	$4.00
3	Three Boards	$3.00	Three Boards	$3.00	$6.00
4	Four Boards	$4.00	Four Boards	$4.00	$8.00
5	Five Boards	$5.00	Five Boards	$5.00	$10.00

6	Six Boards	$6.00	Six Boards	$6.00	$12.00
7	Seven Boards	$7.00	Seven Boards	$7.00	$14.00
8	Eight Boards	$8.00	Eight Boards	$8.00	$16.00
9	Nine Boards	$9.00	Nine Boards	$9.00	$18.00
10	Ten Boards	$10.00	Ten Boards	$10.00	$20.00

B. The EZ MATCH™" is an add-on to the Cash 5 5/32. Players who elect to pay an extra $1 per CASH 5 play will have the opportunity to win a randomly assigned instant prize.

10.E.4 Ticket Purchases

CASH 5 tickets with the "EZ MATCH™" may be purchased only from a Lottery licensee authorized by the Director to sell Jackpot Game tickets.

A. CASH 5 tickets with the "EZ MATCH™" shall show, at a minimum, the player's selection of numbers, the boards played, drawing date, validation and reference numbers, "EZ MATCH™" chosen showing instant win numbers and prize values.

B. A purchaser of a CASH 5 ticket must choose, at the time of purchase, whether or not he/she wants the "EZ MATCH™". If the purchaser chooses the "EZ MATCH™" for the ticket, the cost of the "EZ MATCH™" will be $1.00 per board. (See Paragraph 10.E.3 of this Rule 10.E for detailed Instant Win costs.) The Option applies to all boards on a single ticket and cannot be purchased on a board-by-board basis.

C. Players who purchase multiple boards per ticket and select "EZ MATCH™" will receive one (1) ticket per board purchased.

D. Cash 5 tickets with the "EZ MATCH™" shall not be able to be cancelled.

10.E.5 Method of play

There will be no change in play for the CASH 5 5/32 game. The "EZ MATCH™" is effective only for players who choose the "EZ MATCH™" at time of purchase and pay an additional $1.00 per board.

A. Tickets with the "EZ MATCH™" will display add-on Instant Win numbers below the board(s) purchased.

B. Each add-on Instant Win number will have a prize value randomly assigned by the central gaming system.

C. Prizes are based on ticket pools of eighty-four thousand (84,000).

10.E.6 Prizes For CASH 5 with "EZ MATCH™" Selected

A. Players who choose the "EZ MATCH™" option and pay the extra $1.00 per board will be awarded prizes based the Instant Win numbers matched in the "EZ MATCH™" play area of their Cash 5 ticket.

B. Players can match more one (1) to five (5) instant win numbers per board.

C. Odds of winning an ""EZ MATCH™" prize are shown in the table below.

Division	Probability per Board	Odds per Grid	Expected Number of Winners / Grid	Prize per Winner	Prize Percentage	Payout Percentage
1	0.00001	84,000.00	1	$ 500	0.94%	0.60%
2	0.00002	42,000.00	2	$ 250	0.94%	0.60%
3	0.00008	12,000.00	7	$ 100	1.32%	0.83%
4	0.00024	4,200.00	20	$ 50	1.88%	1.19%
5	0.00060	1,680.00	50	$ 20	1.88%	1.19%
6	0.00119	840.00	100	$ 15	2.82%	1.79%
7	0.00952	105.00	800	$ 10	15.07%	9.52%
8	0.00357	280.00	300	$ 5	2.82%	1.79%
9	0.01429	70.00	1,200	$ 4	9.04%	5.71%
10	0.06667	15.00	5,600	$ 3	31.64%	20.00%
11	0.10000	10.00	8,400	$ 2	31.64%	20.00%
	0.20	5.10	16,480.00		100.00%	63.21%

D. The prize pool contribution for all "EZ MATCH™" prize categories shall **be determined**.

10.E.7 Prize Payment

"EZ MATCH™" instant win prizes can be redeemed immediately at the time of purchase and an exchange ticket will be issued, or redeemed after any Cash 5 win on the original board purchase.

10.E.8 Advance Play

Advance play provides the ability to purchase CASH 5 tickets for more than one drawing. A purchaser of CASH 5 tickets may also purchase the "EZ MATCH™". The “EZ MATCH” only applies to the original purchase for an instant win. “EZ MATCH” does not apply to, or affect, any CASH 5 advance play win.

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720 S Colorado Blvd, Denver CO 80246

Subjects and issues involved

Colorado Lottery Powerball

Statutory authority

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DEPARTMENT OF REVENUE

Lottery Commission

1 CCR 206-1 RULES AND REGULATIONS

AMENDED RULE 14.A COLORADO LOTTERY MULTI-STATE JACKPOT GAME, "POWERBALL®"

BASIS AND PURPOSE FOR AMENDED RULE 14.A

The purpose of Amended Rule 14.A is to provide specific game details and requirements for the Colorado Lottery Multi-State Jackpot Game "POWERBALL®" such as type of play, prizes, method of selecting winning numbers, drawings, and the allocation of revenues. The statutory basis for Rule 14.A is found in C.R.S. 24-35-201, 24-35-208 (1) (a) and (2), and 24-35-212 and 24-35-212.5.

14.A.1 General Provisions

Amended Rule 14. A, Colorado Lottery Multi-State Jackpot Game, “Powerball”, will be effective beginning January 15, 2012.

A Colorado Lottery multi-state Jackpot game to be known as "POWERBALL®" is authorized to be conducted by the Director under the following Rules and Regulations and under such further instructions and directives as the Director may issue in furtherance thereof. If a conflict arises between Rule 14 and this Rule 14.A, Rule 14.A shall apply.

All MUSL (Multi-State Lottery Association) guidelines and MUSL Board decisions must be approved by the Colorado Lottery (hereafter referred to as Lottery) and the Lottery Commission, prior to implementation.

The Director will be a voting member of the MUSL Board during the timeframe in which the Lottery shall be a member of MUSL. The Director will also be a voting member of any MUSL Specific Product Group the Lottery joins.

At any time the Lottery Director determines that any provisions of MUSL or of MUSL’s Specific Game Playing Rules do not sufficiently provide for the security and integrity necessary to protect the Colorado Lottery, he/she shall recommend to the Lottery Commission that the Lottery end its membership with MUSL or with the specific Product Group. Upon concurrence by the Lottery Commission, membership can end at any time.

14.A.2 Definitions

In addition to the definitions provided in Paragraph 1.2 of Rule 1 and Rule 14, and unless the context in this Rule 14.A otherwise requires:

~~a~~A. "Advance Play" means the ability to purchase tickets for more than one drawing.

~~b~~B. "Breakage" means the results of rounding prize amounts down to the nearest whole dollar.

~~c~~C. "Drawing" means the event that occurs wherein the official "POWERBALL®" numbers are drawn.

~~d~~D. "Game Board(s)" or "Board(s)" means that area of the play slip that contains a set of two (2) grids. The first grid containing fifty-nine (59) squares numbered one (1) through fifty-nine (59) and the second grid containing thirty-five (35) squares, numbered one (1) through thirty-five (35).

~~e~~E. "Grand Prize" means a pari-mutuel prize that is advertised to be paid with per-winner annuities or as a lump sum cash payment, unless otherwise specified by the Lottery.

~~f~~F. "Grid" means the area of a play slip that contains a set of numbered squares to be marked by the player.

~~g~~G. "Matching Combinations" means the numbers on a play that coincide with the numbers randomly selected at a drawing for which that play was purchased.

~~h~~H. "MUSL" means the Multi-State Lottery Association, a government-benefit association wholly owned and operated by the Party Lotteries.

~~i~~I. "MUSL Board" means the governing body of MUSL, which is comprised of the chief executive officer of each Party Lottery.

~~j~~J. "Number" means any play integer from one (1) through fifty-nine (59) inclusive.

~~k~~K. "Play" means the six (6) numbers selected on each Board and printed on the ticket.

~~l~~L. "Play slip" means a mark-sense game card used by players of "POWERBALL®" to select plays. A play slip has no pecuniary value and shall not constitute evidence of ticket purchase or of numbers selected.

~~m~~M. "Prize Amount" means the pari-mutuel and/or set prize values established for a game.

~~n~~N. "Prize Category" means and refers to a specific prize within the prize pool.

~~o~~O. "Prize Pool" means a defined percentage of sales as specified in this rule.

~~p~~P. "Quick Pick" or "Partial Quick Pick" means a number or numbers that are randomly generated by the computer when all or a portion of the player's selections have been left blank.

~~q~~Q. "Roll-over" means the amount from the direct prize category contribution from previous drawing(s) in the Grand Prize category, that is not won, that is carried forward to the Grand Prize category for the next drawing.

~~r~~R. "Set Prize" means all other prizes except the Grand Prize that are advertised to be paid by a single cash payment and, except in instances outlined in these rules, will be equal to the prize amount established within the Specific Game Playing Rules.

~~s~~S. "Set Prize Payout Variance" means an account held by MUSL that holds the temporary balances, transferred to MUSL from party lotteries, which results from having fewer-than-expected winners in the set prize categories. This money is paid out to party lotteries in subsequent drawings that have more winners than are statistically expected in the set prize categories.

~~t~~T. "Share(s)" means the total number of matching combinations within each prize category as determined for each drawing.

~~u~~U. "Winning Numbers" means the six (6) numbers, the first five (5) from a field of fifty-nine (59) numbers and the last one (1) from a separate field of thirty-five (35) numbers, randomly selected

at each drawing, which shall be used to determine winning plays contained on a multi-state Jackpot Game ticket.

14.A.3 Price of "POWERBALL®" Play/Board

The price of each "POWERBALL®" play/board shall be $2.00.

14.A.4 Ticket Purchases

~~a~~A. "POWERBALL®" tickets may be purchased only from a Lottery licensee authorized by the Director to sell multi-state Jackpot Game tickets.

~~b~~B. "POWERBALL® " tickets shall show, at a minimum, the player's selection of numbers, the boards played, drawing date and validation and reference numbers. The Lottery shall not directly and knowingly sell a combination of tickets to any person or entity that would guarantee such purchaser a winning ticket.

~~c~~C. Plays may be entered manually using the Jackpot Game terminal keypad or by means of a play slip provided by the Lottery. Facsimiles of play slips, copies of play slips, or other materials which are inserted into the terminal's play slip reader and which are not printed or approved by the Lottery shall not be used to enter a play. No device shall be connected to a Jackpot Game terminal to enter plays, except as may be approved by the Lottery. Unapproved play slips or other devices may be seized by the Lottery.

~~d~~D. All plays made in the game shall be marked on the play slip by hand. No machine-printed play slips shall be used to enter plays. Machine-printed play slips may be seized by the Lottery. Nothing in this regulation shall be deemed to prevent a person with a physical handicap who would otherwise be unable to mark a play slip manually from using any device intended to permit such person to make such a mark (for his/her sole personal use or benefit).

14.A.5 Play for "POWERBALL®"

~~a~~A. Type of play:

A "POWERBALL®" player must select six numbers in each play, five (5) numbers out of fifty-nine (59) plus one (1) out of thirty-five (35). A winning play is achieved only when the following combinations of numbers selected by the player match, in any order, the five plus one winning numbers drawn by the Lottery. Those combinations are 5+1, 5+0, 4+1, 4+0, 3+1, 3+0, 2+1, 1+1 and 0+1.

~~b~~B. Method of play:

The player will use play slips, as provided in Paragraph 14.A.4 of this Rule 14.A, to make number selections. The Jackpot Game terminal will read the play slip and issue a ticket with corresponding play(s). If a play slip is not available, the Jackpot Game licensee may enter the selected numbers via the keyboard. If offered by the Lottery, a player may leave all or a portion of his/her play selections to a random number generator operated by the computer, commonly referred to as "QUICK PICK" or "PARTIAL QUICK PICK."

14.A.6 Prizes For "POWERBALL®"

A. Odds of winning a prize are displayed in the table below:

MATCHING COMBINATIONS	PRIZE CATEGORY	ODDS OF WINNING (ONE PLAY)
All five (5) of first set plus one (1) of second set	Grand Prize	1:175,223,510.0000
All five (5) of first set plus none of second set	Second Prize	1:5,153,632.6471
Any four (4) of first set, but not five, plus one (1) of second set	Third Prize	1:648,975.9630
Any four (4) of first set, but not five, plus none of second set	Fourth Prize	1:19,078.5283
Any three (3) of first set, but not four or five, plus one (1) of second set	Fifth Prize	1:12,244.8295
Any three (3) of first set, but not four or five, plus none of second set	Sixth Prize	1:360.1420
Any two (2) of first set, but not three, four or five, plus one (1) of second set	Seventh Prize	1:706.4325
Any one (1) of first set, but not two, three, four or five, plus one (1) of second set	Eighth Prize	1:110.8129
None of first set plus one (1) of second set	Ninth Prize	1:55.4065
Overall odds of winning any prize		1:31.8464

aB. The prize pool contribution for all prize categories shall consist of fifty percent (50%) of each drawing period's sales unless, as described in Paragraph 14.A.7 c) of this Rule 14.A, the prize reserve accounts are not funded at the balances set by the "POWERBALL® " Product Group. Any amount remaining in the prize pool at the end of this game shall be carried forward to a replacement game or expended in a manner as directed by the Product Group in accordance with state law.

PRIZE POOL

Prize Category	Prize Amounts	Allocation of Prize Pool	Prize Pool Percentage of

			Sales
Grand Prize	Announced Jackpot	63.512%	31.9756%
Second Prize	$1,000,000	19.4038%	9.7019%
Third Prize	$10,000	1.5408%	0.7704%
Fourth Prize	$100	0.524%	0.2620%
Fifth Prize	$100	0.8166%	0.4083%
Sixth Prize	$7	1.9436%	0.9718%
Seventh Prize	$7	0.9908%	0.4954%
Eighth Prize	$4	3.6096%	1.8048%
Ninth Prize	$4	7.2194%	3.6097%
TOTAL		100.00%	50.00%

~~b~~C. Prize Categories - The Grand Prize shall be determined on a pari-mutuel basis. Except as provided in 3) below, all other prizes awarded shall be paid as set prizes with the foregoing expected prize payout percentages:

1. The prize money allocated to the Grand Prize category shall be divided equally by the number of game boards matching all five (5) of the first set plus one (1) of the second set.

2. The prize pool percentage allocated to the set prizes shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the set prizes awarded in the current draw. If the total of all party lotteries' set prizes awarded in a drawing exceeds the percentage of the prize pool allocated to the set prizes, then the amount needed to fund the set prizes awarded shall be drawn from the following sources, in the following order:

~~i~~a. The amount available in the set prize payout variance account.

~~ii~~b. If the set prize payout variance account is not sufficient to pay the set prizes awarded, an amount from the set prize reserve account is used, if available, not to exceed an amount established by MUSL.

~~iii~~c. If after these sources are depleted, sufficient funds do not exist to pay the set prizes awarded, then the highest set prize shall become a pari-mutuel prize. If the amount of the highest set prize, when paid on a pari-mutuel basis, drops to or below the next highest set prize and there are still not sufficient funds to pay the remaining set prizes awarded, then the next highest set prize shall become a pari-mutuel prize. This procedure shall continue down through all set prize levels, if necessary, until all set prize levels become pari-mutuel prize levels.

14.A.7 Prize Reserve Accounts

~~a~~A. The MUSL Board manages three (3) prize reserve accounts (pools) associated with "POWERBALL®". The MUSL Board holds these reserves in trust on behalf of the Lottery, and interest is earned by the Lottery. All deposits will be reported on Lottery records as "Cash Held by MUSL".

1. Set-Aside Pool (Grand Prize Base Reserve) is used to guarantee payment of the minimum or starting grand prize as established by the Product Group.

2. Prize Reserve Trust (Grand Prize Reserve) is used to guarantee payment of valid, but unanticipated, grand prize claims that may result from a system error or for any other reason the normal contributions from sales are not adequate.

3. Set-Prize Reserve Pool is used to guarantee the payment of the set cash prizes.

~~b~~B. ~~Initial Contributions to the Reserves~~

When the Lottery becomes a member of the POWERBALL® product group, the MUSL Board determines an initial contribution to be made by the Lottery to the foregoing reserves. In accordance with the payment plan established between the Lottery and MUSL, the Lottery must deposit with the MUSL board the specified amounts.

~~c~~C. ~~Subsequent Contributions to the Reserves~~

In the event any reserve balance(s), specified above, falls below the balance established by the MUSL Board, a portion of the prize pool contribution shall be used to replenish the reserve(s). Should any reserve(s) require replenishment, the contribution from sales to the Grand Prize shall be reduced from 31.9756% of sales to no less than 29.9756% of sales (up to two percent (2%) of sales). Replenishment of the Grand Prize Base Reserve (Set-Aside Pool) shall have priority over the Prize Reserve Trust and the Set-Prize Reserve Pool.

~~d~~D. In the event the Lottery decides to withdraw from the Product Group, the remaining balances of the Lottery's contribution will be refunded to the Lottery.

14.A.8 Prize Payment

~~a~~A. The Grand Prize is paid by the Lottery upon receipt of funds from MUSL no earlier than fifteen (15) calendar days of validation of the Grand Prize ticket; and when the player makes their final selection of cash or annuity no later than sixty (60) days after validation of the Grand Prize ticket.~~Grand Prizes~~

1. Grand Prizes shall be paid, at the election of the ticket bearer by a single cash payment or in a series of annuity payments. The ticket bearer becomes entitled to the prize at the time the prize is validated as a winner. The election to take the cash payment or annuity payments may be made at the time the prize is validated or within 60 days after the ticket bearer becomes entitled to the prize. An election made after the ticket bearer becomes entitled to the prize is final and cannot be revoked, withdrawn or otherwise changed. If the ticket bearer does not make the election at the time the prize is validated and requests the 60-day election period, the Lottery will cancel the prize warrant that was generated during validation. The validation record will be kept secured and on file at the Lottery office until the ticket bearer makes an election. If the ticket bearer does not make the payment election within 60 days after validation, then the prize shall be paid as an annuity prize.

2. Shares of the Grand Prize shall be determined by dividing the cash available in the Grand Prize pool equally among all boards matching all five (5) of the first set plus one

(1) of the second set of drawn numbers. Winner(s) who elect a cash payment shall be paid their share(s) in a single cash payment. The annuitized option prize shall be determined by multiplying a winner's share of the Grand Prize pool by the MUSL annuity factor. Neither MUSL nor the party lotteries shall be responsible or liable for changes in the advertised or estimated annuity prize amount and the actual amount purchased after the prize payment method is actually known to MUSL. In certain instances announced by the Product Group, the Grand Prize shall be a guaranteed amount and shall be determined pursuant to Paragraph 14.A (8)(e) of this Rule 14.A. If individual shares of the cash held to fund an annuity are less than $250,000, the Product Group, in its sole discretion, may elect to pay the winners their share of the cash held in the Grand Prize pool.

3. All annuitized prizes shall be paid annually in thirty (30) graduated payments with the initial payment being made in cash, to be followed by twenty-nine (29) payments funded by the annuity.

4. Funds for the initial payment of an annuitized prize or the lump sum cash prize shall be made available by MUSL for payment by the Lottery no earlier than the fifteenth calendar day (or the next banking day if the fifteenth day is a holiday) following the drawing. If necessary, when the due date for the payment of a prize occurs before the receipt of funds in the prize pool trust sufficient to pay the prize, the transfer of funds for the payment of the full lump sum cash amount may be delayed pending receipt of funds from the party lotteries. The Lottery may elect to make the initial payment from its own funds after validation, with notice to MUSL.

5. The Grand Prize amount held by MUSL for subsequent payment to an annuity winner shall be transferred to the Lottery and the Lottery shall have payment to the annuity winner on the anniversary date, or if such date falls on a non-business day the first day following the anniversary date, of the selection of the jackpot winning numbers.

6. In the event of the death of a lottery winner during the annuity payment period, the "POWERBALL®" Product Group, in its sole discretion, upon the petition of the estate of the lottery winner (the "Estate") to the Lottery, and subject to federal, state, or district applicable laws, may accelerate the payment of all of the remaining lottery proceeds to the Estate. If the Product Group makes such a determination, then securities and/or cash held to fund the deceased lottery winner's annuitized prize may be distributed to the Estate. The identification of the securities to fund the annuitized prize shall be at the sole discretion of the Product Group.

~~b~~B. ~~Set Prizes~~

The Director's decision with respect to the validation and payment of set prizes, whether during a "POWERBALL®" game or any drawing related thereto, shall be final and binding upon all participants in the Lottery.

All set prizes (all prizes except the Grand Prize) shall be paid by the Lottery. The Lottery may begin paying set prizes after receiving authorization to pay from the MUSL central office.

~~c~~C. ~~Prizes Rounded~~

Annuitized payments of the Grand Prize or a share of the Grand Prize may be rounded to facilitate the purchase of an appropriate funding mechanism. Breakage on an annuitized Grand Prize win shall be added to the first cash payment to the winner or winners.

Set Prizes, which, under these rules, may become pari-mutuel prizes, may be rounded down so that prizes can be paid in multiples of whole dollars. Breakage resulting from rounding these prizes shall be carried forward to the prize pool for the next drawing.

~~d~~D. ~~Roll-over~~

If the Grand Prize is not won in a drawing, the prize money allocated for the Grand Prize shall rollover and be added to the Grand Prize pool for the following drawing.

~~e~~E. ~~Funding of Guaranteed Prizes~~

The "POWERBALL®" Product Group may offer guaranteed minimum Grand Prize amounts or minimum increases in the Grand Prize amount between drawings or make other changes in the allocation of prize money where the "POWERBALL®" Product Group finds that it would be in the best interest of the game. If a minimum Grand Prize amount or a minimum increase in the Grand Prize amount between drawings is offered by the "POWERBALL®" Product Group, then the Grand Prize shares shall be determined as follows:

~~———~~1. ~~———~~If there are multiple Grand Prize winners during a single drawing, each selecting the annuitized option prize, then a winner's share of the guaranteed annuitized Grand Prize shall be determined by dividing the guaranteed annuitized Grand Prize by the number of winners.

~~———~~2. ~~———~~If there are multiple Grand Prize winners during a single drawing and at least one of the Grand Prize winners has elected the annuitized option prize, then the best bid submitted by MUSL's pre-approved qualified brokers shall determine the cash pool needed to fund the guaranteed annuitized Grand Prize.

~~———~~3. ~~———~~If no winner of the Grand Prize during a single drawing has elected the annuitized option prize, then the amount of cash in the Grand Prize pool shall be an amount equal to the guaranteed annuitized amount divided by the average annuity factor of the most recent three best quotes provided by MUSL's pre-approved qualified brokers submitting quotes.

~~———~~4. ~~———~~In no case shall quotes be used which are more than two weeks old and if less than three quotes are submitted, then MUSL shall use the average of all quotes submitted. Changes in the allocation of prize money shall be designed to retain approximately the same prize allocation percentages, over a year's time, set out in these rules.

14.A.9 Prize Accounts

~~a~~A. ~~Prize Funds Transferred to MUSL~~

The Lottery shall transfer to the MUSL in trust an amount as determined to be its total proportionate share of the prize account less actual set prize liability. If this results in a negative amount, the MUSL central office shall transfer funds to the Lottery.

~~b~~B. ~~Grand Prize Funds Transferred to Lottery~~

Grand Prize amounts held by MUSL shall be transferred to the Lottery immediately after the Lottery validates the Grand Prize claim and after MUSL has collected the prize pool shares from all member lotteries.

~~c~~C. ~~Unclaimed Grand Prizes~~

All funds to pay a grand prize that go unclaimed shall be returned to the Lottery by MUSL in proportion to sales by the Lottery for the grand prize in question after the claiming period set by the Lottery selling the winning ticket expires.

14.A.10 Funds Transfer

~~a~~A. ~~Draw Receivables from Member Lotteries~~

Funds shall be collected by MUSL from each Party Lottery weekly by wire transfer or other means acceptable to the POWERBALL® Product Group. The POWERBALL® Product Group shall determine collection days. The amount to be transferred shall be calculated in accordance with game rules. The draw reports determine whether the member lotteries owe funds to MUSL or MUSL needs to transfer money to the member lotteries. Each Party Lottery shall transfer to MUSL an amount as determined by MUSL and the Product Group to be its total proportionate share of the prize account less actual set prize liability. If this results in a negative amount, the MUSL central office shall transfer funds to the Party Lottery.

~~b~~B. ~~Initial Grand Prize Funds Transferred to Lottery~~

The Grand Prize amount held by MUSL shall be transferred to the Lottery after the Lottery validates the Grand Prize claim and after MUSL has collected the prize pool shares from all member lotteries.

~~c~~C. ~~Subsequent Grand Prize Payments from MUSL to Member Lotteries.~~

The Grand Prize amount held by MUSL for subsequent payment to annuity winners shall be transferred to the Lottery within seven days pr~~e~~e~~c~~e~~c~~eeding the anniversary date of the selection of the jackpot winning numbers. The Lottery will then make payment to the annuity winner.

14.A.11 Drawings

~~a~~A. The "POWERBALL®" drawings shall be held twice each week on Wednesday and Saturday evenings, except that the drawing schedule may be changed by the MUSL Board. In the event of and act of Force Majeure the drawing shall be rescheduled at the discretion of the MUSL Board.

~~b~~B. Each drawing shall determine, at random, six winning numbers in accordance with drawing guidelines. The Lottery Commission shall review and approve drawing guidelines. Any numbers drawn are not declared winning numbers until the drawing is certified by MUSL in accordance with the "POWERBALL®" drawing guidelines. The winning numbers shall be used in determining all "POWERBALL®" winners for that drawing. If a drawing is not certified, another drawing will be conducted to determine actual winners.

~~c~~C. Each drawing shall be witnessed by an auditor as required in C.R.S. 24-35-208 (2)(d). All drawing equipment used shall be examined by the auditor immediately prior to, but no sooner than thirty (30) minutes before, a drawing and immediately after, but no later than thirty (30) minutes following the drawing. All drawings, inspections and tests shall be recorded on videotape.

~~d~~D. The drawing shall not be invalidated due to the numbers drawn creating an excessive prize liability for the Lottery.~~The drawing shall not be invalidated based on the liability of the Lottery.~~

~~e~~E. The drawing procedures shall provide that a minimum of fifty-nine (59) minutes elapse between the close of the game ticket sales and the time of the drawing for those tickets sold. All drawings shall be open to the public.

14.A.12 Advance Play

Advance play provides the opportunity to purchase "POWERBALL®" tickets for more than one drawing. Advance play tickets shall be available for purchase in variable increments. The Advance Play feature shall be available at the discretion of the Lottery Director.

14.A.13 MUSL Accounting and Finance

~~a~~A. ~~Prize Reserve and Set Prize Reserve contributions from member lotteries~~

At the time a Lottery joins the "POWERBALL®" Product Group, MUSL revises the existing budget and assesses the Lottery for the additional costs. Each July, thereafter, MUSL sets the budget for the impending year and assesses each Lottery their proportionate share. The Lottery receives a copy of these costs and an election form.

~~b~~B. Each September and March, MUSL re-evaluates the amounts that each Lottery must contribute to any Prize Reserves. Any additional contributions to the Prize Reserves are funded by reducing the contribution from sales to the Grand Prize by up to 2% as referred to in14.A.7.

~~c~~C. ~~Draw receivables from member lotteries~~

The draw reports determine whether the Lottery owes and needs to transfer funds to MUSL, or MUSL owes and needs to transfer funds to the Lottery. (The procedures and corresponding time lines documenting the timely and effective transfer of funds between the Lottery and MUSL can be found in the Lottery's financial procedures.) Three different transfers are made on a continual basis:

1. Draw receivables transferred from the Lottery to MUSL,

2. Set prize payments and initial Grand Prize payments transferred from MUSL to the Lottery, and

3. Subsequent Grand Prize annuity payments from MUSL to the Lottery.

14.A.14 Jackpot Game Licensee Commission, Cashing Bonus, Selling Bonus, and Marketing Performance Bonus

~~a~~A. In addition to the Six Percent (6%) Commission set forth in Rule 14.19, retailers can earn a Cashing Bonus, Selling Bonus and Marketing Performance Bonus.

1. Each retailer will receive a cashing bonus of one percent (1%) of each prize paid by the licensee up to and including $599.

2. In order to receive a Selling Bonus, the following criteria must be met:

~~i~~a. A licensee must have sold a grand-prize~~-winning, 5 of 5 with Power Play or a 5 of 5 without Power Play~~ or second-prize winning~~,~~ multi-state Jackpot game ticket for a drawing for which the announced jackpot prize is at least forty million dollars ($40,000,000) or more;

~~ii~~b. Payment of the jackpot-selling bonus will occur once Lottery security has confirmed the selling licensee.

~~iii~~c. A licensee must be selling multi-state Jackpot Game tickets up to and including the day that the ticket is validated by the Lottery and must be the same licensed licensee who sold the winning ticket.

~~iv~~d. The Director or designee shall determine the amount of the jackpot-selling bonus for each qualified-prize-winning ticket sold.

3. In order to receive a five-tenths of one percent (.5%) Marketing Performance Bonus the following criteria must be met:

~~i~~a. A licensee must be licensed on the date the marketing performance bonus is declared;

~~ii~~b. A licensee must sell ~~Scratch tickets~~Lottery products up to and including on the final sales day in which the marketing performance bonus is declared;

~~iii~~c. A licensee must meet or exceed the requirements of the marketing performance bonus plan for the period for which the marketing performance bonus is declared.

~~b~~B. In the event there is a residual resulting from the accrual of the one percent (1%) cashing bonus (14.A.14.A~~(14)(a)(.1)~~) and/or the five-tenths of one percent (.5%) marketing bonus (14.A~~(14)(a)(2)~~.14.A.3) have been expensed, the Lottery Director may provide additional compensation to licensees as described in 14.A~~(~~.14~~)(a)(~~.A.2~~)~~ or may revert the excess amount thereby decreasing the bonus expense.

Notice of Proposed Rulemaking

Tracking number

2015-00198

Department

400 - Department of Natural Resources

Agency

405 - Colorado Parks and Wildlife (405 Series, Parks)

CCR number

2 CCR 405-1

Rule title

CHAPTER P-1 - PARKS AND OUTDOOR RECREATION LANDS

Rulemaking Hearing

Date

05/05/2015

Time

08:00 AM

Location

Clairon Inn, 755 Horizon Drive, Grand Junction 81506

Subjects and issues involved

CHAPTER P-1 - PARKS AND OUTDOOR RECREATION LANDS

Statutory authority

see attached

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March 31, 2015

RULE-MAKING NOTICE
PARKS AND WILDLIFE COMMISSION MEETING
May 5-6, 2015

In accordance with the State Administrative Procedure Act, section 24-4-103, C.R.S., the Parks and Wildlife Commission gives notice that regulations will be considered for adoption at their next meeting on **May 5-6, 2015. The Parks and Wildlife Commission meeting will be held at the Clairon Inn, 755 Horizon Drive, Grand Junction 81506. The following regulatory subjects and issues shall be considered** pursuant to the Commission's authority in sections 33-1-104, 33-1-106, 33-1-107, 33-1-108, 33-1-121, 33-2-104, 33-2-105, 33-2-106, 33-3-104, 33-4-101, 33-4-102 and 33-5.5-102, 33-6-107, 33-6-109, 33-6-112, 33-6-113, 33-6-114, 33-6-114.5, 33-6-117, 33-6-119, 33-6-121, 33-6-124, 33-6-125, 33-6-127, 33-6-128, 33-6-130, 33-6-205, 33-6-206, 33-6-207, 33-6-208, 33-6-209, C.R.S., and in sections 33-10-101 to 33-33-113, C.R.S. (the "Parks Act"), and especially sections 33-10-106, 33-10-107, 33-10.5-107, 33-11-109, 33-12-101, 33-12-103, 33-12-103.5, 33-12-106, 33-12.5-103, 33-13-103, 33-13-104, 33-13-106, 33-13-109, 33-13-110, 33-13-111, 33-14-107, 33-14.5-107, 33-32-103 and 33-33-105. C.R.S.

FINAL REGULATORY ADOPTION - **May 5-6, 2015** beginning **at 8:00 a.m.**

EFFECTIVE DATE OF REGULATIONS approved during the May 2015 Parks and Wildlife Commission meeting: July 1, 2015, unless otherwise noted.

WILDLIFE REGULATIONS

FINAL REGULATIONS

Chapter W-2 - "Big Game" 2 CCR 406-2 and those related provisions of Chapter W-0 - ("General Provisions" 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-2

Open for consideration of regulations including but not limited to, the following:

- Adoption of all limited license numbers for black bear, deer, elk, pronghorn and moose for all Game Management Units in the state that have limited licenses for these species for the 2015 big game seasons, and other related regulatory changes to Chapter W-0 necessary to accommodate changes to and ensure consistency with Chapter W-2.
- Correction of administrative errors or omissions discovered since the adoption of 2015 big game season regulations by the Commission at its January and March meetings including, but not limited to, clean-up of obsolete provisions and corrections with regard to the establishment of limited or unlimited seasons, season dates, bag and possession limits and manner of take provisions, all of which are otherwise necessary to ensure appropriate management of big game species and maximization of wildlife-related recreational opportunity for the general public, and to otherwise conform to and give effect to the intent of the Commission's prior actions.

ISSUES IDENTIFICATION:

Chapter W-0 - "General Provisions" 2 CCR 406-0

Open for consideration of regulations including but not limited to, the following:

- Allowing terrestrial invasive species to be released into the wild for bona fide scientific research purposes only.

Chapter W-2 - "Big Game" 2 CCR 406-2 and those related provisions of Chapter W-0 - ("General Provisions" 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-2

Open for consideration of regulations including but not limited to, the following:

- Establishment of a program to provide public hunting access to Rocky Mountain bighorn sheep on private land.

Chapter W-3 - "Furbearers and Small Game, Except Migratory Birds" 2 CCR 406-3, and those related provisions of Chapter W-9 ("Wildlife Properties" - 2 CCR 406-9) and Chapter W-10 ("Nongame Wildlife" – 2 CCR 406- 10) necessary to accommodate changes to or ensure consistency with Chapter W-3

Open for consideration of annual changes to game bird seasons, excluding turkey, and other small game seasons and related provisions, including season dates, bag and possession limits and manner of take provisions, and other related regulatory changes to Chapter W-9 and Chapter W-10 necessary to accommodate changes to or to ensure consistency with Chapter W-3 including but not limited to the following:

- Extending the chukar hunting closure in GMUs 9, 19, and 191 for 2015.
- Removal of the porcupine from Chapter W-3, adding it to Regulation No. W-1000(A)(5).

Chapter W-5 - "Small Game and Migratory Game Birds" 2 CCR 406-5, and those related provisions of Chapter W-9 ("Wildlife Properties" - 2 CCR 406-9) and Chapter P-1 ("Parks and Outdoor Recreation Lands"- 2 CCR 405-1) necessary to accommodate changes to or ensure consistency with Chapter W-5

Open for consideration of annual changes to waterfowl and migratory bird hunting seasons and related provisions, including season dates, bag and possession limits and manner of take provisions, and other related regulatory changes to Chapter W-9 and P-1 necessary to accommodate changes to or to ensure consistency with Chapter W-5 including but not limited to, the following:

- Opening Barr Lake State Park to dove hunting using the reservation system on Sundays and Mondays during the month of September.
- Opening Highline Lake State Park to youth waterfowl hunting during the youth only season weekend.
- Breaking the Pacific Flyway into two hunting zones starting in the 2016-17 regular waterfowl season.
- Adding additional days to the Central Flyway dark goose season.
- Adjusting the American crow hunting season dates.
- Establishing a new 2016 permit for hunting band-tailed pigeons.

Except for the time indicated for when the meeting is scheduled to begin, the order indicated for each agenda item is approximate and subject to change when necessary to accommodate the Commission's schedule.

Viewing of Proposed Rules: copies of the proposed rules (together with a proposed statement of basis and purpose and specific statutory authority), will be available for inspection and distribution at the Office of the Regulations Manager, Division of Parks and Wildlife, 1313 Sherman St., Denver, Colorado, at least five (5) days prior to the date of hearing. Such copies, however, are only proposals to be submitted to the Commission by the Division of Parks and Wildlife.

Modification of Proposed Rules prior to adoption: subject to the provisions of Section 24-4-103, C.R.S., modification of these proposals may be made by the Division of Parks and Wildlife or the Commission before the Commission promulgates final rules and regulations on the above topics.

Comment deadlines: Comments will be accepted at any time prior to, or as part of the meeting. However, to ensure sufficient time for consideration prior to the meeting, **comments should be provided to the Division of Parks and Wildlife by noon on the following date:**

April 21, 2015, for mailing by the Division of Parks and Wildlife to the Parks and Wildlife Commission on **April 22, 2015.**

Comments received by the Division after noon on **April 21, 2015,** will be provided to the Commission on the day of the meeting.

Opportunity to submit alternate proposals and provide comment: the Commission will afford all interested persons an opportunity to submit alternate proposals, written data, views or arguments and to present them orally at the meeting unless it deems such oral presentation unnecessary. Written alternate proposals, data, views or arguments and other written statements should be submitted to the Division of Parks and Wildlife at 1313 Sherman St., Denver, CO 80203; or e-mailed to **dnr_cpwcommission@state.co.us**.

Use of Consent Agenda:
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Regulatory Matters on the Consent Agenda are noticed for hearing at the same time and in the same manner as other Consent Agenda items. If a member of the Commission requests further consideration of an item on the Consent Agenda, that item will be withdrawn from the Consent Agenda and discussed at the end of the meeting or at the next meeting. The Consent Agenda may be voted on without the necessity of reading individual items. Any Commission member may request clarification from the Director of any matter on the Consent Agenda.

OTHER AGENDA ITEMS: The Parks and Wildlife Commission may consider and make policy, program implementation, and other non-regulatory decisions, which may be of public interest at this meeting. A copy of the complete meeting agenda may be viewed on the Division of Parks and Wildlife's internet home page at **http://cpw.state.co.us**, on or after **April 24, 2015**.

Notice of Proposed Rulemaking

Tracking number

2015-00194

Department

400 - Department of Natural Resources

Agency

406 - Colorado Parks and Wildlife (406 Series, Wildlife)

CCR number

2 CCR 406-0

Rule title

CHAPTER W-0 - GENERAL PROVISIONS

Rulemaking Hearing

Date

05/05/2015

Time

08:00 AM

Location

Clairon Inn, 755 Horizon Drive, Grand Junction 81506

Subjects and issues involved

CHAPTER W-0 - GENERAL PROVISIONS - see attached

Statutory authority

see attached

Contact information

Name

Danielle Isenhart

Title

Regulations Manager

Telephone

303-866-3203 x 4625

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danielle.isenhart@state.co.us

March 31, 2015

RULE-MAKING NOTICE
PARKS AND WILDLIFE COMMISSION MEETING
May 5-6, 2015

In accordance with the State Administrative Procedure Act, section 24-4-103, C.R.S., the Parks and Wildlife Commission gives notice that regulations will be considered for adoption at their next meeting on **May 5-6, 2015. The Parks and Wildlife Commission meeting will be held at the Clairon Inn, 755 Horizon Drive, Grand Junction 81506. The following regulatory subjects and issues shall be considered** pursuant to the Commission's authority in sections 33-1-104, 33-1-106, 33-1-107, 33-1-108, 33-1-121, 33-2-104, 33-2-105, 33-2-106, 33-3-104, 33-4-101, 33-4-102 and 33-5.5-102, 33-6-107, 33-6-109, 33-6-112, 33-6-113, 33-6-114, 33-6-114.5, 33-6-117, 33-6-119, 33-6-121, 33-6-124, 33-6-125, 33-6-127, 33-6-128, 33-6-130, 33-6-205, 33-6-206, 33-6-207, 33-6-208, 33-6-209, C.R.S., and in sections 33-10-101 to 33-33-113, C.R.S. (the "Parks Act"), and especially sections 33-10-106, 33-10-107, 33-10.5-107, 33-11-109, 33-12-101, 33-12-103, 33-12-103.5, 33-12-106, 33-12.5-103, 33-13-103, 33-13-104, 33-13-106, 33-13-109, 33-13-110, 33-13-111, 33-14-107, 33-14.5-107, 33-32-103 and 33-33-105. C.R.S.

FINAL REGULATORY ADOPTION - **May 5-6, 2015** beginning **at 8:00 a.m.**

EFFECTIVE DATE OF REGULATIONS approved during the May 2015 Parks and Wildlife Commission meeting: July 1, 2015, unless otherwise noted.

WILDLIFE REGULATIONS

FINAL REGULATIONS

Chapter W-2 - "Big Game" 2 CCR 406-2 and those related provisions of Chapter W-0 - ("General Provisions" 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-2

Open for consideration of regulations including but not limited to, the following:

- Adoption of all limited license numbers for black bear, deer, elk, pronghorn and moose for all Game Management Units in the state that have limited licenses for these species for the 2015 big game seasons, and other related regulatory changes to Chapter W-0 necessary to accommodate changes to and ensure consistency with Chapter W-2.
- Correction of administrative errors or omissions discovered since the adoption of 2015 big game season regulations by the Commission at its January and March meetings including, but not limited to, clean-up of obsolete provisions and corrections with regard to the establishment of limited or unlimited seasons, season dates, bag and possession limits and manner of take provisions, all of which are otherwise necessary to ensure appropriate management of big game species and maximization of wildlife-related recreational opportunity for the general public, and to otherwise conform to and give effect to the intent of the Commission's prior actions.

ISSUES IDENTIFICATION:

Chapter W-0 - "General Provisions" 2 CCR 406-0

Open for consideration of regulations including but not limited to, the following:

- Allowing terrestrial invasive species to be released into the wild for bona fide scientific research purposes only.

Chapter W-2 - "Big Game" 2 CCR 406-2 and those related provisions of Chapter W-0 - ("General Provisions" 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-2

Open for consideration of regulations including but not limited to, the following:

- Establishment of a program to provide public hunting access to Rocky Mountain bighorn sheep on private land.

Chapter W-3 - "Furbearers and Small Game, Except Migratory Birds" 2 CCR 406-3, and those related provisions of Chapter W-9 ("Wildlife Properties" - 2 CCR 406-9) and Chapter W-10 ("Nongame Wildlife" – 2 CCR 406- 10) necessary to accommodate changes to or ensure consistency with Chapter W-3

Open for consideration of annual changes to game bird seasons, excluding turkey, and other small game seasons and related provisions, including season dates, bag and possession limits and manner of take provisions, and other related regulatory changes to Chapter W-9 and Chapter W-10 necessary to accommodate changes to or to ensure consistency with Chapter W-3 including but not limited to the following:

- Extending the chukar hunting closure in GMUs 9, 19, and 191 for 2015.
- Removal of the porcupine from Chapter W-3, adding it to Regulation No. W-1000(A)(5).

Chapter W-5 - "Small Game and Migratory Game Birds" 2 CCR 406-5, and those related provisions of Chapter W-9 ("Wildlife Properties" - 2 CCR 406-9) and Chapter P-1 ("Parks and Outdoor Recreation Lands"- 2 CCR 405-1) necessary to accommodate changes to or ensure consistency with Chapter W-5

Open for consideration of annual changes to waterfowl and migratory bird hunting seasons and related provisions, including season dates, bag and possession limits and manner of take provisions, and other related regulatory changes to Chapter W-9 and P-1 necessary to accommodate changes to or to ensure consistency with Chapter W-5 including but not limited to, the following:

- Opening Barr Lake State Park to dove hunting using the reservation system on Sundays and Mondays during the month of September.
- Opening Highline Lake State Park to youth waterfowl hunting during the youth only season weekend.
- Breaking the Pacific Flyway into two hunting zones starting in the 2016-17 regular waterfowl season.
- Adding additional days to the Central Flyway dark goose season.
- Adjusting the American crow hunting season dates.
- Establishing a new 2016 permit for hunting band-tailed pigeons.

Except for the time indicated for when the meeting is scheduled to begin, the order indicated for each agenda item is approximate and subject to change when necessary to accommodate the Commission's schedule.

Viewing of Proposed Rules: copies of the proposed rules (together with a proposed statement of basis and purpose and specific statutory authority), will be available for inspection and distribution at the Office of the Regulations Manager, Division of Parks and Wildlife, 1313 Sherman St., Denver, Colorado, at least five (5) days prior to the date of hearing. Such copies, however, are only proposals to be submitted to the Commission by the Division of Parks and Wildlife.

Modification of Proposed Rules prior to adoption: subject to the provisions of Section 24-4-103, C.R.S., modification of these proposals may be made by the Division of Parks and Wildlife or the Commission before the Commission promulgates final rules and regulations on the above topics.

Comment deadlines: Comments will be accepted at any time prior to, or as part of the meeting. However, to ensure sufficient time for consideration prior to the meeting, **comments should be provided to the Division of Parks and Wildlife by noon on the following date:**

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Opportunity to submit alternate proposals and provide comment: the Commission will afford all interested persons an opportunity to submit alternate proposals, written data, views or arguments and to present them orally at the meeting unless it deems such oral presentation unnecessary. Written alternate proposals, data, views or arguments and other written statements should be submitted to the Division of Parks and Wildlife at 1313 Sherman St., Denver, CO 80203; or e-mailed to **dnr_cpwcommission@state.co.us**.

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OTHER AGENDA ITEMS: The Parks and Wildlife Commission may consider and make policy, program implementation, and other non-regulatory decisions, which may be of public interest at this meeting. A copy of the complete meeting agenda may be viewed on the Division of Parks and Wildlife's internet home page at **http://cpw.state.co.us**, on or after **April 24, 2015**.

Notice of Proposed Rulemaking

Tracking number

2015-00195

Department

400 - Department of Natural Resources

Agency

406 - Colorado Parks and Wildlife (406 Series, Wildlife)

CCR number

2 CCR 406-1

Rule title

CHAPTER W-1 - FISHING

Rulemaking Hearing

Date

04/30/2015

Time

09:00 AM

Location

Clairon Inn, 755 Horizon Drive, Grand Junction 81506

Subjects and issues involved

CHAPTER W-1 - FISHING - See Attached

Statutory authority

see attached

Contact information

Name

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Title

Regulations Manager

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danielle.isenhart@state.co.us

Notice of Proposed Rulemaking

Tracking number

2015-00196

Department

400 - Department of Natural Resources

Agency

406 - Colorado Parks and Wildlife (406 Series, Wildlife)

CCR number

2 CCR 406-2

Rule title

CHAPTER W-2 - BIG GAME

Rulemaking Hearing

Date

05/05/2015

Time

08:00 AM

Location

Clairon Inn, 755 Horizon Drive, Grand Junction 81506

Subjects and issues involved

CHAPTER W-2 - BIG GAME - See Attachment

Statutory authority

see attached

Contact information

Name

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Title

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danielle.isenhart@state.co.us

Notice of Proposed Rulemaking

Tracking number

2015-00197

Department

400 - Department of Natural Resources

Agency

406 - Colorado Parks and Wildlife (406 Series, Wildlife)

CCR number

2 CCR 406-3

Rule title

CHAPTER W-3 - FURBEARERS AND SMALL GAME EXCEPT MIGRATORY BIRDS

Rulemaking Hearing

Date

05/05/2015

Time

08:00 AM

Location

Clairon Inn, 755 Horizon Drive, Grand Junction 81506

Subjects and issues involved

CHAPTER W-3 - FURBEARERS AND SMALL GAME EXCEPT MIGRATORY BIRDS - See Attached

Statutory authority

see attached

Contact information

Name

Danielle Isenhart

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danielle.isenhart@state.co.us

March 31, 2015

RULE-MAKING NOTICE
PARKS AND WILDLIFE COMMISSION MEETING
May 5-6, 2015

In accordance with the State Administrative Procedure Act, section 24-4-103, C.R.S., the Parks and Wildlife Commission gives notice that regulations will be considered for adoption at their next meeting on **May 5-6, 2015. The Parks and Wildlife Commission meeting will be held at the Clairon Inn, 755 Horizon Drive, Grand Junction 81506. The following regulatory subjects and issues shall be considered** pursuant to the Commission's authority in sections 33-1-104, 33-1-106, 33-1-107, 33-1-108, 33-1-121, 33-2-104, 33-2-105, 33-2-106, 33-3-104, 33-4-101, 33-4-102 and 33-5.5-102, 33-6-107, 33-6-109, 33-6-112, 33-6-113, 33-6-114, 33-6-114.5, 33-6-117, 33-6-119, 33-6-121, 33-6-124, 33-6-125, 33-6-127, 33-6-128, 33-6-130, 33-6-205, 33-6-206, 33-6-207, 33-6-208, 33-6-209, C.R.S., and in sections 33-10-101 to 33-33-113, C.R.S. (the "Parks Act"), and especially sections 33-10-106, 33-10-107, 33-10.5-107, 33-11-109, 33-12-101, 33-12-103, 33-12-103.5, 33-12-106, 33-12.5-103, 33-13-103, 33-13-104, 33-13-106, 33-13-109, 33-13-110, 33-13-111, 33-14-107, 33-14.5-107, 33-32-103 and 33-33-105. C.R.S.

FINAL REGULATORY ADOPTION - **May 5-6, 2015** beginning **at 8:00 a.m.**

EFFECTIVE DATE OF REGULATIONS approved during the May 2015 Parks and Wildlife Commission meeting: July 1, 2015, unless otherwise noted.

WILDLIFE REGULATIONS

FINAL REGULATIONS

Chapter W-2 - "Big Game" 2 CCR 406-2 and those related provisions of Chapter W-0 - ("General Provisions" 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-2

Open for consideration of regulations including but not limited to, the following:

- Adoption of all limited license numbers for black bear, deer, elk, pronghorn and moose for all Game Management Units in the state that have limited licenses for these species for the 2015 big game seasons, and other related regulatory changes to Chapter W-0 necessary to accommodate changes to and ensure consistency with Chapter W-2.
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ISSUES IDENTIFICATION:

Chapter W-0 - "General Provisions" 2 CCR 406-0

Open for consideration of regulations including but not limited to, the following:

- Allowing terrestrial invasive species to be released into the wild for bona fide scientific research purposes only.

Chapter W-2 - "Big Game" 2 CCR 406-2 and those related provisions of Chapter W-0 - ("General Provisions" 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-2

Open for consideration of regulations including but not limited to, the following:

- Establishment of a program to provide public hunting access to Rocky Mountain bighorn sheep on private land.

Chapter W-3 - "Furbearers and Small Game, Except Migratory Birds" 2 CCR 406-3, and those related provisions of Chapter W-9 ("Wildlife Properties" - 2 CCR 406-9) and Chapter W-10 ("Nongame Wildlife" – 2 CCR 406- 10) necessary to accommodate changes to or ensure consistency with Chapter W-3

Open for consideration of annual changes to game bird seasons, excluding turkey, and other small game seasons and related provisions, including season dates, bag and possession limits and manner of take provisions, and other related regulatory changes to Chapter W-9 and Chapter W-10 necessary to accommodate changes to or to ensure consistency with Chapter W-3 including but not limited to the following:

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Chapter W-5 - "Small Game and Migratory Game Birds" 2 CCR 406-5, and those related provisions of Chapter W-9 ("Wildlife Properties" - 2 CCR 406-9) and Chapter P-1 ("Parks and Outdoor Recreation Lands"- 2 CCR 405-1) necessary to accommodate changes to or ensure consistency with Chapter W-5

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Notice of Proposed Rulemaking

Tracking number

2015-00201

Department

400 - Department of Natural Resources

Agency

406 - Colorado Parks and Wildlife (406 Series, Wildlife)

CCR number

2 CCR 406-5

Rule title

CHAPTER W-5 - MIGRATORY BIRDS

Rulemaking Hearing

Date

05/05/2015

Time

08:00 AM

Location

Clairon Inn, 755 Horizon Drive, Grand Junction 81506

Subjects and issues involved

CHAPTER W-5 - MIGRATORY BIRDS - See Attached

Statutory authority

see attached

Contact information

Name

Danielle Isenhart

Title

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danielle.isenhart@state.co.us

March 31, 2015

RULE-MAKING NOTICE
PARKS AND WILDLIFE COMMISSION MEETING
May 5-6, 2015

In accordance with the State Administrative Procedure Act, section 24-4-103, C.R.S., the Parks and Wildlife Commission gives notice that regulations will be considered for adoption at their next meeting on **May 5-6, 2015. The Parks and Wildlife Commission meeting will be held at the Clairon Inn, 755 Horizon Drive, Grand Junction 81506. The following regulatory subjects and issues shall be considered** pursuant to the Commission's authority in sections 33-1-104, 33-1-106, 33-1-107, 33-1-108, 33-1-121, 33-2-104, 33-2-105, 33-2-106, 33-3-104, 33-4-101, 33-4-102 and 33-5.5-102, 33-6-107, 33-6-109, 33-6-112, 33-6-113, 33-6-114, 33-6-114.5, 33-6-117, 33-6-119, 33-6-121, 33-6-124, 33-6-125, 33-6-127, 33-6-128, 33-6-130, 33-6-205, 33-6-206, 33-6-207, 33-6-208, 33-6-209, C.R.S., and in sections 33-10-101 to 33-33-113, C.R.S. (the "Parks Act"), and especially sections 33-10-106, 33-10-107, 33-10.5-107, 33-11-109, 33-12-101, 33-12-103, 33-12-103.5, 33-12-106, 33-12.5-103, 33-13-103, 33-13-104, 33-13-106, 33-13-109, 33-13-110, 33-13-111, 33-14-107, 33-14.5-107, 33-32-103 and 33-33-105. C.R.S.

FINAL REGULATORY ADOPTION - **May 5-6, 2015** beginning **at 8:00 a.m.**

EFFECTIVE DATE OF REGULATIONS approved during the May 2015 Parks and Wildlife Commission meeting: July 1, 2015, unless otherwise noted.

WILDLIFE REGULATIONS

FINAL REGULATIONS

Chapter W-2 - "Big Game" 2 CCR 406-2 and those related provisions of Chapter W-0 - ("General Provisions" 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-2

Open for consideration of regulations including but not limited to, the following:

- Adoption of all limited license numbers for black bear, deer, elk, pronghorn and moose for all Game Management Units in the state that have limited licenses for these species for the 2015 big game seasons, and other related regulatory changes to Chapter W-0 necessary to accommodate changes to and ensure consistency with Chapter W-2.
- Correction of administrative errors or omissions discovered since the adoption of 2015 big game season regulations by the Commission at its January and March meetings including, but not limited to, clean-up of obsolete provisions and corrections with regard to the establishment of limited or unlimited seasons, season dates, bag and possession limits and manner of take provisions, all of which are otherwise necessary to ensure appropriate management of big game species and maximization of wildlife-related recreational opportunity for the general public, and to otherwise conform to and give effect to the intent of the Commission's prior actions.

ISSUES IDENTIFICATION:

Chapter W-0 - "General Provisions" 2 CCR 406-0

Open for consideration of regulations including but not limited to, the following:

- Allowing terrestrial invasive species to be released into the wild for bona fide scientific research purposes only.

Chapter W-2 - "Big Game" 2 CCR 406-2 and those related provisions of Chapter W-0 - ("General Provisions" 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-2

Open for consideration of regulations including but not limited to, the following:

- Establishment of a program to provide public hunting access to Rocky Mountain bighorn sheep on private land.

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Chapter W-5 - "Small Game and Migratory Game Birds" 2 CCR 406-5, and those related provisions of Chapter W-9 ("Wildlife Properties" - 2 CCR 406-9) and Chapter P-1 ("Parks and Outdoor Recreation Lands"- 2 CCR 405-1) necessary to accommodate changes to or ensure consistency with Chapter W-5

Open for consideration of annual changes to waterfowl and migratory bird hunting seasons and related provisions, including season dates, bag and possession limits and manner of take provisions, and other related regulatory changes to Chapter W-9 and P-1 necessary to accommodate changes to or to ensure consistency with Chapter W-5 including but not limited to, the following:

- Opening Barr Lake State Park to dove hunting using the reservation system on Sundays and Mondays during the month of September.
- Opening Highline Lake State Park to youth waterfowl hunting during the youth only season weekend.
- Breaking the Pacific Flyway into two hunting zones starting in the 2016-17 regular waterfowl season.
- Adding additional days to the Central Flyway dark goose season.
- Adjusting the American crow hunting season dates.
- Establishing a new 2016 permit for hunting band-tailed pigeons.

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Viewing of Proposed Rules: copies of the proposed rules (together with a proposed statement of basis and purpose and specific statutory authority), will be available for inspection and distribution at the Office of the Regulations Manager, Division of Parks and Wildlife, 1313 Sherman St., Denver, Colorado, at least five (5) days prior to the date of hearing. Such copies, however, are only proposals to be submitted to the Commission by the Division of Parks and Wildlife.

Modification of Proposed Rules prior to adoption: subject to the provisions of Section 24-4-103, C.R.S., modification of these proposals may be made by the Division of Parks and Wildlife or the Commission before the Commission promulgates final rules and regulations on the above topics.

Comment deadlines: Comments will be accepted at any time prior to, or as part of the meeting. However, to ensure sufficient time for consideration prior to the meeting, **comments should be provided to the Division of Parks and Wildlife by noon on the following date:**

April 21, 2015, for mailing by the Division of Parks and Wildlife to the Parks and Wildlife Commission on **April 22, 2015.**

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Use of Consent Agenda:
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OTHER AGENDA ITEMS: The Parks and Wildlife Commission may consider and make policy, program implementation, and other non-regulatory decisions, which may be of public interest at this meeting. A copy of the complete meeting agenda may be viewed on the Division of Parks and Wildlife's internet home page at **http://cpw.state.co.us**, on or after **April 24, 2015**.

Notice of Proposed Rulemaking

Tracking number

2015-00200

Department

400 - Department of Natural Resources

Agency

406 - Colorado Parks and Wildlife (406 Series, Wildlife)

CCR number

2 CCR 406-9

Rule title

CHAPTER W-9 - WILDLIFE PROPERTIES

Rulemaking Hearing

Date

05/05/2015

Time

08:00 AM

Location

Clairon Inn, 755 Horizon Drive, Grand Junction 81506

Subjects and issues involved

CHAPTER W-9 - WILDLIFE PROPERTIES - See Attached

Statutory authority

see attached

Contact information

Name

Danielle Isenhart

Title

Regulations Manager

Telephone

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danielle.isenhart@state.co.us

March 31, 2015

RULE-MAKING NOTICE
PARKS AND WILDLIFE COMMISSION MEETING
May 5-6, 2015

In accordance with the State Administrative Procedure Act, section 24-4-103, C.R.S., the Parks and Wildlife Commission gives notice that regulations will be considered for adoption at their next meeting on **May 5-6, 2015. The Parks and Wildlife Commission meeting will be held at the Clairon Inn, 755 Horizon Drive, Grand Junction 81506. The following regulatory subjects and issues shall be considered** pursuant to the Commission's authority in sections 33-1-104, 33-1-106, 33-1-107, 33-1-108, 33-1-121, 33-2-104, 33-2-105, 33-2-106, 33-3-104, 33-4-101, 33-4-102 and 33-5.5-102, 33-6-107, 33-6-109, 33-6-112, 33-6-113, 33-6-114, 33-6-114.5, 33-6-117, 33-6-119, 33-6-121, 33-6-124, 33-6-125, 33-6-127, 33-6-128, 33-6-130, 33-6-205, 33-6-206, 33-6-207, 33-6-208, 33-6-209, C.R.S., and in sections 33-10-101 to 33-33-113, C.R.S. (the "Parks Act"), and especially sections 33-10-106, 33-10-107, 33-10.5-107, 33-11-109, 33-12-101, 33-12-103, 33-12-103.5, 33-12-106, 33-12.5-103, 33-13-103, 33-13-104, 33-13-106, 33-13-109, 33-13-110, 33-13-111, 33-14-107, 33-14.5-107, 33-32-103 and 33-33-105. C.R.S.

FINAL REGULATORY ADOPTION - **May 5-6, 2015** beginning **at 8:00 a.m.**

EFFECTIVE DATE OF REGULATIONS approved during the May 2015 Parks and Wildlife Commission meeting: July 1, 2015, unless otherwise noted.

WILDLIFE REGULATIONS

FINAL REGULATIONS

Chapter W-2 - "Big Game" 2 CCR 406-2 and those related provisions of Chapter W-0 - ("General Provisions" 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-2

Open for consideration of regulations including but not limited to, the following:

- Adoption of all limited license numbers for black bear, deer, elk, pronghorn and moose for all Game Management Units in the state that have limited licenses for these species for the 2015 big game seasons, and other related regulatory changes to Chapter W-0 necessary to accommodate changes to and ensure consistency with Chapter W-2.
- Correction of administrative errors or omissions discovered since the adoption of 2015 big game season regulations by the Commission at its January and March meetings including, but not limited to, clean-up of obsolete provisions and corrections with regard to the establishment of limited or unlimited seasons, season dates, bag and possession limits and manner of take provisions, all of which are otherwise necessary to ensure appropriate management of big game species and maximization of wildlife-related recreational opportunity for the general public, and to otherwise conform to and give effect to the intent of the Commission's prior actions.

ISSUES IDENTIFICATION:

Chapter W-0 - "General Provisions" 2 CCR 406-0

Open for consideration of regulations including but not limited to, the following:

- Allowing terrestrial invasive species to be released into the wild for bona fide scientific research purposes only.

Chapter W-2 - "Big Game" 2 CCR 406-2 and those related provisions of Chapter W-0 - ("General Provisions" 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-2

Open for consideration of regulations including but not limited to, the following:

- Establishment of a program to provide public hunting access to Rocky Mountain bighorn sheep on private land.

Chapter W-3 - "Furbearers and Small Game, Except Migratory Birds" 2 CCR 406-3, and those related provisions of Chapter W-9 ("Wildlife Properties" - 2 CCR 406-9) and Chapter W-10 ("Nongame Wildlife" – 2 CCR 406- 10) necessary to accommodate changes to or ensure consistency with Chapter W-3

Open for consideration of annual changes to game bird seasons, excluding turkey, and other small game seasons and related provisions, including season dates, bag and possession limits and manner of take provisions, and other related regulatory changes to Chapter W-9 and Chapter W-10 necessary to accommodate changes to or to ensure consistency with Chapter W-3 including but not limited to the following:

- Extending the chukar hunting closure in GMUs 9, 19, and 191 for 2015.
- Removal of the porcupine from Chapter W-3, adding it to Regulation No. W-1000(A)(5).

Chapter W-5 - "Small Game and Migratory Game Birds" 2 CCR 406-5, and those related provisions of Chapter W-9 ("Wildlife Properties" - 2 CCR 406-9) and Chapter P-1 ("Parks and Outdoor Recreation Lands"- 2 CCR 405-1) necessary to accommodate changes to or ensure consistency with Chapter W-5

Open for consideration of annual changes to waterfowl and migratory bird hunting seasons and related provisions, including season dates, bag and possession limits and manner of take provisions, and other related regulatory changes to Chapter W-9 and P-1 necessary to accommodate changes to or to ensure consistency with Chapter W-5 including but not limited to, the following:

- Opening Barr Lake State Park to dove hunting using the reservation system on Sundays and Mondays during the month of September.
- Opening Highline Lake State Park to youth waterfowl hunting during the youth only season weekend.
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- Adjusting the American crow hunting season dates.
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Modification of Proposed Rules prior to adoption: subject to the provisions of Section 24-4-103, C.R.S., modification of these proposals may be made by the Division of Parks and Wildlife or the Commission before the Commission promulgates final rules and regulations on the above topics.

Comment deadlines: Comments will be accepted at any time prior to, or as part of the meeting. However, to ensure sufficient time for consideration prior to the meeting, **comments should be provided to the Division of Parks and Wildlife by noon on the following date:**

April 21, 2015, for mailing by the Division of Parks and Wildlife to the Parks and Wildlife Commission on **April 22, 2015.**

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Opportunity to submit alternate proposals and provide comment: the Commission will afford all interested persons an opportunity to submit alternate proposals, written data, views or arguments and to present them orally at the meeting unless it deems such oral presentation unnecessary. Written alternate proposals, data, views or arguments and other written statements should be submitted to the Division of Parks and Wildlife at 1313 Sherman St., Denver, CO 80203; or e-mailed to **dnr_cpwcommission@state.co.us**.

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OTHER AGENDA ITEMS: The Parks and Wildlife Commission may consider and make policy, program implementation, and other non-regulatory decisions, which may be of public interest at this meeting. A copy of the complete meeting agenda may be viewed on the Division of Parks and Wildlife's internet home page at **http://cpw.state.co.us**, on or after **April 24, 2015**.

Notice of Proposed Rulemaking

Tracking number

2015-00199

Department

400 - Department of Natural Resources

Agency

406 - Colorado Parks and Wildlife (406 Series, Wildlife)

CCR number

2 CCR 406-10

Rule title

CHAPTER 10 - NONGAME WILDLIFE

Rulemaking Hearing

Date

05/05/2015

Time

08:00 AM

Location

Clairon Inn, 755 Horizon Drive, Grand Junction 81506

Subjects and issues involved

CHAPTER 10 - NONGAME WILDLIFE - See Attached

Statutory authority

see attached

Contact information

Name

Danielle Isenhart

Title

Regulations Manager

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303-866-3203 x 4625

Email

danielle.isenhart@state.co.us

March 31, 2015

RULE-MAKING NOTICE
PARKS AND WILDLIFE COMMISSION MEETING
May 5-6, 2015

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WILDLIFE REGULATIONS

FINAL REGULATIONS

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ISSUES IDENTIFICATION:

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Notice of Proposed Rulemaking

Tracking number

2015-00181

Department

700 - Department of Regulatory Agencies

Agency

701 - Division of Banking

CCR number

3 CCR 701-1

Rule title

COMMERCIAL BANKS

Rulemaking Hearing

Date

05/21/2015

Time

10:00 AM

Location

Division of Banking, 975 Conference Room, 1560 Broadway, Suite 975, Denver, CO 80202

Subjects and issues involved

Proposed amendment of CB101.53 to update naming, filing, and application processing procedures for Loan Production Offices

Statutory authority

11-102-104(1), C.R.S.

Contact information

Name

Diana S. Gutierrez

Title

Banking Board Secretary

Telephone

303-894-7584

Email

diana.gutierrez@state.co.us

CB101.53 Loan Production Office [Section 11-105-101(1); Section 11-102-104(1)(a), ~~C.R.S.~~]

A. Definitions:

1. A Loan Production Office (LPO) is ~~defined as a~~ any location ~~other than the bank's main office~~ in Colorado that is not a branch and where the only activities conducted are the solicitation and origination of loans by employees or agents of a bank or a subsidiary.

2. A Branch is any location in Colorado, other than the main office, at which deposits are received, checks are paid, money is lent and trust powers may be exercised.

B. A Colorado state-chartered bank or ~~of a subsidiary corporation are conducted, provided that the loans are~~ a state bank chartered in another jurisdiction that intends to open a LPO in Colorado, or operate a LPO under a name which differs in any way from the name approved ~~and made at the main office of the bank or at an office of the subsidiary located on the premises of or contiguous to the main office of the bank, and which location is subject to notification and the fee provisions of this Rule~~ by the Banking Board, shall file an application on the appropriate form provided by the Division of Banking (Division).

The completed application shall be filed at least thirty (30) days prior to the anticipated first day of operations or use of a new name. Every LPO application shall include the name or names under which the applicant proposes to conduct the business of such LPO. The application shall be accompanied by a fee as set by the Banking Board pursuant to Section 11-102-104(11), C.R.S.

~~B. Approval of loans at the main office is not intended to be perfunctory, i.e. merely final execution of the loan documents. Approval at the main office shall be in accordance with safe and sound banking practice, including a review of the credit quality of the loan and a determination that it meets the bank's credit standards. In making an independent credit decision, the employee at the main office may consider recommendations made by the LPO as a factor when assessing the credit quality of the loan.~~

~~C. Application to Operate a LPO or Application to Change Location of a LPO shall be filed with the Banking Board on a form provided by the Division of Banking. A completed application shall be filed at least thirty (30) days prior to the anticipated first day of operating at a location. The application shall be accompanied by a fee as set by the Banking Board pursuant to Section 11-102-104(11), C.R.S.~~

C. A LPO shall not be eligible to conduct business in Colorado if the proposed name is either:

1. Identical to or deceptively similar to the name of any existing financial institution having its principal place of business in Colorado; except that this paragraph (1) shall not apply if the applicant obtains express written consent of the affected Colorado financial institution; or

2. Likely to cause the public to be confused, deceived, or mistaken.

D. When processing a LPO application, the Division shall:

1. Commence a ten (10) calendar day comment period by posting the proposed name on the Division's website and distributing the proposed name by email to its distribution mailing list;

2. If no objections are received within ten (10) calendar days, the Division shall proceed with processing the application; and

3. If an objection is received within ten (10) calendar days, the Division will notify the applicant and request that the applicant contact the objecting party and work out an agreement. The applicant and the objector should provide a written response to the Division within thirty (30) calendar days.

4. If the applicant and the objecting party cannot reach a mutual resolution, the matter will be scheduled for hearing at a meeting of the Banking Board or delegated to the Commissioner.

COLORADO
Department of
Regulatory Agencies
Division of Banking

1560 Broadway, Suite 975
Denver, CO 80202

March 24, 2015

BEFORE THE
COLORADO STATE BANKING BOARD

IN THE MATTER OF	)	
	)	**NOTICE OF PROPOSED RULEMAKING**
RULE AMENDMENT	)	

I. Notice of hearing

PLEASE BE ADVISED THAT, as required by Section 24-4-103, C.R.S., of the State Administrative Procedures Act, the Colorado State Banking Board (Banking Board) hereby gives notice of proposed rulemaking. A hearing is scheduled for May 21, 2015, commencing at 10:00 a.m., at the Division of Banking (Division), DORA 975 Conference Room, 1560 Broadway, Suite 975, Denver, Colorado.

II. Purpose of the proposed rulemaking

The purpose of the hearing is to hear comments concerning the proposed amendment of Banking Board Rule **CB101.53 – Loan Production Office** (LPO), to update the definition of a LPO, and clarify: 1) when an application is required, 2) the standard used to evaluate the name(s) of LPOs, and 3) the application processing procedures.

III. Statutory authority for proposed rulemaking

The proposed amendment of the rule is being held under the authority given the Banking Board by the Colorado Banking Code in accordance with Section 11-102-104(1), C.R.S., which states "the banking board is the policy-making and rule-making authority for the division of banking and has the power to: (a) make, modify, reverse, and vacate rules for the proper enforcement and administration of this code..."

IV. Opportunity to testify and submit written comments

Any interested person(s) has the right to submit written comments or data, view, or argument. Written information should be filed with the Division no later than May 11, 2015. To submit written comments, please contact Diana Gutierrez, Banking Board Secretary, at diana.gutierrez@state.co.us. In addition, any interested person(s) has the right to make an oral presentation at the Hearing, unless the Banking Board deems any oral presentation unnecessary.

SUBMITTED ON BEHALF OF THE
COLORADO STATE BANKING BOARD

Kenneth Boldt

Kenneth Boldt
Acting State Bank Commissioner

COLORADO
Department of
Regulatory Agencies
Division of Banking

1560 Broadway, Suite 975
Denver, CO 80202

March 24, 2015

STATE BANKING BOARD
RULE CB 101.53
PERTAINING TO TITLE 11, ARTICLE 105, SECTION 101
COLORADO REVISED STATUTES

STATEMENT OF BASIS, PURPOSE AND SPECIFIC AUTHORITY

Statement of Basis

With the economic recovery of financial institutions and the Colorado economy, an increasing number of loan production offices (LPO) have been established in Colorado in the past eighteen months. To prevent the use of names that are either deceptively similar to the name of an existing Colorado financial institution or likely to cause public confusion, Banking Board Rule CB101.53, Loan Production Office, is being amended to parallel Colorado's interstate branching provision. With this amendment, the names of bank branches and LPOs will be evaluated under the same standard.

In addition, the amendments clarify when an application is required and revise the LPO application processing procedures to explicitly parallel branch application procedures. The amendments establish a ten (10) calendar day comment period, and if an objection to the use of a proposed name is received, the procedures provide the applicant and objector with the opportunity to work out an agreement before a hearing is scheduled. Under the rule as amended, a new LPO application must be filed whenever a Colorado state-chartered bank or state banks chartered in another jurisdiction proposes to open or operate a LPO under a name which differs in any way from the name approved by the Banking Board.

Finally, due to technological advances in communications and the automation of loan underwriting, the definition of a LPO has been updated so that approval only at the main office is no longer required.

Specific Purpose of this Rulemaking

The specific purpose of this rulemaking is to amend the definition of a LPO to clarify 1) when an application is required; 2) the standard used to evaluate the name(s) of LPOs; and, 3) the application processing procedures.

Rulemaking Authority

Sections 11-101-102, 11-102-104(1)(a), and 11-105-101(1), C.R.S.

Notice of Proposed Rulemaking

Tracking number

2015-00204

Department

700 - Department of Regulatory Agencies

Agency

702 - Division of Insurance

CCR number

3 CCR 702-5

Rule title

PROPERTY AND CASUALTY

Rulemaking Hearing

Date

05/06/2015

Time

11:00 AM

Location

1560 Broadway, Ste 850, Denver CO 80202

Subjects and issues involved

5-3-6 CONCERNING WORKERS COMPENSATION FORM FILINGS FOR NEW AND REVISED POLICY FORMS AND ANNUAL REPORT FILINGS

Statutory authority

8-44-102, 10-1-109, and 10-4-419.5

Contact information

Name

Christine Gonzales-Ferrer

Title

Rulemaking Coordinator

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DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-5

PROPERTY AND CASUALTY

Proposed New Regulation 5-3-6

CONCERNING WORKERS' COMPENSATION FORM FILINGS FOR NEW AND REVISED POLICY FORMS AND ANNUAL REPORT FILINGS

Section 1 Authority

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 8-44-102, 10-1-109, and 10-4-419.5, C.R.S.

Section 2 Scope and Purpose

The purpose of this regulation is to establish the requirements for the filing and certification of new and revised workers' compensation forms and annual reports as they relate to policy forms, endorsements, riders, letters, notices, or other documents affecting workers' compensation insurance policies or contracts.

Section 3 Applicability

This regulation shall apply to all property and casualty insurers or carriers writing workers' compensation insurance in Colorado, including Pinnacol Assurance, that are required to file workers' compensation forms and annual reports with the Division, and to appointed rating and/or advisory organizations issuing workers' compensation insurance policy forms in Colorado.

Section 4 Definitions

A. "Annual report for workers' compensation insurance" means, for the purposes of this regulation, the completion of the Form Schedule Tab in SERFF, and includes the documents and information listed in section 5.G. of this regulation.

B. "Certification of compliance" means, for the purposes of this regulation, the form that contains the necessary elements of certification, as determined by the commissioner, which has been signed by the designated officer of the insurer.

C. “Insurer” or “entity” means, for the purposes of this regulation, every licensed insurer or carrier, including Pinnacol Assurance, providing workers’ compensation insurance that is authorized to conduct business in Colorado.

D. “Listing of new policy forms for workers’ compensation insurance” shall mean, for the purposes of this regulation, completing the Form Schedule Tab in SERFF, including the documents and information listed in Section 5.H. of this regulation.

E. “Officer of an insurer” means, for the purposes of this regulation, the president, vice president, assistant vice president, corporate secretary, assistant corporate secretary, chief executive officer (CEO), chief financial officer (CFO), chief underwriting officer (CUO), general counsel, or actuary who is also a corporate officer, or any officer appointed by the board of directors.

F. “Policy form” means, for the purposes of this regulation, any policy forms, endorsements, riders, letters, notices, or other documents that affect an insurance policy or contract.

G. “Signature” includes an electronic signature as defined in § 24-71.3-102, C.R.S.

Section 5 Rules for Insurers

A. At least thirty-one (31) days prior to using any new or revised form, each insurer subject to the provisions of this regulation must file a certification of compliance form found in Appendix A of this regulation.

B. The Form Schedule Tab in SERFF must be completed with the form name, form number, edition date, form type, and action for each new, revised, or withdrawn policy form. Listing the readability score and attaching the actual forms is not required.

C. An annual report of workers’ compensation insurance containing policy forms must be filed no later than July 1 of each year. These annual reports will consist of completing the Form Schedule Tab in SERFF, and must include a certification of compliance.

D. Certification requirements.

1. The elements of certification are as follows:

   a. The name of the entity;

   b. A statement that the officer signing the certification form is knowledgeable of workers’ compensation insurance;

   c. A statement that the officer signing the certification form has carefully reviewed the policy forms on the SERFF Form Schedule tab or Annual Report;

   d. A statement that the officer signing the certification form has read and understands each applicable law, regulation, and bulletin;

   e. A statement that the officer signing the certification form is aware of applicable penalties for certification of a noncomplying form or contract;

   f. A statement that the officer signing the certification form certifies that the policy forms identified in the SERFF Form Schedule tab or Annual Report provide all applicable mandated coverages and are in full compliance with all Colorado insurance laws and regulations;

g. The name and title of the officer signing the certification form and the date the certification form is signed; and

h. The original signature of the officer. Signature stamps, photocopies or a signature on behalf of the officer are not acceptable. Electronic signatures must be in compliance with § 24-71.3-102, C.R.S., and applicable regulations.

2. The elements of certification must be included in Form WC (Colorado Workers' Compensation Insurance Certification Form for New and Revised Policy Forms and Annual Reports) found in Appendix A of this regulation.

E. If the individual signing the certification is not an officer of an insurer, as defined in Section 4.E. of this regulation, documentation must be included that shows that this individual has been appointed as an officer of the organization by the board of directors. This documentation is required to be submitted with every filing.

F. If an insurer uses the optional method of electronic dissemination of newly issued or renewed policy forms or endorsements, the insurer must comply with Colorado's Uniform Electronic Transaction Act (UETA) § 24-71.3-101 et seq., C.R.S. UETA guidance is provided by the Colorado Office of Information Technology and the Colorado Division of Insurance.

G. All filings submitted in SERFF, which is the format prescribed by the commissioner, must have the Form Schedule Tab completed with the form name, unique form number for new policies, edition date, form type, action, and action specific data.

H. In order to file an annual report for workers' compensation insurance the insurer must complete the Form Schedule Tab in SERFF. The report must also include all workers' compensation insurance policy forms currently in use and issued or delivered to any policyholder in Colorado. Attaching the actual forms is not required.

I. In order to file a listing of new policy forms for workers' compensation insurance the insurer must complete the Form Schedule Tab in SERFF. This tab must include any new or revised workers' compensation insurance policy forms. Attaching the actual policy form(s) is not required, but the information required in Paragraph F. of this section must be included.

Section 6 Rules for Appointed Rating and/or advisory organization or third party administrators

A. If an insurer chooses to use a rating and/or advisory organization, or a third party administrator to submit a filing on its behalf, that rating and/or advisory organization, or a third party administrator must be appointed by an insurer prior to making any new or revised policy form certification filing or annual report form filing.

B. All of the requirements found in Section 5 of this regulation apply when an insurer chooses to appoint a rating and/or advisory organization, or a third party administrator to submit a filing on its behalf.

C. All rating and/or advisory organizations that issue policy forms in Colorado will place the actual new or revised policy form on file and attach the policy form to the Forms Schedule Tab in SERFF.

D. Filings made by a rating and/or advisory organization, or a third party administrator, shall include the following:

1. A letter signed by the company officer appointing the rating and/or advisory organization, or the third party administrator to file on the company's behalf;

2. A certification of compliance which has been signed by the designated officer of the appointing insurer; and

3. A listing of new policy forms for workers' compensation insurance.

Section 7 Severability

If any provision of this regulation or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of this regulation shall not be affected.

Section 8 Enforcement

Noncompliance with this regulation may result in the imposition of any of the sanctions made available in the Colorado statutes pertaining to the business of insurance, or other laws, which include the imposition of civil penalties, issuance of cease and desist orders, and/or suspensions or revocation of license, subject to the requirements of due process.

Section 9 Effective Date

This regulation shall become effective on July 1, 2015.

Section 10 History

New regulation effective July 1, 2015.

Appendix A

FORM WC

COLORADO WORKERS' COMPENSATION INSURANCE CERTIFICATION FORM FOR NEW AND REVISED POLICY FORMS AND ANNUAL REPORTS

I, THE UNDERSIGNED OFFICER OF _____
(Name of Entity)

AM KNOWLEDGEABLE OF WORKERS' COMPENSATION INSURANCE;

HAVE CAREFULLY REVIEWED THE CONTENTS OF THE POLICY FORMS, ENDORSEMENTS, RIDERS, LETTERS, NOTICES, AND OR OTHER DOCUMENTS AFFECTING AN INSURANCE POLICY OR CONTRACT IDENTIFIED ON THE ATTACHED LISTING OF NEW POLICY FORMS OR ANNUAL REPORT WHICH IS HEREBY FILED WITH THE COLORADO COMMISSIONER OF INSURANCE;

HAVE READ AND UNDERSTAND EACH OF THE APPLICABLE COLORADO LAWS, RULES, AND REGULATIONS;

AM AWARE OF THE PENALTIES WHICH MAY BE ENFORCED FOR CERTIFICATION OF A NONCOMPLYING FORM; AND

CERTIFY, TO THE BEST OF MY KNOWLEDGE THAT THE POLICY FORMS IDENTIFIED ON THE LISTING OF NEW POLICY FORMS OR ANNUAL REPORT, FILED WITH THIS CERTIFICATION, ARE IN FULL COMPLIANCE WITH ALL COLORADO INSURANCE LAWS AND REGULATIONS.

_____ _____
(***Original*** Signature of Officer*) (Title of Officer*)

_____ _____
(Printed Name of Officer*) (Date)

* *If the individual signing the certification is other than the president, vice president assistant vice president, corporate secretary, assistant corporate secretary, CEO, CFO, COO, CUO, general counsel, or an actuary that is also a corporate officer, documentation must be included that shows that this individual has been appointed as an officer of the organization by the Board of Directors.*

Version 1.0 – July 1, 2015

Notice of Proposed Rulemaking

Tracking number

2015-00190

Department

700 - Department of Regulatory Agencies

Agency

709 - Division of Professions and Occupations - Colorado Dental Board

CCR number

3 CCR 709-1

Rule title

DENTISTS & DENTAL HYGIENISTS

Rulemaking Hearing

Date

04/30/2015

Time

08:30 AM

Location

1560 Broadway, Denver, CO 80202 Conference Room 110 D

Subjects and issues involved

The Colorado Dental Board has drafted proposed amendments to its rules in order to complete implementation of House Bill 14-1227, which went into effect on July 1, 2015 and concerns the continuation of the State Board of Dental Examiners (now the Colorado Dental Board) and other statutory changes to the Dental Practice Law of Colorado (now the Dental Practice Act); and amending Rule XIII to be consistent with statute, updating Rule XIV, and further clarifying Rule XXIV.

Statutory authority

Sections 12-35-107(1)(b), and 12-35-140(4) and (5), C.R.S.

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DEPARTMENT OF REGULATORY AGENCIES

Colorado Dental Board

DENTISTS & DENTAL HYGIENISTS

3 CCR 709-1

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

Rule I. Definitions

(Amended December 2, 2002; Amended and Re-numbered November 2, 2011, Effective December 30, 2011; Amended January 22, 2015, Effective March 30, 2015)

A. The Board hereby incorporates by reference all definitions as contained in section 12-35-103, C.R.S., as amended.

B. "Regularly announced office location" as specified in section 12-35-128(3)(d)(II), C.R.S., means those offices of which a dentist or a dental hygienist is the proprietor and in which he/she regularly practices dentistry or dental hygiene. This may include the occasional practice in other health care facilities such as hospitals, nursing homes, and/or other facilities under the jurisdiction of the Colorado Department of Public Health and Environment.

C. "Regularly" means fixed intervals or periods as used in these rules.

D. "Certify or Certification" means to declare in writing on the patient's record.

E. "Doctor's Office Notes" as used in section 25-1-802, C.R.S., and applied to dental and dental hygiene practice means a separate record within the patient's file that does not contain anything that relates to or constitutes diagnosis, treatment plan, radiograph interpretation, treatment progress or outcome. All such clinical information is considered the treatment record or progress notes.

F. "Therapeutic Agents" as used in these rules means any agent approved by the United States Food and Drug Administration (FDA) for use in controlled drug delivery systems in the course of periodontal pocket treatment.

G. "Unprofessional Conduct" as used in section 12-35-129.2(5), C.R.S., means any cause that is grounds for disciplinary action pursuant to the "Dental Practice Act," section 12-35-129(1), C.R.S., and the "Healthcare Professions Profiling Program," section 24-34-110, C.R.S.

Rule II. Financial Responsibility Exemptions

(Amended December 2, 2002; Amended and Re-numbered November 2, 2011, Effective December 30, 2011; Amended January 22, 2015, Effective March 30, 2015)

Financial liability requirements pursuant to sections 13-64-301(1)(a) and 12-35-141, C.R.S., do not apply to a dentist or dental hygienist who:

A. Is a public employee of the state of Colorado under the Colorado Governmental Immunity Act, section 24-10-101, C.R.S., et seq.;

B. Performs dental services exclusively as an employee of the United States government;

C. Holds an inactive license;

D. Holds a retired license;

E. Holds an active dental license, but does not engage in any patient care within Colorado or any of the acts constituting the practice of dentistry as defined by sections 12-35-103(5) and 12-35-113, C.R.S., including but not limited to the prescribing of medications, diagnosis, and development of a treatment plan;

F. Holds an active dental hygiene license. but does not engage in any patient care within Colorado or any of the acts constituting the practice of dental hygiene as defined by sections 12-35-103(4), 12-35-103(4.5), 12-35-124, 12-35-125, and 12-35-128, C.R.S.; or

G. Provides uncompensated dental care and who does not otherwise engage in any compensated patient care whatsoever.

Rule III. Licensure of Dentists and Dental Hygienists

(Amended December 2, 2002; Amended on Emergency Basis July 7, 2004; Re-Promulgated August 11, 2004; Amended April 22, 2009; Amended October 21, 2009, Effective December 30, 2009; Amended November 2, 2011, Effective December 30, 2011; Amended January 22, 2015, Effective March 30, 2015)

A. General Requirements for Licensees and Applicants

1. Any person who practices or offers or attempts to practice dentistry or dental hygiene without an active license issued under the Dental Practice Act and in accordance with Board rules commits a class 2 misdemeanor for the first offense and a class 6 felony for the second or any subsequent offense.

2. Any notification by the Board to a licensee or applicant, required or permitted under section 12-35-101, C.R.S., et seq., or the State Administrative Procedure Act, section 24-4-101, C.R.S., et seq., shall be served personally or by first class mail to the last address of record provided in writing to the Board. Service by mail shall be deemed sufficient and proper upon a licensee or applicant.

<u>Licensees</u>

3. Physical or mental illness requirements. These requirements apply to a dentist or dental hygienist who holds an active license issued by the Board, including a dentist issued an academic license.

   a. Licensees shall provide the Board with written notice of the following:

      i. A long-term (more than 90 days) physical illness/condition that renders the licensee unable, or limits the licensee's ability, to practice dentistry or dental hygiene with reasonable skill and safety to patients, or

      ii. A debilitating mental illness/condition that renders the licensee unable, or limits the licensee's ability, to practice dentistry or dental hygiene with reasonable skill and safety to patients.

   b. The licensee shall notify the Board of the illness or condition within 30 days and submit, within 60 days, a letter from his/her treating medical or mental health provider describing:

i. The condition(s),

ii. The impact on the licensee's ability to practice safely, and

iii. Any applicable limitation(s) to the licensee's practice.

c. If a licensee has entered into a voluntary rehabilitation contract with the Board's peer health assistance program, and if the illness or condition is being managed and treated, then the licensee is not required to provide notice to the Board.

d. The Board may require the licensee to submit to an examination to evaluate the extent of the illness or condition and its impact on the licensee's ability to practice with reasonable skill and safety to patients.

e. Pursuant to section 12-35-129.6(2), C.R.S., the Board may enter into a non-disciplinary confidential agreement with the licensee in which he/she agrees to limit his/her practice based on any restriction(s) imposed by the illness or condition, as determined by the Board. A licensee subject to discipline for habitually abusing or excessively using alcohol, a habit-forming drug, or a controlled substance is not eligible to enter into a confidential agreement.

4. If a dentist who holds an active license, including an academic license, is arrested for a drug or alcohol related offense, the dentist shall refer himself/herself to the Board's peer health assistance program within 30 days after the arrest for an evaluation and referral for treatment as necessary. If the dentist self refers, the evaluation by the program is confidential and cannot be used as evidence in any proceedings other than before the Board.

5. Change of name and address

a. A licensee shall inform the Board in clear, explicit, and unambiguous written statement of any name, business address, or preferred contact address change within 30 days of the change. The Board will not change the licensee's information without explicit written notification from the licensee. Notification by fax or email is acceptable. A licensee may update his/her address(es) online electronically through the Division of Professions and Occupations.

i. A licensee is required to keep all business addresses up-to-date.

ii. The Division of Professions and Occupations maintains one contact address for each licensee, regardless of the number of different professional licenses the licensee may hold.

iii. All communication from the Board to a licensee will be to the contact address maintained with the Division of Professions and Occupations.

b. The Board requires one of the following forms of documentation to change a licensee's name or social security number:

i. Marriage license;

ii. Divorce decree;

iii. Court order; or

iv. A driver's license or social security card with a second form of identification may be acceptable at the discretion of the Division of Professions and Occupations.

6. A licensed dentist, including one issued an academic license, or dental hygienist is required to renew his/her license every 2 years and submit the applicable fee. This includes renewing to an active, inactive, or retired status. A dentist issued an academic license is not eligible for retired or inactive status.

7. A dentist or dental hygienist in retired status may provide dental services on a voluntary basis to the indigent, if such services are provided on a limited basis and no fee is charged by the dentist or dental hygienist.

8. A dentist or dental hygienist in inactive status shall not provide dental or dental hygiene services in this state while his/her license is inactive.

9. A dentist or dental hygienist with an expired license shall not provide dental or dental hygiene services in this state while his/her license is expired.

Applicants

10. A foreign-trained dentist is required to complete a program in clinical dentistry and obtain a doctorate of dental surgery or a doctorate of dental medicine at an accredited dental school in order to be eligible for licensure in this state. The only exception is if a foreign-trained dentist satisfies the requirements for an academic license.

11. Under section 12-35-129.1(8), C.R.S., any person whose license to practice is revoked or surrendered is ineligible to apply for any license under the Dental Practice Act for at least 2 years after the date of revocation or surrender of the license. Any subsequent application for licensure is an application for an original license.

12. It is unlawful for any person to file with the Board a forged document or credentials of another person as part of an application for licensure.

13. All documents required as part of a licensure application, except for license renewal, must be received within 1 year of the date of receipt of application. An application is incomplete until the Board receives all additional information requested or required to determine whether to grant or deny the application. If all required information is not submitted within the 1 year period, then the original application materials will be destroyed and the applicant will be required to submit a new application, fee, and all required documentation.

14. The Board may deny an application for licensure upon a finding that the applicant has violated any provisions of the Dental Practice Act and Board rules.

15. An applicant for licensure may not begin practicing as a dentist or dental hygienist in this state until he/she has been issued an active license number to do so, this includes an application to reinstate an expired license or reactivate an inactive license which will require that license number to be activated again before active practice may resume.

16. A dentist applying for a license must be at least 21 years of age.

17. Education, training, or service gained in military services outlined in section 24-34-102(8.5), C.R.S., to be accepted and applied towards receiving a license, must be equivalent, as determined by the Board, to the qualifications otherwise applicable at the time of receipt

of application. It is the applicant's responsibility to provide timely and complete evidence for review and consideration. Satisfactory evidence of such education, training, or service will be assessed on a case-by-case basis.

18. Regulation of Military Spouses. This rule does not limit the requirements of Article 71 of Title 12, C.R.S.

    a. A person need not obtain authority to practice dentistry or dental hygiene during the person's first year of residence in Colorado if:

        i. The person is a military spouse, as defined in section 12-71-101(3), C.R.S., and is authorized to practice that occupation or profession in another state;

        ii. Other than the person's lack of licensure, registration, or certification in Colorado, there is no basis to disqualify the person under Title 12, C.R.S.; and

        ii. The person consents as a condition of practicing dentistry or dental hygiene in Colorado, to be subject to the jurisdiction and disciplinary authority of the Board.

    b. To continue practicing dentistry or dental hygiene in Colorado after the person's first year of residence, the person must apply for and obtain a license in accordance with all licensing laws and requirements in effect at the time of the application, including, but not limited to, the Dental Practice Act, this Board Rule III, and current clinical competency requirements.

B. Original Licensure for Dentists

1. Each applicant shall submit a completed Board approved application along with the required fee in order to be considered for licensure approval and must also verify that he/she:

    a. Graduated with a DDS or DMD degree from an accredited dental school or college, which at the time of the applicant's graduation was accredited by the Commission on Dental Accreditation as evidenced by an official transcript of credits with the date of graduation and degree obtained.

    b. Successfully passed the examination administered by the Joint Commission on National Dental Examinations.

    c. Successfully passed an examination or other methodology, as determined by the Board, designed to test the applicant's clinical skills and knowledge, which may include residency and/or portfolio models.

2. Each applicant must verify that he/she:

    a. Obtained or will obtain prior to practicing as a licensed dentist in this state commercial professional liability insurance coverage with an insurance company authorized to do business in Colorado pursuant to Article 5 of Title 10, C.R.S., in a minimum indemnity amount of $500,000 per incident and $1,500,000 annual aggregate per year, or if covered under a financial responsibility exemption listed in Rule II.

    b. Accurately and completely listed any acts that would be grounds for disciplinary action under the Dental Practice Act and provided a written explanation of the

circumstances of such act(s) and what steps have been taken to remediate the act(s), omission(s), or discipline, including supporting documentation.

c. Accurately and completely provided any and all information pertaining to any final or pending disciplinary action by any state or jurisdiction in which the applicant is or has been previously licensed and provided a written explanation of the circumstances of such action(s) and what steps have been taken to remediate the action(s), omission(s), or discipline that led to the final disciplinary action(s), including supporting documentation.

d. Accurately and completely provided any and all information pertaining to any pending or final malpractice actions against the applicant, verified by the applicant's malpractice insurance carrier(s) and provided a written explanation of the circumstances of such action(s) and what steps have been taken to remediate the action(s) that led to the settlement(s), including supporting documentation. The applicant must request a verification of coverage history for the past 10 years from his/her current and all previous malpractice insurance carriers. Any settlement or final judgment during the applicant's practice history must be reported.

3. Demonstrates current clinical competency and professional ability through at least 1 of the following:

a. Graduated within the 12 months immediately preceding the date the application is received with a DDS or DMD degree from an accredited dental school or college, which at the time of the applicant's graduation was accredited by the Commission on Dental Accreditation.

b. Engaged in the active clinical practice of dentistry for at least 1 year of the 5 years immediately preceding the date the application is received. Experience from postgraduate training, residency programs, internships, or research during this time will be evaluated on a case-by-case basis.

c. Engaged in teaching dentistry in an accredited program for at least 1 year of the 5 years immediately preceding the date the application is received.

d. Engaged in service as a dentist in the military for at least 1 year of the 5 years immediately preceding the date the application is received.

e. Passed a Board approved clinical examination within 1 year of the date the application is received.

f. Successfully completed a Board approved evaluation by a Commission on Dental Accreditation accredited institution or another Board approved entity within 1 year of the date the application is received, which demonstrates the applicant's proficiency as equivalent to the current school graduate. Before undertaking such evaluation, an applicant must submit a proposed evaluation for pre-approval by the Board. The Board may reject an evaluation whose proposal it has not pre-approved or for other good cause.

g. If a dentist with a revoked license, a license suspended for 2 or more years, or any other disciplined license preventing him/her from actively practicing for 2 or more years in Colorado, another state/jurisdiction, or country is applying for a license, then the Board may require him/her to comply with more than 1 of the above competency requirements.

h. In addition to the requirements above, the Board may, in its discretion, apply 1 or more of the following towards demonstration of current clinical competency, except as to applicants described in subparagraph B.3.g of this rule.

i. Practice under a probationary or otherwise restricted license for a specified period of time;

ii. Successful completion of courses approved by the Board; or

iii. Any other professional standard or measure of continued competency as determined by the Board.

C. Endorsement for Dentists

1. In order to be qualified for licensure by endorsement, an applicant is required to demonstrate that he/she does not currently possess a suspended, restricted, or conditional license to practice dentistry, or is currently pending disciplinary action against such license in another state or territory of the United States or Canada.

2. Each qualified applicant shall submit a completed Board approved application along with the required fee in order to be considered for licensure approval and must also verify through the state in which he/she is seeking endorsement from that he/she meets the requirements listed under section B.1 of this rule.

3. An applicant for endorsement must verify as part of his/her application fulfillment of the requirements listed under section B.2 of this rule.

4. An applicant for endorsement must demonstrate current clinical competency and professional ability through at least 1 of the following:

a. Engaged in the active practice of clinical dentistry in the U.S. or one of its territories or Canada for a minimum of 300 hours per year, for a minimum of 5 years out of the 7 seven years immediately preceding the date the application was received. Experience from postgraduate training, residency programs, internships, or research will be evaluated on a case-by-case basis.

b. Engaged in teaching dentistry, which involves personally providing care to patients for not less than 300 hours annually in an accredited dental school for a minimum of 5 years out of the 7 years immediately preceding the date the application was received.

c. For the dentists practicing in the military, a report from a senior officer with a recommendation and verification of clinical experience comparable to the requirement in section C.4.a.

d. Passed a Board approved clinical examination within 1 year of the date the application is received.

e. Successfully completed a Board approved evaluation by a Commission on Dental Accreditation accredited institution or another Board approved entity within 1 year of the date the application is received, which demonstrates the applicant's proficiency as equivalent to the current school graduate. Before undertaking such evaluation, an applicant must submit a proposed evaluation for pre-approval by the Board. The Board may reject an evaluation whose proposal it has not pre-approved or for other good cause.

f. The Board may also apply 1 or more of the following towards demonstration of current clinical competency:

i. Practice under a probationary or otherwise restricted license for a specified period of time;

ii. Successful completion of courses approved by the Board; or

iii. Any other professional standard or measure of continued competency as determined by the Board.

D. Academic License

1. A dentist who is employed at an accredited school or college of dentistry in this state and who practices dentistry in the course of his/her employment responsibilities and is applying for an academic license shall submit with the application and fee the following credentials and qualifications for review and approval by the Board:

   a. Proof of graduation with a DDS or DMD degree or equivalent from a school of dentistry located in the United States or another country.

   b. Evidence of the applicant's employment by an accredited school or college of dentistry in this state; actual practice is to commence only once licensure has been granted.

2. An applicant for an academic license shall satisfy the credentialing standards of the accredited school or college of dentistry that employs the applicant.

3. Pursuant to section 12-35-117.5(4), C.R.S., an academic license shall authorize the licensee to practice dentistry only while engaged in the performance of his/her official duties as an employee of the accredited school or college of dentistry and only in connection with programs affiliated or endorsed by the school or college. A dentist issued an academic license may not use it to practice dentistry outside of his/her academic responsibilities.

4. A dentist with an academic license is subject to discipline pursuant to sections 12-35-129, 12-35-129.1, 12-35-129.2, 12-35-129.4, 12-35-129.5, and 12-35-129.6, C.R.S.

E. Original Licensure for Dental Hygienists

1. Each applicant shall submit a completed Board approved application along with the required fee in order to be considered for licensure approval and must also verify that he/she:

   a. Graduated from a school of dental hygiene that, at the time of the applicant's graduation, was accredited by the Commission on Dental Accreditation, and proof that the program offered by the accredited school of dental hygiene was at least 2 academic years or the equivalent of 2 academic years. An official school transcript of credits with the date of graduation and degree obtained shall be deemed sufficient evidence.

   b. Successfully passed the examination administered by the Joint Commission on National Dental Examinations.

   c. Successfully completed an examination designed to test the applicant's clinical skills and knowledge administered by a regional testing agency composed of at least 4 states or an examination of another state.

2. Each applicant will also be required to verify that he/she:

    a. Obtained or will obtain prior to practicing as a licensed dental hygienist in this state professional liability insurance in the amount of not less than $50,000 per claim and an aggregate liability for all claims during a calendar year of not less than $300,000, or is covered under a financial responsibility exemption listed in Rule II. Coverage may be maintained by the dental hygienist or through a supervising licensed dentist.

    b. Accurately and completely listed any acts that would be grounds for disciplinary action under the Dental Practice Act and provided a written explanation of the circumstances of such act(s) and what steps have been taken to remediate the act(s), omission(s), or discipline, including supporting documentation.

    c. Accurately and completely provided any and all information pertaining to any final or pending disciplinary action by any state or jurisdiction in which the applicant is or has been previously licensed and provided a written explanation of the circumstances of such action(s) and what steps have been taken to remediate the action(s), omission(s), or discipline that led to the final disciplinary action(s), including supporting documentation.

    d. Accurately and completely provided any and all information pertaining to any pending or final malpractice actions against the applicant, verified by the applicant's malpractice insurance carrier(s) and provided a written explanation of the circumstances of such action(s) and what steps have been taken to remediate the practice that led to the settlement(s), including supporting documentation. The applicant must request a verification of coverage history for the past 10 years from his/her current and all previous malpractice insurance carriers. Any settlement or final judgment during the applicant's practice history must be reported.

3. Demonstrates current clinical competency and professional ability through at least 1 of the following:

    a. Graduated within the 12 months immediately preceding the date the application was received from an academic program of dental hygiene that, at the time of the applicant's graduation, was accredited by the Commission on Dental Accreditation and which was at least 2 academic years or the equivalent of 2 academic years.

    b. Engaged in the active clinical practice of dental hygiene for at least 1 year of the 5 years immediately preceding the date the application is received.

    c. Engaged in teaching dental hygiene or dentistry in an academic program that was accredited by the Commission on Dental Accreditation for at least 1 year of the 5 years immediately preceding the date the application is received.

    d. Engaged in service as a licensed dental hygienist in the military for at least 1 year of the 5 years immediately preceding the date the application is received.

    e. Passed a Board approved regional or state clinical examination within 1 year of the date the application is received.

    f. Successfully completed a Board approved evaluation by a Commission on Dental Accreditation accredited institution or another Board approved entity within 1 year

of the date the application is received, which demonstrates the applicant's proficiency as equivalent to the current school graduate. Before undertaking such evaluation, an applicant must submit a proposed evaluation for pre-approval by the Board. The Board may reject an evaluation whose proposal it has not pre-approved or for other good cause.

g. If a dental hygienist with a revoked license, a license suspended for 2 or more years, or any other disciplined license preventing him/her from actively practicing for 2 or more years in Colorado, another state/jurisdiction, or country is applying for a license, then the Board may require him/her to comply with more than 1 of the above competency requirements.

h. The Board may, in its discretion, apply 1 or more of the following towards demonstration of current clinical competency (cannot be considered in lieu of the requirements of subparagraph g above, but may be considered as an additional requirement by the Board):

i. Practice under a probationary or otherwise restricted license for a specified period of time;

ii. Successful completion of courses approved by the Board; or

iii. Any other professional standard or measure of continued competency as determined by the Board.

F. Endorsement for Dental Hygienists

1. In order to be qualified for licensure by endorsement, an applicant is required to demonstrate that he/she does not currently possess a suspended, restricted, or conditional license to practice dental hygiene, or is currently pending disciplinary action against such license in another state or territory of the United States or Canada.

2. Each qualified applicant shall submit a completed Board approved application along with the required fee in order to be considered for licensure approval and must also verify through the state in which he/she is seeking endorsement from that he/she meets the requirements listed under section E.1 of this rule.

3. An applicant for endorsement must verify as part of his/her application fulfillment of the requirements listed under section E.2 of this rule.

4. The applicant must disclose the existence of any dental hygiene or other health care license previously held or currently held in any other state or jurisdiction, including dates and status.

5. An applicant for endorsement must demonstrate current clinical competency and professional ability through at least 1 of the following:

a. Engaged in the active practice of clinical dental hygiene in the U.S. or one of its territories or Canada for a minimum of 300 hours per year, for a minimum of 1 year out of 3 years immediately preceding the date the application was received.

b. Engaged in teaching dental hygiene or dentistry, which involves personally providing care to patients for not less than 300 hours annually in an accredited program for a minimum of 1 year out of the 3 years immediately preceding the date the application was received.

c. For the licensed dental hygienists practicing in the military, a report from a senior officer with a recommendation and verification of clinical experience comparable to the requirement in section F.5.a.

d. Passed a Board approved regional or state clinical examination within 1 year of the date the application is received.

e. Successfully completed a Board approved evaluation by a Commission on Dental Accreditation accredited institution or another Board approved entity within 1 year of the date the application is received, which demonstrates the applicant's proficiency as equivalent to the current school graduate. Before undertaking such evaluation, an applicant must submit a proposed evaluation for pre-approval by the Board. The Board may reject an evaluation whose proposal it has not pre-approved or for other good cause.

f. The Board may also apply 1 or more of the following towards demonstration of current clinical competency:

i. Practice under a probationary or otherwise restricted license for a specified period of time;

ii. Successful completion of courses approved by the Board; or

iii. Any other professional standard or measure of continued competency as determined by the Board.

G. Continuing Education Requirements for Dentists, Dentists Issued an Academic License, and Dental Hygienists

1. Effective March 1, 2016, every licensee with an active license in Colorado is required to complete 30 hours of Board approved continuing education during the 2 years preceding the next renewal period to ensure patient safety and professional competency, pursuant to section 12-35-139, C.R.S. Continuing education hours may only be applied to the renewal period in which they were completed.

2. This requirement does not apply to a licensee placing his/her license into inactive or retired status, or renewing such status. It only applies if renewing a license in active status, or reinstating or reactivating a license pursuant to paragraph 3 of this rule.

3. Effective March 1, 2018, a licensee with an expired license of less than 2 years or who has inactivated his/her license for less than 2 years is required to submit proof of having completed the required 30 hours of continuing education credit for the previous renewal period prior to reinstating/reactivating his/her license and may not apply those hours to the next renewal period.

4. If a license is issued within 1 year of a renewal date, no continuing education will be required for that first renewal period. If a license is issued outside of 1 year of a renewal date, then 15 hours of Board approved continuing education will be required for that first renewal period.

5. For dentists, including those issued an academic license, the Board automatically accepts any course or program recognized by any of the following organizations (or a successor organization):

a. American Dental Association (ADA) Continuing Education Recognition Program (CERP),

b. Academy of General Dentistry (AGD) Program Approval for Continuing Education (PACE),

c. American Medical Association (AMA) Physician Recognition Award (PRA) and credit system as Category 1 Credit, or

d. Commission on Dental Accreditation (CODA) accredited institutions.

6. For dental hygienists, the Board automatically accepts any course recognized in paragraph 5 above and sponsored or recognized by (or a successor organization):

   a. The American Dental Hygienists' Association (ADHA) and its constituents and component societies, or

   b. Local, state, regional, national, or international dental, dental hygiene, dental assisting, medical related professional organization, or study group that has a sound scientific basis, proven efficacy, and ensures public safety.

7. Current Basic Life Support (BLS) for healthcare providers is required of all licensees and all licensees will receive a maximum of 2 hours continuing education credit for completing.

8. At least 16 of the required 30 hours must be clinical or science based, or 8 of the required 15 if paragraph G.4 of this rule applies.

9. At least 50% of the required hours must be live and interactive.

10. A presenter of courses may submit course hours he/she presented, up to 6 total credits, towards his/her continuing education requirement. The presenter may receive credit one time for each course presented in a renewal period, up to 6 total credits for that renewal period.

11. A dentist renewing an anesthesia or sedation permit may apply continuing education credits specific to renewing his/her permit for anesthesia or sedation administration (17 hours every 5 years) to the 30 hours required to renew a license every 2 years. Anesthesia related hours may only be applied to the renewal period in which they were completed.

12. At the conclusion of each renewal period, licensees may be subject to a Board audit to verify compliance with continuing education requirements. Licensees shall assist the Board in its audit by providing timely and complete responses to the Board's inquiries.

13. A licensee must maintain copies of all completed Board approved coursework, including any certificates of completion, for at least 2 renewal periods after the continuing education was completed. The records shall document the licensee's course attendance and participation, and shall include at a minimum course sponsor, title, date(s), hours, and the course verification of completion certificate or form. Failure to meet this requirement may result in credit not being accepted for a course or courses, which may result in violation of the continuing education requirements of section 12-35-139, C.R.S., and this Rule III.

14. Failure to comply with the requirements of this rule is grounds for discipline, pursuant to section 12-35-129(1)(i), C.R.S.

15. The Board may excuse a licensee from all or any part of the requirements of this rule or grant an extension because of an unusual circumstance, emergency, special hardship, or military service. The licensee may apply for a waiver or an extension by submitting a written request, including supporting documentation for Board consideration at least 45 days before the renewal date.

16. Continuing education required as a condition of a disciplinary action cannot be applied towards the renewal requirements of a license or anesthesia/sedation permit.

H. Reinstatement/Reactivation Requirements for Dentists and Dental Hygienists with Expired, Inactive, or Retired Licenses

1. In order to reinstate or reactivate a license back into active status, each applicant shall submit a completed Board approved application along with the required fee in order to be considered for licensure approval and must also verify that he/she:

   a. Obtained or will obtain prior to active practice in this state professional liability insurance as required pursuant to section 12-35-141, C.R.S., or is covered under a financial responsibility exemption listed in Rule II.

   b. Accurately and completely listed any acts that would be grounds for disciplinary action under the Dental Practice Act and provided a written explanation of the circumstances of such act(s) and what steps have been taken to remediate the act(s), omission(s), or discipline, including supporting documentation since last renewing his/her license to an active, retired, or inactive status in this state.

   c. Accurately and completely provided any and all information pertaining to any final or pending disciplinary action by any state or jurisdiction in which the applicant is or has been previously licensed since last renewing his/her license to an active, retired, or inactive status in this state and provided a written explanation of the circumstances of such action(s) and what steps have been taken to remediate the action(s), omission(s), or discipline that led to the final disciplinary action(s), including supporting documentation.

   d. Accurately and completely provided any and all information pertaining to any pending or final malpractice actions against the applicant, verified by the applicant's malpractice insurance carrier(s) since last renewing his/her license to an active, retired, or inactive status in this state and provided a written explanation of the circumstances of such action(s) and what steps have been taken to remediate the practice that led to the settlement(s), including supporting documentation.

2. If the license has been expired, retired, or inactive for 2 or more years, then an applicant is required to demonstrate continued clinical competency. A licensee who applies for an active license and has not practiced at least 300 hours in a 12-month period during the 5 years immediately preceding the application for reinstatement/reactivation to an active status must demonstrate to the Board how he/she maintained his/her professional ability, knowledge, and skills. The Board may request documentation of the 300 hours for a 12-month period or may accept the following qualifications as fulfillment of the practice requirement, which will be reviewed on a case-by-case basis:

   a. Time spent in postgraduate training, residency programs, or an internship.

   b. Time spent in research and in teaching in an accredited program.

c. Time spent practicing in the military or public health service. For licensed dentists and dental hygienists practicing in the military, a report from a senior officer with a recommendation and verification of clinical experience may be accepted.

d. Passed a Board approved clinical examination within 1 year of the date the application is received.

e. Successfully completed a Board approved evaluation by a Commission on Dental Accreditation accredited institution or another Board approved entity within 1 year of the date the application is received, which demonstrates the applicant's proficiency as equivalent to the current school graduate. Before undertaking such evaluation, an applicant must submit a proposed evaluation for pre-approval by the Board. The Board may reject an evaluation whose proposal it has not pre-approved or for other good cause.

f. The Board may also consider applying 1 or more of the following towards demonstration of current clinical competency (cannot be considered in lieu of the competency requirements above if the licensee has not practiced in over 2 years due to a disciplinary action, but may be considered as an additional requirement by the Board):

i. Practice under a probationary or otherwise restricted license for a specified period of time;

ii. Successful completion of courses approved by the Board; or

iii. Any other professional standard or measure of continued competency as determined by the Board.

I. Temporary Licenses

1. By invitation only:

a. A dentist or dental hygienist who lawfully practices dentistry or dental hygiene in another state or United States territory may be granted a temporary license to practice dentistry or dental hygiene in this state pursuant to section 12-35-107(1)(e), C.R.S., if:

i. Such dentist or dental hygienist has been invited by a program provided through a lawful agency of Colorado local, county, state, or federal government or a Colorado non-profit tax exempt organized under section 501 (c) (3) of the federal "Internal Revenue Code of 1986," as amended to provide dental or dental hygiene services to persons identified through such program;

ii. The governmental entity or nonprofit private foundation as defined in section H.1.a.i of this rule certifies the name of the applicant and the dates within which the applicant has been invited to provide dental or dental hygiene services in this state, the applicant's full dental or dental hygiene license history with verification of licensure in each state, and an active license in at least one state on a form provided by the Board; and

iii. Such applicant's practice in this state, if granted by the Board, is limited to that required by the entities specified in section H.1.a.i and ii of this rule and shall not exceed 120 consecutive days in a 12 month period,

renewable once in a 1 year period for a maximum of 240 consecutive days in a 1 year period.

b. A temporary licensee shall provide dental or dental hygiene services only to persons identified through an entity as described in section H.1.a.i of this rule and will not accept any compensation above what he/she has agreed to be paid by the entity.

2. The Board may also issue a temporary license to an applicant for licensure to demonstrate clinical competency in compliance with sections B.3.f, C.4.e, E.3.f, F.5.e, and H.2.e under direct supervision of a licensed dentist or dental hygienist.

3. A temporary licensee may be subject to discipline by the Board as defined in 12-35-129,, C.R.S., et seq., and shall be subject to the professional liability insurance requirement as defined in section 12-35-141, C.R.S.

Rule IV. License Presentation

(Amended December 2, 2002; Re-numbered December 30, 2011)

A dentist's or dental hygienist's license, or a copy thereof, shall be available on the premises where the dentist or dental hygienist practices.

Rule V. Practice in Education and Research Programs

(Promulgated as Emergency Rule XXVIII on July 7, 2004; Amended January 21, 2010, Effective March 30, 2010; Re-numbered December 30, 2011)

A. Pursuant to §12-35-115(1)(f), the names of individuals engaging in practice while appearing in programs of dental education or research must be submitted to the Board on the Board-approved form.

B. Information provided to the Board by any group of Colorado licensed dentists or dental hygienists inviting dentists and/or dental hygienists to practice while appearing in a program of dental education shall include the following.

1. Name of program

2. Goals or objectives of program

3. Instructors in program

4. Syllabus of content

5. Method of program evaluation

C. Information provided to the Board by any group of Colorado licensed dentists or dental hygienists inviting dentists and/or dental hygienists to practice while appearing in a program of dental research shall include the following

1. Name of Program

2. Research goal or objectives

3. Research design

4. Evidence of approval of research by a Review Board for Human Subject Research which meets the requirements of the Office of Human Subjects Research, National Institutes of Health

D. The dentists and/or dental hygienists invited to participate in the educational or research program who are not licensed in Colorado shall submit evidence to the Board that each participant understands the limitations in such practice as specified in to §12-35-115(1)(f).

E. The Board shall approve participation if, in the judgment of the Board, the information submitted indicates the program is in compliance with to §12-35-115(1)(f).

F. The Board may deny participation if, in the judgment of the Board, the information submitted indicates the program is not in compliance with to §12-35-115(1)(f).

Rule VI. Treatment Provider Identification

(Effective February 1, 1999; Amended January 21, 2010, Effective March 30, 2010; Re-numbered December 30, 2011)

1. Patient records shall note at the time of the treatment or service the name of any dentist, dental hygienist, or dental assistant who performs any treatment or service upon a patient.

2. When patient treatment or service is performed which requires supervision, the patient record must also note the name of the supervising dentist or dental hygienist for the treatment or service performed on the patient.

Rule VII. Patient Records Retention

(Effective February 1, 1999; Amended December 2, 2002; Amended January 21, 2010, Effective March 30, 2010; Re-numbered December 30, 2011)

A. Records for minors shall be kept for a minimum of seven (7) years after the patient reaches the age of majority (age 18).

B. Records for adult patients shall be kept for a minimum of seven (7) years after the last date of dental treatment or examination, whichever occurs at the latest date.

C. This Rule does not apply to records kept by educational, not-for-profit, and/or public health programs.

D. When the destruction cycle is imminent, written notice to the patient's last known address, or notice by publication, must be made sixty (60) days prior to destruction. Destruction cannot take place until a 30 day period has elapsed wherein the patient may claim the records.

E. Notice by publication may be accomplished by publishing in a major newspaper or a newspaper broadly circulated in the local community one day per week for four (4) consecutive weeks.

F. When the destruction cycle is imminent, records will be provided to the patient or legal guardian at no charge; however appropriate postage and handling costs are permitted.

G. Records may not be withheld for past due fees relating to dental treatment

H. Destruction shall be accomplished by a means which renders the records unable to be identified or read such as by fire or shredding.

Rule VIII. Patient Records in the Custody of a Dentist or Dental Hygienist

(Effective December 2, 2002; Amended January 21, 2010, Effective March 30, 2010; Re-numbered December 30, 2011)

A. Every patient's record in the custody of a dentist or dental hygienist shall be available to a patient or the patient's designated representative at reasonable times and upon reasonable notice.

B. A patient or designated representative (representative) may inspect or obtain a copy of his/her patient record after submitting a signed and dated request to the custodian of the patient record. The provider or the representative shall acknowledge in writing the patient's or representative's request. After inspection, the patient or representative shall sign and date the record to acknowledge inspection.

C. The custodian of the record shall make a copy of the record available or make the record available for inspection within a reasonable time from the date of the signed request, normally not to exceed five days, excluding weekends and holidays.

D. Patient or representative may not be charged for inspection of records.

E. The patient or representative shall pay for the reasonable cost of obtaining a copy of the patient record, not to exceed $12.00 for the first ten or fewer pages and $0.25 per page for every additional page. Actual postage costs may also be charged.

F. If the patient or representative so approves, the custodian may supply a written interpretation by the attending provider or representative of patient records, such as radiographs, diagnostic casts, or non-written records which cannot be reproduced without special equipment. If the requestor prefers to obtain a copy of such patient records, the patient must pay the actual cost of such reproduction.

G. If changes, corrections, deletions, or other modifications are made to any portion of a patient record, the person must note in the record date, time, nature, reason, correction, deletion, or other modification, and his/her name.

H. Nothing in this rule shall be construed as to limit a right to inspect patient records that is otherwise granted by state statute to the patient or representative.

I. Nothing in this rule shall be construed to waive the responsibility of a custodian of records to maintain confidentiality of those records the possession of the custodian.

Rule IX. Controlled Substance Record Keeping Requirements

(Amended December 2, 2002; Re-numbered December 30, 2011; Amended January 22, 2015, Effective March 30, 2015)

Every dentist, including one issued an academic license, with a current registration issued by the United States Drug Enforcement Administration (DEA) is required to register and maintain a user account with the Prescription Drug Monitoring Program (PDMP) pursuant to section 12-42.5-403(1.5)(a), C.R.S. If he/she fails to register and maintain a PDMP user account, then his/her administering, dispensing, or prescribing a controlled substance falls outside the course of legitimate professional practice and violates section 12-35-129(1)(c), C.R.S.

Every dentist shall maintain records in his/her office regarding such dentist's ordering, prescribing, dispensing, administration, and inventory of drugs or controlled substances for a period of two years as follows:

A. The dentist shall keep a complete and accurate inventory of all stocks of controlled substances on hand in his/her office. Every two (2) years, in accordance with the Drug Enforcement Administration inventory requirements, the dentist shall conduct a new inventory of all such controlled substances.

B. When the dentist prescribes, dispenses, and/or administers any controlled substance, the following shall be recorded on the patient's record:

1. Name and address of patient.

2. Diagnosis being treated or services performed.

3. Name and strength of drug(s) prescribed, dispensed, and/or administered.

4. Quantity of drug(s) prescribed, dispensed, and/or administered.

5. Date of prescribing, dispensing, and/or administration of such drugs.

6. Name of authorized practitioner-dispensing drug.

C. With respect to drugs listed in Schedule II, III, IV, and V of the Federal Controlled Substance Act and the Rules and Regulations adopted pursuant thereto, the dentist shall maintain a record of dispensing or administration which shall be separate from the individual patient's record. This separate record shall include the following information:

1. Name of the patient.

2. Name and strength of the drug.

3. Quantity of the drug dispensed or administered.

4. Date such drug was administered or dispensed.

5. Name of the authorized practitioner dispensing drug.

D. The dentist shall maintain a record of any controlled substance(s) lost, destroyed, or stolen, and the record shall include the kind and quantity of such controlled substance(s) and the date of such loss, destruction or theft. In addition, the dentist must report such loss or theft to the Drug Enforcement Administration District Office.

E. Prescription orders must include original signatures from the prescribing dentist. All prescriptions for controlled substances shall be dated as of, and signed on, the day when issued and shall bear the full name and address of the patient, the drug name, strength, dosage form, quantity prescribed, directions for use, and the name, address, and registration number of the practitioner. A practitioner may sign a prescription in the same manner as he/she would sign a check or legal document (e. g., J. H. Smith or John H. Smith). When an oral order is not permitted, prescriptions shall be written with ink or indelible pencil or typewritten and shall be manually signed by the practitioner. The prescriptions may be prepared by the secretary or agent for the signature of a practitioner, but the prescribing practitioner is responsible in case the prescription does not conform in all essential respects to the law and regulations. The use of rubber-stamped, pre-printed, or pre-signed signatures on prescription pads is not acceptable.

Rule X. Minimum Standards for Qualifications, Training and Education for Unlicensed Personnel Exposing Patients to Ionizing Radiation

The Board deems that the requirements for all dental work settings are met by these standards as of July 1, 1993.

A. All unlicensed dental personnel who expose patients to ionizing radiation must:

1. Be a minimum of 18 years of age.

2. Successfully complete minimum safety education and training for operating machine sources of ionizing radiation and administering such radiation to patients.

B. Such education and training shall include at least 8 hours in the following areas, but not limited to:

1. Dental nomenclature - .5 hours;

2. Machine operation exposure factors - 1.5 hours;

3. Operator and patient safety - 1 hour.

4. Practical or clinical experience in:

a. Intra/extra - oral techniques for exposing radiographs - 4 hours;

b. Appropriate film handling and storage - .25 hour;

c. Appropriate processing procedures - .5 hours;

d. Appropriate patient record documentation for radiographs - .25 hour.

C. Written verification of education and training shall be provided by the sponsoring agency, educational institution or licensee to each participant upon completion. This written verification shall be cosigned signed by the unlicensed person; one copy shall be kept in each unlicensed person's employment record located at the employment site, the other kept by the unlicensed person. Written verification of completion of education and training must include:

1. Name of agency, educational institution or licensee who provided such education and training;

2. Verification of hours;

3. Date of completion;

4. Exposure techniques for which education and training have been provided, i.e., bitewings, periapicals, occlusals, and panoramic.

Education and training shall be obtained by complying with subsection D, E, or F.

D. Education and training may be obtained through programs approved by the Colorado Commission on Higher Education, the State Board of Community Colleges and Occupational Education, the Private Occupational School Division, or the equivalent in any other state. Such programs shall include the education and training as specified in subsection B, above.

E. Education and training may be provided on the job by a licensed dentist or dental hygienist providing a Board approved educational module which complies with subsection B is used as the basis for such training.

F. Proof of successful completion of the Dental Assisting National Board Examination (DANB).

G. All Licensees must insure that newly hired untrained dental personnel comply with these rules within three months of becoming employed in a capacity in which they will be delegated the task of exposing radiographs.

H. It shall be the duty of each licensee to ensure that:

1. Tasks are assigned only to those individuals who have successfully completed the education and training and meet the qualifications for those tasks, which are being delegated;

2. The properly executed verification documentation of all unlicensed personnel who are operating machine sources of ionizing radiation and exposing such radiation be submitted to the Colorado State Board of Dental Examiners upon request.

Rule XI. Laboratory Work Order Forms

(Re-numbered December 30, 2011; Amended January 22, 2015, Effective March 30, 2015)

Laboratory work order forms, written or electronic, as defined in section 12-35-103(11), C.R.S., shall be retained by the dentist and lab for 2 years and contain the following information pursuant to section 12-35-133, C.R.S.:

A. Name of laboratory.

B. Name of dentist.

C. Address of dentist.

D License number of dentist.

E. Patient name or I.D. number.

F. Instructions to laboratory.

1. Include adequate space for instructions or directions.

2. Date of try in or delivery.

G. Personal signature of the authorizing dentist shall be written in ink or provided electronically and shall be manually entered by the dentist for each order. The use of rubber stamped, pre-printed, or a pre-signed signature on work orders is not acceptable.

H. Date of directions.

Rule XII. Denture Construction by Assistants and Unlicensed Technicians

(Effective February 1, 1999; Amended October 1, 1999, December 2, 2002; Amended January 21, 2010, Effective March 30, 2010; Re-numbered December 30, 2011; Amended January 22, 2015, Effective March 30, 2015)

This rule relates to tasks authorized to be performed by dental assistants as defined in section 12-35-128(3)(d), C.R.S., and tasks authorized to be performed by unlicensed technicians as defined in section 12-35-133, C.R.S.

A. Dentures are defined as fixed, removable, full, or partial appliances designed to replace teeth.

B. Dental assistants who render direct patient treatment as allowed by section 12-35-128(3)(d), C.R.S., necessary for the construction of dentures, shall be supervised by the dentist.

C. A dental assistant or unlicensed technician shall not practice dentistry as defined in section 12-35-113, C.R.S, unless pursuant to sections 12-35-128 and 12-35-133, C.R.S.

D. All tasks authorized to be performed by a dental assistant pursuant to section 12-35-128(3)(d), C.R.S., shall be performed in the "regularly announced office location" of a dentist where the dentist is the proprietor and in which he/she regularly practices dentistry, unless that person is operating as an unlicensed technician pursuant to section 12-35-133(1)(b), C.R.S., which allows an unlicensed technician that possesses a valid laboratory work order to provide extraoral construction, manufacture, fabrication, supply, or repair of identified dental and orthodontic devices. Intraoral service in a human mouth by a dental assistant or unlicensed technician is authorized and permissible only if under the direct supervision of a dentist pursuant to section 12-35-128(3)(d), C.R.S.

E. Nothing in this rule shall prevent the filling of a valid work order pursuant to section 12-35-133, C.R.S., by any unlicensed technician, association, corporation, or other entity for the construction, reproduction, or repair of prosthetic dentures, bridges, plates, or appliances to be used or worn as substitutes for natural teeth or for restoration of natural teeth.

Rule XIII. Limited Prescriptive Authority for Dental Hygienists

(Effective June 30, 1996 as Rule XXIV; Amended December 2, 2002; Amended January 21, 2010, Effective March 30, 2010; Re-numbered December 30, 2011; Amended January 22, 2015, Effective March 30, 2015; Amended April 30, 2015, Effective June 30, 2015)

A. Pursuant to section 12-35-124(1)(g)(I), C.R.S., a dental hygienist without supervision of a dentist may prescribe, administer, and dispense fluoride, fluoride varnish, antimicrobial solutions for mouth rinsing, and other nonsystemic antimicrobial agents in collaboration with a licensed dentist and, if applicable, when issued a National Provider Identifier (NPI) number by the Centers for Medicare & Medicaid Services (CMS) under the U.S. Department of Health and Human Services.

1. Collaboration with a dentist requires the dental hygienist to develop an articulated plan for safe prescribing which documents how the dental hygienist intends to maintain ongoing collaboration with a dentist in connection with the dental hygienist's practice of prescribing as allowed in section 12-35-124(1)(g), C.R.S., and section C of this rule.

2. The articulated plan shall guide the dental hygienist's prescriptive practice and shall include at least the following:

    a. A mechanism for consultation and referral to a dentist when the dental hygienist detects a condition that requires care beyond the scope of practicing unsupervised dental hygiene;

    b. A quality assurance plan;

    c. Decision support tools; and

        i. A decision support tool is an assistive tool commonly recognized by healthcare professionals as a valid resource for information on pharmaceutical agents or to aid the dental hygienist in making appropriate judgments regarding safe prescribing.

ii. Such tools may include, but are not limited to, electronic prescribing databases, evidence-based guidelines, antimicrobial reference guides, and professional journals and textbooks.

d. Emergency protocols and standing orders, including use of emergency drugs.

3. The dental hygienist shall:

a. Retain the written articulated plan with the collaborating dentist's signature on file;

b. Review the plan annually; and

c. Update the plan as necessary.

4. The articulated plan is subject to Board review and the dental hygienist shall provide the plan to the Board upon request.

B. A dental hygienist shall not prescribe, administer, or dispense the following:

1. Drugs whose primary effect is systemic, with the exception of fluoride supplements permitted under section 12-35-124(1)(g)(III)(A), C.R.S., and section C.1 of this rule below; and

2. Dangerous drugs or controlled substances.

C. A dental hygienist may prescribe the following:

1. Fluoride supplements as follows (all using sodium fluoride):

a. Tablets: 0.5 mg, 1.1 mg, or 2.2 mg;

b. Lozenges: 2.21 mg; and

c. Drops: 1.1 mL.

2. Topical anti-caries treatments as follows (all using sodium fluoride unless otherwise indicated):

a. Toothpastes: 1.1% or less (or stannous fluoride 0.4%);

b. Topical gels: 1.1% or less (or stannous fluoride 0.4%);

c. Oral rinses: 0.05%, 0.2%, 0.44%, or 0.5%;

d. Oral rinse concentrate used in periodontal disease: 0.63% stannous fluoride;

e. Fluoride varnish: 5%; and

f. Prophy pastes containing approximately 1.23% sodium fluoride and used for polishing procedures as part of professional dental prophylaxis treatment; and

3. Topical anti-infectives as follows:

a. Chlorhexidine gluconate rinses: 0.12%;

b. Chlorhexidine gluconate periodontal chips for insertion into the periodontal pocket;

c. Tetracycline impregnated fibers, inserted subgingivally into the periodontal sulcus (pocket);

d. Doxycycline hyclate periodontal gel, inserted subgingivally into the periodontal sulcus (pocket); and

e. Minocycline hydrochlorided periodontal paste, inserted subgingivally into the periodontal sulcus (pocket).

D. A dental hygienist shall maintain clear documentation in the patient record of the:

1. ~~a~~. Agent prescribed, administered, or dispensed, including dose, amount, and refills;

2. ~~b~~. Date of the action; and

3. ~~c~~. Rationale for prescribing, administering, or dispensing the agent.

E. A prescriptive order shall include:

~~a~~1. Name of the patient,

~~b~~2. Date of action,

~~c~~3. Agent prescribed including dose, amount and refills, and

~~d~~4. Rationale for prescribing the agent.

F. If a dental hygienist prescribes, administers, or dispenses without supervision of a dentist but fails to develop the required articulated plan, or fails to maintain clear documentation in the patient record; or prescribes, administers, or dispenses outside of what is allowed pursuant to section 12-35-124(1)(g), C.R.S., or in this rule, then such conduct constitutes grounds for discipline pursuant to section 12-35-129(1)(i), C.R.S.

G. Any dental hygienist placing therapeutic agents or prescribing as allowed in this rule shall have proof of current Basic Life Support (BLS) for healthcare providers.

H. The placement and removal of therapeutic agents in periodontal pockets and limited prescriptive authority may not be delegated or assigned to a dental assistant.

I. ~~Nothing in this rule prevents a dental assistant from delivering~~Pursuant to section 12-35-128(3)(b)(II), C.R.S., a dental assistant under the indirect supervision of a dentist may deliver topical fluoride.

Rule XIV. Anesthesia

(Amended February 1, 1998, August 1, 2000; August 11, 2004; October 27, 2004; October 26, 2006; July 9, 2009, Effective December 31, 2006; Amended January 21, 2010, Effective March 30, 2010; Amended April 30, 2015, Effective June 30, 2015)

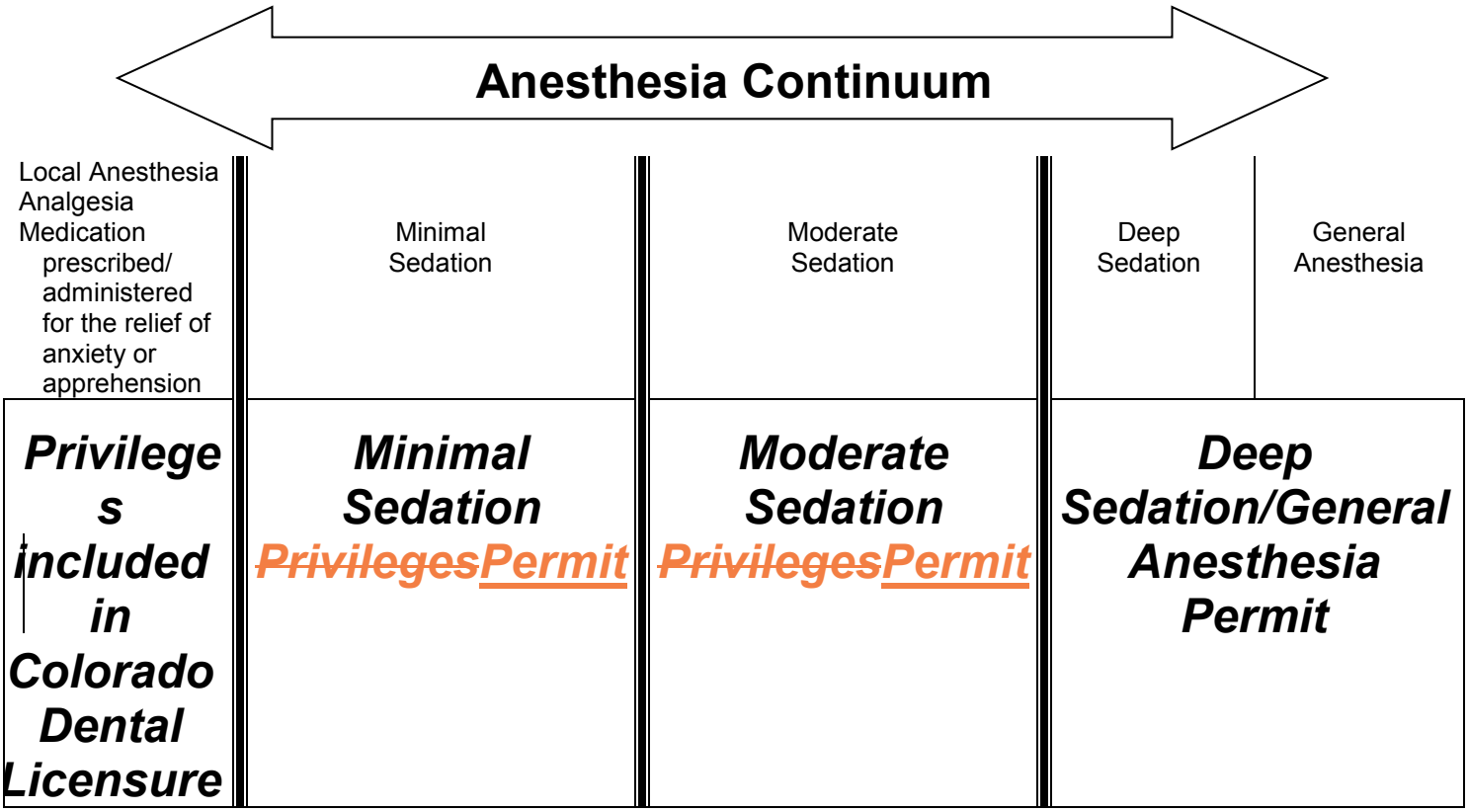
A. Introduction

1. This Rule XIV is authorized by the Dental Practice ~~Law of Colorado~~Act including but not limited to sections 12-35-107(1)(b)(II) and (III), ~~(f),~~ (h) ~~and (i)~~, 12-35-113(1)(p) and (q), 12-35-114, 12-35-125(1)(f) ~~and~~ , 12-35-128(3)(~~a~~a)(V), 12-35-129(1)(cc) and (ll), and 12-35-140, C.R.S. ~~This Rule XIV replaces prior anesthesia related Board Rules XIV, XV, XVI, XVII, and XVIII.~~

2. The purpose of this Rule XIV is to provide dental patients in the state of Colorado open and safe access to anesthesia care by making the process for obtaining ~~privileges or~~ a permit well defined, transparent, and consistent for the dental professionals while at the same time, advocating for patient safety.

B. The Anesthesia Continuum

1. The anesthesia continuum represents a spectrum encompassing analgesia, local anesthesia, sedation, and general anesthesia along which no single part can be simply distinguished from neighboring parts. It is ~~neither~~ not the route of administration ~~nor the medication(s) used~~ that determines or defines the level of anesthesia administered. The location on the continuum defines the level of anesthesia administered.



2. The level of anesthesia on the continuum is determined by the definitions listed under section C of this Rule XIV. Elements used to determine the level of anesthesia include the level of consciousness and the likelihood of anesthesia provider intervention(s), based upon the following patient parameters:

   a. Responsiveness

   b. Airway

   c. Respiratory (breathing)

   d. Cardiovascular

C. Definitions Related to Anesthesia

1. Anesthesia - The art and science of managing anxiety, pain, and awareness. Includes analgesia, local anesthesia, minimal, moderate or deep sedation, or general anesthesia.

2. Analgesia - The diminution or elimination of pain.

3. Local Anesthesia - The elimination of sensation, especially pain, in one part of the body by the topical application or regional injection of a drug.

4. Minimal Sedation - A minimally depressed level of consciousness produced by a pharmacological method, that retains the patient's ability to independently and continuously maintain an airway and respond normally to tactile stimulation and verbal command. Although cognitive function and coordination may be modestly impaired, ventilatory and cardiovascular functions are unaffected.

5. Moderate Sedation - A drug-induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway and spontaneous ventilation is adequate. Cardiovascular function is usually maintained.

6. Deep Sedation - A drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

7. General Anesthesia - A drug-induced loss of consciousness during which patients are not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

8. Monitoring - Evaluation of patients to assess physical condition and level of anesthesia.

9. Peri-anesthesia Period - The time from the beginning of the pre-anesthesia assessment until the patient is discharged from anesthesia care.

10. Anesthesia Provider - The licensed and legally authorized individual responsible for administering medications that provide analgesia, local anesthesia, minimal, moderate or deep sedation, or general anesthesia.

11. Pediatric Designation – Required if administering minimal sedation, moderate sedation, or deep sedation/general anesthesia to a patient under 12 years old.

D. General Rules for the Safe Administration of Anesthesia

1. The anesthesia provider's education, training, experience, and current competence must correlate with the progression of a patient along the anesthesia continuum.

2. The anesthesia provider must be prepared to manage deeper than intended levels of anesthesia as it is not always possible to predict how a given patient will respond to anesthesia.

3. The anesthesia provider's ultimate responsibility is to protect the patient. This includes, but is not limited to, identification and management of any complication(s) occurring during the peri-anesthesia period.

4. No dentist shall administer or employ any agent(s) with a narrow margin for maintaining consciousness including, but not limited to, ultra-short acting barbiturates, propofol, parenteral ketamine, and similarly acting drugs, or quantity of agent(s), or technique(s), or any combination thereof that would likely render a patient deeply sedated, generally anesthetized or otherwise not meeting the conditions of the definition of minimal sedation or moderate sedation in section C of this Rule XIV, unless he/she holds a valid Deep Sedation/General Anesthesia Permit issued by the Colorado Dental Board.

E. Anesthesia Privileges Included in Colorado Dental Licensure

1. The following anesthesia privileges are included ~~in~~ with a Colorado ~~dental licensure~~issued dentist license and academic license:

   a. Local Anesthesia;

   b. Analgesia;

   c. Medication prescribed/administered for the relief of anxiety or apprehension (limited to the maximum recommended dose of a single drug not including nitrous oxide, otherwise it will be considered minimal sedation); and

   d. Nitrous Oxide/Oxygen Inhalation Analgesia in compliance with section G of this Rule XIV.

2. A dentist who elects to engage the services of another anesthesia provider in order to provide anesthesia in his ~~or~~/ her dental office is responsible for ensuring that the ~~facility~~ office meets the requirements outlined in this Rule XIV.

F. Anesthesia ~~Privileges and~~ Permits

1. Local Anesthesia ~~Privileges~~ Permit for dental hygienists -

   a. A dental hygienist may obtain a Local Anesthesia ~~Privileges~~ Permit and administer local anesthesia or a local anesthetic reversal agent under the indirect supervision of a dentist.

   b. A Local Anesthesia ~~Privileges~~ Permit will be issued once and will remain valid as long as the licensee maintains an active license to practice, except as otherwise provided in section 12-35-140, C.R.S., or this Rule XIV.

   c. In order to initially apply for, renew, or reinstate a Local Anesthesia Permit pursuant to this Rule XIV, an applicant must pay a fee established by the Director of the Division of Professions and Occupations pursuant to section 24-34-105, C.R.S.

2. ~~Temporary Privileges or~~Inspection Permit -

   a. A dentist will be issued ~~temporary privileges or a temporary permit~~an Inspection Permit upon meeting the educational and/or experience requirements for a Moderate Sedation ~~Privileges~~ Permit or for a Deep Sedation/General Anesthesia Permit as outlined in this Rule XIV prior to successfully completing his/her clinical onsite inspection.

b. Unless otherwise authorized by the Board, the ~~temporary privileges or permit~~Inspection Permit will be issued once and will remain valid for a maximum of ~~ninety (~~90~~)~~ days.

c. An Inspection Permit can only be used to administer anesthesia for purposes of a Board authorized inspection.

3. Minimal Sedation ~~Privileges~~ Permit -

a. To administer minimal sedation, a dentist shall have a Minimal Sedation ~~Privileges~~Permit, Moderate Sedation ~~Privileges~~ Permit, or a Deep Sedation/General Anesthesia Permit issued in accordance with this Rule XIV.

b. A Minimal Sedation ~~Privileges~~ Permit shall be valid for a period of ~~five (~~5~~)~~ years, after which such ~~privileges~~ permit may be renewed upon reapplication.

c. In order to initially apply for, renew, or reinstate a Minimal Sedation Permit pursuant to this Rule XIV, an applicant must pay a fee established by the Director of the Division of Professions and Occupations pursuant to section 24-34-105, C.R.S.

4. Moderate Sedation ~~Privileges~~ Permit -

a. To administer ~~Moderate~~ moderate ~~Sedation~~sedation, a dentist shall have a Moderate Sedation ~~Privileges~~ Permit or a Deep Sedation/General Anesthesia Permit issued in accordance with this Rule XIV.

b. A Moderate Sedation ~~Privileges~~ Permit shall be valid for a period of ~~five (~~5~~)~~ years after which such ~~privileges~~ permit may be renewed upon reapplication.

c. In order to initially apply for, renew, or reinstate a Moderate Sedation Permit pursuant to this Rule XIV, an applicant must pay a fee established by the Director of the Division of Professions and Occupations pursuant to section 24-34-105, C.R.S.

5. Deep Sedation/General Anesthesia Permit -

a. To administer deep sedation/and or general anesthesia, a dentist shall have a Deep Sedation/General Anesthesia Permit issued in accordance with this Rule XIV.

b. A Deep Sedation/General Anesthesia Permit shall be valid for a period of ~~five (~~5~~)~~ years after which such permit may be renewed upon reapplication.

c. In order to initially apply for ~~or~~, renew, or reinstate a Deep Sedation/General Anesthesia Permit pursuant to this Rule XIV, an applicant must pay a fee established by the Director of the Division of ~~Registrations~~ Professions and Occupations pursuant to section 24-34-105, C.R.S.

G. Nitrous Oxide/Oxygen Inhalation Requirements

1. A dentist may delegate under direct supervision the monitoring and administration of nitrous oxide/oxygen inhalation to appropriately trained dental personnel, pursuant to sections 12-35-113(1)(p) and (q), 12-35-128(3)(c), and 12-35-140(4), C.R.S.

2. The supervising dentist is responsible for determining and documenting the maximum percent-dosage of nitrous oxide administered to the patient. Documentation shall include the

length of time nitrous oxide was ~~used~~ delivered~~and the length of time the patient was reoxygenated with 100% oxygen~~.

3. It is the responsibility of the supervising dentist to ensure that dental personnel who administer and/or monitor nitrous oxide/oxygen inhalation are appropriately trained.

4. If nitrous oxide is used in the practice of dentistry, then the supervising dentist shall provide and ensure the following:

   a. Fail safe mechanisms in the delivery system and an appropriate scavenging system;

   b. The inhalation equipment must be evaluated for proper operation and delivery of inhalation agents;

   c. Any administration or monitoring of nitrous oxide/oxygen inhalation to patients by dental personnel is performed in accordance with generally accepted standards of dental or dental hygiene practice.

H. Local Anesthesia ~~Privileges~~ Permit for Dental Hygienists

1. A dental hygienist may obtain a Local Anesthesia ~~Privileges~~ Permit after submitting a Board-approved application and upon successful completion of courses conducted by a school accredited by the ~~American Dental Association~~ Commission on Dental Accreditation (CODA).

2. Courses must meet the following requirements:

   a. ~~Twelve (~~12~~)~~ hours of didactic training, including but not limited to:

      ~~–~~i. Anatomy;

      ~~–~~ii. Pharmacology;

      ~~–~~iii. Techniques;

      ~~–~~iv. Physiology; and

      ~~–~~v. Medical Emergencies.

   b. ~~Twelve (~~12~~)~~ hours of clinical training that includes the administration of at least ~~six (~~6~~)~~ infiltration and ~~six (~~6~~)~~ block injections.

I. Minimal Sedation ~~Privileges~~ Permit - A dentist may obtain a Minimal Sedation ~~Privileges~~ Permit after submitting a Board-approved application and upon successful completion of the educational requirements, or by endorsement of authorized administration in another state/jurisdiction set forth below:

1. A specialty residency or general practice residency recognized by the ~~American Dental Association~~ Commission on Dental Accreditation (CODA) that includes comprehensive and appropriate training to administer and manage minimal sedation; or

2. Educational criteria for a Moderate Sedation ~~Privileges~~ Permit or for a Deep Sedation/General Anesthesia Permit; or

3. A minimum of ~~sixteen (~~16~~)~~ hours of Board-approved coursework completed within the past ~~five (~~5~~)~~ years that provides training in the administration and induction of minimal sedation techniques and management of complications and emergencies associated with sedation commensurate with the American Dental Association (ADA) Guidelines for teaching the comprehensive control of anxiety and pain in dentistry.

   a. The coursework must contain an appropriate combination of didactic instruction and practical skills training.

   b. The applicant must submit for Board approval documentation of the training course(s) to include, but not be limited to, a syllabus or course outline of the program and a certificate or other documentation from course sponsors or instructors indicating the number of course hours, content of such courses and date of successful completion.

   c. Course content leading to current Basic Life Support (BLS) and/or Advanced Cardiac Life Support (ACLS) and/or Pediatric Advanced Life Support (PALS) cannot be considered as part of the ~~sixteen (~~16~~)~~ hours of classroom and clinical instruction.

4. The Board may consider qualifications accepted in another state or jurisdiction that resulted in a comparable permit to be issued by that state or jurisdiction which is substantially equivalent to the requirements for a Minimal Sedation Permit in Colorado, as long as the applicant has successfully administered minimal sedation in 20 cases for the last 2 years prior to applying, and has had no discipline, significant morbidity to a patient, or patient mortality associated with the administration of sedation.

5. Pediatric Designation - A dentist is only eligible for a Pediatric Designation on his/her Minimal Sedation Permit by successfully completing one of the following:

   a. Completing a pediatric residency pursuant to subparagraph 1.a of this Rule XIV.J.

   b. Meeting the educational criteria pursuant to subparagraph 1.b of this Rule XIV.J, or

   b. Completing:

      i. A minimum of 30 hours specific to pediatric patients in addition to or as part of the 60 hours of education pursuant to subparagraph 2.a of this Rule XIV.J; and

      ii. 10 pediatric cases in addition to or as part of the 20 cases of experience pursuant to subparagraph 2.b of this Rule XIV.J.

J. Moderate Sedation ~~Privileges~~ Permit - A dentist may obtain a Moderate Sedation ~~Privileges~~ Permit after submitting a Board-approved application and upon successful completion of education only, or a combination of approved education and experience, or by endorsement of authorized administration in another state or jurisdiction as set forth below:

1. Education Only Route - ~~must~~ Must submit proof of having successfully completed one of the following:

   a. A specialty residency or general practice residency recognized by the ~~American Dental Association~~ Commission on Dental Accreditation (CODA) that includes comprehensive and appropriate training to administer and manage moderate sedation; or

b. Educational criteria for a Deep Sedation/General Anesthesia Permit.

2. Education/Experience Route - ~~must~~ Must submit proof of successfully completing moderate sedation course(s) and acceptable sedation cases as set forth below.

a. Education -

~~I)~~i. ~~Sixty (~~60~~)~~ hours of Board-approved coursework completed within the past ~~five (~~5~~)~~ years that provides training in the administration and induction of moderate sedation techniques and management of complications and emergencies associated with sedation commensurate with the American Dental Association (ADA) Guidelines for teaching the comprehensive control of anxiety and pain in dentistry.

~~II)~~ii. Such coursework must include an appropriate combination of didactic instruction and practical skills training. Coursework must also include documented training in parenteral techniques in order to perform parenteral sedation once a Moderate Sedation Permit is issued.

~~III)~~iii. The applicant must submit for Board approval documentation of the training course(s) to include, but not be limited to, a syllabus or course outline of the program and a certificate or other documentation from course sponsors or instructors indicating the number of course hours, content of such courses and date of successful completion.

~~IV)~~iv. Course content leading to current Basic Life Support (BLS) and/or Advanced Cardiac Life Support (ACLS) and/or Pediatric Advanced Life Support (PALS) cannot be considered as part of the ~~sixty (~~60~~)~~ hours of classroom and clinical instruction.

b. Experience -

~~I)~~i. ~~Twenty (20) s~~Sedation cases performed by the applicant on 20 unique patients that were completed as part of or separate from the ~~Board~~ Board-approved sedation training course.

ii. If completed as part of a Board-approved sedation training course, then time spent on cases does not count towards the 60-hour course requirement.

~~II)~~iii. If completed separate from the course, then all cases must be completed during the ~~one (~~1~~)~~ year period immediately after completion of the approved training program.

~~III)~~iv. All of the cases must be performed and documented under the on-site instruction and supervision of a person qualified to administer anesthesia at a deep sedation/general anesthesia level.

~~IV)~~v. ~~All of the cases must be performed and documented by the applicant.~~Pursuant to section 12-35-140(4)(b), C.R.S., the applicant must both be the primary provider of the sedation and directly provide dental care for all required casework.

~~V)~~vi. Cases may be performed on live patients or as part of a hands-on high-fidelity sedation simulation center or program; however, a maximum of 5

hands-on high fidelity simulation cases may be accepted as part of the required 20 sedation cases.

~~VI)~~vi. ~~All of the c~~Cases must meet the documentation and monitoring requirements for moderate sedation set forth in sections O and P of this Rule XIV. The cases must meet generally accepted standards for the provision and documentation of moderate sedation in Colorado, regardless of where the cases occurred.

3. Endorsement Route – The Board may consider qualifications accepted in another state or jurisdiction that resulted in a comparable permit to be issued by that state or jurisdiction which is substantially equivalent to the requirements for a Moderate Sedation Permit in Colorado, as long as the applicant has successfully administered moderate sedation in 20 cases for the last 2 years prior to applying, and has had no discipline, significant morbidity to a patient, or patient mortality associated with the administration of sedation.

4. Pediatric Designation - A dentist is only eligible for a Pediatric Designation on his/her Moderate Sedation Permit by successfully completing one of the following:

a. Completing a pediatric residency pursuant to subparagraph 1.a of this Rule XIV.J.

b. Meeting the educational criteria pursuant to subparagraph 1.b of this Rule XIV.J, or

c. Completing:

i. A minimum of 30 hours specific to pediatric patients in addition to or as part of the 60 hours of education pursuant to subparagraph 2.a of this Rule XIV.J; and

ii. 10 pediatric cases in addition to or as part of the 20 cases of experience pursuant to subparagraph 2.b of this Rule XIV.J.

K. Deep Sedation/General Anesthesia Permit - A dentist may obtain a Deep Sedation/General Anesthesia Permit after submitting a Board-approved application and upon successful completion of one of the following educational requirements:

1. A residency program in general anesthesia that is approved by the ~~American Dental Association~~Commission on Dental Accreditation (CODA), the American Dental Society of Anesthesiology, the Accreditation Council for Graduate Medical Education, the American Osteopathic Association, or any successor organization to any of the foregoing; or

2. An acceptable post-doctoral training program (e.g., oral and maxillofacial surgery or dental anesthesiology) that affords comprehensive and appropriate training necessary to administer and manage deep sedation and general anesthesia commensurate with the American Dental Association (ADA) Guidelines for teaching the comprehensive control of anxiety and pain in dentistry.

3. A dentist issued a Deep Sedation/General Anesthesia Permit will automatically obtain a Pediatric Designation.

L. Clinical On-Site Inspection for Obtaining, Renewing, or Reinstating a Moderate Sedation ~~Privileges~~ or ~~a~~ Deep Sedation/General Anesthesia Permit

1. Applications for a Moderate Sedation Permit or Deep Sedation/General Anesthesia Permit

a. Any dentist applying for a Moderate Sedation Permit or a Deep Sedation/General Anesthesia Permit must successfully complete a clinical on-site inspection as a condition of obtaining a Moderate Sedation Permit or Deep Sedation/General Anesthesia Permit.

b. Upon satisfying the requirements of section J or K of this Rule XIV, the dentist applying for a Moderate Sedation Permit or Deep Sedation/General Anesthesia Permit will initially be issued an Inspection Permit. The dentist must then undergo a clinical on-site inspection. The Inspection Permit may only be utilized for purposes of undergoing the Board-approved clinical on-site inspection.

c. Upon issuance, an Inspection Permit is effective for 90 days, and unless otherwise authorized by the Board, the clinical on-site inspection must be successfully completed within those 90 days while the Inspection Permit is in effect.

~~1. Any dentist applying for Moderate Sedation Privileges or a Deep Sedation/General Anesthesia Permit will initially be issued a temporary permit upon successfully meeting the educational and/or experience requirements as provided in this Rule XIV. The dentist must then undergo a clinical on-site inspection.~~

2. Renewing or Reinstating a Moderate Sedation Permit or Deep Sedation/General Anesthesia Permit

a. Any dentist applying to renew or reinstate a Moderate Sedation Permit or a Deep Sedation/General Anesthesia Permit must submit an updated clinical on-site inspection as required pursuant to section 12-35-140(5), C.R.S.

b. To renew an active permit a clinical on-site inspection must be completed within the 3 months before the expiration date of the permit or within a 3 month grace-period after the expiration date of the permit; otherwise the permit will expire and the dentist will no longer be authorized to administer those levels of anesthesia requiring a permit.

c. Any dentist whose Moderate Sedation Permit or Deep Sedation/General Anesthesia Permit has expired is required to first obtain an Inspection Permit before proceeding with a clinical on-site inspection.

~~2. Unless otherwise authorized by the Board, a clinical on-site inspection must be successfully completed within ninety (90) days of a temporary permit being issued in order to receive Moderate Sedation Privileges or a Deep Sedation/General Anesthesia Permit.~~

~~3. The Board may require re-inspection of a facility as part of the process for renewal or reinstatement of the privileges or permit.~~

4~~3~~. A separate clinical on-site inspection is not required for dentists who receive a Moderate Sedation ~~Privileges~~ Permit or a Deep Sedation/General Anesthesia Permit pursuant to this Rule XIV for ~~one~~ 1 office and travel to other dental office locations to administer anesthesia. However, it is the responsibility of the anesthesia provider to ensure that each ~~facility~~ office meets the requirements outlined in this rule. This responsibility also extends to a dentist without a Moderate Sedation ~~Privileges~~ Permit or a Deep Sedation/General Anesthesia Permit who elects to engage the services of another anesthesia provider to provide such anesthesia in his/her dental office.

4. A clinical on-site inspection is not required for dentists administering only in a hospital setting.

5. In the case of a dentist who practices exclusively from a mobile or portable facility, a clinical on-site inspection shall be conducted in the office of a Colorado licensed dentist. A written list of all monitors, emergency equipment, and other materials which the mobile anesthesia provider agrees to have available at all times while administering in multiple locations shall be provided to the inspector, who in turn will provide it with his/her inspection report to the Board.

~~5~~6. The dentist requiring the ~~anesthesia~~ clinical on-site inspection is responsible for all fees associated with and must bear the cost of the inspection. The dentist must pay any fee incurred directly to the approved inspector. The inspector may charge a reasonable inspection fee, plus actual travel expenses for lodging, meals, and mileage at the current United States Internal Revenue Service (IRS) rate per mile. An inspection fee up to $500 is reasonable.

~~6~~7. The ~~anesthesia~~ clinical on-site inspection shall consist of ~~four (4)~~the following parts:

a. Review of the office equipment, records, and emergency medications required in sections M, N, and O, and subsections P.~~2~~ 3 and P.~~3~~ 4 of this Rule XIV.

b. Surgical/Anesthetic Techniques. ~~The inspector shall observe at least one (1) case while the dentist administers anesthesia at the level for which he/she is making application to the Board. The inspector may require additional cases to observe at his/her discretion.~~

i. The inspector shall observe at least 1 case while the dentist administers anesthesia at the level for which he/she is making application to the Board. The inspector may require additional cases to observe at his/her discretion.

ii. Any dentist requesting a Pediatric Designation that is applying for, renewing, or reinstating a Moderate Sedation Permit and is eligible for the designation through completion of a pediatric specialty training program or a combination of acceptable pediatric education (30 hours) and experience (10 pediatric cases) is required to have at least 1 pediatric case observed as part of his/her inspection.

c. Simulated Emergencies. The dentist and his/her team must ~~be able to~~ demonstrate ~~his/her expertise in~~adequately managing a minimum of 8 emergencies ~~as required in the application~~.

d. Discussion Period.

~~7~~8. The inspector shall be a Board-approved Colorado licensed ~~anesthesiologist~~ physician or certified registered nurse anesthetist (CRNA) trained in dental outpatient deep sedation/general anesthesia and moderate sedation, or a dentist ~~with~~ issued a Deep Sedation/General Anesthesia Permit pursuant to section 12-35-140(5)(a), C.R.S. A dentist issued a Moderate Sedation Permit may perform the clinical on-site inspection for another dentist renewing a Moderate Sedation Permit only.

~~8~~9. The inspector shall not have an unethical agreement or conflict of interest with an applicant. ~~An inspector's receipt of payment from the applicant for services as an inspector is acceptable and does not constitute an unethical agreement or conflict of interest.~~

~~9~~10. Inspectors shall be considered consultants for the Board and shall be immune from liability in any civil action brought against him/her occurring while acting in this capacity as set forth in section 12-35-109(3), C.R.S.

~~10~~11. The documentation of the anesthesia inspection must be completed on Board-approved forms ~~approved by the Board~~and submitted for review along with the anesthesia record(s).

M. Office Facilities and Equipment for Provision of Minimal Sedation, Moderate Sedation, Deep Sedation and/or General Anesthesia -

1. Any dentist whose practice includes the administration of minimal sedation by any anesthesia provider must provide the following office facilities and equipment, which are required to be functional at all times:

   a. Emergency equipment and facilities, including:

      ~~I)~~i. An appropriate size bag-valve-mask apparatus or equivalent with an oxygen hook-up;

      ~~II)~~ii. Oral and nasopharyngeal airways;

      ~~III)~~iii. Appropriate emergency medications; and

      ~~IV)~~iv. An external defibrillator - manual or automatic.

   b. Equipment to monitor vital signs and oxygenation/ventilation, including:

      ~~I)~~i. A continuous pulse oximeter; and

      ~~II)~~ii. A blood pressure cuff of appropriate size and stethoscope, or equivalent blood pressure monitoring devices.

   c. Oxygen, suction, and a pulse oximeter must be immediately available during the recovery period.

2. Any dentist whose practice includes the administration of moderate sedation by any anesthesia provider must provide the following office facilities and equipment, which are required to be functional at all times:

   a. Emergency equipment and facilities, including:

      ~~I)~~i. An appropriate size bag-valve-mask apparatus or equivalent with an oxygen hook-up;

      ~~II)~~ii. Oral and nasopharyngeal airways;

      ~~III)~~iii. Appropriate emergency medications; and

      ~~IV)~~iv. An external defibrillator - manual or automatic.

   b. Equipment to monitor vital signs and oxygenation/ventilation, including:

      ~~I)~~i. A continuous pulse oximeter; and

~~II)~~ii. A blood pressure cuff of appropriate size and stethoscope, or equivalent blood pressure monitoring devices.

c. Oxygen, suction, and a pulse oximeter must be immediately available during the recovery period.

d. Back-up suction equipment.

e. Back-up lighting system.

f. Parenteral access or the ability to gain parenteral access, if clinically indicated.

g. Electrocardiograph, if clinically indicated.

h. End-tidal carbon dioxide monitor (capnography) by July 1, 2016.

3. Any dentist whose practice includes the administration of deep sedation and/or general anesthesia by any anesthesia provider must provide the following office facilities and equipment, which are required to be functional at all times:

a. Emergency equipment and facilities, including:

~~I)~~i. An appropriate size bag-valve-mask apparatus or equivalent with an oxygen hook-up;

~~II)~~ii. Oral and nasopharyngeal airways;

~~III)~~iii. Appropriate emergency medications; and

~~IV)~~iv. An external defibrillator - manual or automatic.

b. Equipment to monitor vital signs and oxygenation/ventilation, including:

~~I)~~i. A continuous pulse oximeter; and

~~II)~~ii. A blood pressure cuff of appropriate size and stethoscope, or equivalent blood pressure monitoring devices.

c. Oxygen, suction, and a pulse oximeter must be immediately available during the recovery period.

d. Back-up suction equipment.

e. Back-up lighting system.

f. Parenteral access or the ability to gain parenteral access, if clinically indicated.

g. Electrocardiograph.

h. End-tidal carbon dioxide monitor ~~if using a laryngeal mask airway or endotracheal intubation~~(capnography) by July 1, 2016.

i. Additional emergency equipment and facilities, including:

~~I)~~i. Endotracheal tubes suitable for patients being treated;

~~II)~~ii. A laryngoscope with reserve batteries and bulbs,

~~III)~~iii. Endotracheal tube forceps (i.e. magill); and

~~IV)~~iv. At least one additional airway device.

N. ~~Volatile~~ Anesthesia Gas Delivery Systems ~~--~~ ~~if utilized, shall~~ Shall include:

1. Capability to deliver oxygen to a patient under positive pressure, including a back-up oxygen system;

2. Gas outlets that meet generally accepted safety standards preventing accidental administration of inappropriate gases or gas mixture;

3. Fail-safe mechanisms for inhalation of nitrous oxide analgesia;

4. The inhalation equipment must have an appropriate scavenging system if volatile anesthetics are used; and

5. Gas storage facilities, which meet generally accepted safety standards.

O. Documentation ~~--~~ ~~shall~~ Shall include, but is not limited to:

1. For administration of local anesthesia and analgesia -

   a. Pertinent medical history, including weight; and

   b. Medication(s) administered and dosage(s).

2. For administration of minimal sedation, moderate sedation, deep sedation or general anesthesia -

   a. Medical History - current and comprehensive;

   b. Weight;

   c. Height for any patient over the age of 12;

   d. American Society of Anesthesiology (ASA) Classification;

   e. Dental Procedure(s);

   f. Informed Consent;

   g. Anesthesia Record, which includes:

      ~~I)~~i. Parenteral access site and method, if utilized;

      ~~II)~~ii. Medication(s) administered - medication (including oxygen), dosage, route, and time given;

      ~~III)~~iii. Vital signs before and after anesthesia is utilized;

      ~~IV)~~iv. Intravenous fluids, if utilized; and

~~V)~~v. Response to anesthesia - including any complications;

h. Condition of patient at discharge.

3. ~~For~~ In addition, for administration of moderate sedation, deep sedation or general anesthesia~~:~~ :

a. Physical examination - airway assessment; baseline heart rate, blood pressure, respiratory rate, and oxygen saturation;

b. Anesthesia record, which includes:

~~I)~~i. Time anesthesia commenced and ended;

~~II)~~ii. At least every 5 minutes - blood pressure, heart rate, if clinically indicated indicated by patient history, medical condition(s), or age; and

~~III)~~iii. At least every 15 minutes - oxygen saturation (~~SAO2~~SpO2); respiratory rate; electrocardiograph (ECG), if clinically indicated by patient history, medical condition(s), or age; and ventilation status (spontaneous, assisted, or controlled).

P. Patient Monitoring ~~--~~ ~~shall~~ Shall include, but is not limited to the following for the administration of:

1. Local Anesthesia and Analgesia -

~~a.~~ General state of the patient.

2. Minimal Sedation -

a. Continuous heart rate and respiratory status;

b. Continuous oxygen saturation (SpO2)~~, if clinically indicated by patient history, medical condition(s), or age~~;

c. Pre and post procedure blood pressure; and

d. Level of anesthesia on the continuum.

~~e. Level of cooperation in the pediatric or special needs patient may not reasonably allow for full compliance with some monitoring requirements. In such instance, the supervising dentist shall use professional judgment and shall document available monitoring parameters to the best of his/her ability.~~

3. Moderate Sedation -

a. Continuous heart rate, respiratory status, and oxygen saturation;

b. Intermittent blood pressure every 5 minutes or more frequently;

c. Continuous electrocardiograph, if clinically indicated by patient history, medical condition(s), or age; ~~and~~

d. End-tidal carbon dioxide monitoring (capnography) by July 1, 2016; and

~~d~~e. Level of anesthesia on the continuum.

4. Deep Sedation or General Anesthesia -

a. Continuous heart rate, respiratory status, and oxygen saturation;

b. Intermittent blood pressure every 5 minutes or more frequently;

c. Continuous electrocardiograph;

d. End-tidal carbon dioxide monitoring ~~if using a laryngeal mask airway or endotracheal intubation~~(capnography) by July 1, 2016; and

e. Level of anesthesia on the continuum.

5. Level of cooperation in the pediatric or special needs patient may not reasonably allow for full compliance with some monitoring requirements. In such instance, the supervising dentist shall use professional judgment and shall document available monitoring parameters to the best of his/her ability.

Q. Miscellaneous Requirements

1. Life Support Certification(s) -

a. Successful completion of Basic Life Support (BLS) training for health care providers and continuous certification are required for:

i. All dentists and dental personnel utilizing, administering, or monitoring local anesthesia, analgesia (including nitrous oxide), minimal sedation, moderate sedation, deep sedation, or general anesthesia; and

ii. All dental hygienists utilizing, administering, or monitoring local anesthesia.

~~a. All dentists and dental personnel utilizing, administering or monitoring local anesthesia, analgesia, minimal sedation, moderate sedation, deep sedation or general anesthesia shall have successfully completed current Basic Life Support (BLS) training.~~

b. Additionally, any dentist applying for or maintaining a Moderate Sedation ~~Privileges~~ Permit or a Deep Sedation/General Anesthesia Permit must have successfully completed current Advanced Cardiac Life Support (ACLS) or Pediatric Advanced Life Support (PALS), as appropriate for the dentist's practice, and maintain continuous certification.

c. Successful completion of PALS training and continuous certification are required for a dentist that applies for or maintains a Pediatric Designation.

2. Personnel -

a. Minimal/Moderate Sedation - ~~during~~ During the administration of minimal or moderate sedation, the supervising dentist and at least ~~one (~~1~~)~~ other individual who is experienced in patient monitoring and documentation must be present.

b. Deep sedation/general anesthesia - ~~during~~ During the administration of deep sedation or general anesthesia, the supervising dentist and at least ~~two (~~2~~)~~ other

individuals ~~must be present;~~ , one of whom is experienced in patient monitoring and documentation, must be present.

3. Monitoring and medication administration - ~~may be delegated to trained dental personnel under the direct supervision of the dentist; however, the supervising dentist retains full accountability.~~ The supervising dentist retains full accountability, but delegation to trained dental personnel may occur under:

   a. Direct supervision by the dentist when a patient is being monitored, or

   b. Direct, continuous, and visual supervision by the dentist when medication, excluding local anesthetic, is being administered to a patient.

4. Discharge - ~~patient~~ Patient discharge after sedation and/or general anesthesia must be specifically authorized by the anesthesia provider.

R. Additional Requirements for ~~Privileges or~~ Permits: Demonstration of Continued Competency and Reinstatement of Expired ~~Privileges or~~ Permits

1. An applicant for a Local Anesthesia ~~Privileges~~Permit, Minimal Sedation ~~Privileges~~Permit, Moderate Sedation ~~Privileges~~ Permit, or a Deep Sedation/General Anesthesia Permit shall demonstrate to the Board that he/she has maintained the professional ability and knowledge required to perform anesthesia when the applicant has not completed a residency program or the coursework set forth in this Rule XIV within the past ~~five (~~5~~)~~ years immediately preceding the application. The applicant may demonstrate competency as follows:

   a. Submit proof satisfactory to the Board that he/she has engaged in the level of administration of anesthesia within generally accepted standards of dental or dental hygiene practice and in compliance with section O and P of this Rule XIV at or above the level for which the applicant is pursuing ~~privileges or~~ a permit for at least ~~one (~~1~~)~~ of the ~~five (~~5~~)~~ years immediately preceding the application, or

   b. Submit proof satisfactory to the Board of an evaluation, completed within ~~one (~~1~~)~~ year preceding the application by a person or entity approved by the Board that certifies the applicant's ability to administer anesthesia within generally accepted standards of dental or dental hygiene practice and in compliance with sections O and P of this Rule XIV at or above the level for which he/she is requesting ~~privileges or~~ a permit. The proposed procedure for the evaluation and the proposed evaluating person or entity must be submitted and be pre-approved by the Board.

2. If a dentist allows his/her Colorado dental license to expire then his/her Minimal Sedation ~~Privileges~~Permit, Moderate Sedation ~~Privileges~~ Permit, or Deep Sedation/General Anesthesia Permit shall also expire. The dentist may apply for reinstatement of his/her Minimal Sedation ~~Privileges~~Permit, Moderate Sedation ~~Privileges~~ Permit, or Deep Sedation/General Anesthesia Permit simultaneously with or subsequent to application for reinstatement of licensure.

3. If a dental hygienist allows his/her Colorado dental hygienist license to expire then his/her Local Anesthesia ~~Privileges~~ Permit shall also expire. The dental hygienist may apply for reinstatement of his/her Local Anesthesia ~~Privileges~~ Permit simultaneously with or subsequent to application for reinstatement of licensure.

4. ~~A~~ If a dentist or dental hygienist has not had a permit within the 2 years immediately preceding ~~who is submitting~~ an application for reinstatement of his/her ~~privileges or~~ permit, he/she shall demonstrate to the Board the same competency requirements set forth in section R.1 of this Rule XIV. ~~if he/she has not had privileges or a permit within the two (2) years immediately preceding such reinstatement application~~.

5. Effective March 1, 2016, a dentist renewing his/her permit is required to complete 17 hours of Board-approved continuing education credits specific to anesthesia or sedation administration during the 5-year permit renewal period as a condition of renewing it.

   a. These credits may also be applied to the 30 continuing education hours required every 2 years as part of licensure renewal. However, they may only apply to the license renewal period in which they were earned and cannot be re-applied towards a subsequent license renewal period.

   b. A dentist permitted to administer either minimal sedation, moderate sedation, or deep sedation/general anesthesia may not apply time spent maintaining current BLS, ACLS, or PALS towards this requirement.

   c. Board-approved continuing education credits in anesthesia or sedation administration are limited to any course or program recognized by the (or successor organization):

      i. American Dental Association (ADA) Continuing Education Recognition Program (CERP),

      ii. Academy of General Dentistry (AGD) Program Approval for Continuing Education (PACE),

      iii. American Medical Association (AMA), or

      iv. Commission on Dental Accreditation (CODA) accredited institution.

S. Anesthesia Morbidity/Mortality Reporting Requirements -- ~~a~~ A complete written report shall be submitted to the Board by the anesthetizing dentist or dental hygienist and his/her supervising dentist within ~~fifteen (~~15~~)~~ days of any anesthesia related incident resulting in significant ~~patient~~ morbidity to a patient or patient mortality. A morbidity or mortality report shall include:

1. ~~A morbidity and mortality report shall include t~~The complete anesthesia record ~~with an associated narrative of all events.~~ for the patient at issue;

2. The anesthetizing dentist's or dental hygienist's narrative of all events; and

~~2~~3. All records related to the incident ~~shall be submitted to the Board as part of the report~~.

T. Effect of ~~2009 Amendments on Currently Issued Permits~~Pediatric Designation Requirements

1. Any dentist whose Board-issued permit to perform ~~General Anesthesia and/or Deep Sedation is active on March 30, 2010 shall automatically obtain a Deep Sedation/General Anesthesia Permit pursuant to this Rule XIV. Such dentist's permit shall expire five (5) years from the date under which the prior General Anesthesia and/or Deep Sedation Permit was granted. Following such expiration, the dentist must comply with all applicable statutory and regulatory requirements in order to renew the Deep Sedation/General Anesthesia Permit~~deep sedation/general anesthesia is active on June 30, 2015, shall automatically obtain a Pediatric Designation on his/her permit.

2. Any dentist whose Board-issued permit to perform ~~Parenteral Conscious Sedation is active on March 30, 2010 shall automatically obtain Moderate Sedation Privileges pursuant to this Rule XIV. Such dentist's privileges shall expire five (5) years from the date under which the prior Parenteral Conscious Sedation permit was granted. Following such expiration, the dentist must comply with all applicable statutory and regulatory requirements in order to renew the Moderate Sedation Privileges~~moderate sedation is active on June 30, 2015, shall automatically obtain a Pediatric Designation on his/her permit for 1 year. In order to continue or regain that designation, he/she will be required to apply for and obtain a Pediatric Designation in accordance with subsection J.4 of this Rule XIV.

3. Any dentist whose Board-issued permit to perform ~~Enteral Conscious Sedation is active on March 30, 2010 shall automatically obtain Minimal Sedation Privileges pursuant to this Rule XIV. Such dentist's privileges shall expire five (5) years from the date under which the prior Enteral Conscious Sedation permit was granted. Following such expiration, the dentist must comply with all applicable statutory and regulatory requirements in order to renew the Minimal Sedation Privileges~~minimal sedation is active on June 30, 2015, shall automatically obtain a Pediatric Designation on his/her permit for 1 year. In order to continue or regain that designation, he/she will be required to apply for and obtain a Pediatric Designation in accordance with subsection I.5 of this Rule XIV.

~~4. Any dental hygienist whose Board-issued permit to perform Local Anesthesia is active on March 30, 2010 shall automatically obtain Local Anesthesia Privileges pursuant to this Rule XIV. Such hygienist's privileges shall remain valid for so long as the licensee maintains an active license to practice, except as otherwise provided in this Rule XIV.~~

U. Board Reserved Rights

1. Dentists or dental hygienists utilizing anesthesia that requires ~~privileges or~~ a permit shall be responsible for practicing within generally accepted standards of dental or dental hygiene practice in administering anesthesia and complying with the terms of this Rule XIV, pursuant to section 12-35-129(1), C.R.S.

2. Dentists or dental hygienists utilizing anesthesia that requires ~~privileges or~~ a permit, under this Rule XIV without first obtaining the required ~~privileges or~~ permit, or utilizing such anesthesia with ~~expired privileges or~~ an expired permit, may be disciplined pursuant to section 12-35-129(1)(cc) and (ll), C.R.S.

3. Upon a specific finding of a violation of this Rule XIV, and/or upon reasonable cause, the Board may require a supervising dentist to submit proof demonstrating that applicable staff have the appropriate education/training in order to administer nitrous oxide/oxygen and/or are otherwise acting in compliance with this Rule XIV.

4. The Board may discipline a license or deny ~~a dentist or dental hygienist~~an application for a violation of this Rule XIV, unprofessional conduct, and/or any other grounds pursuant to section 12-35-129(1), C.R.S.

5. In addition to the remedies set forth above, nothing in this Rule XIV shall limit the authority of the Board, upon objective and reasonable grounds, to order summary suspension of an anesthesia ~~privileges or~~ permit pursuant to section 24-4-104(4), C.R.S.

6. In addition to the remedies set forth above, nothing in this Rule XIV shall limit the authority of the Board, upon objective and reasonable grounds, to order summary suspension of a license to practice dentistry or dental hygiene, pursuant to section 24-4-104(4), C.R.S.

7. Upon review of a morbidity/mortality report and/or upon reasonable concern regarding the use of anesthesia, the Board may require an on-site inspection of the dental ~~facility~~ office utilized by the anesthesia provider in administering anesthesia.

8. The Board reserves all other powers and authorities set forth in the Dental Practice ~~Law of Colorado~~Act, Article 35 of Title 12, C.R.S. and the Administrative Procedure Act, Article 4 of Title 24, C.R.S.

Rule XV. Pediatric Case Management; Medical Immobilization/Protective Stabilization

(Amended October 24, 2007, Effective December 31, 2007; Amended January 21, 2010, Effective March 30, 2010; Re-numbered December 30, 2011)

A. The purpose of this rule is to recognize that pediatric cases may require special case management, and that pediatric and special needs patients may need specialized care in order to prevent injury and to protect the health and safety of the patients, the dentist, and the dental staff. In addition to patient management of the pediatric and special needs patient, it may be necessary to medically immobilize the pediatric and special needs patients to prevent injury and to protect the health and safety of the patients, the dentist, and the dental staff. To achieve effective pediatric patient management, it is important to build a trusting relationship between the dentist, the dental staff, the patient, and the parent of guardian. This necessitates that the dentist establishes communication with them and promotes a positive attitude towards oral and dental health in order to alleviate fear and anxiety and to deliver quality dental care.

B. Pediatric Case Management

1. Parents or legal guardians cannot be denied access to the patient during treatment in the dental office unless the health and safety of the patient, parent or guardian, or dental staff would be at risk. The parent or guardian shall be informed of the reason they are denied access to the patient and both the incident of the denial and the reason for the denial shall be documented in the patient's dental record.

2. This provision shall not apply to dental care delivered in an accredited hospital or acute care facility.

C. Medical Immobilization/Protective Stabilization

1. Within this Rule, the terms medical immobilization and protective stabilization are used interchangeably. These terms refer to partial or complete immobilization of the patient necessary to protect the patient, practitioner, and other dental staff from injury while providing care. Immobilization can be performed by the dentist, staff, or parent or legal guardian with or without the aid of an immobilization device.

2. Training requirement. Prior to utilizing medical immobilization, the dentist shall have received training beyond basic dental education through a residency program or graduate program that contains content and experiences in advanced behavior management or a continuing education course of no less than 6 hours in advanced behavior management that involves both didactic and demonstration components. This training requirement will be effective October 1, 2006.

3. Pre-Immobilization Requirements

a. Prior to utilizing medical immobilization, the dentist shall consider each of the following:

1. Other alternative less restrictive behavioral management methods;

2. The dental needs of the patient;

3. The effect on the quality of dental care;

4. The patient's emotional development; and

5. The patient's physical condition; and

6. The safety of the patient, dentist, and staff.

b. Prior to using medical immobilization, the dentist shall obtain written informed consent for the specific technique of immobilization from the parent or legal guardian and document such consent in the dental record, unless the parent or legal guardian is immobilizing the patient. Consent involving solely the presentation or description of a listing of various behavior management techniques is not considered to constitute informed consent for medical immobilization. The parent or guardian must be informed of the advantages and disadvantaged of the technique(s) of immobilization being utilized and/or considered.

4. Medical Immobilization or Protective Stabilization

a. Immobilization can be performed by the dentist, staff, or parent or legal guardian with or without the aid of an immobilization device.

b. Immobilization must cause no serious or permanent injury and the least possible discomfort.

c. Indication. Partial or complete immobilization may be used for required diagnosis and/or treatment if the patient cannot cooperate due to lack of maturity, mental or physical handicap, failure to cooperate after other behavior management techniques have failed and/or when the safety of the patient, dentist or dental staff would be at risk without using protective stabilization. This method can only be used to reduce or eliminate untoward movement, protect the patient and staff from injury, and to assist in the delivery of quality dental treatment.

d. Contraindications. Medical immobilization may not be used for the convenience of the dentist, as punishment, to provide care for a cooperative patient, or for a patient who cannot be immobilized safely due to medical conditions.

e. Documentation. The patient's records should include:

1. Specific written informed consent for the medical immobilization, including the reason why immobilization is required;

2. Type of immobilization used, including immobilization by a parent or guardian;

3. Indication or reason for specific immobilization;

4. Duration of application;

5. Documentation of adequacy of patient airway, peripheral circulation and proper positioning of immobilization device or technique in increments of 15 minutes while immobilization is utilized.

6. In addition, there must be documentation of the outcome of the immobilization, including the occurrence of any marks, bruises, injuries, or complications to the patient.

f. Duration of Application.

1. The patient record must document the time each immobilization began and ended.

2. The status and progress of the treatment and the plan for future or remaining treatment with treatment options shall be reported at least hourly, or more frequently if appropriate, to the parent or legal guardian. After each such hourly report, renewed consent for continuation of the immobilization must be specifically obtained. Such consent may be verbal but shall be documented in the record.

g. If the treatment plan changes during the procedure from that presented to the parent or legal guardian in the initial informed consent discussion, the parent or legal guardian shall be notified and consulted immediately.

h. Dental hygienists and dental assistants shall not use medical immobilization by themselves, but may assist the dentist as necessary.

Rule XVI. Infection Control

(Effective August 1, 2000; Amended January 5, 2001; Amended January 21, 2010, Effective March 30, 2010; Re-numbered December 30, 2011; Repealed January 22, 2015, Effective March 30, 2015)

Rule XVII. Advertising

(Effective August 1, 2000; Temporarily Expired December 2, 2002; Effective July 1, 2003; Amended October 27, 2004; Amended October 26, 2006, Effective December 30, 2006; Amended April 25, 2007, Effective July 1, 2007; Amended October 24, 2007, Effective December 31, 2007; Amended October 22, 2008, Effective November 30, 2008; Amended January 21, 2010, Effective March 30, 2010; Re-numbered December 30, 2011)

This Rule applies to advertising in all types of media that is directed to the public. No dentist or dental hygienist shall advertise in any form of communication in a manner that is misleading, deceptive or false.

A. Misleading, deceptive, or false advertising includes, but is not limited to the following, and if proven is a violation of section 12-35-129 (1), C.R.S.:

1. A known material misrepresentation of fact;

2. Omits a fact necessary to make the statement considered as a whole not materially misleading;

3. Is intended to be or is likely to create an unjustified expectation about the results the dentist or dental hygienist can achieve;

4. Contains a material, objective representation, whether express or implied, that the advertised services are superior in quality to those of other dental or dental hygiene services if that representation is not subject to reasonable substantiation. For the purposes of this subsection, reasonable substantiation is defined as tests, analysis, research, studies, or other evidence based on the expertise of professionals in the relevant area that have

been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results. Individual experiences are not a substitute for scientific research. Evidence about the individual experience of consumers may assist in the substantiation, but a determination as to whether reasonable substantiation exists is a question of fact on a case-by-case basis;

5. Claims that state or imply a specialty practice by a general dentist in violation of section (B) hereof;

6. The false or misleading use of a claim regarding Board certification, registration, listing, education, or an unearned degree;

7. Advertisement that uses patient testimonials unless the following conditions are met:

    a. The patient's name, address, and telephone number as of the time the advertisement was made must be maintained by the dentist or dental hygienist and that identifying information shall be made available to the Board within ten (10) days of a request for the information by the Board.

    b. Dentists or dental hygienists who advertise dental or dental hygiene services, which are the subject of the patient testimonial, must have actually provided these services to the patient making the testimonial.

    c. If compensation, remuneration, a fee, or benefit of any kind has been provided to the person in exchange for consideration of the testimonial, such testimonial must include a statement that the patient has been compensated for such testimonial.

    d. A specific release and consent for the testimonial from the patient shall be obtained from the patient which shall be made available to the Board within ten (10) days of request of that information.

    e. Any testimonial shall indicate that results may vary in individual cases.

    f. Patient testimonials attesting to the technical quality or technical competence of a service or treatment offered by a licensee must have reasonable substantiation.

8. Advertising that makes an unsubstantiated medical claim or is outside the scope of dentistry, unless the dentist or dental hygienist holds a license or registration in another profession and the advertising and/or claim is within the scope authorized by the license or registration in another profession;

9. Advertising that makes unsubstantiated promises or claims, including but not limited to claims that the patient will be cured;

10. The use of "bait and switch" in advertisements. "Bait and switch" advertising is defined as set forth in the Colorado Consumer Protection Act, section 6-1-105, C.R.S.;

11. The Board recognizes that clinical judgment must be exercised by a dentist or dental hygienist. Therefore, a good faith diagnosis that the patient is not an appropriate candidate for the advertised dental or dental hygiene service or product is not a violation of this rule;

12. If an advertisement includes an endorsement by a third party in which there is compensation, remuneration, fee paid, or benefit of any kind, the endorsement by the third party must indicate that it is a paid endorsement;

13. Inferring or giving the appearance that an advertisement is a news item without using the phrase "paid advertisement";

14. Promotion of a professional service which the licensee knows or should know is beyond the licensee's ability to perform;

15. The use of any personal testimonial by the licensed provider attesting to a quality or competence of a service or treatment offered by a licensee that is not reasonably verifiable;

16. At the time any type of advertisement is placed the dentist or dental hygienist must in good faith possess information that would substantiate the truthfulness of any assertion, omission or claim set forth in the advertisement;

17. A licensed dentist or dental hygienist shall be responsible and shall approve any advertisement made on behalf of the dental or dental hygiene practice. The dentist or dental hygienist shall maintain a listing stating the name and license number of the dentists or dental hygienists who approved and are responsible for the advertisement and shall maintain such list for a period of three (3) years;

18. Advertising that claims to provide services at a specific rate and fails to disclose that the patient's insurance may provide payment for all or part of the services.

B. Specialty Practice and Advertising.

1. A licensed dentist has the legal authority to practice in any and all areas of dentistry and also the authority to confine the areas in which he or she chooses to practice.

2. Dental specialties are recognized as only those defined by the American Dental Association and dental specialists are those dentists who have successfully completed a Commission on Dental Accreditation specialty program.

3. Practitioners who have successfully completed a Commission on Dental Accreditation accredited specialty program may advertise the practice of that specialty. Practitioners who have not completed an accredited specialty program, and have limited their practice to a specific Commission on Dental Accreditation defined specialty, must clearly state in all advertising and/or public promotions, that he or she is a general dentist who has limited his or her practice to that field of dentistry and must disclose "General Dentistry" in print larger and/or bolder and noticeably more prominent than any other area of practice or service advertised.

4. It is misleading, deceptive or false for general practitioners to list their names, advertise, or promote themselves in any area or location that implies a specialty. A general practitioner who advertises in any medium under a specialty heading or section may be considered as having engaged in misleading, deceptive or false advertising and may be in violation of section 12-35-129 (1), C.R.S.

5. Those group practices which include general dentists and specialists must list the phrase "General Dentistry and Specialty Practice" larger and/or bolder and noticeably more prominent than any service offered in an advertisement. Names and qualifications shall be made available to the public upon request.

C. Acronyms

In addition to those acronyms required by law pertaining to one's business entity such as Professional Corporation (P.C.) or Limited Liability Company (L.L.C.), dentists or dental hygienists may only use those acronyms earned at a program accredited by a regional or professional accrediting agency recognized by the United States Department of Education or the Council on Postsecondary Accreditation.

Rule XVIII. Protocol for Termination of Practice upon Revocation, Relinquishment, or Suspension for More than 90 Days of Dental License

(Amended December 2, 2002; Re-numbered December 30, 2011)

A. Upon revocation and relinquishment of the dental license, the licensee shall immediately stop the practice of dentistry and shall tender his/her license to practice dentistry to the Board within twenty-four (24) hours from the effective date of revocation or relinquishment. The licensee shall notify all patients within 30 calendar days that the licensee has ceased the practice of dentistry and that the patient must make arrangements for the transfer of patient records. The licensee shall make the patient records or copies of the patient records available to the patient, to a dentist designated by the patient, or if the licensee's practice is sold, to the dentist who purchases the practice. The transfer of patient records must be completed within 60 days. These terms may be set forth in the revocation or relinquishment order.

B. Any request to deviate from this rule must be set forth in writing to the Board. The Board may review the request and may, upon good cause shown, issue an amended termination order. The decision to amend the terms for the termination of practice is final with the Board. A failure to comply with the provisions of the termination order may be grounds for disciplinary action for violation of a Board Order.

C. Written notice by first class mail of the termination of practice must be made to all patients of the practice to the patient's last known address, or by notice by publication as set forth in Rule .E.

D. The suspended practitioner cannot employ any licensed dentist, hygienist, or assistant and cannot be on the premises of the dental office to observe, monitor, or participate in any way in care given. The suspended practitioner may derive no income from the dental practice either directly or indirectly during the period of suspension, except for treatment provided before the beginning of the suspension. The suspended practitioner may provide administrative duties alone to the practice.

Rule XIX. Protocol upon Suspension of Dental License for Less than 90 Days (Summary Suspension and Suspension of Less than 90 Days)

(Effective December 2, 2002; Re-numbered December 30, 2011)

A. Upon suspension of license, the licensee shall immediately stop the practice of dentistry and shall tender his/her license to practice dentistry to the Board within twenty-four (24) hours from the effective date of the suspension.

B. The licensee shall assure the continued care of patients and must make arrangements for the transfer of patient records. The licensee shall make the patient records or copies of the patient records available to the patient, to a dentist designated by the patient, or if the licensee's practice is sold, to the dentist who purchases the practice.

C. Any request to deviate from this rule must be set forth in writing to the Board. The Board may review the request and may, upon good cause shown, issue an amended termination order. The

decision to amend the terms for the termination of practice is final with the Board. A failure to comply with the provisions of the termination order may be grounds for disciplinary action for violation of a Board Order.

D. The suspended practitioner cannot employ any licensed dentist, hygienist, or assistant and cannot be on the premises of the dental office to observe, monitor, or participate in any way in care given. The suspended practitioner may derive no income from the dental practice either directly or indirectly during the period of suspension, except for treatment provided before the beginning of the suspension. The suspended practitioner may provide administrative duties alone to the practice.

Rule XX. Compliance with Board Subpoena

(Effective December 31, 2007; Amended January 21, 2010, Effective March 30, 2010; Re-numbered December 30, 2011)

A. When the Board requests a patient's complete patient record, pursuant to subpoena, the patient chart or record shall include all medical histories for the patient, all patient notes, all labeled and dated radiographs, all billing and/or all insurance records that are compiled for a specific patient.

B. It is the responsibility of the licensed dentist or dental hygienist to assure that all records submitted are legible and, if necessary, to have records transcribed to assure legibility.

C. Failure by a licensed dentist or dental hygienist to submit the complete patient record to the Board, or any relevant papers, books, records, documentary evidence, and/or other materials, as requested pursuant to subpoena is a violation of § 12-35-129(1)(i), C.R.S.

Rule XXI. Declaratory Orders

(Re-numbered December 30, 2011)

Adopted in accordance with the requirements of 24-4-105(11).

A. Any person may petition the Board for a declaratory order to terminate controversies or to remove uncertainties as to the applicability to the petitioner of any statutory provision or of any rule or order of the Board.

B. The Board will determine, in its discretion and without notice to petitioner, whether to rule upon any such petition. If the Board determines that it will not rule upon such a petition, the Board shall promptly notify the petitioner of its action and state the reasons for such action.

C. In determining whether to rule upon a petition filed pursuant to this rule, the Board will consider the following matters, among others:

1. Whether a ruling on the petition will terminate a controversy or remove uncertainties as to the applicability to the petitioner of any statutory provision or rule or order of the Board.

2. Whether the petition involves any subject, question or issue which is the focus of a formal or informal matter or investigation currently pending before the Board or a court but not involving any petitioner.

3. Whether the petition seeks a ruling on a moot or hypothetical question or will result in an advisory ruling or opinion.

4. Whether the petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to Rule 57, Colo. R. Civ. P., which will terminate the controversy or remove any uncertainty as to the applicability to the petitioner of the statute, rule or order in question.

D. Any petition filed pursuant to this rule shall set forth the following:

1. The name and address of the petitioner and whether the petitioner is licensed pursuant to the provisions of C.R.S. 12 35 101, et seq., as amended.

2. The statute, rule or order to which the petition relates.

3. A concise statement of all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the petitioner.

E. If the Board determines that it will rule on the petition, the following procedures apply:

1. The Board may rule upon the petition based solely upon the facts presented in the petition. In such a case, any ruling of the Board will apply only to the extent of the facts presented in the petition and any amendment to the petition.

2. The Board may order the petitioner to file a written brief, memorandum or statement of position.

3. The Board may set the petition, upon due notice to the petitioner, for a non evidentiary hearing.

4. The Board may dispose of the petition on the sole basis of the matters set forth in the petition.

5. The Board may request the petitioner to submit additional facts in writing. In such event, such additional facts will be considered as an amendment to the petition. The Board may take administrative notice of the facts pursuant to the Administrative Procedure Act (C.R.S. 1973 24 4 105(8)) and may utilize its experience, technical competence and specialized knowledge in the disposition of the petition.

6. If the Board rules upon the petition without a hearing, it shall promptly notify the petitioner of its decision.

7. The Board may, in its discretion, set the petition for hearing, upon due notice to the petitioner, for the purpose of obtaining additional facts or information or to determine the truth of any facts set forth in the petition or to hear oral argument on the petition.

8. The notice to the petitioner setting such hearing shall set forth, to the extent known, the factual or other matters into which the Board intends to inquire.

9. For the purpose of such a hearing, to the extent necessary, the petitioner shall have the burden of proving all of the facts stated in the petition, all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the petitioner and any other facts the petitioner desires the Board to consider.

F. The parties to any proceeding pursuant to this rule shall be the Board and the petitioner. Any other person may seek leave of the Board to intervene in such a proceeding, and leave to intervene will be granted at the sole discretion of the Board. A petition to intervene shall set forth the same

matters as required by section D. of this rule. Any reference to a "petitioner" in this rule also refers to any person who has been granted leave to intervene by the Board.

Rule XXII. Practice Monitor Consultant Guidelines

(Amended February 1, 1998, May 15, 1998, December 2, 2002; Amended January 21, 2010, Effective March 30, 2010; Re-numbered December 30, 2011)

A. Licensees requiring monitoring must pay the monitor for service. Remuneration for such service will be a reasonable fee negotiated by the parties.

B. Monitors must be approved by the Board and shall submit their application for practice monitor on form(s) supplied by the Board.

C. Monitors are responsible for periodic assessment of a licensee's practice as directed by the Board or its agent(s).

D. Monitors shall have access to all patient records, files, and materials to effectively monitor a licensee's practice.

E. The monitor may elect to observe the licensee in the execution of certain procedures.

F. Monitors shall be required to submit practice monitor reports on form(s) supplied by the Board and on a schedule to be determined by the Board.

G. Monitors approved by the Board shall be deemed to be consultants of the Board.

Rule XXIII. Fining Schedule for Violations of the Dental Practice Act and Board Rules

(Adopted January 22, 2015, Effective March 30, 2015)

Pursuant to section 12-35-129.1(6), C.R.S., when a licensed dentist, including one issued an academic license, or dental hygienist violates a provision of the Dental Practice Act or a Board rule, the Board may impose a fine on the licensee. The amount of an administrative fine assessed will be based on the following criteria:

- Severity of the violation,

- Type of violation,

- Whether the licensee committed repeated violations, and

- Any other mitigating or aggravating circumstances.

A. If the licensee is a dentist, the fine must not exceed $5,000. If the violation(s) involve:

1. Substandard Care, Fraud, or Attempting to Deceive the Board

    a. First offense, may be fined up to $3,000.

    b. Second offense, may be fined up to $4,000.

    c. Third offense, may be fined up to $5,000.

2. Record Keeping Violations

a. First offense, may be fined up to $1,250.

b. Second offense, may be fined up to $2,500.

c. Third offense, may be fined up to $5,000.

3. Failure to Maintain or Provide Complete Records

    a. First offense, may be fined up to $1,250.

    b. Second offense, may be fined up to $2,500.

    c. Third offense, may be fined up to $5,000.

4. Failure to Comply with Continuing Education Requirements

    a. First offense, may be fined up to $1,250.

    b. Second offense, may be fined up to $2,500.

    c. Third offense, may be fined up to $5,000.

5. Practicing on an Expired License

    a. 0 – 12 months, may be fined up to $1,250.

    b. 1 -2 years, may be fined up to $2,500.

    c. 2 or more years, may be fined up to $5,000.

6. Administering Anesthesia/Sedation without a Permit

    a. First offense, may be fined up to $1,250.

    b. Second offense, may be fined up to $2,500.

    c. Third offense, may be fined up to $5,000.

7. Failure to Appropriately Supervise Dental Personnel

    a. First offense, may be fined up to $1,250.

    b. Second offense, may be fined up to $2,500.

    c. Third offense, may be fined up to $5,000.

8. Failure to Meet Generally Accepted Standards for Infection Control – each day a violation continues or occurs may be considered a separate violation for the purpose of imposing a fine under this category.

    a. First offense, may be fined up to $1,250.

    b. Second offense, may be fined up to $2,500.

    c. Third offense, may be fined up to $5,000.

9. False Advertising

    a. First offense, may be fined up to $1,250.

    b. Second offense, may be fined up to $2,500.

    c. Third offense, may be fined up to $5,000.

10. Failure to Register for the Prescription Drug Monitoring Program (PDMP) – applicable only if the licensee maintains a current United States Drug Enforcement Agency (DEA) registration

    a. First offense, may be fined up to $1,250.

    b. Second offense, may be fined up to $2,500.

    c. Third offense, may be fined up to $5,000.

11. Failure to Respond in an Honest, Materially Responsive, and Timely Manner to a Complaint

    a. First offense, may be fined up to $1,250.

    b. Second offense, may be fined up to $2,500.

    c. Third offense, may be fined up to $5,000.

12. Failure to Maintain Professional Liability Insurance

    a. First offense, may be fined up to $1,250.

    b. Second offense, may be fined up to $2,500.

    c. Third offense, may be fined up to $5,000.

13. Violation of the Practice Ownership Laws

    a. First offense, may be fined up to $1,250.

    b. Second offense, may be fined up to $2,500.

    c. Third offense, may be fined up to $5,000.

14. Aiding and Abetting the Unlicensed Practice of Dentistry or Dental Hygiene

    a. First offense, may be fined up to $1,250.

    b. Second offense, may be fined up to $2,500.

    c. Third offense, may be fined up to $5,000.

15. Failure to Comply with a Board Order or Subpoena

    a. First offense, may be fined up to $1,250.

    b. Second offense, may be fined up to $2,500.

c. Third offense, may be fined up to $5,000.

16. Other Violations

a. First offense, may be fined up to $1,250.

b. Second offense, may be fined up to $2,500.

c. Third offense, may be fined up to $5,000.

B. If the licensee is a dental hygienist, the fine must not exceed $3,000. If the violation(s) involve:

1. Substandard Care, Fraud, or Attempting to Deceive the Board

a. First offense, may be fined up to $1,000.

b. Second offense, may be fined up to $2,000.

c. Third offense, may be fined up to $3,000.

2. Record Keeping Violations

a. First offense, may be fined up to $750.

b. Second offense, may be fined up to $1,500.

c. Third offense, may be fined up to $3,000.

3. Failure to Maintain or Provide Complete Records

a. First offense, may be fined up to $750.

b. Second offense, may be fined up to $1,500.

c. Third offense, may be fined up to $3,000.

4. Failure to Comply with Continuing Education Requirements

a. First offense, may be fined up to $750.

b. Second offense, may be fined up to $1,500.

c. Third offense, may be fined up to $3,000.

5. Practicing on an Expired License

a. 0 – 12 months, may be fined up to $750.

b. 1 -2 years, may be fined up to $1,500.

c. 2 or more years, may be fined up to $3,000.

6. Administering Local Anesthesia without a Permit

a. 0 – 12 months, may be fined up to $750.

b. 1 -2 years, may be fined up to $1,500.

c. 2 or more years, may be fined up to $3,000.

7. Failure to Meet Generally Accepted Standards for Infection Control – each day a violation continues or occurs may be considered a separate violation for the purpose of imposing a fine under this category.

   a. First offense, may be fined up to $750.

   b. Second offense, may be fined up to $1,500.

   c. Third offense, may be fined up to $3,000.

8. False Advertising

   a. First offense, may be fined up to $750.

   b. Second offense, may be fined up to $1,500.

   c. Third offense, may be fined up to $3,000.

9. Failure to Respond in an Honest, Materially Responsive, and Timely Manner to a Complaint

   a. First offense, may be fined up to $750.

   b. Second offense, may be fined up to $1,500.

   c. Third offense, may be fined up to $3,000.

10. Failure to Maintain Professional Liability Insurance

    a. First offense, may be fined up to $750.

    b. Second offense, may be fined up to $1,500.

    c. Third offense, may be fined up to $3,000.

11. Violation of the Practice Ownership Laws

    a. First offense, may be fined up to $750.

    b. Second offense, may be fined up to $1,500.

    c. Third offense, may be fined up to $3,000.

12. Aiding and Abetting the Unlicensed Practice of Dentistry or Dental Hygiene

    a. First offense, may be fined up to $750.

    b. Second offense, may be fined up to $1,500.

    c. Third offense, may be fined up to $3,000.

13. Failure to Comply with a Board Order or Subpoena

a. First offense, may be fined up to $750.

b. Second offense, may be fined up to $1,500.

c. Third offense, may be fined up to $3,000.

14. Other Violations

a. First offense, may be fined up to $750.

b. Second offense, may be fined up to $1,500.

c. Third offense, may be fined up to $3,000.

C. A fine is subject to an additional surcharge imposed by the Executive Director of the Department of Regulatory Agencies (DORA), pursuant to section 24-34-108, C.R.S.

Rule XXIV. Use of Lasers

(Adopted January 22, 2015, Effective March 30, 2015; Adopted April 30, 2015, Effective June 30, 2015)

A. The requirements in this rule do not apply to use of non-adjustable laser units for purposes of diagnosis and curing.

B. Only a dentist may employ a laser capable of the removal of hard and/or soft tissue in the treatment of a dental patient.

C. Laser use by a dental hygienist can only be performed under the indirect or direct supervision of a dentist, and must be limited to pocket disinfection at settings that preclude hard and soft tissue removal, except for incidental gingival curettage.

D. Effective June 30, 2015, a licensee who is a first time laser user must first successfully complete training that covers at a minimum laser physics, safety, and appropriate use prior to utilizing the laser.

1. Training must be obtained through a course provided or recognized by any of the following organizations (or a successor organization):

a. A Commission on Dental Accreditation (CODA) accredited institution;

b. The American Dental Association (ADA) Continuing Education Recognition Program (CERP);

c. The Academy of General Dentistry (AGD) Program Approval for Continuing Education (PACE); or

d. The American Medical Association (AMA).

2. A licensee utilizing a laser, other than what is described in section A of this rule, must maintain evidence of training as required in subparagraph D.1 of this rule. Upon request of the Board, the licensee must submit evidence of such training or submit proof of laser use prior to June 30, 2015, if applicable.

E. All lasers must be used in accordance with accepted safety guidelines.

Editor's Notes

History

Rules XVII, XXVI eff. 07/01/2007.

Rules XXVI, XXIX, XXX eff. 12/31/2007.

Rule XXVI eff. 11/30/2008.

Rule III eff. 05/30/2009.

Rule III eff. 12/30/2009.

Rules III, XIV - XXX eff. 03/30/2010.

Rules I - IX, XI - XIII, XV - XXII eff. 12/30/2011.

Rules I, II, III, IX, XI, XII, XIII, XVI (repealed), XXIII, and XXIV eff. 03/30/2015.

Rules XIII, XIV, and XXIV eff. 06/30/2015.

COLORADO
Department of
Regulatory Agencies
Division of Professions and Occupations

Rulemaking Hearing, April 30, 2015

Proposed Changes with Statement of Basis, Purpose, and Authority

Basis and Purpose: To implement House Bill 14-1227, which went into effect on July 1, 2015 and concerns the continuation of the State Board of Dental Examiners (now the Colorado Dental Board) and other statutory changes to the Dental Practice Law of Colorado (now the Dental Practice Act); and to amend Rule XIII to be consistent with statute, update Rule XIV, and further clarify Rule XXIV.

Statement of Authority: Pursuant to section 12-35-107(1)(b), C.R.S., the Colorado Dental Board shall "[m]ake, publish, declare, and periodically review reasonable rules as necessary to carry out and make effective the powers and duties of the board as vested in it" by Article 35 of Title 12.

Pursuant to section 12-35-140(4)(a), C.R.S., the Colorado Dental Board "shall establish, by rule, minimum training, experience, and equipment requirements for the administration of local anesthesia, analgesia including nitrous oxide/xygen inhalation, and medication prescribed or administered for the relief of anxiety or apprehension, minimal sedation, moderate sedation, deep sedation, or general anesthesia, including procedures that may be used by and minimum training requirements for dentists, dental hygienists, and dental assistants."

Pursuant to section 12-35-140(5), C.R.S., the Colorado Dental Board "shall establish, by rule, criteria and procedures for an office inspection program to be completed upon application and renewal of anesthesia or sedation permits"…

Notice of Proposed Rulemaking

Tracking number

2015-00203

Department

700 - Department of Regulatory Agencies

Agency

749 - Division of Professions and Occupations - Office of Naturopathic Doctor Registration Program

CCR number

4 CCR 749-1

Rule title

NATUROPATHIC DOCTORS REGISTRATION, PRACTICE, AND DISCIPLINE

Rulemaking Hearing

Date

04/30/2015

Time

09:00 AM

Location

1560 Broadway, Conference Room 1250C, Denver, CO 80202

Subjects and issues involved

The rulemaking reflects amendments to Rule 5 and adds Rules 13, 14, and 15. The basis of the amendments to the rules is to carry out the powers and duties of the Division Director of the Division of Professions and Occupations, Department of Regulatory Agencies (Director) pursuant to § 12-37.3-104(a), C.R.S. The purpose of these amendments is to ensure that naturopathic doctors maintain continuing professional competency to practice naturopathic medicine.

Statutory authority

The statutory authority for the rules is found in § 12-37.3-108, C.R.S.

Contact information

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COLORADO DEPARTMENT OF REGULATORY AGENCIES

Division of Professions and Occupations

Office of Naturopathic Doctor Registration Program

4 CCR 749-1

RULES REGULATING NATUROPATHIC DOCTORS REGISTRATION, PRACTICE, AND DISCIPLINE

Authority

Basis: These rules are promulgated pursuant to § 12-37.3-104(1)(a), C.R.S. The registration and regulation of Naturopathic Doctors is found in Title 12 ("Professions and Occupations"), Article 37.3 ("Naturopathic Doctors") of the Colorado Revised Statutes.

Scope and Purpose

These rules were promulgated in order to carry out the powers and duties of the Division Director of the Division of Professions and Occupations, Department of Regulatory Agencies ("Director") pursuant to § 12-37.3-104(1)(a), C.R.S. These rules affect every person who practices as a Naturopathic Doctor in the State of Colorado.

Rule 5 - Inactive registration status (§ 12-37.3-118, C.R.S.)

The purpose of this rule is to clarify the requirements governing inactive registration status pursuant to § 12 -37.3- 118, C.R.S.

A. A registered naturopathic doctor shall request an inactive registration status by completing and submitting the appropriate application for Inactive Status.

B. A naturopathic doctor with an inactive registration shall not engage in any act or conduct that constitutes the practice of naturopathic medicine.

C. A naturopathic doctor with an inactive registration is exempt from the continuing professional competency requirements of § 12-37.3-108, C.R.S., and Rule 13, except as described in this Rule.

D. Inactive registration status does not:

1. Prevent the Director from investigating complaints or imposing discipline against a naturopathic doctor in accordance with Title 12, Article 37.3 of the Colorado Revised Statutes; or,

2. Limit or restrict the Director's functions, duties, or obligations, under Title 12, Article 37.3 of the Colorado Revised Statutes.

E. Except as otherwise provided by this rule, a naturopathic doctor with an inactive registration remains subject to all provisions of these rules and all provisions of Title 12, Article 37.3 of the

Colorado Revised Statutes.

F. A naturopathic doctor may reactivate an inactive registration by:

1. Submitting a completed application for reactivation and paying a fee established by the Director; and

2. Submitting proof, in a manner prescribed by the Director, that the naturopathic doctor's licenses or registrations held in other states or jurisdictions are in good standing; and

3. Attesting that the applicant will, prior to providing naturopathic services to patients, maintain the professional liability insurance coverage required § 12-37.3-114, C.R.S. under in the form prescribed by the Director, paying any reactivation fee established by the Director, attesting to compliance with the professional liability insurance coverage requirements of § 12-37.3-114, C.R.S.

4. If inactive for at least two years, demonstrating continuing professional competency, in a manner prescribed by the director, by providing one of the following:

   a. Verification of licensure, registration, or certification in good standing from another state or jurisdiction along with proof of active practice in that state or jurisdiction for two of the previous five years from the date of the reactivation application;

   b. Documentation of completion, within the two years immediately preceding the application for reactivation, of twenty-five Professional Development Activities, as defined in Rule 13, for each year or portion thereof that the registration was inactive;

   c. Proof of continuing professional competency by any other means approved by the Director.

Rule 13 - Continuing Professional Competency (§ 12-37.3-108, C.R.S.)

The purpose of this rule is to establish a program of ongoing continuing professional competency as set forth in § 12-37.3-108, C.R.S., wherein a registered naturopathic doctor shall maintain and demonstrate continuing professional competency in order to renew, reinstate, or reactivate a registration to practice naturopathic medicine in the state of Colorado.

A. Definitions

1. *Continuing Professional Competency:* The ongoing ability of a naturopathic doctor to learn, integrate, and apply the knowledge, skill, and judgment to practice as a naturopathic doctor according to generally accepted standards and professional ethical standards.

2. *Continuing Professional Development (CPD):* The Director's program through which a registrant can satisfy the continuing professional competency requirements in order to renew, reinstate, or reactivate a registration.

3. *Deemed Status:* A registrant who satisfies the continuing professional competency requirements of a state department or accrediting body or entity as approved by the Director pursuant to § 12-37.3-108(1)(c), C.R.S., may qualify for "Deemed Status."

4. *Learning Plan:* The Director-approved form through which a registrant documents the registrant's goals and plans of learning that were developed from the registrant's reflective self- assessment (RSAT), which is defined below. A registrant shall execute the registrant's learning plan by completing professional development activities (PDA) as required before a registration is renewed.

5. *Military Exemption:* As set forth in § 12-70-102, C.R.S., a registrant who has been called to federally funded active duty for more than 120 days for the purpose of serving in a war, emergency or contingency may request an exemption from the continuing professional competency requirements for the renewal period that falls within the period of service or within the six months following the completion of service.

6. *Professional Development Activities (PDA):* Learning activities undertaken to increase the registrant's knowledge and skill or hone existing knowledge and skill for the purpose of continuing professional competency. PDA are equivalent to clock hours; one PDA is equal to one clock hour.

7. *Program Manual:* An instructional guide to assist the registrant in understanding the continuing professional competency requirements and the CPD program.

8. *Reflective Self-assessment Tool (RSAT):* A reflective practice tool in which a registrant can reflect upon the registrant's knowledge and skills as a naturopathic doctor taking into account the registrant's current level and area of practice.

B. Continuing Professional Competency Requirements

1. Effective after the 2015 renewal of a registration, or upon the completion of any renewal of a registration thereafter, the registrant shall demonstrate continuing professional competency in order to renew by:

   a. Participation in the Continuing Professional Development (CPD) program;

   b. Participation in a program of continuing professional competency through a state agency or an accrediting body or entity as approved by the Director as set forth in § 12-37.3-108(1)(c), C.R.S. this status is hereafter known as "Deemed Status" as defined herein; or

   c. Receiving an exemption for military service as defined in § 12-70-102, C.R.S. Military exemptions must be approved by the Director. A registrant seeking a military exemption shall submit a request in writing with evidence that the registrant's military service meets the criteria established in § 12-70-102, C.R.S., and section E of this rule.

2. A registrant shall attest at the time of the renewal of a registration to compliance with continuing professional competency requirements.

C. Continuing Professional Development (CPD) Program

1. The CPD Program entails the following:

   a. The registrant shall complete the Reflective Self-Assessment Tool (RSAT) once per renewal period. A registrant shall use the form approved by the Director.

   b. The execution of a Learning Plan once per renewal period that is based upon the registrant's RSAT. The registrant shall use the form approved by the Director.

c. Accrual of twenty-five Professional Development Activities per year of each renewal period.

2. Professional Development Activities (PDA)

a. PDA must be relevant to the registrant's practice as a naturopathic doctor and pertinent to the registrant's learning plan. The Director will not pre-approve specific courses or providers. The registrant shall determine which activities and topics will meet the registrant's learning plan, and select an appropriate course and provider.

b. PDA are organized into the following seven categories. One PDA is granted per one clock hour of qualifying activity with the exception of the category "Presenting" in which two PDA are credited for every one hour of presentation delivery. This 2:1 ratio acknowledges the preparation of the presentation. PDAs are credited only once per presentation.

i. Coursework

ii. Group Study

iii. Independent Learning

iv. Mentoring

v. Presenting

vi. Publishing

vii. Volunteer Service

c. PDA earned must include a minimum of thirteen hours from the category of "Coursework"; however all twenty-five PDA can be earned within this category. With the exception of the category of "Coursework", no more than five PDA can be credited in any one category.

d. PDA will be accepted if the activity is included in the current Program Manual. The current Program Manual will be available to all registrants through the program and will set forth accepted PDA within each category. The Director has sole discretion to accept or reject PDA that are not identified in the current Program Manual.

e. The total required annual PDA must be earned within the same year in which credit is requested. PDA will be credited toward only one renewal period.

D. Audit of Compliance

1. The following documentation is required for an audit of compliance of a registrant's participation in the CPD program:

i. A signed Learning Plan that contains the registrant's goals in the form and manner set forth in the current Program Manual as approved by the Director.

ii. Documentation of the required PDA in compliance with the

current Program Manual and this Rule.

iii. The Director has sole discretion to accept or reject PDA that do not meet the criteria established by the Director as defined in the current Program Manual and this Rule.

2.. As set forth in § 12-37.3-108(2), C.R.S., records of assessments or other documentation developed or submitted in connection with the continuing professional competency program are confidential and not subject to inspection by the public or discovery in connection with a civil action against a naturopathic doctor. Neither the Director nor any other person shall use the records or documents unless used by the Director to determine whether a naturopathic doctor is maintaining continuing professional competency to engage in the profession.

3. The current Program Manual will set forth the documentation methods and standards for compliance with this Rule.

E. Deemed Status

1. Qualification. In order to qualify for "Deemed Status" upon renewal, the registrant shall:

a. Attest to the registrant's deemed status; and;

b. Attest that the requested continuing professional competency program is substantially equivalent to the CPD program administered by the Director and must include, at a minimum each renewal period, the following components:

i. An assessment of knowledge and skills;

ii. Twenty-five contact hours of continuing education or learning activities per year of the renewal period; and

iii. Demonstration of completion of continuing competency activities.

2. Administrative Approval. The Director has sole discretion to administratively approve a state agency and accrediting body and/or entity meeting the criteria established in this section. Once an accrediting body and/or entity is approved, such approval will be publically published.

3. Compliance Audit. A registrant claiming "Deemed Status" is subject to an audit of compliance. To satisfy an audit of compliance, the registrant shall submit appropriate evidence of participation in a qualifying program through submission of:

a. A letter from state agency, accrediting body or entity as approved by the Director specifying that the registrant has completed the registrant's continuing professional competency program, or

b. Other documentation approved by the Director which reflects the registrant's completion of a program of continuing professional competency.

F. Military Exemption.

1. Military exemptions must be approved by the Director. A registrant seeking a military exemption shall submit a request in writing with evidence that the registrant's military service meets the criteria established in § 12-70-102, C.R.S.

2. After being granted a military exemption, in order to complete the renewal process, a registrant shall attest to the registrant's military exemption.

G. Records Retention. A registrant shall retain documentation demonstrating the registrant's compliance for either two complete renewal periods or four years, whichever period is longer.

H. Non-Compliance. Falsifying an attestation or other documentation regarding the registrant's compliance with continuing professional competency requirements constitutes the falsification of information in an application and may be grounds for discipline pursuant to § 12-37.3-112(1)(b), C.R.S.

I. Reinstatement and Reactivation. A registrant seeking to reinstate or reactivate a registration shall meet the continuing professional competency requirements detailed in Rule 5 and Rule 14.

Rule 14 - Renewal of Registration (§ 12-37.3-107, C.R.S)

The purpose of this rule is to establish the requirements for renewing a registration pursuant to § 12-37.3-107, C.R.S.

A. Failure to Receive Renewal Notice. Failure to receive notice for renewal of registration from the Director does not excuse a registrant from the requirement for renewal under the Naturopathic Doctor Act and this Rule.

B. Grace period. Registrants shall have a sixty-day grace period after the expiration of a registration to renew such registration without the imposition of a disciplinary sanction for practicing on an expired registration. During this grace period a delinquency fee will be charged for late renewals. A registrant who does not renew a registration within the sixty-day grace period shall be treated as having an expired registration and shall be ineligible to practice until such registration is reinstated.

C. Continuing Professional Competence. Pursuant to §12-37.3-108, C.R.S. and Rule 13, naturopathic doctors shall demonstrate continuing professional competence in order to renew.

D. Military Exemption. As set forth in § 12-70-102, C.R.S., a registrant who has been called to federally funded active duty for more than 120 days for the purpose of serving in a war, emergency or contingency may request an exemption from payment of the renewal registration fee and from completion of continuing professional competency requirements for the renewal of a registration for the renewal period that falls within the period of service or within the six months following the completion of service.

Rule 15 - Reinstatement of Expired Registration (§ 12-37.3-107, 24-34-102(8) and 24-34-105, C.R.S)

The purpose of this rule is to establish the requirements for reinstatement of a registration that has expired.

A. An applicant seeking reinstatement of an expired registration must complete a reinstatement application, pay a reinstatement fee, and attest to complying with the professional liability insurance coverage requirements of § 12-37.3-114, C.R.S.

B. An applicant seeking to reinstate a registration that has been expired less than two years shall be required to demonstrate continuing professional competency as described in § 12-37.3-108,

C.R.S., and Rule 13.

C. An applicant seeking to reinstate a registration that has been expired for at least two years must demonstrate competency to practice under § 24-34-102(8), C.R.S., by providing one of the following:

1. Verification of licensure, registration, or certification in good standing from another state or jurisdiction along with proof of active practice in that state or jurisdiction for two of the previous five years from the date of the reactivation application;

2. Documentation of completion, within the two years immediately preceding the application for reactivation, of twenty-five Professional Development Activities, as defined in Rule 13, for each year or portion thereof that the registration was inactive;

3. Proof of continuing professional competency by any other means approved by the Director.

D. An applicant seeking to reinstate a registration that has been expired for five or more years from the date of receipt of the reinstatement application must demonstrate competency to practice, in a manner required by the Director, by:

1. Providing verification of licensure, registration, or certification in good standing from another state, along with proof of active practice in that state for two of the previous five years from the date of application for reinstatement; and

2. Providing evidence of supervised practice for a period of no less than six months, subject to the terms established by the Director; and

3. Completion of an additional thirteen Professional Development Activities as defined in Rule 13 for each year or portion thereof the license has been inactive; or

4. Provide proof of continuing professional competency by any other means approved by the Director.

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Division of Professions and Occupations

Office of Naturopathic Doctor Registration Program

4 CCR 749-1

RULES REGULATING NATUROPATHIC DOCTORS REGISTRATION, PRACTICE, AND DISCIPLINE

Authority

Basis: These rules are promulgated pursuant to § 12-37.3-104(1)(a), C.R.S. The registration and regulation of Naturopathic Doctors is found in Title 12 ("Professions and Occupations"), Article 37.3 ("Naturopathic Doctors") of the Colorado Revised Statutes.

Scope and Purpose

These rules were promulgated in order to carry out the powers and duties of the Division Director of the Division of Professions and Occupations, Department of Regulatory Agencies ("Director") pursuant to § 12-37.3-104(1)(a), C.R.S. These rules affect every person who practices as a Naturopathic Doctor in the State of Colorado.

Rule 5 - Inactive registration status (§ 12-37.3-118, C.R.S.)

The purpose of this rule is to clarify the ~~regulations~~ requirements governing inactive registration status pursuant to § 12-37.3- 118, C.R.S.

A. A registered naturopathic doctor shall request an inactive registration status by completing and submitting the appropriate application for Inactive Status.

B. A naturopathic doctor with an inactive registration shall not engage in any act or conduct that constitutes the practice of naturopathic medicine.

C. A naturopathic doctor with an inactive registration is exempt from the continuing professional competency requirements of § 12-37.3-108, C.R.S., and Rule 13, except as described in this Rule.

D. Inactive registration status does not:

1. Prevent the Director from investigating complaints or imposing discipline against a naturopathic doctor in accordance with Title 12, Article 37.3 of the Colorado Revised Statutes; or,

2. Limit or restrict the Director's functions, duties, or obligations, under Title 12, Article 37.3 of the Colorado Revised Statutes.

E. Except as otherwise provided by this rule, a naturopathic doctor with an inactive registration remains subject to all provisions of these rules and all provisions of Title 12, Article 37.3 of the Colorado Revised Statutes.

F. A naturopathic doctor may reactivate an inactive registration by:

1. Submitting a completed application for reactivation and paying a fee established by the Director; and

2. Submitting proof, in a manner prescribed by the Director, that the naturopathic doctor's licenses or registrations held in other states or jurisdictions are in good standing; and

3. Attesting that the applicant will, prior to providing naturopathic services to patients, maintain the professional liability insurance coverage required § 12-37.3-114, C.R.S. under in the form prescribed by the Director, paying any reactivation fee established by the Director, attesting to compliance with the professional liability insurance coverage requirements of § 12-37.3-114, C.R.S. ~~Submitting a completed application for reactivation and paying a fee established by the Director;~~

4. If inactive for at least two years, demonstrating continuing professional competency, in a manner prescribed by the director, by providing one of the following:

   a. Verification of licensure, registration, or certification in good standing from another state or jurisdiction along with proof of active practice in that state or jurisdiction for two of the previous five years from the date of the reactivation application;

   b. Documentation of completion, within the two years immediately preceding the application for reactivation, of twenty-five Professional Development Activities, as defined in Rule 13, for each year or portion thereof that the registration was inactive;

   c. Proof of continuing professional competency by any other means approved by the Director.

~~**Submitting proof, in a manner prescribed by the Director, that a naturopathic doctor license or registration held in another state or jurisdiction is in good standing;**~~

~~**Attesting that the applicant will, prior to practicing naturopathic medicine, maintain the professional liability insurance coverage required in statute; and,**~~

~~**Demonstrating compliance with the Director's continuing professional competency rules with respect to registration reactivation**~~

~~.~~Rule 13 - Continuing Professional Competency (§ 12-37.3-108, C.R.S.)

The purpose of this rule is to establish a program of ongoing continuing professional competency as set forth in § 12-37.3-108, C.R.S., wherein a registered naturopathic doctor shall maintain and demonstrate continuing professional competency in order to renew, reinstate, or reactivate a registration to practice naturopathic medicine in the state of Colorado.

A. Definitions

1. *Continuing Professional Competency:* The ongoing ability of a naturopathic doctor to learn, integrate, and apply the knowledge, skill, and judgment to practice as a naturopathic doctor according to generally accepted standards and professional ethical standards.

2. *Continuing Professional Development (CPD):* The Director's program through which a registrant can satisfy the continuing professional competency requirements in order to renew, reinstate, or reactivate a registration.

3. *Deemed Status:* A registrant who satisfies the continuing professional competency requirements of a state department or accrediting body or entity as approved by the Director pursuant to § 12-37.3-108(1)(c), C.R.S., may qualify for "Deemed Status."

4. *Learning Plan:* The Director-approved form through which a registrant documents the registrant's goals and plans of learning that were developed from the registrant's reflective self- assessment (RSAT), which is defined below. A registrant shall execute the registrant's learning plan by completing professional development activities (PDA) as required before a registration is renewed.

5. *Military Exemption:* As set forth in § 12-70-102, C.R.S., a registrant who has been called to federally funded active duty for more than 120 days for the purpose of serving in a war, emergency or contingency may request an exemption from the continuing professional competency requirements for the renewal period that falls within the period of service or within the six months following the completion of service.

6. *Professional Development Activities (PDA):* Learning activities undertaken to increase the registrant's knowledge and skill or hone existing knowledge and skill for the purpose of continuing professional competency. PDA are equivalent to clock hours; one PDA is equal to one clock hour.

7. *Program Manual:* An instructional guide to assist the registrant in understanding the continuing professional competency requirements and the CPD program.

8. *Reflective Self-assessment Tool (RSAT):* A reflective practice tool in which a registrant can reflect upon the registrant's knowledge and skills as a naturopathic doctor taking into account the registrant's current level and area of practice.

B. Continuing Professional Competency Requirements

1. Effective after the 2015 renewal of a registration, or upon the completion of any renewal of a registration thereafter, the registrant shall demonstrate continuing professional competency in order to renew by:

   a. Participation in the Continuing Professional Development (CPD) program;

   b. Participation in a program of continuing professional competency through a state agency or an accrediting body or entity as approved by the Director as set forth in § 12-37.3-108(1)(c), C.R.S. this status is hereafter known as "Deemed Status" as defined herein; or

   c. Receiving an exemption for military service as defined in § 12-70-102, C.R.S. Military exemptions must be approved by the Director. A registrant seeking a military exemption shall submit a request in writing with evidence that the registrant's military service meets the criteria established in § 12-70-102, C.R.S., and section E of this rule.

2. A registrant shall attest at the time of the renewal of a registration to compliance with continuing professional competency requirements.

C. Continuing Professional Development (CPD) Program

1. The CPD Program entails the following:

a. The registrant shall complete the Reflective Self-Assessment Tool (RSAT) once per renewal period. A registrant shall use the form approved by the Director.

b. The execution of a Learning Plan once per renewal period that is based upon the registrant's RSAT. The registrant shall use the form approved by the Director.

c. Accrual of twenty-five Professional Development Activities per year of each renewal period.

2. Professional Development Activities (PDA)

a. PDA must be relevant to the registrant's practice as a naturopathic doctor and pertinent to the registrant's learning plan. The Director will not pre-approve specific courses or providers. The registrant shall determine which activities and topics will meet the registrant's learning plan, and select an appropriate course and provider.

b. PDA are organized into the following seven categories. One PDA is granted per one clock hour of qualifying activity with the exception of the category "Presenting" in which two PDA are credited for every one hour of presentation delivery. This 2:1 ratio acknowledges the preparation of the presentation. PDAs are credited only once per presentation.

i. Coursework

ii. Group Study

iii. Independent Learning

iv. Mentoring

v. Presenting

vi. Publishing

vii. Volunteer Service

c. PDA earned must include a minimum of thirteen hours from the category of "Coursework"; however all twenty-five PDA can be earned within this category. With the exception of the category of "Coursework", no more than five PDA can be credited in any one category.

d. PDA will be accepted if the activity is included in the current Program Manual. The current Program Manual will be available to all registrants through the program and will set forth accepted PDA within each category. The Director has sole discretion to accept or reject PDA that are not identified in the current Program Manual.

e. The total required annual PDA must be earned within the same year in which credit is requested. PDA will be credited toward only one renewal period.

D. Audit of Compliance

1. The following documentation is required for an audit of compliance of a registrant's participation in the CPD program:

i. A signed Learning Plan that contains the registrant's goals in the form and manner set forth in the current Program Manual as approved by the Director.

ii. Documentation of the required PDA in compliance with the current Program Manual and this Rule.

iii. The Director has sole discretion to accept or reject PDA that do not meet the criteria established by the Director as defined in the current Program Manual and this Rule.

2.. As set forth in § 12-37.3-108(2), C.R.S., records of assessments or other documentation developed or submitted in connection with the continuing professional competency program are confidential and not subject to inspection by the public or discovery in connection with a civil action against a naturopathic doctor. Neither the Director nor any other person shall use the records or documents unless used by the Director to determine whether a naturopathic doctor is maintaining continuing professional competency to engage in the profession.

3. The current Program Manual will set forth the documentation methods and standards for compliance with this Rule.

E. Deemed Status

1. Qualification. In order to qualify for "Deemed Status" upon renewal, the registrant shall:

a. Attest to the registrant's deemed status; and;

b. Attest that the requested continuing professional competency program is substantially equivalent to the CPD program administered by the Director and must include, at a minimum each renewal period, the following components:

i. An assessment of knowledge and skills;

ii. Twenty-five contact hours of continuing education or learning activities per year of the renewal period; and

iii. Demonstration of completion of continuing competency activities.

2. Administrative Approval. The Director has sole discretion to administratively approve a state agency and accrediting body and/or entity meeting the criteria established in this section. Once an accrediting body and/or entity is approved, such approval will be publically published.

3. Compliance Audit. A registrant claiming "Deemed Status" is subject to an audit of compliance. To satisfy an audit of compliance, the registrant shall submit appropriate evidence of participation in a qualifying program through submission of:

a. A letter from state agency, accrediting body or entity as approved by the Director specifying that the registrant has completed the registrant's continuing professional competency program, or

b. Other documentation approved by the Director which reflects the registrant's

completion of a program of continuing professional competency.

F. Military Exemption.

1. Military exemptions must be approved by the Director. A registrant seeking a military exemption shall submit a request in writing with evidence that the registrant's military service meets the criteria established in § 12-70-102, C.R.S.

2. After being granted a military exemption, in order to complete the renewal process, a registrant shall attest to the registrant's military exemption.

G. Records Retention. A registrant shall retain documentation demonstrating the registrant's compliance for either two complete renewal periods or four years, whichever period is longer.

H. Non-Compliance. Falsifying an attestation or other documentation regarding the registrant's compliance with continuing professional competency requirements constitutes the falsification of information in an application and may be grounds for discipline pursuant to § 12-37.3-112(1)(b), C.R.S.

I. Reinstatement and Reactivation. A registrant seeking to reinstate or reactivate a registration shall meet the continuing professional competency requirements detailed in Rule 5 and Rule 14.

Rule 14 - Renewal of Registration (§ 12-37.3-107, C.R.S)

The purpose of this rule is to establish the requirements for renewing a registration pursuant to § 12-37.3-107, C.R.S.

A. Failure to Receive Renewal Notice. Failure to receive notice for renewal of registration from the Director does not excuse a registrant from the requirement for renewal under the Naturopathic Doctor Act and this Rule.

B. Grace period. Registrants shall have a sixty-day grace period after the expiration of a registration to renew such registration without the imposition of a disciplinary sanction for practicing on an expired registration. During this grace period a delinquency fee will be charged for late renewals. A registrant who does not renew a registration within the sixty-day grace period shall be treated as having an expired registration and shall be ineligible to practice until such registration is reinstated.

C. Continuing Professional Competence. Pursuant to §12-37.3-108, C.R.S. and Rule 13, naturopathic doctors shall demonstrate continuing professional competence in order to renew.

D. Military Exemption. As set forth in § 12-70-102, C.R.S., a registrant who has been called to federally funded active duty for more than 120 days for the purpose of serving in a war, emergency or contingency may request an exemption from payment of the renewal registration fee and from completion of continuing professional competency requirements for the renewal of a registration for the renewal period that falls within the period of service or within the six months following the completion of service.

Rule 15 - Reinstatement of Expired Registration (§ 12-37.3-107, 24-34-102(8) and 24-34-105, C.R.S)

The purpose of this rule is to establish the requirements for reinstatement of a registration that has expired.

A. An applicant seeking reinstatement of an expired registration must complete a reinstatement application, pay a reinstatement fee, and attest to complying with the professional liability

insurance coverage requirements of § 12-37.3-114, C.R.S.

B. An applicant seeking to reinstate a registration that has been expired less than two years shall be required to demonstrate continuing professional competency as described in § 12-37.3-108, C.R.S., and Rule 13.

C. An applicant seeking to reinstate a registration that has been expired for at least two years must demonstrate competency to practice under § 24-34-102(8), C.R.S., by providing one of the following:

1. Verification of licensure, registration, or certification in good standing from another state or jurisdiction along with proof of active practice in that state or jurisdiction for two of the previous five years from the date of the reactivation application;

2. Documentation of completion, within the two years immediately preceding the application for reactivation, of twenty-five Professional Development Activities, as defined in Rule 13, for each year or portion thereof that the registration was inactive;

3. Proof of continuing professional competency by any other means approved by the Director.

D. An applicant seeking to reinstate a registration that has been expired for five or more years from the date of receipt of the reinstatement application must demonstrate competency to practice, in a manner required by the Director, by:

1. Providing verification of licensure, registration, or certification in good standing from another state, along with proof of active practice in that state for two of the previous five years from the date of application for reinstatement; and

2. Providing evidence of supervised practice for a period of no less than six months, subject to the terms established by the Director; and

3. Completion of an additional thirteen Professional Development Activities as defined in Rule 13 for each year or portion thereof the license has been inactive; or

4. Provide proof of continuing professional competency by any other means approved by the Director.

Notice of Proposed Rulemaking

Tracking number

2015-00183

Department

1000 - Department of Public Health and Environment

Agency

1007 - Hazardous Materials and Waste Management Division

CCR number

6 CCR 1007-1 Part 22

Rule title

Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material

Rulemaking Hearing

Date

05/15/2015

Time

10:00 AM

Location

The Nature Place Conference and Education Center, 2000 Old Stage Rd., Florrisant, CO 80816

Subjects and issues involved

To consider the promulgation of 6 CCR 1007-1, Colorado Rules and Regulations Pertaining to Radiation Control, Part 22, Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material

Statutory authority

25-1.5-101(1)(k), 25-1.5-101(1)(l), 25-11-103, 25-11-104, and 25-1-108, C.R.S.

Contact information

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COLORADO
Department of Public Health & Environment

Dedicated to protecting and improving the health and environment of the people of Colorado

To: Members of the State Board of Health

From: James Jarvis, Health Physicist, Hazardous Materials and Waste Management Division

Through: Gary Baughman, Division Director *GB*

Date: March 4, 2015

Subject: **Request for Rulemaking Hearing**
Proposed new rule 6 CCR 1007-1, Part 22, "Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material", with a request for the rulemaking hearing to occur May 15, 2015

The Division is proposing a new regulatory part, titled *Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material*.

The proposed regulatory part is being initiated to maintain compatibility with the requirements of the U.S. Nuclear Regulatory Commission (NRC) and implement the requirements in 10 CFR Part 37. The proposed new rule addresses security requirements for certain radioactive materials licensees possessing Category 1 or Category 2 radioactive materials to protect the public against theft, diversion or unauthorized use. Category 1 and 2 radioactive materials are those materials which have been determined by national and international agencies to present a potential risk to national security and public health and safety due to the types and amounts of radioactivity involved. The Category 1 and 2 materials are defined in the proposed rule and are based upon those found in the International Atomic Energy Agency (IAEA) Code of Conduct. The proposed rule codifies and expands upon the current security requirements required by license condition which have been in place since about 2005.

The proposed Part 22 rule addresses the following major subject areas:
(1) Physical security requirements;
(2) Training requirements for the security program;
(3) Personnel background check requirements for individuals requiring unescorted access;
(4) Records and notification requirements; and
(5) Security during transportation.

Approximately 115 stakeholders (including the ~30 directly impacted licensee stakeholders) were notified of the proposed new rule and were provided the opportunity to ask questions and comment via email, and were offered the opportunity to participate in stakeholder meetings. The Division received no written comments from stakeholders. A limited number of stakeholders participated in the stakeholder meetings.

Further details are listed in a Statement of Basis and Purpose and Specific Statutory Authority for the proposed rule, which, along with a Regulatory Analysis and supporting information, is available at: http://www.colorado.gov/pacific/cdphe/radregs

At the March 18, 2015 request for rulemaking, the Radiation Program requests Board of Health set a rulemaking hearing on May 15, 2015.

cc: Deborah Nelson, Administrator, State Board of Health

DRAFT

STATEMENT OF BASIS AND PURPOSE
AND SPECIFIC STATUTORY AUTHORITY
for Amendments to

6 CCR 1007-1, Radiation Control, Part 22, Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material

Basis and Purpose.

The Colorado Radiation Control Act, Title 25, Article 11, Colorado Revised Statutes (the Act), requires the State Board of Health to formulate, adopt and promulgate rules and regulations pertaining to radiation control.

Section 25-11-103 of the Act requires the Colorado Department of Public Health and Environment (Department) to develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing radiation. Under this authority the Department requires registration of sources of ionizing radiation such as radiation machines and licenses governing the use of radioactive materials.

Section 25-11-104 of the Act requires Colorado's radiation regulations to be consistent with the Suggested State Regulations for Control of Radiation (SSRCR) of the Conference of Radiation Control Program Directors, Inc., except when the Board of Health concludes, on the basis of detailed findings, that a substantial deviation from the SSRCR is warranted. The Department's regulations, where applicable, must also be compatible with the regulations adopted by the U.S. Nuclear Regulatory Commission (NRC) in order to maintain status as an Agreement State. The Act establishes the SSRCR as the model for Colorado to use in adopting NRC regulatory provisions. In some instances, maintaining consistency with the SSRCR may not be possible due to the model regulation being out of date with NRC changes, where no model regulation exists, or where there are specific programmatic needs that differ greatly from the SSRCR.

Colorado's proposed new rule - Part 22 - is based upon SSRCR Part "V" (October 2014) which is in turn based upon the federal requirements contained in 10 CFR Part 37. The 10 CFR Part 37 rule was promulgated in May 2013 and became effective in March 2014 for licensees in states that are under federal jurisdiction.

The Department is proposing a new regulatory Part 22, *Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material*, with the State of Colorado Rules and Regulations Pertaining to Radiation Control. The proposed rule addresses security requirements for certain radioactive materials to protect the public against theft, diversion or unauthorized use. Category 1 and 2 radioactive materials are those materials which have been determined by national and international agencies to present a potential risk to national security and public health and safety due to the types and amounts of radioactivity involved. The rule will expand upon (and eventually replace) the security related requirements now contained in license condition.

The Part 22 rule addresses the following major areas:
(1) Physical security requirements;

(2) Training requirements for the security program;
(3) Personnel background check requirements for individuals requiring unescorted access;
(4) Records and notification requirements; and
(5) Security during transportation.

Note that editorial comments, notes, and information shown in the right side margin of the draft proposed rule are for information only to aid the reader, and are not considered part of the regulation. These will be removed from the final regulation prior to submission to the Colorado Secretary of State's office for publishing in the Colorado register.

Specific Statutory Authority.

These rules are promulgated pursuant to the following statutory provisions: 25-1.5-101(1)(k), 25-1.5(1)(l), 25-11-103, 25-11-104, and 25-1-108, C.R.S.

SUPPLEMENTAL QUESTIONS

Is this rulemaking due to a change in state statute?

_____ Yes, the bill number is _____; rules are ___ authorized ___ required.

___X__ No

Is this rulemaking due to a federal statutory or regulatory change?

__X__ Yes**

_____ No

** The promulgation of 10 CFR Part 37 in May 2013 requires Agreement States such as Colorado to promulgate equivalent regulations in a timely manner.

Does this rule incorporate materials by reference?

__X__ Yes

_____ No

Does this rule create or modify fines or fees?

_____ Yes

__X__ No

DRAFT

REGULATORY ANALYSIS

for Amendments to

6 CCR 1007-1, Radiation Control, Part 22, Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material

1. A description of the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

The proposed rule impacts licensees who possess Category 1 and Category 2 radioactive materials.[a] These radioactive materials have been determined by the federal government to present a potential security risk, and therefore require further control and security measures for storage, use, and transit. The proposed rule implements the additional security requirements of federal rule found in 10 CFR Part 37 which was promulgated in May 2013 for licensees of the NRC.

The less than 30 radioactive materials licensees who currently possess Category 1 or Category 2 quantities of radioactive material will be impacted by the proposed new regulation. These same impacted licensees are now required to implement additional security requirements similar to those found in the proposed rule for these materials. These additional requirements have been in place since about 2005 (and later expanded on in 2008) and are presently mandated through license condition requirements. The requirements of the proposed Part 22 rule include and expand upon the requirements now specified in license condition. The typical types of licensees impacted by the proposed rule include: medical facilities with gamma knife devices; industrial radiography licensees, self-shielded (blood irradiators) licensees, research irradiator licensees, and well logger licensees.

There are no specific classes of persons that are expected to benefit from the proposed rule. By ensuring that certain risk-significant radioactive materials are stored, used and shipped appropriately in accordance with the enhanced security measures, the citizens of Colorado as a whole will potentially realize a greater level of security from diversion and malevolent use of such materials.

Registrants or users of radiation producing (x-ray) machines are not impacted by the proposed new rule nor are most users of radioactive materials. This rule only impacts specific radioactive materials licensees having radioactive materials deemed to be of higher risk. Less than 10% of radioactive materials licensees are impacted by the proposed rule.

[a]The list of Category 1 and Category 2 quantities of radioactive material may be found in Appendix A of the proposed draft rule or in Appendix A to 10 CFR Part 37 (**http://www.nrc.gov/reading-rm/doc-collections/cfr/part037/part037-appa.html**)

2. To the extent practicable, a description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

QUANTITATIVE IMPACTS

All licensees who now possess Category 1 and Category 2 quantities of radioactive material are currently required to implement specific security measures that are above and beyond the basic security measures required for all radioactive materials licensees. These requirements are implemented through license conditions and have been in place since 2005 as required by NRC. The proposed rule maintains and expands upon the existing security requirements contained in the specific radioactive materials licenses. It is estimated that proposed rule duplicates roughly 80 % of the requirements currently implemented through license condition, by continuing to require full background checks and fingerprinting for individuals requiring unescorted access to Category 1 and 2 radioactive materials, requiring licensees to monitor and immediately detect, assess, and respond to unauthorized access to radioactive materials, and the continued coordination with local law enforcement.

The majority of physical security measures required by the proposed rule have been in place for about nine years since similar requirements were implemented through license condition beginning in 2005. Since the proposed rule is more specific with respect to physical security requirements, it is possible that a few of licensees may be required to implement some additional physical security measures as a result of the proposed rule. Through the Global Threat Reduction Initiative (GTRI), a federal program of the National Nuclear Security Administration (NNSA), multiple Colorado licensees have already received physical security improvements and upgrades at their facilities at no upfront expense to the licensee. Those facilities, and in particular the facilities that possess Category 1 quantities of material have benefited from this federal program which is expected to eliminate the need for further security upgrades as a result of the proposed rule. Licensees in need of additional security measures may be able to take advantage of this federal program.

A substantial portion of the quantitative costs due to the proposed rule are associated with procedure and training development, periodic program review costs, and training. However, most facilities impacted by the rule and the current license condition requirements would likely already have some documented procedures and plans and likely already conduct some type of security training for their impacted employees and thus the impact may be less than estimated.

Some of the key requirements that will be new to licensees include the development of written security plans and implementation procedures for physical and information security; the development and implementation of annual security training for employees; and the annual testing of security systems. The quantitative impact of the proposed rule will be that licensees who possess Category 1 and 2 materials will be required to implement additional security related requirements. Some additional expense will be realized by licensees both initially and annually to maintain the security requirements. The additional expense will primarily be in terms of the licensee staff time and effort

necessary to develop the written documents (plans and procedures) necessary to implement and maintain the new requirements. Estimates of licensee expenses are outlined in Table 1 and Table 2 below.

Table 1 outlines the initial one-time cost estimates associated with implementing the new rule for small, medium, and large facilities. (For cost estimation purposes, a small, medium, and large facility is assumed to have 5, 20, and 50 employees requiring background checks, respectively. Most impacted licensees are between a small and medium sized facility). Table 2 outlines the annual, ongoing costs associated with the rule. It is expected that most licensee costs will be lower than those estimated although it is possible that a few licensee may experience higher costs depending upon the specifics of their existing security program under the current requirements.

TABLE 1. ESTIMATED ONE TIME (INITIAL) COSTS TO LICENSEES AS A RESULT OF NEW OR REVISED REQUIREMENTS IN THE PROPOSED RULE.[a]

ACTIVITY/REQUIREMENT	EST. LICENSEE HOURS	EST. COST PER LICENSEE
PLANS AND PROCEDURE DEVELOPMENT		
DEVELOPMENT/MODIFICATION OF ACCESS AUTHORIZATION PROGRAM PROCEDURES	40	$2,200
DEVELOPMENT OF SECURITY PLAN AND IMPLEMENTING PROCEDURES [b]	60	$3,300
DEVELOPMENT OF INFORMATION PROTECTION PROCEDURES	35	$1,925
DEVELOPMENT OF PROCEDURE FOR CATEGORY 1 SHIPMENTS	N/A	$0 [c]
BACKGROUND INVESTIGATIONS		
ADDITIONAL BACKGROUND INVESTIGATION REQUIRED FOR REVIEWING OFFICIAL PERSONNEL REQUIRING UNESCORTED ACCESS.	N/A	$0 [d]
ADDITIONAL BACKGROUND INVESTIGATIONS REQUIRED FOR USER PERSONNEL REQUIRING UNESCORTED ACCESS.	N/A	$0 [e]
COST OF DOCUMENTING THE LIST OF INDIVIDUALS GRANTED UNAUTHORIZED ACCESS	N/A	$0 [f]
TRAINING		
INITIAL SECURITY TRAINING COSTS (EMPLOYEE TIME SPENT IN TRAINING CLASS)	2	$110 per employee
DOCUMENTATION OF TRAINING (FLAT AMOUNT)	3	$165
TOTAL ESTIMATED COST OF INITIAL TRAINING	-	$715 (S) $2,365 (M)

		$5,665 (L)
LICENSEE COMMUNICATION TO LOCAL LAW ENFORCEMENT AGENCY (LLEA)		
LLEA PLAN DEVELOPMENT, NOTICE, AND DOCUMENTING COMMUNICATION EFFORTS [g]	31	$1,705
TOTAL INITIAL IMPLEMENTATION COST ESTIMATES FOR PROPOSED PART 22	**-**	**(S) $9,845 (M) $11,495 (L) $14,795**

[a] The impacted activities and estimates in this table were modified from data contained in the Regulatory Analysis for 10 CFR Part 37. Some adjustments have been made based upon specific information obtained through discussions with affected licensees and professional judgement. An average hourly rate of $55 per hour is assumed for licensee labor costs, based on the NRC Regulatory Analysis (derived from the National Wage Data from the Bureau of Labor Statistics).

[b] Under the current requirements mandated by license condition, impacted licensees are required to have a documented security plan. Therefore, it is expected that some security documentation now exists that licensees may use and expand upon to the meet the requirements of Part 22. The estimate assumes that the plan and procedures will take approximately 30 hours each.

[c] Shipment of Category 1 materials is an infrequent event. Licensees who ship Category 1 materials must prepare written procedures for such shipments would potentially increase costs by $1,100 per Category 1 licensee. Since this is an infrequent event unlikely to occur in the first year, it is excluded from the totals.

[d] Current license condition requirements mandate that the reviewing official (RO) have a full background check with fingerprinting if they have unescorted access to Category 1 and 2 materials. To ensure the RO's are screened to the same level as user individuals, the proposed rule requires that all RO's be granted access to the materials following completion of fingerprinting and background checks. Based upon licensee information, most licensees have 1-2 RO's who have completed the full background check including fingerprinting and therefore further background checks would not be required for most licensees. Should an additional/expanded background check be needed for an RO, the cost is estimated at $491 per investigation per RO (8 hours to perform the background check at an assumed $55 per hours, plus the fingerprinting and FBI check costs which total $51).

[e] The implementation of Part 22 is not expected to change (increase or decrease) the need for individual users to complete the security background check process. The number of users/individuals granted unescorted access is dependent upon the licensees business and operational needs for security cleared individuals requiring unescorted access.

[f] This is a requirement of the current license conditions. The proposed Part 22 rule will not change what is currently required of licensees and therefore no additional costs are assumed.

[g] Coordination with LLEA is a requirement of the current license conditions. The proposed Part 22 rule enhances and provides some additional specificity over what is currently required of licensees and therefore some additional costs are assumed.

TABLE 2. ESTIMATED <u>ANNUAL</u> COSTS TO LICENSEES AS A RESULT OF NEW OR MODIFIED REQUIREMENTS IN THE PROPOSED RULE.[a]

ACTIVITY/REQUIREMENT	EST. HOURS	EST. COST PER LICENSEE
ANNUAL REVIEW OF PLANS AND PROCEDURES		
ANNUAL SECURITY PROGRAM REVIEW	25	$1,375
ANNUAL ACCESS AUTHORIZATION PROGRAM REVIEW	25	$1,375

TRAINING		
ANNUAL SECURITY REFRESHER TRAINING (PER EMPLOYEE)	2 per employee	$110 per employee
DOCUMENTATION FOR ANNUAL TRAINING	2	$110 (TOTAL PER YEAR PER LICENSEE)
ANNUAL COSTS PER LICENSEE FOR TRAINING (REFRESHER TRAINING + DOCUMENTATION)	-	$660 (S) $2,310 (M) $5,610 (L)
ANNUAL LLEA COORDINATION		
ANNUAL COORDINATION EFFORTS WITH LLEA + DOCUMENTING COORDINATION EFFORTS	5.5	$303
ANNUAL MAINTENANCE AND TESTING OF SECURITY SYSTEMS		
MAINTENANCE AND TESTING OF SECURITY SYSTEM/EQUIPMENT	20	$1,100
DOCUMENTATION OF TESTING/RECORDS MAINTENANCE	10	$550
ACCESS AUTHORIZATION PROGRAM		
NEW/ADDITIONAL BACKGROUND INVESTIGATIONS REQUIRED [b]	N/A	$0 [b]
10 YEAR REINVESTIGATIONS		
TIME TO COMPLETE REINVESTIGATION	1	$55
FINGERPRINTING AND FBI CHECK FEE	-	$51
TOTAL COST PER REINVESTIGATION PER EMPLOYEE	-	$106
TOTAL ANNUAL COST PER LICENSEE FOR REINVESTIGATION (ASSUMES 20% OF EMPLOYEES REQUIRE REINVESTIGATION IN ANY GIVEN YEAR)		$106 (S) $ 424 (M) $1,060 (L)
ANNUAL COST OF MAINTENANCE OF EMPLOYEE ACCESS LIST	2	$110
EVENT NOTIFICATIONS		
NOTIFICATIONS OF ATTEMPTED THEFT, SABOTAGE, DIVERSION [c]	N/A	$0 [c]
REPORTING OF SUSPICIOUS EVENTS[d]	0.25	$14

CATEGORY 1 SHIPMENTS		
PREPARATION ACTIVITIES FOR CATEGORY 1 SHIPMENTS (LICENSE VERIFICATION; COORDINATION; NOTIFICATIONS; DOCUMENTATION)	-	$436
PHYSICAL PROTECTION OF CAT 1 SHIPMENTS [e]	-	-
CATEGORY 2 SHIPMENTS		
PREPARATION ACTIVITIES FOR CATEGORY 2 SHIPMENTS (LICENSE VERIFICATION; COORDINATION; NOTIFICATION; DOCUMENTATION)	-	$3,060[f] (PER YEAR)
PHYSICAL PROTECTION OF CAT 2 SHIPMENTS	-	$1,000
TOTAL ESTIMATED ANNUAL COSTS	**-**	**(S) $10,088 (M) $12,056 (L) $15,992**

[a] The impacted activities and estimates in this table were modified from data contained in the Regulatory Analysis for 10 CFR Part 37. Some adjustments have been made based upon specific information obtained through discussions with affected licensees and professional judgement. An average hourly rate of $55 per hour is assumed for licensee labor costs, based on the NRC Regulatory Analysis (derived from the National Wage Data from the Bureau of Labor Statistics).

[b] Since the current license condition requirements require background checks including fingerprinting, it is expected that the new rule will not require additional personnel to have a background check completed. The number of users requiring unescorted access to Category 1 and Category 2 is determined by the licensee based upon business needs and is not dependent upon the requirements of the proposed rule.

[c] Notifications of theft, sabotage, and diversion are required by the current license condition requirements and therefore no additional costs are assumed.

[d] Reporting of suspicious events is a new requirement. The Department does not have any history or data pertaining to notifications relating to suspicious activities. Estimate assumes 1 incident per year per licensee. Estimate is based on NRC data.

[e] The shipment of Category 1 materials are relatively infrequent and typically occur every 5-10 years, depending upon the isotope involved and the needs and use of the source/device. Despite the additional security requirements in the proposed rule, the shipment of Category 1 materials in and of themselves, result in significant coordination, expense, and health and safety considerations and expense on the part of the licensee. As estimated by NRC, an additional expense of up to $10,000 per Category 1 shipment may be realized as a result of the additional security requirements relating to shipments. Since shipments of such material are relatively infrequent and do not occur every year, they are not included in the final total annual cost estimates.

[f] This estimate assumes a licensee has 15 devices which are shipped 3 times per year resulting in approximately 45 shipments per year at an estimated cost of ~$68 per shipment. Shipments of Category 2 materials by certain licensees are a routine, frequent event.

The estimated cost to licensees to implement the new rule is dependent upon a number of factors. The factors impacting cost include the number of reviewing officials who do not already have but require a full criminal background check and fingerprinting; the number of individuals who require initial and refresher training; the number of individuals who require unescorted access and therefore require background checks; the complexity of the security program and facility; the level of detail in the security plan and

procedures; and the frequency and type of shipments of radioactive materials. Most of these factors are not easily predictable and largely depend upon the size and type of facility/operation, and the business needs of the licensee.

QUALITATIVE IMPACTS

The qualitative impact or value of the proposed rule is the associated decreased risk of a security related event, such as theft or diversion of radioactive material and subsequent use for unauthorized purposes. Increasing the security for high-risk radioactive material decreases the risk of malevolent use and would expectedly benefit Colorado and the nation. Other positive impacts resulting from the decreased risk and avoidance of security-related events include reducing or eliminating public and occupational health issues due to a radioactive materials accident or event. Similarly, one would expect a benefit due to the avoidance of potential damage to licensee and community property as a result of improper use of risk significant radioactive materials. In addition, some regulatory efficiency is gained by implementing the requirements through regulation rather than through license conditions and supplemental documents issued to each impacted licensee. Similarly, regulatory efficiencies are also realized for prospective (future) licensees in that requirements are centralized in the regulations rather than having the Program provide them at the time of application.

An additional qualitative impact of the proposed rule will be that Colorado's regulatory framework for risk-significant quantities of radioactive material will be consistent with those of the federal government (NRC) and other Agreement States, and consistent with the policies of the Department of Homeland Security.

3. The probable costs to the agency and to any other agency for the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

It is expected that some additional effort by the Department's Radioactive Materials Unit will be necessary to implement and maintain the requirements of proposed new rule.

The transition from current security requirements (contained within the affected licenses as license conditions) to regulations will require modification of approximately 30 licenses. This additional cost will be a one-time effort and realized at the time the license is amended to remove the current requirements (and defer to regulation). It is expected that this will occur in early 2016, just prior to the compliance (enforcement) date in March 2016. Similarly, there will be some initial expense due to updating inspection checklists and providing staff training. Some additional annual costs will also be realized as a result of additional documentation reviews during the 5 year license renewal cycles as well as during routine inspections. Cost estimates are outlined for initial and annual activities in Table 3 below.

TABLE 3. ESTIMATED INITIAL AND ANNUAL COSTS TO AGENCY (RADIATION PROGRAM) AS A RESULT OF NEW OR MODIFIED REQUIREMENTS IN THE PROPOSED RULE.

ACTIVITY	ESTIMATED HOURS	ESTIMATED COST FOR AGENCY [a]
-INITIAL COSTS-		
INITIAL LICENSE AMENDMENTS TO TRANSITION FROM LICENSE CONDITION TO REGULATION	60	$3,000
INITIAL UPDATE TO INSPECTION CHECKLISTS	3	$150
INITIAL STAFF TRAINING	4 [b]	$2,000
INITIAL INSPECTION COSTS DUE TO ADDITIONAL REQUIREMENTS	N/A	$0 [c]
	TOTAL	**$5,150**
-ANNUAL COSTS-		
ANNUALIZED COSTS OF (5 YEAR) LICENSE RENEWALS AND PERIODIC SECURITY RELATED AMENDMENTS	30	$1,500
ANNUAL INSPECTION COSTS DUE TO ADDITIONAL REGULATORY REQUIREMENTS	1 (PER LICENSEE)	$750 [d]
	TOTAL	**$2,250**

[a] The hourly staff rate is assumed to be $50 per hour.

[b] Assumes 10 staff members will require training.

[c] No additional initial/special inspections will be performed as a result of the new regulatory requirements/Part 22. Inspections will be conducted in accordance with the current routine health and safety inspection schedule.

[d] Assumes 15 inspections are conducted per year on average. Category 2 licensees are typically required to be inspected annually.

The total costs to the Department for implementation of the new rule is therefore estimated to be approximately $5,150 initially, and approximately $2,250 annually.

Similar to the current license condition requirements and the requirements of 10 CFR Part 37, new Part 22 requirements will require licensees to coordinate with local law enforcement agencies (LLEAs). The law enforcement agency will typically be the local police or sheriff department in the location where the licensee has facilities. The burden of the requirements fall upon the impacted licensees and not local law enforcement as the radiation program has no regulatory authority over LLEA.
No other agency will be impacted by the proposed new rule.

4. A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

The costs of the proposed rule for the affected licensees are associated with the development or revisions of written plans, procedures and training documents or materials, training of staff, and the required annual security program review and testing required by the new regulatory part. It is expected that nearly all of the impacted licensees have physical security systems in place that will meet the physical security requirements more explicitly required by the new rule. However, since the new rule is more prescriptive with respect to certain physical security requirements, it is possible that a limited number of licensees possessing Category 1 materials could be required to implement some additional security upgrades. Without further information from the licensees and a specific case-by-case evaluation and inspection, the number of these licensees impacted and costs are difficult to predict but would be expected to be very limited. (As indicated in item 2 above, some licensees may be eligible for no-cost security upgrades provided by National Nuclear Security Administration programs.)

A qualitative benefit of the proposed rule will be that Colorado's program pertaining to security of certain risk-significant radioactive materials will be consistent with those of federal rule (NRC) and other Agreement States who have implemented equivalent requirements. By implementing the new rule, Colorado will continue to maintain its status as an Agreement State under the NRC. Although less easily quantified, the enhanced protection requirements associated with Category 1 and Category 2 materials specified in the proposed rule is expected to help reduce the risk that public health and safety and occupational health will be affected by unintended radiological releases. Similarly, the risk of property contamination (on-site and off-site of the licensee facility) from such releases would also be reduced. More frequent notification of Local Law Enforcement required of licensees as a result of the proposed rule may produce a more informed LLEA.

Inaction or failure to promulgate, require or otherwise implement the additional security requirements contained in the proposed rule would ultimately place Colorado in violation of the agreement[1] between Colorado and the U.S. Nuclear Regulatory Commission and could prohibit maintaining status as an Agreement State. Failure to implement the requirements will result in Colorado being incompatible with the federal rules of 10 CFR Part 37 and would ultimately result in inconsistency in national regulatory scheme pertaining to regulation of certain risk-significant radioactive materials. Inaction or continued failure to promulgate equivalent requirements could potentially result in deferral of the security requirements to federal rule and the enforcement of the requirements to NRC.

[1] http://nrc-stp.ornl.gov/special/regs/coagreements.pdf

5. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

The Radiation Program believes there are no less costly or less intrusive methods for implementing these additional security requirements. As an Agreement State, Colorado's Radiation Program must promulgate requirements and regulations that are both compatible and consistent with federal rules governing radioactive materials to help

ensure a nationwide, consistent regulatory program to ensure the security of such materials.

The current method of utilizing license conditions and supplemental documents is not a particularly efficient method of implementing requirements. The current process requires maintenance of approximately 30 licenses which contain addendums and reference documents specific for the security requirements. Implementing the requirements through regulation is more efficient and would make the requirements available for current and prospective licensees in a single location. The Radiation Program believes rule promulgation is the preferred method for implementing these specific requirements.

6. Alternative Rules or Alternatives to Rulemaking Considered and Why Rejected.

There are no alternative rules or rulemaking considered. As an Agreement State, Colorado's Radiation Program must promulgate requirements and regulations that are both compatible and consistent with federal rules governing radioactive materials to help ensure a nationwide, consistent regulatory program to ensure the security of such materials.

7. To the extent practicable, a quantification of the data used in the analysis; the analysis must take into account both short-term and long-term consequences.

The data used in the analysis is based on certain data and information provided in the regulatory analysis for 10 CFR Part 37, on which the proposed Part 22 rule is ultimately based. Licensee hourly rates are based on nationally derived statistics from the U.S. Bureau of Labor. State agency hourly rates are based on internal data averages for state staff based upon Division fiscal data. Some modifications and assumptions to the federal regulatory analysis information have been made to make the data more specific to Colorado licensee demographics or are based on staff judgement.

The consequences identified below are in addition to the health and safety risk the federal regulation seeks to address.

SHORT-TERM CONSEQUENCES
The short-term consequences of failing to implement the proposed regulatory changes would result in the Radiation Program being non-compliant by the NRC mandated due date of March 19, 2016. Although many of the requirements could remain in place through license condition, Colorado would not benefit from further reduction in risk provided by the additional requirements in the proposed rule.

LONG-TERM CONSEQUENCES
The long-term consequences of failing to implement the proposed regulatory changes for the radioactive materials program would potentially result in an inadequate to protect health and safety determination by NRC during its periodic evaluation of Colorado's

Agreement State program. If not corrected through implementation of equivalent requirements, such a determination could eventually result in Colorado's regulatory program being under heightened oversight and ultimately federal government (US NRC) control. Elimination of the radioactive materials program would then be contrary to the requirements of current state statute.

DRAFT

STAKEHOLDER COMMENTS

for Amendments to

6 CCR 1007-1, Radiation Control, Part 22, Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material

The following individuals and/or entities were included in the development of these proposed rules:

The ~30 impacted licensees were notified on December 31, 2014 of a pre-comment period stakeholder meeting (held on January 15). Additionally, a notification of the opportunity to comment on the proposed changes to Part 22 was sent on January 21, 2015 to a total of approximately 115 entities via email.

The entities notified on January 22 represented:

- Approximately 30 specific radioactive materials licensees currently implementing additional security requirements through license condition that would be impacted by the proposed Part 22 rule;
- Approximately 85 “other stakeholders” representing individuals who have specifically signed up to receive notification of proposed radiation regulation changes and who represent a wide variety of interests, most of whom are <u>not</u> impacted by the new rule. These stakeholder entities may include: x-ray registrants, non-impacted radioactive materials licensees; private citizens; private companies; professional organizations; and special interest groups.

In addition to the opportunity for written comment, stakeholders were provided with the opportunity to participate in two stakeholder meetings held on January 15 and February 4. A total of 7 stakeholders participated in these meetings either in-person or via phone. Stakeholders participating asked specific questions regarding various aspects of implementation, but did not specifically provide comments or recommended changes.

This rulemaking does not include a local government mandate. The burden of regulatory conformity to this rule applies to the regulated entities (licensees) only. EO5 does not apply.

Summarize Major Factual and Policy Issues Encountered and the Stakeholder Feedback Received. If there is a lack of consensus regarding the proposed rule, please also identify the Department’s efforts to address stakeholder feedback or why the Department was unable to accommodate the request.

To date, no stakeholders have provided written comments opposing or supporting the rule, nor have changes to the rule been suggested. Most comments and questions that arose during the stakeholder meetings and discussions were technical in nature and related to implementation of the proposed rule requirements for specific situations or conditions. Radiation program licensing and inspection staff present at the meetings responded to questions as they arose. For further information, stakeholders were referred to the Department’s website where rulemaking information and links to NRC guidance documents (for implementing the equivalent federal rule 10 CFR Part 37) are posted.

No specific policy issues have been identified with development of the proposed rule. The rule, which is based upon federal rules promulgated in 2013, codifies and expands upon the security requirements currently required by license condition most of which have been in place since 2005. The rule puts forth certain requirements for the expanded security of specific types and quantities of radioactive material to address physical security, written plans and procedures, training, communication with local law enforcement entities, and periodic security program evaluations. As with many things security related, law enforcement is one element of a larger comprehensive security program. The rule however does not dictate or require explicit actions of law enforcement. The burden of implementation of rule requirements has been and continues to reside with the radioactive materials licensee. Although not required, local law enforcement entities have voluntarily worked with numerous licensees over the years since the inception of the requirements to maintain a level of awareness of licensee activities and facilities. A high degree of compatibility with the equivalent federal rule is mandated and therefore Agreement States such as Colorado have little discretion or flexibility with respect to modifying the language or requirements of the rule. There is no state mandate on local law enforcement and thus, there is no EO5 impact.

Please identify health equity and environmental justice (HEEJ) impacts. Does this proposal impact Coloradoans equally or equitably? Does this proposal provide an opportunity to advance HEEJ? Are there other factors that influenced these rules?

The Department has proposed a rule that treats entities that possess certain risk-significant quantities of radioactive materials (and who need additional security measures as a result of these materials) equitably. The proposed requirements are based upon the type and quantity of radioactive material in possession of the license and therefore all licensees having such higher risk materials are impacted equally. Implementation of the rule is expected to result in a qualitative reduction in the risk to public, occupational, and environmental health due to avoidance and prevention of malevolent use of radioactive materials. Additionally, the rule is necessary to maintain nationwide consistency in the way in which higher risk materials are managed.

DRAFT 1 03/04/15

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Hazardous Materials and Waste Management Division

RADIATION CONTROL – PHYSICAL PROTECTION OF CATEGORY 1 AND CATEGORY 2 QUANTITIES OF RADIOACTIVE MATERIAL

6 CCR 1007-1 PART 22

Adopted by the Board of Health May 15, 2015

Affected licensees shall be compliant with this Part on or before March 19, 2016

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

PHYSICAL PROTECTION OF CATEGORY 1 AND CATEGORY 2 QUANTITIES OF RADIOACTIVE MATERIAL

22.1 Authority

22.1.1 Rules and regulations set forth herein are adopted pursuant to the provisions of section 25-1-108, 25-1.5-101(1)(k) and (1)(l), and 25-11-104, CRS.

22.2 Scope, Purpose and Applicability

22.2.1 Scope and Purpose

22.2.1.1 This Part has been established to provide the requirements for the physical protection program for any licensee that possesses an aggregated category 1 or category 2 quantity of radioactive material listed in Appendix A to this Part. These requirements provide reasonable assurance of the security of category 1 or category 2 quantities of radioactive material by protecting these materials from theft or diversion. Specific requirements for access to material, use of material, transfer of material, and transport of material are included. No provision of this Part authorizes possession of licensed material.

22.2.2 Applicability

22.2.2.1 This Part applies to any person who, under the regulations of 22.8 through 22.23, possesses or uses at any site, an aggregated category 1 or category 2 quantity of radioactive material.

22.2.2.2 This Part applies to any person who, under the regulations of 22.24 through 22.29:

(1) Transports or delivers to a carrier for transport in a single shipment, a category 1 or category 2 quantity of radioactive material; or

(2) Imports or exports a category 1 or category 2 quantity of radioactive material; the provisions only apply to the domestic portion of the transport.

22.3 Definitions.

As used in this Part, these terms have the definitions set forth as follows:

"Access control" means a system for allowing only approved individuals to have unescorted access to the security zone and for ensuring that all other individuals are subject to escorted access.

"Aggregated" means accessible by the breach of a single physical barrier that would allow access to radioactive material in any form, including any devices that contain the radioactive material, when the total activity equals or exceeds a category 2 quantity of radioactive material.

"Approved individual" means an individual whom the licensee has determined to be trustworthy and reliable for unescorted access in accordance with 22.8 through 22.14 and who has completed the training required by 22.16.3.

"Background investigation" means the investigation conducted by a licensee or applicant to support the determination of trustworthiness and reliability.

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

“Category 1 quantity of radioactive material” means a quantity of radioactive material meeting or exceeding the category 1 Threshold in Table 1 of Appendix A to this Part. This is determined by calculating the ratio of the total activity of each Radionuclide to the category 1 threshold for that radionuclide and adding the ratios together. If the sum is equal to or exceeds 1, the quantity would be considered a category 1 quantity. Category 1 quantities of radioactive material do not include the radioactive material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet.

"Category 2 quantity of radioactive material" means a quantity of radioactive material meeting or exceeding the category 2 threshold but less than the category 1 threshold in Table 1 of Appendix A to this Part. This is determined by calculating the ratio of the total activity of each radionuclide to the category 2 threshold for that radionuclide and adding the ratios together. If the sum is equal to or exceeds 1, the quantity would be considered a category 2 quantity. Category 2 quantities of radioactive material do not include the radioactive material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet.

"Diversion" means the unauthorized movement of radioactive material subject to this Part to a location different from the material’s authorized destination inside or outside of the site at which the material is used or stored.

"Escorted access" means accompaniment while in a security zone by an approved individual who maintains continuous direct visual surveillance at all times over an individual who is not approved for unescorted access.

"Fingerprint orders" means the orders issued by the U.S. Nuclear Regulatory Commission or the legally binding requirements issued by Agreement States that require fingerprints and criminal history records checks for individuals with unescorted access to category 1 and category 2 quantities of radioactive material or (as defined in 10 CFR Part 73) safeguards information-modified handling.

"Government agency" means any executive department, commission, independent establishment,

corporation, wholly or partly owned by the United States of America which is an instrumentality of the United States, or any board, bureau, division, service, office, officer, authority, administration, or other establishment in the executive branch of the Government.

“License issuing authority” means the licensing agency that issued the license, i.e. the U.S. Nuclear Regulatory Commission or the appropriate agency of an Agreement State.

"Local law enforcement agency (LLEA)" means a public or private organization that has been approved by a federal, state, or local government to carry firearms and make arrests, and is authorized and has the capability to provide an armed response in the jurisdiction where the licensed category 1 or category 2 quantity of radioactive material is used, stored, or transported.

“Lost or missing licensed material” means licensed material whose location is unknown. It includes material that has been shipped but has not reached its destination and whose location cannot be readily traced in the transportation system.

"Mobile device" means a piece of equipment containing licensed radioactive material that is either mounted on wheels or casters, or otherwise equipped for moving without a need for disassembly or dismounting; or designed to be hand carried. Mobile devices do not include stationary equipment installed in a fixed location.

"Movement control center" means an operations center that is remote from transport activity and that maintains position information on the movement of radioactive material, receives reports of attempted attacks or thefts, provides a means for reporting these and other problems to appropriate agencies and can request and coordinate appropriate aid.

"No-later-than arrival time" means the date and time that the shipping licensee and receiving licensee have established as the time at which an investigation will be initiated if the shipment has not arrived at the receiving facility. The no-later-than arrival time may not be more than 6 hours after the estimated arrival time for shipments of category 2 quantities of radioactive material.

"Reviewing official" means the individual who shall make the trustworthiness and reliability determination of an individual to determine whether the individual may have, or continue to have, unescorted access to the category 1 or category 2 quantities of radioactive materials that are possessed by the licensee.

"Sabotage" means deliberate damage, with malevolent intent, to a category 1 or category 2 quantity of radioactive material, a device that contains a category 1 or category 2 quantity of radioactive material, or the components of the security system.

"Safe haven" means a readily recognizable and readily accessible site at which security is present or from which, in the event of an emergency, the transport crew can notify and wait for the local law enforcement authorities.

"Security zone" means any temporary or permanent area determined and established by the licensee for the physical protection of category 1 or category 2 quantities of radioactive material.

"Telemetric position monitoring system" means a data transfer system that captures information by instrumentation and/or measuring devices about the location and status of a transport vehicle or package between the departure and destination locations.

"Trustworthiness and reliability" are characteristics of an individual considered dependable in judgment, character, and performance, such that unescorted access to category 1 or category 2 quantities of radioactive material by that individual does not constitute an unreasonable risk to the public health and

safety or security. A determination of trustworthiness and reliability for this purpose is based upon the results from a background investigation.

"Unescorted access" means solitary access to an aggregated category 1 or category 2 quantity of radioactive material or the devices that contain the material.

22.4 Communications.

Except where otherwise specified, all communications, reports, and notifications concerning or required by the regulations in this Part shall be sent to Radiation Program - HMWMD, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, CO 80246-1530.

22.5 Reserved

22.6 Specific Exemptions.

22.6.1 The Department may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this Part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

22.6.2 A licensee that possesses radioactive waste that contains category 1 or category 2 quantities of radioactive material is exempt from the requirements of 22.8 through 22.29. Except that any radioactive waste that contains discrete sources, ion-exchange resins, or activated material that weighs less than 2,000 kg (4,409 lbs) is not exempt from the requirements of this Part. The licensee shall implement the following requirements to secure the radioactive waste:

A. Use continuous physical barriers that allow access to the radioactive waste only through established access control points;

B. Use a locked door or gate with monitored alarm at the access control point;

C. Assess and respond to each actual or attempted unauthorized access to determine whether an actual or attempted theft, sabotage, or diversion occurred; and

D. Immediately notify the LLEA and request an armed response from the LLEA upon determination that there was an actual or attempted theft, sabotage, or diversion of the radioactive waste that contains category 1 or category 2 quantities of radioactive material.

Background Investigations and Access Authorization Program

22.8 Personnel Access Authorization Requirements for Category 1 or category 2 Quantities of Radioactive Material.

22.8.1 General.

A. Each licensee that possesses an aggregated quantity of radioactive material at or above the category 2 threshold shall establish, implement, and maintain its access authorization program in accordance with the requirements of this Part.

B. An applicant for a new license and each licensee that would become newly subject to the requirements of this Part upon application for modification of its license shall implement the

requirements of this Part, as appropriate, before taking possession of an aggregated category 1 or category 2 quantity of radioactive material.

C. Any licensee that has not previously implemented the NRC Security Orders or been subject to the provisions of 22.8 through 22.14 shall implement the provisions of 22.8 through 22.14 before aggregating radioactive material to a quantity that equals or exceeds the category 2 threshold.

22.8.2 General performance objective.

A. The licensee's access authorization program must ensure that the individuals specified in 22.8.3. are trustworthy and reliable.

22.8.3 Applicability.

A. Licensees shall subject the following individuals to an access authorization program in accordance with Section 22.9:

1. Any individual whose assigned duties require unescorted access to category 1 or category 2 quantities of radioactive material or to any device that contains the radioactive material; and

2. Reviewing officials.

B. Licensees need not subject the categories of individuals listed in 22.12.1. to the investigation elements of the access authorization program.

C. Licensees shall approve for unescorted access to category 1 or category 2 quantities of radioactive material only those individuals with job duties that require unescorted access to category 1 or category 2 quantities of radioactive material.

D. Licensees may include individuals needing access to safeguards information-modified handling under 10 CFR Part 73 in the access authorization program under 22.8 through 22.14.

22.9 Access authorization program requirements.

22.9.1 Granting unescorted access authorization.

A. Licensees shall implement the requirements of this Part for granting initial or reinstated unescorted access authorization.

B. Individuals who have been determined to be trustworthy and reliable shall also complete the security training required by 22.16.3 before being allowed unescorted access to category 1 or category 2 quantities of radioactive material.

22.9.2 Reviewing officials.

A. Reviewing officials are the only individuals who may make trustworthiness and reliability determinations that allow individuals to have unescorted access to category 1 or category 2 quantities of radioactive materials possessed by the licensee.

B. Each licensee shall name one or more individuals to be reviewing officials. After completing the background investigation on the reviewing official, the licensee shall provide under oath or affirmation, a certification that the reviewing official is deemed trustworthy and reliable by the licensee. The fingerprints of the named reviewing official must be taken by a law enforcement agency, Federal or State agencies that provide fingerprinting services to the public, or commercial fingerprinting services authorized by a State to take fingerprints. The licensee shall re-certify that the reviewing official is deemed trustworthy and reliable every 10 years in accordance with 22.10.3.

C. Reviewing officials must be permitted to have unescorted access to category 1 or category 2 quantities of radioactive materials or access to safeguards information or safeguards information-modified handling, if the licensee possesses safeguards information or safeguards information modified handling.

D. Reviewing officials cannot approve other individuals to act as reviewing officials.

E. A reviewing official does not need to undergo a new background investigation before being named by the licensee as the reviewing official if:

1. The individual has undergone a background investigation that included fingerprinting and an FBI criminal history records check and has been determined to be trustworthy and reliable by the licensee; or

2. The individual is subject to a category listed in 22.12.1.

22.9.3 Informed consent.

A. Licensees may not initiate a background investigation without the informed and signed consent of the subject individual. This consent must include authorization to share personal information with other individuals or organizations as necessary to complete the background investigation. Before a final adverse determination, the licensee shall provide the individual with an opportunity to correct any inaccurate or incomplete information that is developed during the background investigation. Licensees do not need to obtain signed consent from those individuals that meet the requirements of 22.10.2. A signed consent must be obtained prior to any reinvestigation.

B. The subject individual may withdraw his or her consent at any time. Licensees shall inform the individual that:

1. If an individual withdraws his or her consent, the licensee may not initiate any elements of the background investigation that were not in progress at the time the individual withdrew his or her consent; and

2. The withdrawal of consent for the background investigation is sufficient cause for denial or termination of unescorted access authorization.

22.9.4 Personal history disclosure.

A. Any individual who is applying for unescorted access authorization shall disclose the personal history information that is required by the licensee's access authorization program for the reviewing official to make a determination of the individual's trustworthiness and reliability.

Refusal to provide, or the falsification of, any personal history information required by this Part is sufficient cause for denial or termination of unescorted access.

22.9.5 Determination basis.

A. The reviewing official shall determine whether to permit, deny, unfavorably terminate, maintain, or administratively withdraw an individual's unescorted access authorization based on an evaluation of all of the information collected to meet the requirements of this Part.

B. The reviewing official may not permit any individual to have unescorted access until the reviewing official has evaluated all of the information collected to meet the requirements of this Part and determined that the individual is trustworthy and reliable. The reviewing official may deny unescorted access to any individual based on information obtained at any time during the background investigation.

C. The licensee shall document the basis for concluding whether or not there is reasonable assurance that an individual is trustworthy and reliable.

D. The reviewing official may terminate or administratively withdraw an individual's unescorted access authorization based on information obtained after the background investigation has been completed and the individual granted unescorted access authorization.

E. Licensees shall maintain a list of persons currently approved for unescorted access authorization. When a licensee determines that a person no longer requires unescorted access or meets the access authorization requirement, the licensee shall remove the person from the approved list as soon as possible, but no later than 7 working days, and take prompt measures to ensure that the individual is unable to have unescorted access to the material.

22.9.6 Procedures.

A. Licensees shall develop, implement, and maintain written procedures for implementing the access authorization program. The procedures must include provisions for the notification of individuals who are denied unescorted access. The procedures must include provisions for the review, at the request of the affected individual, of a denial or termination of unescorted access authorization. The procedures must contain a provision to ensure that the individual is informed of the grounds for the denial or termination of unescorted access authorization and allow the individual an opportunity to provide additional relevant information.

22.9.7 Right to correct and complete information.

A. Prior to any final adverse determination, licensees shall provide each individual subject to this Part with the right to complete and correct information and the right to explain information obtained as a result of the licensee's background investigation. Confirmation of receipt by the individual of this notification must be maintained by the licensee for a period of 1 year from the date of the notification.

B. If, after reviewing his or her criminal history record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, update, or explain anything in the record, the individual may initiate challenge procedures. These procedures include direct application by the individual challenging the record to the law enforcement agency that contributed the questioned information or a direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Federal Bureau of Investigation, Criminal Justice Information Services (CJIS) Division, ATTN: SCU, Mod. D–2, 1000 Custer Hollow Road,

Clarksburg, WV 26306 as set forth in 28 CFR 16.30 through 16.34. In the latter case, the Federal Bureau of Investigation (FBI) will forward the challenge to the agency that submitted the data, and will request that the agency verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. Licensees must provide at least 10 days for an individual to initiate action to challenge the results of an FBI criminal history records check after the record being made available for his or her review. The licensee may make a final adverse determination based upon the criminal history records only after receipt of the FBI's confirmation or correction of the record.

22.9.7 Records.

A. The licensee shall retain documentation regarding the trustworthiness and reliability of individual employees for 3 years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material.

B. The licensee shall retain a copy of the current access authorization program procedures as a record for 3 years after the procedure is no longer needed. If any portion of the procedure is superseded, the licensee shall retain the superseded material for 3 years after the record is superseded.

C. The licensee shall retain the list of persons approved for unescorted access authorization for 3 years after the list is superseded or replaced.

22.10 Background Investigations.

22.10.1 Initial investigation.

A. Before allowing an individual unescorted access to category 1 or category 2 quantities of radioactive material or to the devices that contain the material, licensees shall complete a background investigation of the individual seeking unescorted access authorization. The scope of the investigation must encompass at least the 7 years preceding the date of the background investigation or since the individual's eighteenth birthday, whichever is shorter. The background investigation must include at a minimum:

1. Fingerprinting and an FBI identification and criminal history records check in accordance with 22.11;

2. Verification of true identity. Licensees shall verify the true identity of the individual who is applying for unescorted access authorization to ensure that the applicant is who he or she claims to be. A licensee shall review official identification documents (*e.g.,* driver's license; passport; government identification; certificate of birth issued by the state, province, or country of birth) and compare the documents to personal information data provided by the individual to identify any discrepancy in the information. Licensees shall document the type, expiration, and identification number of the identification document, or maintain a photocopy of identifying documents on file in accordance with 22.13. Licensees shall certify in writing that the identification was properly reviewed, and shall maintain the certification and all related documents for review upon inspection;

3. Employment history verification. Licensees shall complete an employment history verification, including military history. Licensees shall verify the individual's employment with each previous employer for the most recent 7 years before the date

of application;

4. Verification of education. Licensees shall verify that the individual participated in the education process during the claimed period;

5. Character and reputation determination. Licensees shall complete reference checks to determine the character and reputation of the individual who has applied for unescorted access authorization. Unless other references are not available, reference checks may not be conducted with any person who is known to be a close member of the individual's family, including but not limited to the individual's spouse, parents, siblings, or children, or any individual who resides in the individual's permanent household. Reference checks under this Part must be limited to whether the individual has been and continues to be trustworthy and reliable;

6. The licensee shall also, to the extent possible, obtain independent information to corroborate that provided by the individual (*e.g.,* seek references not supplied by the individual); and

7. If a previous employer, educational institution, or any other entity with which the individual claims to have been engaged fails to provide information or indicates an inability or unwillingness to provide information within a time frame deemed appropriate by the licensee but at least after 10 business days of the request or if the licensee is unable to reach the entity, the licensee shall document the refusal, unwillingness, or inability in the record of investigation; and attempt to obtain the information from an alternate source.

22.10.2 Grandfathering.

A. Individuals who have been determined to be trustworthy and reliable for unescorted access to category 1 or category 2 quantities of radioactive material under the fingerprint Orders or equivalent Agreement State requirements may continue to have unescorted access to category 1 and category 2 quantities of radioactive material without further investigation. These individuals shall be subject to the reinvestigation requirement.

B. Individuals who have been determined to be trustworthy and reliable under the provisions of 10 CFR Part 73 or the security orders for access to safeguards information, safeguards information-modified handling, or risk-significant material may have unescorted access to category 1 and category 2 quantities of radioactive material without further investigation. The licensee shall document that the individual was determined to be trustworthy and reliable under the provisions of 10 CFR Part 73 or a security order. Security order, in this context, refers to any order that was issued by the NRC that required fingerprints and an FBI criminal history records check for access to safeguards information, safeguards information-modified handling, or risk significant material such as special nuclear material or large quantities of uranium hexafluoride. These individuals shall be subject to the reinvestigation requirement.

22.10.3 Reinvestigations.

A. Licensees shall conduct a reinvestigation every 10 years for any individual with unescorted access to category 1 or category 2 quantities of radioactive material. The reinvestigation shall consist of fingerprinting and an FBI identification and criminal history records check in accordance with 22.11. The reinvestigations must be completed within 10 years of the date on which these elements were last completed.

22.11 Requirements for Criminal History Records Checks of Individuals Granted Unescorted Access to Category 1 or Category 2 Quantities of Radioactive Material.

22.11.1 General performance objective and requirements.

A. Except for those individuals listed in 22.12 and those individuals grandfathered under 22.10.2., each licensee subject to the provisions of this Part shall fingerprint each individual who is to be permitted unescorted access to category 1 or category 2 quantities of radioactive material. Licensees shall transmit all collected fingerprints to the U.S. Nuclear Regulatory Commission for transmission to the FBI. The licensee shall use the information received from the FBI as part of the required background investigation to determine whether to grant or deny further unescorted access to category 1 or category 2 quantities of radioactive materials for that individual.

B. The licensee shall notify each affected individual that his or her fingerprints will be used to secure a review of his or her criminal history record, and shall inform him or her of the procedures for revising the record or adding explanations to the record.

C. Fingerprinting is not required if a licensee is reinstating an individual's unescorted access authorization to category 1 or category 2 quantities of radioactive materials if:

1. The individual returns to the same facility that granted unescorted access authorization within 365 days of the termination of his or her unescorted access authorization; and

2. The previous access was terminated under favorable conditions.

D. Fingerprints do not need to be taken if an individual who is an employee of a licensee, contractor, manufacturer, or supplier has been granted unescorted access to category 1 or category 2 quantities of radioactive material, access to safeguards information, or safeguards information-modified handling by another licensee, based upon a background investigation conducted under this Part, the Fingerprint Orders, or 10 CFR Part 73. An existing criminal history records check file may be transferred to the licensee asked to grant unescorted access in accordance with the provisions of 22.13.3.

E. Licensees shall use the information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for unescorted access authorization to category 1 or category 2 quantities of radioactive materials, access to safeguards information, or safeguards information-modified handling.

22.11.2 Prohibitions.

A. Licensees may not base a final determination to deny an individual unescorted access authorization to category 1 or category 2 quantities of radioactive material solely on the basis of information received from the FBI involving:

1. An arrest more than 1 year old for which there is no information of the disposition of the case; or

2. An arrest that resulted in dismissal of the charge or an acquittal.

B. Licensees may not use information received from a criminal history records check obtained under this Part in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall licensees use

the information in any way that would discriminate among individuals on the basis of race, religion, national origin, gender, or age.

22.11.3 Procedures for processing of fingerprint checks.

A. For the purpose of complying with this Part, licensees shall submit to the U.S. Nuclear Regulatory Commission, Director, Division of Facilities and Security, 11545 Rockville Pike, Rockville, MD 20852-2738, ATTN: Criminal History Program, Mail Stop T-03B46M, one completed, legible standard fingerprint card (Form FD–258, ORIMDNRCOOOZ), electronic fingerprint scan or, where practicable, other fingerprint record for each individual requiring unescorted access to category 1 or category 2 quantities of radioactive material. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by calling 1–301–415–7513, or by email to *FORMS.Resource@nrc.gov.* Guidance on submitting electronic fingerprints can be found at http://www.nrc.gov/site- help/esubmittals.html.

B. Fees for the processing of fingerprint checks are due upon application. Licensees shall submit payment with the application for the processing of fingerprints through corporate check, certified check, cashier's check, money order, or electronic payment, made payable to ''U.S. NRC.'' (For guidance on making electronic payments, contact the Security Branch, Division of Facilities and Security at 301–415–7513.) Combined payment for multiple applications is acceptable. The U.S. Nuclear Regulatory Commission publishes the amount of the fingerprint check application fee on the NRC's public Web site. (To find the current fee amount, go to the Electronic Submittals page at http://www.nrc.gov/site-help/e-submittals.html and see the link for the Criminal History Program under Electronic Submission Systems.)

C. The U.S. Nuclear Regulatory Commission will forward to the submitting licensee all data received from the FBI as a result of the licensee's application(s) for criminal history records checks.

22.12 Relief from Fingerprinting, Identification, and Criminal History Records Checks and Other Elements of Background Investigations for Designated Categories of Individuals Permitted Unescorted Access to Certain Radioactive Materials.

22.12.1 Fingerprinting, and the identification and criminal history records checks required by section 149 of the Atomic Energy Act of 1954, as amended, and other elements of the background investigation are not required for the following individuals prior to granting unescorted access to category 1 or category 2 quantities of radioactive materials:

A. An employee of the Commission or of the Executive Branch of the U.S. Government who has undergone fingerprinting for a prior U.S. Government criminal history records check;

B. A Member of Congress;

C. An employee of a member of Congress or Congressional committee who has undergone fingerprinting for a prior U.S. Government criminal history records check;

D. The Governor of a State or his or her designated State employee representative;

E. Federal, State, or local law enforcement personnel;

F. State Radiation Control Program Directors and State Homeland Security Advisors or their designated State employee representatives;

G. Agreement State employees conducting security inspections on behalf of the NRC under an agreement executed under section 274.i. of the Atomic Energy Act;

H. Representatives of the International Atomic Energy Agency (IAEA) engaged in activities associated with the U.S./IAEA Safeguards Agreement who have been certified by the NRC;

I. Emergency response personnel who are responding to an emergency;

J. Commercial vehicle drivers for road shipments of category 1 and category 2 quantities of radioactive material;

K. Package handlers at transportation facilities such as freight terminals and railroad yards;

L. Any individual who has an active Federal security clearance, provided that he or she makes available the appropriate documentation. Written confirmation from the agency/employer that granted the Federal security clearance or reviewed the criminal history records check must be provided to the licensee. The licensee shall retain this documentation for a period of 3 years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material; and

M. Any individual employed by a service provider licensee for which the service provider licensee has conducted the background investigation for the individual and approved the individual for unescorted access to category 1 or category 2 quantities of radioactive material. Written verification from the service provider must be provided to the licensee. The licensee shall retain the documentation for a period of 3 years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material.

22.12.2 Fingerprinting, and the identification and criminal history records checks required by section 149 of the Atomic Energy Act of 1954, as amended, are not required for an individual who has had a favorably adjudicated U.S. Government criminal history records check within the last 5 years, under a comparable U.S. Government program involving fingerprinting and an FBI identification and criminal history records check provided that he or she makes available the appropriate documentation. Written confirmation from the agency/employer that reviewed the criminal history records check must be provided to the licensee. The licensee shall retain this documentation for a period of 3 years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material. These programs include, but are not limited to:

A. National Agency Check;

B. Transportation Worker Identification Credentials (TWIC) under 49 CFR part 1572;

C. Bureau of Alcohol, Tobacco, Firearms, and Explosives background check and clearances under 27 CFR part 555;

D. Health and Human Services security risk assessments for possession and use of select agents and toxins under 42 CFR part 73;

E. Hazardous Material security threat assessment for hazardous material endorsement to commercial driver's license under 49 CFR part 1572; and

F. Customs and Border Protection's Free and Secure Trade (FAST) Program.

22.13 Protection of information.

22.13.1 Each licensee who obtains background information on an individual under this Part shall establish and maintain a system of files and written procedures for protection of the record and the personal information from unauthorized disclosure.

22.13.2 The licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his or her representative, or to those who have a need to have access to the information in performing assigned duties in the process of granting or denying unescorted access to category 1 or category 2 quantities of radioactive material, safeguards information, or safeguards information-modified handling. No individual authorized to have access to the information may disseminate the information to any other individual who does not have a need to know.

22.13.3 The personal information obtained on an individual from a background investigation may be provided to another licensee:

A. Upon the individual's written request to the licensee holding the data to disseminate the information contained in his or her file; and

B. The recipient licensee verifies information such as name, date of birth, social security number, gender, and other applicable physical characteristics.

22.13.4 The licensee shall make background investigation records obtained under this Part available for examination by an authorized representative of the Department to determine compliance with the regulations and laws.

22.13.5 The licensee shall retain all fingerprint and criminal history records (including data indicating no record) received from the FBI, or a copy of these records if the individual's file has been transferred, on an individual for 3 years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material.

22.14 Access Authorization Program Review.

22.14.1 Each licensee shall be responsible for the continuing effectiveness of the access authorization program. Each licensee shall ensure that access authorization programs are reviewed to confirm compliance with the requirements of this Part and that comprehensive actions are taken to correct any noncompliance that is identified. The review program shall evaluate all program performance objectives and requirements. Each licensee shall periodically (at least annually) review the access program content and implementation.

22.14.2 The results of the reviews, along with any recommendations, must be documented. Each review report must identify conditions that are adverse to the proper performance of the access authorization program, the cause of the condition(s), and, when appropriate, recommend corrective actions, and corrective actions taken. The licensee shall review the findings and take any additional corrective actions necessary to preclude repetition of the condition, including reassessment of the deficient areas where indicated.

22.14.3 Review records must be maintained for 3 years.

Physical Protection Requirements During Use

22.15 Security program.

22.15.1 Applicability.

A. Each licensee that possesses an aggregated category 1 or category 2 quantity of radioactive material shall establish, implement, and maintain a security program in accordance with the requirements of this Part.

B. An applicant for a new license and each licensee that would become newly subject to the requirements of this Part upon application for modification of its license shall implement the requirements of this Part, as appropriate, before taking possession of an aggregated category 1 or category 2 quantity of radioactive material.

C. Any licensee that has not previously implemented the Security Orders or equivalent Agreement State requirements or been subject to 22.15 through 22.23 shall provide written notification to the Department to the address specified in 22.4 at least 90 days before aggregating radioactive material to a quantity that equals or exceeds the category 2 threshold.

22.15.2 General performance objective.

A. Each licensee shall establish, implement, and maintain a security program that is designed to monitor and, without delay, detect, assess, and respond to an actual or attempted unauthorized access to category 1 or category 2 quantities of radioactive material.

22.15.3 Program features.

A. Each licensee's security program must include the program features, as appropriate, described in 22.16 through 22.22.

22.16 General Security Program Requirements.

22.16.1 Security plan.

A. Each licensee identified in 22.15.1. shall develop a written security plan specific to its facilities and operations. The purpose of the security plan is to establish the licensee's overall security strategy to ensure the integrated and effective functioning of the security program required by this Part. The security plan must, at a minimum:

1. Describe the measures and strategies used to implement the requirements of this Part; and

2. Identify the security resources, equipment, and technology used to satisfy the requirements of this Part.

B. The security plan must be reviewed and approved by the individual with overall responsibility for the security program.

C. A licensee shall revise its security plan as necessary to ensure the effective implementation of Department requirements. The licensee shall ensure that:

1. The revision has been reviewed and approved by the individual with overall responsibility for the security program; and

2. The affected individuals are instructed on the revised plan before the changes are implemented.

D. The licensee shall retain a copy of the current security plan as a record for 3 years after the security plan is no longer required. If any portion of the plan is superseded, the licensee shall retain the superseded material for 3 years after the record is superseded.

22.16.2 Implementing procedures.

A. The licensee shall develop and maintain written procedures that document how the requirements of this Part and the security plan will be met.

B. The implementing procedures and revisions to these procedures must be approved in writing by the individual with overall responsibility for the security program.

C. The licensee shall retain a copy of the current procedure as a record for 3 years after the procedure is no longer needed. Superseded portions of the procedure must be retained for 3 years after the record is superseded.

22.16.3 Training.

A. Each licensee shall conduct training to ensure that those individuals implementing the security program possess and maintain the knowledge, skills, and abilities to carry out their assigned duties and responsibilities effectively. The training must include instruction in:

1. The licensee's security program and procedures to secure category 1 or category 2 quantities of radioactive material, and in the purposes and functions of the security measures employed;

2. The responsibility to report promptly to the licensee any condition that causes or may cause a violation of Department requirements;

3. The responsibility of the licensee to report promptly to the local law enforcement agency and licensee any actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material; and

4. The appropriate response to security alarms.

B. In determining those individuals who shall be trained on the security program, the licensee shall consider each individual's assigned activities during authorized use and response to potential situations involving actual or attempted theft, diversion, or sabotage of category 1 or category 2 quantities of radioactive material. The extent of the training must be commensurate with the individual's potential involvement in the security of category 1 or category 2 quantities of radioactive material.

C. Refresher training must be provided at a frequency not to exceed 12 months and when significant changes have been made to the security program. This training must include:

1. Review of the training requirements of 22.16.3.A. and any changes made to the security program since the last training;

2. Reports on any relevant security issues, problems, and lessons learned;

3. Relevant results of Department inspections; and

4. Relevant results of the licensee's program review and testing and maintenance.

D. The licensee shall maintain records of the initial and refresher training for 3 years from the date of the training. The training records must include dates of the training, topics covered, a list of licensee personnel in attendance, and related information.

22.16.4 Protection of information.

A. Licensees authorized to possess category 1 or category 2 quantities of radioactive material shall limit access to and unauthorized disclosure of their security plan, implementing procedures, and the list of individuals that have been approved for unescorted access.

B. Efforts to limit access shall include the development, implementation, and maintenance of written policies and procedures for controlling access to, and for proper handling and protection against unauthorized disclosure of, the security plan and implementing procedures.

C. Before granting an individual access to the security plan or implementing procedures, licensees shall:

1. Evaluate an individual's need to know the security plan or implementing procedures; and

2. If the individual has not been authorized for unescorted access to category 1 or category 2 quantities of radioactive material, safeguards information, or safeguards information-modified handling, the licensee must complete a background investigation to determine the individual's trustworthiness and reliability. A trustworthiness and reliability determination shall be conducted by the reviewing official and shall include the background investigation elements contained in 22.10.1.A.2. through 22.10.1.A.7.

D. Licensees need not subject the following individuals to the background investigation elements for protection of information:

1. The categories of individuals listed in 22.12.1.A. through 22.12.1.M; or

2. Security service provider employees, provided written verification that the employee has been determined to be trustworthy and reliable, by the required background investigation in 22.10.1.A.2 through 22.10.1.A.7, has been provided by the security service provider.

E. The licensee shall document the basis for concluding that an individual is trustworthy and reliable and should be granted access to the security plan or implementing procedures.

F. Licensees shall maintain a list of persons currently approved for access to the security plan or implementing procedures. When a licensee determines that a person no longer needs access to the security plan or implementing procedures or no longer meets the access authorization requirements for access to the information, the licensee shall remove the person from the approved list as soon as possible, but no later than 7 working days, and take prompt measures to ensure that the individual is unable to obtain the security plan or implementing procedures.

G. When not in use, the licensee shall store its security plan and implementing procedures in a manner to prevent unauthorized access. Information stored in nonremovable electronic form must be password protected.

H. The licensee shall retain as a record for 3 years after the document is no longer needed:

1. A copy of the information protection procedures; and

2. The list of individuals approved for access to the security plan or implementing procedures.

22.17 LLEA Coordination.

22.17.1 A licensee subject to this Part shall coordinate, to the extent practicable, with an LLEA for responding to threats to the licensee's facility, including any necessary armed response. The information provided to the LLEA must include:

A. A description of the facilities and the category 1 and category 2 quantities of radioactive materials along with a description of the licensee's security measures that have been implemented to comply with this Part; and

B. A notification that the licensee will request a timely armed response by the LLEA to any actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of material.

22.17.2 The licensee shall notify the Department within 3 business days if:

A. The LLEA has not responded to the request for coordination within 60 days of the coordination request; or

B. The LLEA notifies the licensee that the LLEA does not plan to participate in coordination activities.

22.17.3 The licensee shall document its efforts to coordinate with the LLEA. The documentation must be kept for 3 years.

22.17.4 The licensee shall coordinate with the LLEA at least every 12 months, or when changes to the facility design or operation adversely affect the potential vulnerability of the licensee's material to theft, sabotage, or diversion.

22.18 Security zones.

22.18.1 Licensees shall ensure that all aggregated category 1 and category 2 quantities of radioactive material are used or stored within licensee-established security zones. Security zones may be permanent or temporary.

22.18.2 Temporary security zones must be established as necessary to meet the licensee's transitory or intermittent business activities, such as periods of maintenance, source delivery, and source replacement.

22.18.3 Security zones must, at a minimum, allow unescorted access only to approved individuals through:

A. Isolation of category 1 and category 2 quantities of radioactive materials by the use of continuous physical barriers that allow access to the security zone only through established access control points. A physical barrier is a natural or man-made structure or formation sufficient for the isolation of the category 1 or category 2 quantities of radioactive material within a security zone; or

B. Direct control of the security zone by approved individuals at all times; or

C. A combination of continuous physical barriers and direct control.

22.18.4 For category 1 quantities of radioactive material during periods of maintenance, source receipt, preparation for shipment, installation, or source removal or exchange, the licensee shall, at a minimum, provide sufficient individuals approved for unescorted access to maintain continuous surveillance of sources in temporary security zones and in any security zone in which physical barriers or intrusion detection systems have been disabled to allow such activities.

22.18.5 Individuals not approved for unescorted access to category 1 or category 2 quantities of radioactive material must be escorted by an approved individual when in a security zone.

Sec 22.19 Monitoring, Detection, and Assessment.

22.19.1 Monitoring and detection.

A. Licensees shall establish and maintain the capability to continuously monitor and detect without delay all unauthorized entries into its security zones. Licensees shall provide the means to maintain continuous monitoring and detection capability in the event of a loss of the primary power source, or provide for an alarm and response in the event of a loss of this capability to continuously monitor and detect unauthorized entries.

B. Monitoring and detection must be performed by:

1. A monitored intrusion detection system that is linked to an onsite or offsite central monitoring facility; or

2. Electronic devices for intrusion detection alarms that will alert nearby facility personnel; or

3. A monitored video surveillance system; or

4. Direct visual surveillance by approved individuals located within the security zone; or

5. Direct visual surveillance by a licensee designated individual located outside the security zone.

C. A licensee subject to this Part shall also have a means to detect unauthorized removal of the radioactive material from the security zone. This detection capability must provide:

1. For category 1 quantities of radioactive material, immediate detection of any attempted unauthorized removal of the radioactive material from the security zone. Such immediate

detection capability must be provided by:

a. Electronic sensors linked to an alarm; or

b. Continuous monitored video surveillance; or

c. Direct visual surveillance.

2. For category 2 quantities of radioactive material, weekly verification through physical checks, tamper indicating devices, use, or other means to ensure that the radioactive material is present.

22.19.2 Assessment. Licensees shall immediately assess each actual or attempted unauthorized entry into the security zone to determine whether the unauthorized access was an actual or attempted theft, sabotage, or diversion.

22.19.3 Personnel communications and data transmission. For personnel and automated or electronic systems supporting the licensee's monitoring, detection, and assessment systems, licensees shall:

A. Maintain continuous capability for personnel communication and electronic data transmission and processing among site security systems; and

B. Provide an alternative communication capability for personnel, and an alternative data transmission and processing capability, in the event of a loss of the primary means of communication or data transmission and processing. Alternative communications and data transmission systems may not be subject to the same failure modes as the primary systems.

22.19.4 Response.

A. Licensees shall immediately respond to any actual or attempted unauthorized access to the security zones, or actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material at licensee facilities or temporary job sites. For any unauthorized access involving an actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material, the licensee's response shall include requesting, without delay, an armed response from the LLEA.

22.20 Maintenance and Testing.

22.20.1 Each licensee subject to this Part shall implement a maintenance and testing program to ensure that intrusion alarms, associated communication systems, and other physical components of the systems used to secure or detect unauthorized access to radioactive material are maintained in operable condition and are capable of performing their intended function when needed. The equipment relied on to meet the security requirements of this Part must be inspected and tested for operability and performance at the manufacturer's suggested frequency. If there is no suggested manufacturer's suggested frequency, the testing must be performed at least annually, not to exceed 12 months.

22.20.2 The licensee shall maintain records on the maintenance and testing activities for 3 years.

22.21 Requirements for Mobile Devices.

22.21.1 Each licensee that possesses mobile devices containing category 1 or category 2 quantities of radioactive material must:

A. Have two independent physical controls that form tangible barriers to secure the material from unauthorized removal when the device is not under direct control and constant surveillance by the licensee; and

B. For devices in or on a vehicle or trailer, unless the health and safety requirements for a site prohibit the disabling of the vehicle, the licensee shall utilize a method to disable the vehicle or trailer when not under direct control and constant surveillance by the licensee. Licensees shall not rely on the removal of an ignition key to meet this requirement.

22.22 Security Program Review.

22.22.1 Each licensee shall be responsible for the continuing effectiveness of the security program. Each licensee shall ensure that the security program is reviewed to confirm compliance with the requirements of this Part and that comprehensive actions are taken to correct any noncompliance that is identified. The review must include the radioactive material security program content and implementation. Each licensee shall periodically (at least annually) review the security program content and implementation.

22.22.2 The results of the review, along with any recommendations, must be documented. Each review report must identify conditions that are adverse to the proper performance of the security program, the cause of the condition(s), and, when appropriate, recommend corrective actions, and corrective actions taken. The licensee shall review the findings and take any additional corrective actions necessary to preclude repetition of the condition, including reassessment of the deficient areas where indicated.

22.22.3 The licensee shall maintain the review documentation for 3 years.

22.23 Reporting of Events.

22.23.1 The licensee shall immediately notify the LLEA after determining that an unauthorized entry resulted in an actual or attempted theft, sabotage, or diversion of a category 1 or category 2 quantity of radioactive material. As soon as possible after initiating a response, but not at the expense of causing delay or interfering with the LLEA response to the event, the licensee shall notify the Department. In no case shall the notification to the Department be later than 4 hours after the discovery of any attempted or actual theft, sabotage, or diversion.

22.23.2 The licensee shall assess any suspicious activity related to possible theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material and notify the LLEA as appropriate. As soon as possible but not later than 4 hours after notifying the LLEA, the licensee shall notify the Department

22.24.3 The initial telephonic notification required by 22.23.1 must be followed within a period of 30 days by a written report submitted to the Department address specified in 22.4. The report must include sufficient information for Department analysis and evaluation, including identification of any necessary corrective actions to prevent future instances.

Physical Protection in Transit

22.24 Additional Requirements for Transfer of Category 1 and Category 2 Quantities of Radioactive Material.

22.24.1 A licensee transferring a category 1 or category 2 quantity of radioactive material to a licensee of the Department, U.S. Nuclear Regulatory Commission, or an Agreement State shall meet the license verification provisions listed below instead of those listed in Part 3, Section 3.22.4. of these regulations:

A. Any licensee transferring category 1 quantities of radioactive material to a licensee of the Department, U.S. Nuclear Regulatory Commission, or an Agreement State, prior to conducting such transfer, shall verify with the NRC's license verification system or the license issuing authority that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred and that the licensee is authorized to receive radioactive material at the location requested for delivery. If the verification is conducted by contacting the license issuing authority, the transferor shall document the verification. For transfers within the same organization, the licensee does not need to verify the transfer.

B. Any licensee transferring category 2 quantities of radioactive material to a licensee of the Department, U.S. Nuclear Regulatory Commission, or an Agreement State, prior to conducting such transfer, shall verify with the NRC's license verification system or the license issuing authority that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred. If the verification is conducted by contacting the license issuing authority, the transferor shall document the verification. For transfers within the same organization, the licensee does not need to verify the transfer.

C. In an emergency where the licensee cannot reach the license issuing authority and the license verification system is nonfunctional, the licensee may accept a written certification by the transferee that it is authorized by license to receive the type, form, and quantity of radioactive material to be transferred. The certification must include the license number, current revision number, issuing agency, expiration date, and for a category 1 shipment the authorized address. The licensee shall keep a copy of the certification. The certification must be confirmed by use of the NRC's license verification system or by contacting the license issuing authority by the end of the next business day.

D. The transferor shall keep a copy of the verification documentation as a record for 3 years.

22.25 Applicability of Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material During Transit.

22.25.1 For shipments of category 1 quantities of radioactive material, each shipping licensee shall comply with the requirements for physical protection contained in 22.26.1. and 22.26.5.; 22.27; 22.28.A., 22.28.2.A. and 22.28.3.; and 22.29.1., 22.29.3., 22.29.5., 22.29.7., and 22.29.8.

22.25.2 For shipments of category 2 quantities of radioactive material, each shipping licensee shall comply with the requirements for physical protection contained in 22.26.2. through 22.26.5.; 22.28.1.B., 22.28.1.C., 22.28.2.B., and 22.28.3.; and 22.29.2., 22.29.4., 22.29.6., 22.29.7., and 22.29.8. For those shipments of category 2 quantities of radioactive material that meet the criteria of Part 17, Section 17.11, the shipping licensee shall also comply with the advance notification provisions of Part 17, Section 17.11.

22.25.3 The shipping licensee shall be responsible for meeting the requirements of this Part unless the receiving licensee has agreed in writing to arrange for the in-transit physical protection required under this Part.

22.25.4 Each licensee that imports or exports category 1 quantities of radioactive material shall comply with the requirements for physical protection during transit contained in 22.26.1.B. 22.26.5.; 22.27; 22.28.1.A., 22.28.2.A., 22.28.3.; and 22.29.1., 22.29.3., 22.29.5., 22.29.7., and 22.29.8. for the domestic portion of the shipment.

22.25.5 Each licensee that imports or exports category 2 quantities of radioactive material shall comply with the requirements for physical protection during transit contained in 22.28.1.B., 22.28.1.C., 22.28.2.B.; and 22.29.2.,22.29.4., 22.29.6., 22.29.7. and 22.29.8. for the domestic portion of the shipment.

22.26 Preplanning and Coordination of Shipment of Category 1 or Category 2 Quantities of Radioactive Material.

22.26.1 Each licensee that plans to transport, or deliver to a carrier for transport, licensed material that is a category 1 quantity of radioactive material outside the confines of the licensee's facility or other place of use or storage shall:

A. Preplan and coordinate shipment arrival and departure times with the receiving licensee;

B. Preplan and coordinate shipment information with the governor or the governor's designee of any State through which the shipment will pass to:

1. Discuss the State's intention to provide law enforcement escorts; and

2. Identify safe havens; and

C. Document the preplanning and coordination activities.

22.26.2 Each licensee that plans to transport, or deliver to a carrier for transport, licensed material that is a category 2 quantity of radioactive material outside the confines of the licensee's facility or other place of use or storage shall coordinate the shipment no-later-than arrival time and the expected shipment arrival with the receiving licensee. The licensee shall document the coordination activities.

22.26.3 Each licensee who receives a shipment of a category 2 quantity of radioactive material shall confirm receipt of the shipment with the originator. If the shipment has not arrived by the no- later-than arrival time, the receiving licensee shall notify the originator.

22.26.4 Each licensee, who transports or plans to transport a shipment of a category 2 quantity of radioactive material, and determines that the shipment will arrive after the no-later-than arrival time provided pursuant to 22.26.2., shall promptly notify the receiving licensee of the new no-later-than arrival time.

22.26.5 The licensee shall retain a copy of the documentation for preplanning and coordination and any revision thereof, as a record for 3 years.

22.27 Advance Notification of Shipment of Category 1 Quantities of Radioactive Material.

22.27.1 As specified in 22.27.1.A. and 22.27.1.B., each licensee shall provide advance notification to the Department and the governor of a State, or the governor's designee, of the shipment of licensed material in a category 1 quantity, through or across the boundary of the State, before the transport, or delivery to a carrier for transport of the licensed material outside the confines of the licensee's facility or other place of use or storage.

A. Procedures for submitting advance notification.

1. The notification to the office of each appropriate governor or governor's designee is available on the NRC's Web site at *http://nrc-stp.ornl.gov/special/designee.pdf.* A list of the contact information is also available upon request from the Director, Division of Intergovernmental Liaison and Rulemaking, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The notification to the Department must be made to the address specified in 22.4.

2. A notification delivered by mail must be postmarked at least 7 days before

transport of the shipment commences at the shipping facility.

3. A notification delivered by any means other than mail must reach Department at least 4 days before the transport of the shipment commences and must reach the office of the governor or the governor's designee at least 4 days before transport of a shipment within or through the State.

B. Information to be furnished in advance notification of shipment. Each advance notification of shipment of category 1 quantities of radioactive material must contain the following information, if available at the time of notification:

1. The name, address, and telephone number of the shipper, carrier, and receiver of the category 1 radioactive material;

2. The license numbers of the shipper and receiver;

3. A description of the radioactive material contained in the shipment, including the radionuclides and quantity;

4. The point of origin of the shipment and the estimated time and date that shipment will commence;

5. The estimated time and date that the shipment is expected to enter each State along the route;

6. The estimated time and date of arrival of the shipment at the destination; and

7. A point of contact, with a telephone number, for current shipment information.

C. Revision notice.

1. The licensee shall provide any information not previously available at the time of the initial notification, as soon as the information becomes available but not later than commencement of the shipment, to the governor of the State or the governor’s designee, and to the Department.

2. A licensee shall promptly notify the governor of the State or the governor’s designee of any changes to the information provided in accordance with 22.27.1.B and 22.27.1.C.1 of this section. The licensee shall also immediately notify the Department of any such changes.

D. Cancellation notice. Each licensee who cancels a shipment for which advance notification has been sent shall send a cancellation notice to the governor of each State or to the governor’s designee previously notified and to the Department. The licensee shall send the cancellation notice before the shipment would have commenced or as soon thereafter as possible. The licensee shall state in the notice that it is a cancellation and identify the advance notification that is being cancelled.

E. Records. The licensee shall retain a copy of the advance notification and any revision and cancellation notices as a record for 3 years.

F. Protection of information. State officials, State employees, and other individuals, whether or not licensees of NRC or an Agreement State, who receive schedule information of the

kind specified in 22.27.1.B shall protect that information against unauthorized disclosure as specified in 22.16.4 of this part.

22.28 Requirements for Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material During Shipment.

22.28.1 Shipments by road.

A. Each licensee who transports, or delivers to a carrier for transport, in a single shipment, a category 1 quantity of radioactive material shall:

1. Ensure that movement control centers are established that maintain position information from a remote location. These control centers must monitor shipments 24 hours a day, 7 days a week, and have the ability to communicate immediately, in an emergency, with the appropriate law enforcement agencies.

2. Ensure that redundant communications are established that allow the transport to contact the escort vehicle (when used) and movement control center at all times. Redundant communications may not be subject to the same interference factors as the primary communication.

3. Ensure that shipments are continuously and actively monitored by a telemetric position monitoring system or an alternative tracking system reporting to a movement control center. A movement control center must provide positive confirmation of the location, status, and control over the shipment. The movement control center must be prepared to promptly implement preplanned procedures in response to deviations from the authorized route or a notification of actual, attempted, or suspicious activities related to the theft, loss, or diversion of a shipment. These procedures will include, but not be limited to, the identification of and contact information for the appropriate LLEA along the shipment route.

4. Provide an individual to accompany the driver for those highway shipments with a driving time period greater than the maximum number of allowable hours of service in a 24-hour duty day as established by the Department of Transportation Federal Motor Carrier Safety Administration. The accompanying individual may be another driver.

5. Develop written normal and contingency procedures to address:

a. Notifications to the communication center and law enforcement agencies;

b. Communication protocols. Communication protocols must include a strategy for the use of authentication codes and duress codes and provisions for refueling or other stops, detours, and locations where communication is expected to be temporarily lost;

c. Loss of communications; and

d. Responses to an actual or attempted theft or diversion of a shipment.

e. Each licensee who makes arrangements for the shipment of category 1 quantities of radioactive material shall ensure that drivers, accompanying personnel, and movement control center personnel have access to the normal

and contingency procedures.

B. Each licensee that transports category 2 quantities of radioactive material shall maintain constant control and/or surveillance during transit and have the capability for immediate communication to summon appropriate response or assistance.

C. Each licensee who delivers to a carrier for transport, in a single shipment, a category 2 quantity of radioactive material shall:

1. Use carriers that have established package tracking systems. An established package tracking system is a documented, proven, and reliable system routinely used to transport objects of value. In order for a package tracking system to maintain constant control and/or surveillance, the package tracking system must allow the shipper or transporter to identify when and where the package was last and when it should arrive at the next point of control.

2. Use carriers that maintain constant control and/or surveillance during transit and have the capability for immediate communication to summon appropriate response or assistance; and

3. Use carriers that have established tracking systems that require an authorized signature prior to releasing the package for delivery or return.

22.28.2 Shipments by rail.

A. Each licensee who transports, or delivers to a carrier for transport, in a single shipment, a category 1 quantity of radioactive material shall:

1. Ensure that rail shipments are monitored by a telemetric position monitoring system or an alternative tracking system reporting to the licensee, third-party, or railroad communications center. The communications center shall provide positive confirmation of the location of the shipment and its status. The communications center shall implement preplanned procedures in response to deviations from the authorized route or to a notification of actual, attempted, or suspicious activities related to the theft or diversion of a shipment. These procedures will include, but not be limited to, the identification of and contact information for the appropriate LLEA along the shipment route.

2. Ensure that periodic reports to the communications center are made at preset intervals.

B. Each licensee who transports, or delivers to a carrier for transport, in a single shipment, a category 2 quantity of radioactive material shall:

1. Use carriers that have established package tracking systems. An established package tracking system is a documented, proven, and reliable system routinely used to transport objects of value. In order for a package tracking system to maintain constant control and/or surveillance, the package tracking system must allow the shipper or transporter to identify when and where the package was last and when it should arrive at the next point of control.

2. Use carriers that maintain constant control and/or surveillance during transit and have the capability for immediate communication to summon appropriate response or assistance; and

3. Use carriers that have established tracking systems that require an authorized signature prior to releasing the package for delivery or return.

22.28.3 Investigations.

A. Each licensee who makes arrangements for the shipment of category 1 quantities of radioactive material shall immediately conduct an investigation upon the discovery that a category 1 shipment is lost or missing. Each licensee who makes arrangements for the shipment of category 2 quantities of radioactive material shall immediately conduct an investigation, in coordination with the receiving licensee, of any shipment that has not arrived by the designated no-later-than arrival time.

22.29 Reporting of Events.

22.29.1 The shipping licensee shall notify the appropriate LLEA and the Department within 1 hour of its determination that a shipment of category 1 quantities of radioactive material is lost or missing. The appropriate LLEA would be the law enforcement agency in the area of the shipment's last confirmed location. During the investigation required by 22.28.3., the shipping licensee will provide agreed upon updates to the Department on the status of the investigation.

22.29.2 The shipping licensee shall notify the Department within 4 hours of its determination that a shipment of category 2 quantities of radioactive material is lost or missing. If, after 24 hours of its determination that the shipment is lost or missing, the radioactive material has not been located and secured, the licensee shall immediately notify the Department.

22.29.3 The shipping licensee shall notify the designated LLEA along the shipment route as soon as possible upon discovery of any actual or attempted theft or diversion of a shipment or suspicious activities related to the theft or diversion of a shipment of a category 1 quantity of radioactive material. As soon as possible after notifying the LLEA, the licensee shall notify the Department upon discovery of any actual or attempted theft or diversion of a shipment, or any suspicious activity related to the shipment of category 1 radioactive material.

22.29.4 The shipping licensee shall notify the Department as soon as possible upon discovery of any actual or attempted theft or diversion of a shipment, or any suspicious activity related to the shipment, of a category 2 quantity of radioactive material.

22.29.5 The shipping licensee shall notify the Department and the LLEA as soon as possible upon recovery of any lost or missing category 1 quantities of radioactive material.

22.29.6 The shipping licensee shall notify the Department as soon as possible upon recovery of any lost or missing category 2 quantities of radioactive material.

22.29.7 The initial telephone notification required by 22.29.1. through 22.29.4. must be followed within a period of 30 days by a written report submitted to the Department to the address listed in 22.4. Note that a written report is not required for notifications on suspicious activities required by 22.29.3. and 22.29.4. The report must set forth the following information:

A. A description of the licensed material involved, including kind, quantity, and chemical and physical form;

B. A description of the circumstances under which the loss or theft occurred;

C. A statement of disposition, or probable disposition, of the licensed material involved;

D. Actions that have been taken, or will be taken, to recover the material; and

E. Procedures or measures that have been, or will be, adopted to ensure against a recurrence of the loss or theft of licensed material.

22.29.8 Subsequent to filing the written report, the licensee shall also report any additional substantive information on the loss or theft within 30 days after the licensee learns of such information.

Records

22.30 Form of Records.

22.30.1 Each record required by this Part must be legible throughout the retention period specified by each Department regulation. The record may be the original or a reproduced copy or a microform, provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, and specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

22.31 Record Retention.

22.31.1 Licensees shall maintain the records that are required by the regulations in this Part for the period specified by the appropriate regulation. If a retention period is not otherwise specified, these records must be retained until the Department terminates the facility's license. All records related to this Part may be destroyed upon Department termination of the facility license.

Enforcement

22.32 Inspections.

22.32.1 Each licensee shall afford to the Department at all reasonable times opportunity to inspect category 1 or category 2 quantities of radioactive material and the premises and facilities wherein the radioactive material is used, produced, or stored.

22.32.2 Each licensee shall make available to the Department for inspection, upon reasonable notice, records kept by the licensee pertaining to its receipt, possession, use, acquisition, import, export, or transfer of category 1 or category 2 quantities of radioactive material.

Part 22, Appendix A - Category 1 and Category 2 Radioactive Materials

Table 1—Category 1 and Category 2 Threshold

The terabecquerel (TBq) values are the regulatory standard. The curie (Ci) values specified are obtained by converting from the TBq value. The curie values are provided for practical usefulness only.

Radioactive material	Category 1 (TBq)	Category 1 (Ci)	Category 2 (TBq)	Category 2 (Ci)
Americium-241	60	1,620	0.6	16.2
Americium-241/Be	60	1,620	0.6	16.2
Californium-252	20	540	0.2	5.40
Cobalt-60	30	810	0.3	8.10
Curium-244	50	1,350	0.5	13.5
Cesium-137	100	2,700	1	27.0
Gadolinium-153	1,000	27,000	10	270
Iridium-192	80	2,160	0.8	21.6
Plutonium-238	60	1,620	0.6	16.2
Plutonium-239/Be	60	1,620	0.6	16.2
Promethium-147	40,000	1,080,000	400	10,800
Radium-226	40	1,080	0.4	10.8
Selenium-75	200	5,400	2	54.0
Strontium-90	1,000	27,000	10	270
Thulium-170	20,000	540,000	200	5,400
Ytterbium-169	300	8,100	3	81.0

Note: *Calculations Concerning Multiple Sources or Multiple Radionuclides* The ''sum of fractions'' methodology for evaluating combinations of multiple sources or multiple radionuclides is to be used in determining whether a location meets or exceeds the threshold and is thus subject to the requirements of this Part.

I. If multiple sources of the same radionuclide and/or multiple radionuclides are aggregated at a location, the sum of the ratios of the total activity of each of the radionuclides must be determined to verify whether the activity at the location is less than the category 1 or category 2 thresholds of Table 1, as appropriate. If the calculated sum of the ratios, using the equation below, is greater than or equal to 1.0, then the applicable requirements of this Part apply.

II. First determine the total activity for each radionuclide from Table 1. This is done by adding the activity of each individual source, material in any device, and any loose or bulk material that contains the radionuclide. Then use the equation below to calculate the sum of the ratios by inserting the total activity of the applicable radionuclides from Table 1 in the numerator of the equation and the corresponding threshold activity from Table 1 in the denominator of the equation. Calculations must be performed in metric values (i.e., TBq) and the numerator and denominator values must be in the same units.

R_1 = total activity for radionuclide 1
R_2 = total activity for radionuclide 2
R_N = total activity for radionuclide n
AR_1 = activity threshold for radionuclide 1
AR_2 = activity threshold for radionuclide 2
AR_N = activity threshold for radionuclide n

$$\sum_{1}^{n}\left[\frac{R_1}{AR_1}+\frac{R_2}{AR_2}+\frac{R_n}{AR_n}\right]\geq 1.0$$

COLORADO
Board of Health
Department of Public Health & Environment

Notice of Public Rule-Making Hearing Scheduled for May 15, 2015

NOTICE is hereby given pursuant to the provisions of Section 24-4-103, C.R.S., that the Colorado Board of Health will conduct a public rule-making hearing on May 15, 2015 at 10 a.m. in the The Nature Place Conference and Education Center, 2000 Old Stage Rd., Florrisant, CO 80816, to consider the promulgation of 6 CCR 1007-1, Colorado Rules and Regulations Pertaining to Radiation Control, Part 22, *Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material*. The proposed rules have been developed by the Hazardous Materials and Waste Management Division of the Colorado Department of Public Health and Environment pursuant to Section 25-1.5-101(1)(k), 25-1.5-101(1)(l), 25-11-103, 25-11-104, and 25-1-108, C.R.S.

The agenda for the meeting and the proposed amendments will also be available on the Board's website, https://www.colorado.gov/pacific/cdphe/boh at least 7 days prior to the meeting. The proposed rules, together with the proposed statement of basis and purpose, specific statutory authority and regulatory analysis will be available for inspection at the Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South EDO-A5, Denver, Colorado 80246-1530 at least five working days prior to the hearing. Copies of the proposed rules may be obtained by contacting the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division, HMWM-RM-B2, 4300 Cherry Creek Drive S., Denver, CO 80246, (303) 692-3454.

The Board encourages all interested persons to participate in the hearing by providing written data, views, or comments, or by making oral comments at the hearing. At the discretion of the Chair, oral testimony at the hearing may be limited to three minutes or less depending on the number of persons wishing to comment. Pursuant to 6 CCR 1014-8, §3.02.1, written testimony must be submitted no later than five (5) calendar days prior to the rulemaking hearing. Persons wishing to submit written comments should submit them to: Colorado Board of Health, ATTN: Jamie L. Thornton, Program Assistant, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South EDO-A5, Denver, Colorado 80246-1530 or by e-mail at: cdphe.bohrequests@state.co.us

Dated this 24th day of March, 2015.

Deborah Nelson
Board of Health Administrator

Notice of Proposed Rulemaking

Tracking number

2015-00191

Department

1507 - Department of Public Safety

Agency

1507 - Division of Fire Prevention and Control

CCR number

8 CCR 1507-12

Rule title

PERSONS DEALING WITH FIREWORKS

Rulemaking Hearing

Date

04/30/2015

Time

01:00 PM

Location

690 Kipling Street, Lakewood, CO

Subjects and issues involved

To establish minimum requirements and standards for licenses to sell, store, or use fireworks.

Statutory authority

C.R.S. 12-28-104(7).

Contact information

Name

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Title

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DEPARTMENT OF PUBLIC SAFETY
Division of Fire Prevention and Control

PERSONS DEALING WITH FIREWORKS

8 CCR 1507-12

CHAPTER I SCOPE AND DEFINITIONS

1.1 PURPOSE

This regulation is promulgated to establish minimum requirements and standards for licenses to sell, store, or use fireworks in the interest of the life, health and safety of employees and the general public, as well as the protection of property.

1.2 AUTHORITY

The Executive Director of the Department of Public Safety is authorized to promulgate rules and regulations for the licensing of persons dealing with fireworks pursuant to C.R.S. 12-28-104(7). Within the Department of Public Safety, the Director of the Division of Fire ~~Safety~~ Prevention and Control shall administer these rules and regulations.

1.3 SCOPE

These rules and regulations shall apply to the possession, sale, storage, and use of fireworks in the State of Colorado by any person.

For a thorough understanding of all requirements concerning the possession, sale, storage, and use of fireworks in Colorado, these rules must be used in conjunction with Article 28 of Title 12, Colorado Revised Statutes, as amended and contained in Senate Bill 91-51.

These rules do not super~~c~~sede, and are to be used in conjunction with any other state and federal laws and regulations concerning the manufacture, sale, storage, transportation and use of fireworks.

These rules and regulations shall not apply to:

(a) The use of fireworks by railroads or other transportation agencies for signal purposes or illumination.

(b) The sale or use of blank cartridges for a show or theater, for signal or ceremonial purposes in athletics or sports, or for use by military organizations.

(~~b~~c) Fireworks which are used in testing or research by a licensed explosives laboratory.

(~~c~~d) The sale, purchase, possession, or use of fireworks distributed by the Division of Wildlife for agricultural purposes under conditions approved by said Division.

(~~d~~e) Toy caps which do not contain more than twenty-five hundredths of a grain of explosive compound per cap.

(~~e~~f) Highway flares, railroad fusees, ship distress signals, smoke candles, and other emergency signal devices.

(fg) Educational rockets and toy propellant device type engines used in such rockets when such rockets are of nonmetallic construction and utilize replaceable engines or model cartridges containing less than two ounces of propellant and when such engines or model cartridges are designed to be ignited by electrical means.

(gh) The transportation of fireworks when such transportation is under the jurisdiction of the U.S. Department of Transportation.

(hi) The manufacture, transportation, and storage of fireworks by federal and state military agencies.

1.4 DEFINITIONS

The definitions contained in C.R.S. 12-28-101 shall apply to these rules and regulations. In addition, the following words, when used in these rules and regulations, shall mean:

APPROVAL, APPROVED or AUTHORIZED: Acceptable to the Director of the Division of Fire Safety or the "authority having jurisdiction."

AUTHORITY HAVING JURISDICTION: The organization, office or individual responsible for "approving" equipment, an installation or a procedure.

CERTIFIED FIREWORKS DISPLAY OPERATOR: A person certified by the Division of Fire Safety to conduct fireworks displays.

CERTIFIED PYROTECHNIC OPERATOR: A person certified by the Division of Fire Safety to conduct pyrotechnic special effect performances.

C.F.R. or CFR: Code of Federal Regulations.

C.R.S.: Colorado Revised Statutes.

DEPARTMENT: The Colorado Department of Public Safety.

DIRECTOR: The Director of the Division of Fire SafetyPrevention and Control located within the Colorado Department of Public Safety.

DISCHARGE SITE: The area immediately surrounding the display fireworks mortars used for an outdoor fireworks display.

DISPLAY FIREWORKS: Large fireworks designed primarily to produce visible or audible effects by combustion, deflagration, or detonation. This term includes, but is not limited to, aerial shells containing more than 40 grams of pyrotechnic composition, and other display pieces which exceed the limits for U.S.D.O.T. classification as "common fireworks." Display fireworks are classified as Class B explosives by the U.S.D.O.T.

DIVISION: The Division of Fire SafetyPrevention and Control in the Colorado Department of Public Safety.

EXECUTIVE DIRECTOR: The Executive Director of the Colorado Department of Public Safety.

EXPLOSIVE: Any chemical compound, mixture, or device, the primary or common purpose of which Is to function by explosion. The term includes, but is not limited to: dynamite, black powder, pellet powder, igniting explosives, detonators, squibs, detonating cord, igniter cord, and igniters.

FALLOUT AREA: The area over which aerial shells are fired. The shells burst over this area, and unsafe debris and malfunctioning aerial shells fall into this area. The fallout area is the location where a typical aerial shell dud will fall to the ground considering wind and the angle of mortar placement.

FIREWORKS DISPLAY: An outdoor display of aerial shells and/or ground pieces conducted by a certified fireworks display operator and performed as entertainment, or a special effect performance utilizing pyrotechnic materials and devices before a live audience.

FIREWORKS PLANT: All land and buildings thereon used for in connection with the manufacture, research or processing of fireworks, including storage buildings used with or in connection with plant operation.

GROUND DISPLAY PIECE: A pyrotechnic device that functions on the ground (as opposed to an aerial shell that functions in the air). Typical ground display pieces include fountains, roman candles and wheels.

HIGHWAY: Any public street, public alley or public road.

INSPECTOR: An Inspector of the Division ~~of Fire Safety~~.

LOCAL AUTHORITY: The duly authorized fire department, police department, or sheriffs department of a local jurisdiction.

MAGAZINE: Any building or structure, or container, other than a fireworks plant, approved and used exclusively for the storage of explosive materials.

MIXING BUILDING: Any building used primarily for mixing and blending of pyrotechnic compositions.

MONITOR: A person designated by the sponsors of a fireworks display to keep the audience in the intended viewing area and out of the discharge site and fallout area.

MORTAR: A tube from which aerial shells are fired into the air.

MOTOR VEHICLE: Any self-propelled vehicle, truck, tractor, semi-trailer, or truck-trailer combination used for the transportation of freight over public highways.

N.F.P.A.: National Fire Protection Association.

OPERATOR: The person with overall responsibility for safety and the setting up and discharge of a fireworks display.

PERMISSIBLE FIREWORKS: Those small firework devices designed primarily to produce visible effects by combustion and which are listed in, and comply with the construction, chemical composition, and labeling requirements of C.R.S. 12-28-101. Some small devices designed to produce audible effects are included, such as whistling devices. Permissible fireworks burn without explosion, and do not produce a loud report, and no device or component shall, upon functioning, project or disburse any metal, glass, or brittle plastic fragments.

PUBLIC DISPLAY: See Fireworks Display.

PYROTECHNIC COMPOSITION: A chemical mixture, which upon burning and without explosion, produces visible, brilliant displays, bright lights, or sounds.

PYROTECHNIC OPERATOR: The person with responsibility for pyrotechnic safety and who controls, initiates, or otherwise creates special effects. The pyrotechnic operator is also responsible for storing, setting up, and removing pyrotechnic materials after a performance.

PYROTECHNIC SPECIAL EFFECT PERFORMANCES: A special effect created through the use of pyrotechnic materials and devices performed by a Certified Pyrotechnic Operator for the entertainment of a live audience.

SHALL: Indicates a mandatory requirement.

SHOULD: Indicates a recommendation or that which is advised but not required.

STORAGE BUILDING: Any building, structure, or facility in which Common Fireworks (Class C Explosives) in any state of processing, providing there is no exposed pyrotechnic material, but in which no processing, manufacturing or sale is actually performed.

U.S.D.O.T. or U.S. DOT: United States Department of Transportation.

WAREHOUSE: Any building or structure used exclusively for the storage of non-explosive materials.

CHAPTER II GENERAL PROVISIONS

2.1 GENERAL PROVISIONS

Except as provided in C.R.S. 12-28-101 through 12-28-111 and these rules and regulations, no person shall possess or discharge any fireworks, other than permissible fireworks, anywhere in Colorado.

Except as provided in C.R.S. 12-28-101 through 12-28-111 and these rules and regulations, no person shall manufacture, offer for sale, expose for sale, sell, or have in his possession with the intent to offer for sale, any fireworks including permissible fireworks, unless said person is licensed to conduct such activity by the Division ~~of Fire Safety~~, and has obtained a permit, if any, required by the local authority.

2.2 SALE OF FIREWORKS TO JUVENILES

Except as provided in paragraph 2.3, no person shall furnish, by gift, sale or other means, any fireworks, including permissible fireworks, to any person who is under sixteen years of age.

2.3 PURCHASE, POSSESSION OR DISCHARGE OF FIREWORKS BY JUVENILES

No person under sixteen years of age may purchase any fireworks, including permissible fireworks.

No person under sixteen years of age may possess or discharge any permissible fireworks unless such person is under adult supervision during these acts. Adult supervision shall mean that a responsible adult is in the immediate vicinity of the juvenile, in order to oversee the activities of the juvenile and to remedy any unsafe acts.

2.4 CODES AND STANDARDS

The following codes and the standards referenced therein are adopted and promulgated as minimum standards for persons dealing with fireworks ~~The following codes and standards, including all addenda, appendices, and interpretations are hereby incorporated by this reference~~ in accordance with C.R.S. 24- 4-103 (12.5):

2.4.1 49 C.F.R. Part 173 as of January 30th, 2015; U.S. Department of Transportation.

2.4.3 International Fire Code - 2015 Edition, First Printing: May 2014 (Copyright 2014 by International Code Council, Inc. - Washington, D.C.), including Appendices B and C.

2.4.4 International Mechanical Code - 2015 Edition, First Printing: May2014 (Copyright 2014by International Code Council, Inc. - Washington, D.C.).

2.4.5 ~~International Energy Conservation Code - 2015 Edition, First Printing: May 2014 (Copyright 2014 by International Code Council, Inc. - Washington, D.C.).~~

2.4.6 ~~International Existing Building Code- 2015 Edition, First Printing: May 2014 (Copyright 2014 by International Code Council, Inc. - Washington, D.C.).~~

2.4.7 NFPA1124, Code for the Manufacture, Transportation, and Storage, and Retail Sales of Fireworks and Pyrotechnic Articles- 2013 Edition, Final Printing: August 2014 (Copywrite 2014 by National Fire Protection Association – Quincy, MA).

2.4.8 NFPA1123, Code for Fireworks Display- 2014 Edition, Final Printing: August 2013 (Copywrite 2013 by National Fire Protection Association – Quincy, MA).

2.4.9 NFPA1126, Code for the Use opf Pyrotechnics Before a Proximate Audience- 2011 Edition, Final Printing: December 2009 (Copywrite 2010 by National Fire Protection Association – Quincy, MA).

2.5 The Division shall maintain copies of the complete texts of the adopted codes, which are available for public inspection during regular business hours. Interested parties may inspect the referenced incorporated materials by contacting the ~~Public School Construction Program Administrator at the Division~~Fire & Life safety Section Chief and/or The State Depository Libraries.

2.6 In the event that a new edition of the code is adopted, the code current at the time of permit application shall remain in effect throughout the work authorized by the permit.

2.7 This rule does not include later amendments or editions of the incorporated material.

~~The following codes and standards, including all addenda, appendices, and interpretations are hereby incorporated by this reference in accordance with C.R.S. 24-4-103 (12.5):~~

~~(a) 49 C.F.R. Parts 173.88 and 173.100 through 173.111 (Inclusive), 1990 edition; U.S. Department of Transportation.~~

~~This standard is published by the U.S. Government Printing Office, Washington, D.C. 20401. Copies are available at the Colorado Division of Fire Safety, 700 Kipling Street, Suite 1200, Denver, CO 80215, for public inspection during business hours. Copies of the incorporated material may be purchased from the U.S. Government Printing Office, 1961 Stout Street, Room 117, Denver, CO 80294.~~

~~(b)NFPA1124,1988 edition; Code for the Manufacture, Transportation, and Storage of Fireworks. National Fire Protection Association, Batterymarch Park, Quincy, MA 02269.~~

~~(c)NFPA 1123,1990 edition; Standard for Public Display of Fireworks. National Fire Protection Association, Batterymarch Park, Quincy, MA 02269.~~

~~These standards are published by the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. Copies are available at the Colorado Division of Fire Safety, 700 Kipling Street, Suite 1200, Denver, CO 80215, for public inspection during business hours. Copies of the incorporated material can be purchased from the NFPA at the address above.~~

~~(d)Uniform Building Code, 1991 edition. International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, CA 90601.~~

~~(e)Uniform Fire Code, 1991 edition. ICBO and Western Fire Chiefs' Association, 5360 South Workman Mill Road, Whittier, CA 90601.~~

~~These codes are published by the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, CA 90601. Copies are available at the Colorado Division of Fire Safety, 700 Kipling Street, Suite 1200, Denver, CO 80215, for public inspection during business hours. Copies of the incorporated material can be purchased from the ICBO at the address above.~~

~~THIS RULE DOES NOT INCLUDE AMENDMENTS TO OR LATER EDITIONS OF THE INCORPORATED MATERIAL.~~

2.5 REGULATION BY MUNICIPALITIES

These rules and regulations shall not be construed to prohibit the imposition by municipal ordinance of further regulations and prohibitions upon the sale, use, and possession of fireworks, including permissible fireworks, within the corporate limits of any city or town, but no such city or town shall permit or authorize the sale, use, or possession of any fireworks in violation of C.R.S. 12-28-101 through 12-28-111 and these rules and regulations.

CHAPTER III PERMISSIBLE FIREWORKS

3.1 GENERAL

Unless otherwise restricted by the ordinances or resolutions of any municipality or other governing body authorized by law to restrict the sale, possession or use of fireworks, the following fireworks may be sold to, possessed by, and/or used by the general public, when such sale, possession and/or use is in accordance with C.R.S. 12-28-101 through 12-28-111 and these rules and regulations:

(a) Cylindrical fountains, total pyrotechnic composition not to exceed seventy-five grams each in weight. The inside diameter shall not exceed three- quarters of one inch.

(b) Cone fountains, total pyrotechnic composition not to exceed fifty grams each in weight.

(c) Wheels, total pyrotechnic composition not to exceed sixty grams for each driver unit or two hundred and forty grams for each complete wheel. The inside tube diameter of driver units shall not exceed one-half of one inch.

(d) Ground spinner, a small device containing not more than 20 grams of pyrotechnic composition venting out of an orifice usually in the side of the tube. Similar in operation to a wheel, but intended to be placed flat on the ground.

(e) Illuminating torches and colored fire in any form, total pyrotechnic composition not to exceed one hundred grams each in weight.

(f) Dipped sticks and sparklers, the total pyrotechnic composition of which does not exceed one hundred grams, of which the composition of any chlorate or perchlorate shall not exceed five grams.

(g) Explosive auto alarms, as described in Title 49, Code of Federal Regulations, Part 173.100.

(h) Toy propellant devices and toy smoke devices, as described in Title 49, Code of Federal Regulations, Part 173.100.

(i) Cigarette loads, as described in Title 49, Code of Federal Regulations, Part 173.100.

(j) Trick matches, as described in Title 49, Code of Federal Regulations, Part 173.100.

(k) Trick noise makers, as described in Title 49, Code of Federal Regulations, Part 173.100.

(l) Snake or glow worm, pressed pellets of pyrotechnic composition that produce a large snake-like ash upon burning.

(m)Novelties consisting of two or more devices enumerated in this section.

(n) Fireworks which are used exclusively for testing or research by a licensed explosives laboratory.

3.2 LICENSE REQUIRED

No person shall sell, offer for sale, expose for sale, or possess with intent to sell permissible fireworks for retail, unless said person is licensed as a fireworks retailer.

CHAPTER IV FIREWORKS LICENSING

4.1 GENERAL PROVISIONS

No person shall purchase, possess, keep, store, sell or offer for sale, give away, use, or dispose of in any manner any fireworks, except permissible fireworks, unless said person holds a valid license from the Department of Public Safety.

No person shall sell, offer for sale, expose for sale, or possess with intent to sell permissible fireworks for retail, unless said person is licensed as a fireworks retailer.

Application for a fireworks license shall be made to the Division ~~of Fire Safety on forms~~in a format prescribed by the Director and shall contain such information as the Director may require.

Application for a fireworks license shall be filed with the Division ~~of Fire Safety~~ at least thirty days before the start of activities for which the license is required. Under extraordinary circumstances, exceptions to this rule may be approved by the Executive Director of the Department of Public Safety on a case-by-

case basis when such exception is permitted by statute and would not adversely affect the public health, safety and welfare as determined by and in the sole discretion of the Executive Director.

Payment of the fee required by C.R.S. 12-28-104(6)(c) must accompany the application for a license to the Division ~~of Fire Safety. A check or money order for the fee shall be made payable to the Division of Fire Safety.~~

Licenses issued under these rules and regulations shall be dated and numbered. Each license will indicate the class of license and will be valid through September 1 of the year following the date on which the license was issued. Exception: a retailer of fireworks license shall be valid only for the calendar year in which it is issued.

Where application for a fireworks license is made in the name of a corporation or company, the application shall also include the name of the person who will be responsible for compliance with the provisions of the Fireworks Act, Article 28 of Title 12, C.R.S., and any rules and regulations promulgated thereunder.

Where application for a fireworks license is made in the name of a corporation or company, a copy of the Certificate of Good Standing from the Secretary of State must be filed with the application.
Where business is to be conducted under a fictitious name, a copy of the trade name affidavit as filed with the Colorado Department of Revenue must be filed with the application.

All applicants for a fireworks license will be subject to a background investigation, including, but not limited to: criminal history, reference checks and review of fireworks records.

In the event that an application for a fireworks license is incomplete, the applicant shall have 180 days in which to submit additional required documentation, after which the initial application shall be void. Processing fees in accordance with 13.1 shall be forfeited.

4.2 CLASSES OF FIREWORKS LICENSES

Following are the classes of fireworks licenses required by C.R.S. 12-28-104 and these rules and regulations, and the general activities permitted by such license:

(a) RETAILER OF FIREWORKS LICENSE: To sell, offer for sale, expose for sale, or possess with intent to sell permissible fireworks at retail.

(b) DISPLAY RETAILER OF FIREWORKS LICENSE: To sell deliver, consign, give or furnish fireworks to any person authorized to conduct a fireworks display in Colorado.

(c) WHOLESALER OF FIREWORKS LICENSE: To sell, deliver, consign, give or furnish permissible fireworks to a retailer for resale in Colorado.

(d) EXPORTER OF FIREWORKS LICENSE: To sell, deliver, consign, give or furnish fireworks for export outside of Colorado.

4.3 LICENSE RESTRICTIONS

No license holder shall sell, store, or use fireworks except in compliance with C.R.S. 12-28-101 through 12-28-111 and these rules and regulations.

No person shall have any fireworks, except permissible fireworks, in his possession or control without a license required by C.R.S. 12-28-104 and these rules and regulations.

No person under the age of twenty-one years of age shall be issued a license to sell, store, or use fireworks.

No license shall be assigned or in any way transferred.

4.4 PROTECTION AND EXHIBITION OF LICENSES

License holders shall take every reasonable precaution to protect their licenses from loss, theft, defacement, destruction or unauthorized duplication.

The loss or theft of any license shall be reported immediately to the Division ~~of Fire Safety~~. Licenses shall be prominently displayed at the location where fireworks are sold.

4.5 REPORTS OF ACCIDENTS, FIRES AND INJURIES

Any accident, fire or injury which occurs in connection with the manufacture, sale, transportation, storage, or use of fireworks, and known to the license holder, shall be reported immediately by the license holder to the Division ~~of Fire Safety~~, and local fire and law enforcement authorities whenever there is loss of life, injury to any person, or damage to property.

4.6 RECORDS OF TRANSACTIONS - GENERAL REQUIREMENTS

Unless otherwise required by C.R.S 12-28-101 through 12-28-111 and these rules and regulations, all license holders shall keep a complete record of all transactions involving fireworks for two years following the year in which the transactions occurred. An accumulation of invoices, sales slips, delivery tickets, bills of lading, or receipts or similar papers representing individual transactions will satisfy the general requirements of complete records. The specific record- keeping requirement for each class of license is found herein under the heading for the class of license.

Such records must be retained by the license holder and furnished to the Division ~~of Fire Safety~~ during normal business hours upon request.

4.7 LICENSE CHANGES

The Division ~~of Fire Safety~~ shall be notified within twenty-four hours when:

(a) The permanent address of a person who possesses a fireworks license is changed.

(b) The ownership of any business possessing fireworks licenses is changed.

(c) The person who is responsible for compliance with the provisions of the Fireworks Act, Article 28 of Title 12, C.R.S. is changed.

(d) The location of a retail sales outlet is changed and the address of the new location. Failure of the license holder to provide such information shall result in the license being void.

4.8 DENIAL, SUSPENSION OR REVOCATION OF A LICENSE

A license for the sale, storage, or use of fireworks may be denied, suspended, or revoked by the Executive Director because of, but not limited to:

(a) Non-compliance with any lawful order by the Executive Director of the Department of Public Safety within the time specified in such order.

(b) Violations of any of the provisions of the Fireworks Act, Article 28 of Title 12, C.R.S., and any rules and regulations promulgated thereunder.

(c) A conviction of any felony, but subject to the provisions of C.R.S. 24-5-101.

(d) A conviction pursuant to C.R.S. 12-28-110.

(e) Any material misstatement, misrepresentation, or fraud in obtaining a fireworks license.

(f) Failure to exercise reasonable safeguards resulting in a serious hazard to life, health or property.

4.9 PROCEDURE ON DENIAL, SUSPENSION OR REVOCATION

In any case where the Executive Director denies, suspends, or revokes a license, the Department shall notify the applicant or license holder. Said notice shall state the reasons for denial, suspension or revocation and state that upon a written request a hearing before the issuing authority shall be held.

Upon notice of the revocation or suspension of any license, the former license holder shall immediately surrender to the Executive Director of the Department of Public Safety the license and all copies thereof.

The period of denial, suspension or revocation shall be within the sound discretion of the Executive Director.

Any hearing requested pursuant to this section shall be conducted by the Executive Director or an Administrative Law Judge on behalf of the Executive Director pursuant to the provisions of the “State Administrative Procedure Act”, Article 4 of Title 24, C.R.S.

Any person aggrieved by the decision or order of the Executive Director of the Department may seek judicial relief pursuant to the provisions of C.R.S. 24-4-106.

CHAPTER V RETAILER OF FIREWORKS LICENSE

5.1 GENERAL

No person shall sell, offer for sale, expose for sale, or possess with intent to sell permissible fireworks for retail until that person first obtains a retailer of fireworks license from the Division ~~of Fire Safety~~ and the permit, if any, required by the authority having jurisdiction.

No person shall sell, offer for sale, expose for sale, or possess with intent to sell permissible fireworks which have not been purchased by a wholesaler licensed by the State of Colorado.

A retailer of fireworks license will permit only such sales as provided by Title 12, Article 28, Colorado Revised Statutes, entitled “Fireworks.”

5.2 ACTIVITIES PERMITTED

The only activity permitted under this license is the sale, or possession with intent to sell permissible fireworks for retail to the public.

Prior to the start of permitted activities, the license holder must obtain a permit, if any required, from the authority having jurisdiction.

5.3 LICENSE PROVISIONS

Application for a retailer of fireworks license shall be made to the Division at least thirty days prior to the start of permitted activities. Under extraordinary circumstances, exceptions to this rule may be approved by the Executive Director on a case-by-case basis when such exception is permitted by statute and would

not adversely affect the public health, safety and welfare as determined by and in the sole discretion of the Executive Director.

A retailer of fireworks license shall be good only for the calendar year in which it is issued and shall apply to only one retail location.

The license shall be prominently displayed at the place of business of the licensed retailer.

5.4 VERIFICATION REQUIRED FOR SALES

For all sales, the retailer must verify that the purchaser is over sixteen years of age by way of inspecting the purchaser's driver's license or other state- issued identification card.

5.5 RECORD OF TRANSACTIONS

A retailer of fireworks shall keep available for inspection a copy of each invoice for fireworks purchased. Such invoice shall show the license number of the wholesaler from whom such fireworks were purchased. Said records shall be maintained for as long as any fireworks included on the invoice am held in such person's possession.

5.6 ADDITIONAL REQUIREMENTS

A retailer of fireworks shall comply with all building and fire codes adopted by the local authority. In the absence of locally adopted building or fire codes, said person shall comply with the Uniform Fire Code, 1991 Edition.

CHAPTER VI DISPLAY RETAILER OF FIREWORKS LICENSE

6.1 GENERAL

No person shall sell, deliver, consign, give, or furnish fireworks to any person authorized by C.R.S. 12-28- 103 and these rules and regulations to conduct a fireworks display in Colorado until that person first obtains a display retailer of fireworks license from the Division ~~of Fire Safety~~ and the permit, if any, required by the authority having jurisdiction.

A display retailer of fireworks license will permit only such sales as provided by Title 12, Article 28, Colorado Revised Statutes, entitled “Fireworks.”

6.2 ACTIVITIES PERMITTED

The only activity permitted under this license is the sale of display fireworks and fireworks displays to sponsors of fireworks displays or certified fireworks display operators who are holders of permits for fireworks displays.

Prior to the start of permitted activities, the license holder must obtain a permit, if any required, from the authority having jurisdiction.

6.3 LICENSE PROVISIONS

Application for a display retailer of fireworks license shall be made to the Division at least thirty days prior to the start of permitted activities.

A display retailer of fireworks license shall be valid through September 1 of the year following the date on which the license was issued and shall apply to only one location.

The license shall be prominently displayed at the place of business of the licensed display retailer.

6.4 VERIFICATION REQUIRED FOR SALES

For all sales, the display retailer must verify that the display will be conducted by a certified fireworks display operator and that the sponsor holds a current and valid permit for a fireworks display.

6.5 RECORD OF TRANSACTIONS

A display retailer of fireworks shall keep available for inspection a copy of each invoice for fireworks sold. Such invoice shall show:

(a) The full legal name, address and certification number of the purchaser, who may not be the certified fireworks display operator.

(b) The full legal name, address and certification number of the certified fireworks display operator responsible for the display.

(c) The quantity and type of firework sold.

Said records shall be retained by the license holder for two years following the year in which the transactions occurred.

6.6 ADDITIONAL REQUIREMENTS

A display retailer of fireworks shall comply with all building and fire codes adopted by the local authority. In the absence of locally adopted building or fire codes, said person shall comply with the Uniform Fire Code, 1991 Edition.

CHAPTER VII WHOLESALER OF FIREWORKS LICENSE

7.1 GENERAL

No person shall sell, deliver, consign, give, or furnish permissible fireworks to a retailer for resale in Colorado until that person first obtains a wholesaler of fireworks license from the Division ~~of Fire Safety~~ and the permit, if any, required by the authority having jurisdiction.

A wholesaler of fireworks license will permit only such sales as provided by Title 12, Article 28, Colorado Revised Statutes, entitled “Fireworks.”

7.2 ACTIVITIES PERMITTED

The only activity permitted under this license is the sale, delivery, consignment, gift or otherwise providing permissible fireworks to a retailer for resale in Colorado.

Prior to the start of permitted activities, the license holder must obtain a permit, if any required, from the authority having jurisdiction.

7.3 LICENSE PROVISIONS

Application for a wholesaler of fireworks license shall be made to the Division at least thirty days prior to the start of permitted activities.

A wholesaler of fireworks license shall be valid through September 1 of the year following the date on which the license was issued and shall apply to only one retail location.

The license shall be prominently displayed at the place of business of the licensed wholesaler.

7.4 VERIFICATION REQUIRED FOR SALIES

For all sales, the wholesaler must verify that the purchaser is a holder of a valid retailer, display retailer, or exporter of fireworks.

7.5 RECORD OF TRANSACTIONS

A wholesaler of fireworks shall keep available for inspection a copy of each invoice for fireworks sold. Such invoice shall show:

(a) The full legal name, address and license number of the purchaser.

(b) The quantity and type of firework sold.

(c) The wholesale or retail license number or retail license or tax identification number.

Said records shall be retained by the license holder for two years following the year in which the transactions occurred.

7.6 ADDITIONAL REQUIREMENTS

A wholesaler of fireworks shall comply with all building and fire codes adopted by the local authority. In the absence of locally adopted building or fire codes, said person shall comply with the Uniform Fire Code, 1991 Edition.

CHAPTER VIII EXPORTER OF FIREWORKS LICENSE

8.1 GENERAL

No person shall sell, deliver, consign, give, or furnish fireworks for export outside of Colorado until that person first obtains a exporter of fireworks license from the Division ~~of Fire Safety~~ and the permit, if any, required by the authority having jurisdiction.

A exporter of fireworks license will permit only such sales as provided by Title 12, Article 28, Colorado Revised Statutes, entitled “Fireworks.”

8.2 ACTIVITIES PERMITTED

The only activity permitted under this license is the sale of fireworks for export outside of Colorado. Prior to the start of permitted activities, the license holder must obtain a permit, if any required, from the local authority.

8.3 LICENSE PROVISIONS

Application for a exporter of fireworks license shall be made to the Division at least thirty days prior to the start of permitted activities.

A exporter of fireworks license shall be valid through September 1 of the year following the date on which the license was issued and shall apply to only one retail location.

The license shall be prominently displayed at the place of business of the licensed exporter.

8.4 VERIFICATION REQUIRED FOR SALES

For all permitted sales, the exporter must verify that the purchaser;

(a) holds a valid motor vehicle driver's license issued by a stale other than Colorado; and holds a valid motor vehicle registration issued by a state other than Colorado; or

(b) holds a valid Colorado motor vehicle driver's license; and holds a valid wholesale, retail or resale license issued by a state or local authority located outside the State of Colorado.

8.5 RECORD OF TRANSACTIONS

A exporter of fireworks shall keep available for inspection a copy of each bill of lading for fireworks sold. Such bill of lading shall show:

(a) The full legal name and address of the purchaser; and

(b) The quantity and type of firework sold; and

(c) The drivers license number of the purchaser and the state of issue; and

(d) The motor vehicle license number and state of issue, or

(e) The wholesale, retail or resale license number and state of issue.

Said records shall be retained by the license holder for three years following the year in which the transactions occurred.

8.6 ADDITIONAL REQUIREMENTS

A exporter of fireworks shall comply with all building and firs codes adopted by the local authority. In the absence of locally adopted building or fire codes, said person shall comply with the Uniform Fire Code, 1991 Edition.

CHAPTER IX FIREWORKS PERMITS

9.1 GENERAL

Any governing body has the power to grant nontransferable and nonassignable permits within the area under its jurisdiction for the storage of fireworks or for:

(a) the facilities used for the retail sales; of fireworks, including permissible fireworks.

(b) displays of fireworks by any person, fair association, amusement park, or other organizations or groups.

9.2 PERMIT REQUIRED

Prior to the start of permitted activities, the holder of any license pursuant to C.R.S. 12-28-104 and these rules and regulations must obtain a permit, if any required, from the governing body.

Application for permits pursuant to C.R.S. 12-~~23~~28-103 and these rules and regulations shall be made to the governing body or the Division, whichever is applicable, at least thirty days prior to the start of permitted activities, unless otherwise required by the authority having jurisdiction. For permit applications

made to the Division, exceptions to this rule may be approved on a case by case basis when such exception
would not adversely affect the public health, safety and welfare as determined by and in the sole discretion of the Executive Director.

9.3 PERMIT FOR FIREWORKS DISPLAY

No fireworks display shall be conducted in the State of Colorado without a valid permit. In the event the governing body does not regulate and/or issue permits for fireworks displays, the sponsor shall apply for a permit from the Division ~~of Fire Safety~~.

CHAPTER X DISPLAY OF FIREWORKS

10.1 GENERAL PROVISIONS

No fireworks display shall be conducted in the State of Colorado without a valid permit. In the event the governing body does not regulate and/or issue permits for fireworks displays, the operator shall apply for a permit from the Division ~~of Fire Safety~~. Exception: No permit shall be required for fireworks displays conducted by the Colorado State Fair Authority or any other ~~fire protection related~~ governing body.

These provisions apply to both outdoor fireworks displays and pyrotechnic special effect performances.

10.2 PERMIT PROVISIONS

Application for a fireworks display permit shall be made to the Division at least thirty days prior to the date of the fireworks display. Under extraordinary circumstances, exceptions to this rule may be approved by the Executive Director on a case-by-case basis when such exception is permitted by statute and would not adversely affect the public health, safety and welfare as determined by and in the sole discretion of the Executive Director.

All fireworks display permits shall be valid for only one date or event and location and shall expire the day following the permitted date. An alternate date shall be permitted should the display or event covered by the permit be postponed.

The application for a fireworks display permit shall be accompanied by a site plan, evidence of financial responsibility, and a check or money order in payment of any required fee.
No permit for a fireworks display shall be issued to any person unless said person is a certified fireworks display operator or a certified pyrotechnic operator, whichever classification is appropriate.

10.3 CONDUCT OF FIREWORKS DISPLAY

All fireworks displays performed in the State of Colorado must be conducted by a certified fireworks display operator or a certified pyrotechnic operator, whichever classification is appropriate. ~~Exception: Legitimate employees of a unit of local government who are performing a fireworks display on behalf of the local government are exempt from this certification requirement.~~

In addition to any other requirements of the authority having jurisdiction, any outdoor fireworks display conducted in the State of Colorado must be performed in accordance with the requirements of NFPA 1123-~~1990~~2014; Code for the Outdoor Display of Fireworks.

Any pyrotechnic special effect performances must be performed in accordance with the requirements of the authority having jurisdiction.

Unless otherwise required by the authority having jurisdiction, the display site shall be set-up and ready for inspection a minimum of sixty (60) minutes prior to the start of the display.

Prior to conducting an authorized fireworks display, the operator shall conduct an inspection of the display site.

10.4 REPORTS OF ACCIDENTS, FIRES AND INJURIES

Any pyrotechnics-related accident, fire or injury which occurs in connection with an authorized fireworks display, and known to the operator, shall be reported immediately by the operator to the Division ~~of Fire Safely~~, and local fire and law enforcement authorities ~~whenever there is loss of life, injury to any person, or damage to property.~~

CHAPTER XI FIREWORKS DISPLAY OPERATOR CERTIFICATION

11.1 GENERAL PROVISIONS

No person shall be certified as a fireworks display operator unless he has passed a general knowledge fireworks examination, except that any person who holds a valid fireworks display operator certification from an approved national fireworks organization may request a waiver of the required examination.

Any person who has actively participated in at least five fireworks displays and has satisfactory references may request a waiver of the required examination.

11.2 APPLICATION FOR CERTIFICATION

Application for certification as a fireworks display operator shall be filed with the Division ~~of Fire Safety~~ on forms prescribed by the Director and shall contain such information as the Director may require.

Application for certification as a fireworks display operator shall be filed with the Division ~~of Fire Safety~~ at least thirty days before the date of any fireworks display to be conducted by the applicant.

Payment of the fee required by these rules and regulations must accompany the application for certification to the Division ~~of Fire Safety~~. ~~A check or money order for the fee shall be made payable to the Division of Fire Safety.~~

Certification issued under these rules and regulations shall be dated and numbered and shall be valid for a period of three years unless earlier revoked.

In the event that an application for a fireworks certification is incomplete, the applicant shall have 180 days in which to submit additional required documentation, after which the initial application shall be void. Processing fees in accordance with 13.1 shall be forfeited.

Renewal of the certification shall be granted to an operator without the need to retest, provided: (a) they are in good standing with the Division; and (b) they have actively participated in at least three fireworks displays during the previous three year period.

11.3 GENERAL KNOWLEDGE EXAMINATION

A General Knowledge Fireworks Examination designed to indicate that personnel who handle display fireworks in the State of Colorado have a minimum understanding of safety requirements and State regulations, shall be administered to all persons who apply for certification as an operator of fireworks displays. This examination shall be developed or approved by the Director. Length and content of the examination and the passing grade will be at the discretion of the Director.

Any person may retake the examination when a passing grade is not achieved, however, a waiting period of thirty (30) days is required after each unsuccessful attempt.

Applicants may receive three successive examination attempts. Should the applicant fail the examination on the third attempt, he will not be allowed to retake the examination until he produces evidence of satisfactory completion of an approved program of instruction in conducting fireworks displays.

A thirty dollar ($30) nonrefundable fee will be assessed for each attempt to pass the General Knowledge Fireworks Examination.

A company or corporation which utilizes a training and testing program to qualify their personnel may petition the Division to use this test in lieu of this General Knowledge Fireworks Examination.

CHAPTER XII PYROTECHNIC OPERATOR CERTIFICATION

12.1 GENERAL PROVISIONS

No person shall be certified as a pyrotechnic operator unless he has passed a general knowledge fireworks examination, except that any person who holds a valid pyrotechnic operator certification from an approved national fireworks organization may request a waiver of the required examination.

Any person who has actively participated in at least five performances where pyrotechnic materials were used may request a waiver of the required examination.

12.2 APPLICATION FOR CERTIFICATION

Application for certification as a pyrotechnic operator shall be filed with the Division ~~of Fire Safety~~ on forms prescribed by the Director and shall contain such information as the Director may require.

Application for certification as a pyrotechnic operator shall be filed with the Division ~~of Fire Safety~~ at least thirty days before the date of any fireworks display to be conducted by the applicant.

Payment of the fee required by these rules and regulations must accompany the application for certification to the Division ~~of Fire Safety~~. ~~A check or money order for the fee shall be made payable to the Division of Fire Safety.~~

Certification issued under these rules and regulations shall be dated and numbered and shall be valid for a period of three years unless earlier revoked.

In the event that an application for a fireworks certification is incomplete, the applicant shall have 180 days in which to submit additional required documentation, after which the initial application shall be void. Processing fees in accordance with 13.1 shall be forfeited.

Renewal of the certification shall be granted to an operator without the need to retest, provided: (a) they are in good standing with the Division; and (b) they have actively participated in at least three pyrotechnic displays during the previous three year period.

12.3 GENERAL KNOWLEDGE EXAMINATION

A General Knowledge Fireworks Examination designed to indicate that personnel who handle display fireworks in the State of Colorado have a minimum understanding of safety requirements and State regulations, shall be administered to all persons who apply for certification as an operator of pyrotechnic displays. This examination shall be developed or approved by the Director. Length and content of the examination and the passing grade will be at the discretion of the Director.

Any person may retake the examination when a passing grade is not achieved, however, a waiting period of thirty (30) days is required after each unsuccessful attempt.

Applicants may receive three successive examination attempts. Should the applicant fail the examination on the third attempt, he will not be allowed to retake the examination until he produces evidence of satisfactory completion of an approved program of instruction in conducting fireworks displays.

A company or corporation which utilizes a training and testing program to qualify their personnel may petition the Division to use this test in lieu of this General Knowledge Fireworks Examination.

CHAPTER XIII LICENSE, CERTIFICATION AND PERMIT FEES

13.1 GENERAL

The Department of Public Safety will charge the following fees for tests, licenses, certifications and permits issued under these rules and regulations:

GENER AL KNOW LEDGE FIREW ORKS EX AMIN AT ION……	$30 .00
RETAILER OF FIREWORKS LICENSE	$~~25.00~~50.00
DISPLAY RETAILER OF FIREWORKS LICENSE	$~~750.00~~1,500.00
WHOLESALER OF FIREWORKS LICENSE.....	$~~750.00~~1,500.00
EXPORTER OF FIREWORKS LICENSE	$~~750.00~~1,500.00
FIREWORKS DISPLAY OPERATOR CERTIFICATION.....	$~~25.00~~50.00
PYROTECHNIC OPERATOR CERTIFICATION	$~~25.00~~50.00
FIREWORKS DISPLAY PERMIT	$~~250.00~~500.00*

*This is the maximum fee. The fee for a Fireworks Display Permit shall be ten percent (10%) of the total cost of the display, up to a maximum of $~~250.00~~500.00.

The above fees are established for licenses, certification and permits issued by the Department of Public Safety. Consult the local authority to determine their fees for permits, if any, pursuant to C.R.S. 12-28-103.

Of the above fees, the sum of $~~25.00~~50.00 represents the cost to process applications for licensing or certification. In the event an application for licensing or certification is denied, for any reason, this amount is non-refundable. Processing fees will not be refunded in the event that local or statewide fireworks restrictions are enacted. In addition, the above listed fees are non-refundable in the event a license is suspended or revoked.

Notice of Proposed Rulemaking

Tracking number

2015-00180

Department

500,1008,2500 - Department of Human Services

Agency

2503 - Income Maintenance (Volume 3)

CCR number

9 CCR 2503-6

Rule title

COLORADO WORKS PROGRAM

Rulemaking Hearing

Date

05/08/2015

Time

10:00 AM

Location

El Paso County Department of Human Services, Nautilus Room, 1675 W. Garden of the Gods Road, Colorado Springs, Colorado 80907

Subjects and issues involved

#15-2-26-1: Colorado Works Changes Based Upon Audit and Appeal Findings

Statutory authority

26-1-107; 26-1-109; 26-1-111; 26-2-702; 26-2-703; 26-2-706; 26-2-706.5; 26-2-708; 26-2-709; 26-2-716, C.R.S. (2014)

Contact information

Name

Danielle Dunaway

Title

Employment and Benefits Division

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303-866-2788

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Title of Proposed Rule: Colorado Works Changes Based Upon Audit and Appeal Findings

Rule-making#: 15-2-26-1

Office/Division or Program: Office of Economic Security/ Employment and Benefits Division

Rule Author: Danielle Dunaway

Phone: 303-866-2788

E-Mail: danielle.dunaway@state.co.us

STATEMENT OF BASIS AND PURPOSE

Summary of the basis and purpose for the rule or rule change. *(State what the rule says or does, explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule. How do these rule changes align with the outcomes that we are trying to achieve, such as those measured in C-Stat?)*

The purpose of these rules is to provide clarification of the intent of the original rules and to ensure ongoing compliance. The Colorado Works rules are being revised in order to:

1) Be in compliance with audit and appeals findings, and
2) Enhance workforce development service delivery.

Rule revisions are necessary to be in compliance with corrective action requirements as identified in the State Audit as well as multiple appeal hearings requiring additional rule clarification.

Several of the rules provide clarification of the types of interfaces or verifications that are required. This will assist both the county department and the customer by easing some of the current verification burdens. This will also assist in timely processing because the worker may not have to delay processing the case for verification that can be obtained through the automated interfaces. The workforce development changes provide clarification around the expectations for the Individualized Plan that is developed to help families meet their employment goals.

An emergency rule-making (which waives the initial Administrative Procedure Act noticing requirements) is necessary:

☐ to comply with state/federal law and/or

☐ to preserve public health, safety and welfare

Explain:

Authority for Rule:

State Board Authority: 26-1-107, C.R.S. (2014) - State Board to promulgate rules; 26-1-109, C.R.S. (2014) - state department rules to coordinate with federal programs; 26-1-111, C.R.S. (2014) - state department to promulgate rules for public assistance and welfare activities.

Initial Review	04/03/2015	Final Adoption	05/08/2015
Proposed Effective Date	07/01/2015	EMERGENCY Adoption	N/A

[Note: "Strikethrough" indicates deletion from existing rules and "all caps" indicates addition of new rules.]

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STATEMENT OF BASIS AND PURPOSE (continued)

Program Authority: *(give federal and/or state citations and a summary of the language authorizing the rule-making)* 26-2-702, C.R.S. (2014) - legislative intent in implementing the Colorado Works Program; 26-2-703, C.R.S. (2014) – definitions related to the Colorado Works Program; 26-2-706, C.R.S. (2014) - target populations; 26-2-706.5, C.R.S. (2014) - restrictions on length of participation; 26-2-708, C.R.S. (2014) - assistance - assessment - individual responsibility contract - waivers for domestic violence; 26-2-709, C.R.S. (2014) - benefits - cash assistance - programs – authority to promulgate rules; 26-2-716, C.R.S. (2014) - county duties - appropriations - penalties - hardship or domestic violence extensions - incentives - authority to promulgate rules

Does the rule incorporate material by reference?		Yes	X	No
Does this rule repeat language found in statute?		Yes	X	No
If yes, please explain.				

The program has sent this proposed rule-making package to which stakeholders?

County Human Services Directors Association; Colorado Legal Services; The Legal Center; Economic Security Sub-PAC; All Families Deserve a Chance (AFDC) Coalition; Legal Aid of Metropolitan Denver; Colorado Center on Law and Policy; Colorado Department of Human Services Food and Energy Assistance Division; and, Colorado Department of Health Care Policy and Financing

Attachments:
Regulatory Analysis
Overview of Proposed Rule
Stakeholder Comment Summary

Title of Proposed Rule: Colorado Works Changes Based Upon Audit and Appeal Findings

Rule-making#: 15-2-26-1

Office/Division or Program: Office of Economic Security/ Employment and Benefits Division

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REGULATORY ANALYSIS

(*complete each question; answers may take more than the space provided*)

1. List of groups impacted by this rule:
Which groups of persons will benefit, bear the burdens or be adversely impacted by this rule?

Colorado county departments of social/human services and their respective contractors serving TANF families; all eligible applicants for Colorado Works/Temporary Assistance for Needy Families (TANF) program; and all eligible recipients/participants of Colorado Works/TANF.

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?

All sixty four (64) counties and approximately 18,000 Colorado Works assistance units will be affected. These rule changes are necessary to be in compliance with recent audit findings and hearing judgments. These changes will provide clarification for program requirements and will have minimal impact to overall workload.

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.

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)*

None

County Fiscal Impact

None

Federal Fiscal Impact

None

Other Fiscal Impact *(such as providers, local governments, etc.)*

None

4. Data Description:
List and explain any data, such as studies, federal announcements, or questionnaires, which were relied upon when developing this rule?

No additional data was utilized in developing these rule modifications.

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REGULATORY ANALYSIS (continued**)**

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.

No alternatives were explored as rule clarification was necessary due to audit findings and hearing judgments.

Rules are necessary versus any other action in order to provide direction to the county departments and to be in compliance with corrective action requirements. In order to do that rules need to be revised as currently written.

Title of Proposed Rule: Colorado Works Changes Based Upon Audit and Appeal Findings

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OVERVIEW OF PROPOSED RULE

Compare and/or contrast the content of the current regulation and the proposed change.

Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment			
3.600.31	Private Contracting section currently utilizes the term Individual Responsibility Contract	Updated the name of the written agreement counties have with individuals who are participating in the program and engaged in work activities that support employment to Individualized Plan.	___	Yes	X	No
3.602.1, I	Applications timeframes for normal processing standards	Clarifies the valid timeframe for an application following a denial.	___	Yes	X	No
3.604.1, A	Request of Verifications section currently utilizes the term Individual Responsibility Contract	Updated the name of the written agreement counties have with individuals who are participating in the program and engaged in work activities that support employment to Individualized Plan.	___	Yes	X	No
3.604.1, B, 2, c, and 3.604.1, K	Required Primary Verifications section related to the Social Security Number application	Specifies the verification timeframes for a Social Security Number application.	___	Yes	X	No
3.604.1, B, 2, d	Required Primary Verifications section related to the verification of relationship and responsibility to establish the assistance unit	Clarifies that verification related to responsibility is only necessary for specified caretakers other than the child's parent. Deleted the requirement to verify relationship.	___	Yes	X	No
3.604.1, L	General Requirements for the Income and Eligibility Verification System (IEVS)	Revised to include other acceptable interfaces that can be used to verify eligibility.	___	Yes	X	No

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Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment
3.604.2, Q and R	Assistance Unit composition specific to individuals ineligible for Colorado Works and specific penalties for disqualified and excluded persons	Clarifies that disqualified or excluded members are removed from the assistance unit for the purpose of establishing assistance unit size only.	___ Yes X No
3.604.2, V	Family Violence Option Waiver section currently utilizes the term Individual Responsibility Contract	Updated the name of the written agreement counties have with individuals who are participating in the program and engaged in work activities that support employment to Individualized Plan.	___ Yes X No
3.605.2, E	Income from short term employment currently utilizes the term Individual Responsibility Contract	Updated the name of the written agreement counties have with individuals who are participating in the program and engaged in work activities that support employment to Individualized Plan.	___ Yes X No
3.606.6, A and C	Description of time limits and extensions	Clarifies that assistance units containing excluded members are not eligible for an extension and to update the name of the written agreement counties have with individuals who are participating in the program and engaged in work activities that support employment.	___ Yes X No
3.606, F	Required Individual Responsibility Contract and Participation section currently utilizes the term Individual Responsibility Contract	Updated the name of the written agreement counties have with individuals who are participating in the program and engaged in work activities that support employment to Individualized Plan.	___ Yes X No

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Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment
3.606.8, A	Diversion section currently utilizes the term Individual Responsibility Contract	Updated the name of the written agreement counties have with individuals who are participating in the program and engaged in work activities that support employment to Individualized Plan.	___ Yes X No
3.606.8, B, 1	Supportive Services section currently utilizes the term Individual Responsibility Contract	Updated the name of the written agreement counties have with individuals who are participating in the program and engaged in work activities that support employment and further define the types of supportive services.	___ Yes X No
3.607.2	Individual Responsibility Contract section currently describes the agreement between the participant and the county department	Updated the name of the written agreement counties have with individuals who are participating in the program and engaged in work activities that support employment and further define the types of supportive services. Revised to clarify language regarding the development of an individualized plan. Revised to clarify the conditions of the individualized plan.	___ Yes X No
3.608.1, B and D	Workforce development section currently utilizes the term Individual Responsibility Contract	Updated the name of the written agreement counties have with individuals who are participating in the program and engaged in work activities that support employment.	___ Yes X No

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Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment
3.608.2, A and C	Work activities section currently utilizes the term Individual Responsibility Contract	Updated the name of the written agreement counties have with individuals who are participating in the program and engaged in work activities that support employment.	___ Yes X No
3.608.3, A, 5	Work participation rate section currently utilizes the term Individual Responsibility Contract	Updated the name of the written agreement counties have with individuals who are participating in the program and engaged in work activities that support employment.	___ Yes X No
3.608.4	Noncompliance section currently utilizes the term Individual Responsibility Contract	Updated the name of the written agreement counties have with individuals who are participating in the program and engaged in work activities that support employment.	___ Yes X No
3.609.961 and 3.609.962	Optional noncustodial parent programs and options for including drug and alcohol treatment as a benefit sections currently utilizes the term Individual Responsibility Contract	Updated the name of the written agreement counties have with individuals who are participating in the program and engaged in work activities that support employment.	___ Yes X No

Title of Proposed Rule: Colorado Works Changes Based Upon Audit and Appeal Findings

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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):

None

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:

County Human Services Directors Association; Colorado Legal Services; The Legal Center; Economic Security Sub-PAC; All Families Deserve a Chance (AFDC) Coalition; Legal Aid of Metropolitan Denver; Colorado Center on Law and Policy; Colorado Department of Human Services Food and Energy Assistance Division; and, Colorado Department of Health Care Policy and Financing

Are other State Agencies (such as Colorado Department of Health Care Policy and Financing) impacted by these rules? If so, have they been contacted and provided input on the proposed rules?
Rules were sent to Marivel Guadaramma with the Colorado Department of Health Care Policy and Financing

[ ] Yes [X] No

Have these rules been reviewed by the appropriate Sub-PAC Committee?

[X] Yes [ ] No

Date presented __March 5, 2015____. Were there any issues raised? ____ Yes __X_ No

If not, why.

Comments were received from stakeholders on the proposed rules:

[ ] Yes [X] 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.

3.600.31 Private Contracting [Rev. eff. 9/15/12]

The Board of County Commissioners may contract all or part of the Colorado Works program operation to private or public providers. Contracts which are paid for with county block grant funds and which are designed to invest in the development of community resources pursuant to Section 26-2-707.5(1), C.R.S., do not require that Colorado Works participants complete an application, a written agreement, or INDIVIDUALIZED PLAN (IP) ~~an Individual Responsibility Contract (IRC)~~. Counties continue to have the authority to require such written documentation in their individual contracting procedures.

The contracting procedures for benefits or services provided through community resource investment contracts must:

A. Ensure that county block grant funds be used only to support the purposes of the Colorado Works program.

B. Approximate, with reasonable certainty, the number of Temporary Assistance for Needy Families (TANF) eligible persons to be served and include the method used to calculate this number. This number and the calculation used must be documented and made available upon request by the State Department for audit purposes.

C. Outline the provider's eligibility verification process.

D. Explain the methodology used as the basis upon which the costs for the services are calculated. Such methodology must be an accounting or statistical system that gives a reasonably accurate calculation of the costs for TANF-eligible services that support TANF-eligible applicants or participants.

E. Prohibit supplantation: "supplantation" means the replacement of county funds serving Colorado Works participants with block grant funds and the use of those county fund savings for purposes other than Colorado Works.

F. Include a regular accounting of activity at least twice a year. All expenditures for goods, services, or start-up funds must be documented with purchasing document.

G. Ensure that the agency has the ability to clearly identify Colorado Works participants and/or recipients from others in situations where an agency receives funding from multiple sources.

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3.602.1 Applications [Rev. eff. 8/1/14]

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I. Normal Processing Standard

1. For applications containing a request for both Food Assistance and Colorado Works, the county department shall act to determine eligibility for expedited food assistance benefits within seven (7) calendar days and to make changes in food assistance eligibility and benefits as applicable.

2. The county department shall consider an application for Colorado Works to be an application for all programs of public assistance, except for child welfare services, for which the applicant has requested assistance. County departments shall make applicants

aware of other services and assistance under other public assistance programs that they may be eligible. The determination of eligibility for Colorado Works shall be made as soon as eligibility criteria is met and all required verification is provided, but not more than forty-five (45) calendar days of the original date of application unless the applicant has requested and the county department has approved the extension of time.

3. The county department shall make an eligibility determination on a case as soon as eligibility criteria is met and all required verification is provided, but not more than forty-five (45) calendar days from the application date. The determination should be followed by a written notification of eligibility status to the household. Applicants who refuse to cooperate in completing the application processes shall be denied based upon timely noticing in accordance to Section 3.609.7, E, 4, F, 4. In cases where verification is incomplete, the county department shall provide the household with a statement of required verification on the State prescribed notice form and offer to assist the household in obtaining the required verification. The county department shall allow the household ten (10) calendar days to provide the missing verifications, unless the household can provide good cause or the verification falls under the programs verification at an individual level described in Section 3.609.4, O. If good cause is provided, the applicant shall have until the twentieth (20th) calendar day following the date of application to provide the necessary verification. The state prescribed notice form shall reflect specific months of eligibility and ineligibility.

4. Following a determination of ineligibility, applications remain valid for a period of thirty (30) calendar days. IF THE APPLICANT HAS GOOD CAUSE AND NOTIFIES THE COUNTY DEPARTMENT THAT HE/SHE IS REQUESTING BENEFITS WITHIN THIRTY (30) CALENDAR DAYS OF THE DENIAL, THE COUNTY DEPARTMENT SHALL RESCHEDULE THE INTERVIEW IF NOT ALREADY COMPLETED, AND THE CURRENT APPLICATION DATE SHALL BE USED. IF THE APPLICANT DOES NOT HAVE GOOD CAUSE AND NOTIFIES THE COUNTY DEPARTMENT THAT HE/SHE IS REQUESTING BENEFITS, AND THE REQUEST IS MADE WITHIN THIRTY (30) CALENDAR DAYS OF THE CURRENT APPLICATION, THAT APPLICATION MAY BE USED BUT THE DATE OF APPLICATION SHALL BE THE MOST RECENT DATE THE APPLICANT REQUESTED BENEFITS. IF THE APPLICANT REQUESTS BENEFITS MORE THAN THIRTY (30) DAYS FROM THE DATE OF THE DENIAL, THEY MUST SUBMIT A NEW APPLICATION, UNLESS GOOD CAUSE IS PROVIDED UP TO NINETY (90) DAYS. ~~Households reapplying for benefits more than thirty (30) calendar days from the date of the original application date must submit a new application. For households reapplying for benefits within thirty (30) calendar days of the original application, the date the county is contacted and a request for assistance is made shall be the new application date.~~

5. County departments shall require no more than one interview for a Colorado Works applicant. When an interview is conducted, the county worker shall review the application for completeness and secure, if necessary, signed copies of the Authorization for Release of Information form, and any other forms or documentation necessary to determine eligibility.

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3.604.1 Program Verifications [Rev. eff. 4/1/13]

A. Request of Verifications

The county department shall not require any documentary evidence (verification) and/or written statements for eligibility determination until the county department receives a signed and dated application. The applicant/participant has the primary responsibility for providing documentary evidence for required verification and to resolve questionable information. The county worker shall assist the individual in obtaining the necessary documentation provided the individual is cooperating with county workers. The individual may supply documentary evidence in person, through mail, by facsimile, through an electronic device, or through an authorized representative. The county worker shall accept all pertinent documentary evidence provided by the applicant/participant, and shall be primarily concerned with how adequately the verification proves the statements on the application and/or program participation if applicable. If written verification cannot be obtained, county workers shall substitute an acceptable "collateral contact" if available as defined in Section 3.601 Program Definitions and E-F of this Section.

If proper verification is not received and a collateral contact is unavailable the participant will be noticed (in writing or verbally) with ~~inform~~ INFORMATION that the county worker will assist with obtaining verification, provided that he or she is cooperating with the county department.

The applicant/participant must provide all verification within thirty (30) calendar days from the date of application. At redetermination or while receiving cash payment, the participant shall have ten (10) days from the date the change occurred to notify the county department of any change and provide all necessary verifications in order to continue to receive payment unless specified otherwise in the INDIVIDUALIZED PLAN ~~Individual Responsibility Contract~~ or per limited reporting requirements specified in Section 3.606.1, C, 16.

Verification is an eligibility requirement. Failure to provide requested verification may result in the case and/or individual being denied, closed, terminated, or discontinued. This process shall begin the date the application is date stamped by the county and shall continue throughout the life of the case, including program participation and applicable verifications for ongoing redeterminations of eligibility.

B. Required Primary Verifications

1. All information received through the Income and Eligibility Verification (IEVS) system shall be reviewed and verified. Assistance shall not be denied, delayed or discontinued pending receipt of information requested through IEVS, if other evidence establishes the individual's eligibility for assistance.

2. All applicants/participants shall provide to the county the following information:

    a. Verification of lawful presence in the United States; Section 3.604.1, N, 5.

    b. Verification of citizenship or qualified non-citizenship status: Section 3.604.1, N, 1-4.

    c. A Social Security Number (SSN) for each individual applying for benefits or proof that an application for a SSN has been made. PROOF OF APPLICATION IS ONLY VALID FOR UP TO EIGHT (8) MONTHS WITHOUT GOOD CAUSE. The agency shall explain to the applicant or recipient that refusal or failure without good cause to provide an SSN or a receipt of a SSN application will result in exclusion of the applicant for whom an SSN or receipt is not obtained. This exclusion applies only to the applicant for whom the SSN or receipt is not provided and not to the entire assistance unit.

1) FOR INDIVIDUALS THAT MADE APPLICATION FOR A SSN AT INITIAL ELIGIBILITY DETERMINATION, VERIFICATION OF THE SSN MUST BE RECEIVED PRIOR TO THE NEXT RECERTIFICATION.

2) FOR INDIVIDUALS ADDED TO THE ASSISTANCE UNIT WITHIN SIXTY (60) DAYS OF THE CERTIFICATION PERIOD EXPIRING, VERIFICATION OF THE SSN MUST BE RECEIVED BY THE FOLLOWING RECERTIFICATION.

d. ~~Verification of relationship used to establish the assistance unit for a specific case. If verification of relationship does not exist,~~ Verification of a specified caretaker's responsibility for the child(ren) must be provided, UNLESS THE SPECIFIED CARETAKER IS THE CHILD(REN)'S PARENT.

e. Verification of income of any member of the assistance unit or other household member whose income is used to determine eligibility and payment.

f. Verification of Colorado residency.

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K. Social Security Number

1. Requirement to Provide Social Security Number

Each applicant for, or recipient of, financial assistance is required to provide a Social Security Number (SSN) to the county department. If an applicant has more than one number, all numbers shall be required.

For an applicant or recipient who is unable to provide an SSN, an application form to obtain a SSN(s) shall be completed by the applicant or recipient for each member of the assistance unit without an SSN for whom assistance is requested and the receipt of this application provided to the county department as verification until a SSN(s) is obtained, NOT TO EXCEED EIGHT (8) MONTHS WITHOUT GOOD CAUSE.

The county department shall verify the Social Security Numbers provided by the assistance unit with the Social Security Administration (SSA) in accordance with procedures established by the State Department for the State On Line Query (SOLQ).

Upon proof of application for an SSN, the time required for issuance or to secure verification of the number shall not be used as a basis for delaying action on the public assistance application.

The county department shall accept as verified a Social Security Number that has been verified by any program agency participating in the State On Line Query (SOLQ).

2. When SSN Cannot Be Verified

When the county department receives notification through SOLQ that an SSN cannot be verified or is otherwise discrepant (e.g., name or number do not match SSA records), the county department shall:

a. Conduct a case record review to confirm that the SSN in the case record matches the SSN submitted to the SSA for verification. If an error occurred in the original submittal (e.g., digits transposed, incorrect name submitted) the county department shall correct the error and the SSN will be resubmitted through SOLQ for verification.

b. If no error is identified in a., above, the county department shall advise the assistance unit in writing that an SSN could not be verified, and instruct the assistance unit to contact the county department to resolve the discrepancy. ~~However, this notice shall not constitute advance notice of adverse action.~~

The county department shall make every effort to assist the applicant(s) in resolving the discrepancy. This includes referral to the appropriate SSA office, and assisting to obtain available documents, etc., which may be required by the SSA.

L. General Requirements for INTERFACE VERIFICATIONS ~~the Income and Eligibility Verification System (IEVS)~~ INTERFACES ARE ACCEPTABLE VERIFICATION SOURCES FOR COLORADO WORKS.~~-~~

~~1. County Reporting Requirements~~

~~The county department shall report the results of the verification in accordance with reporting requirements established by the State Department for the Income and Eligibility Verification System (IEVS).~~

~~2. Notification~~

~~At initial application and at redetermination an applicant or recipient of Colorado Works shall be notified through written statement provided on or with the application form that the information available through IEVS will be requested, and that such information will be used, and shall be verified through sources, such as collateral contacts with the applicant or recipient when discrepancies are found by the county department; and that such information may affect the assistance unit's eligibility and level of payment.~~

~~a. All verification types (pay stubs, employer verification, etc.) obtained by a third party to validate or invalidate the IEVS discrepancy shall be kept in the case file;~~

~~b. Information directly obtained from the statewide benefit management system such as screen shots shall not be included in the case file;~~

~~c. Case documentation shall be available in the case file or statewide benefit management system documenting action taken on the case within forty-five (45) calendar days of initial receipt. Appropriate case documentation includes the purpose of the review, the fact that the case was reviewed, the action taken on the case, and how determination was made that the information was or was not correct.~~

~~3. Income and Eligibility Verification System (IEVS)~~

~~The Income and Eligibility Verification System (IEVS) provides for the exchange of information on Colorado Works with the Social Security Administration (SSA), Internal Revenue Service (IRS) and the Colorado Department of Labor and Employment (DOLE). Through IEVS, recipient SSNs will be matched with source agency records on a regular basis to identify potential earned and unearned income, resources and/or assets, including the following:~~

~~a. SSA (BENDEX, SDX)~~

~~Social Security benefits, SSI, pensions, self employment earnings, federal employee earnings.~~

~~b. IRS~~

~~Unearned income information including interest on checking or savings accounts, dividends, royalties, winnings from betting establishment, capital gains, etc.~~

~~c. DOLE~~

~~Wage and unemployment insurance benefits.~~

~~The county department shall act on all information received through the Income and Eligibility Verification System (IEVS). The county department shall at a minimum, prior to approval of benefits, verify potential earnings or unemployment benefits through the DOLE for all applicants, except institutionalized applicants. However, benefits shall not be delayed pending receipt of verification from a collateral source (e.g., employers). In addition, in cases where the county department has information that an institutionalized or group home recipient is working, wage and Unemployment Insurance Benefits (UIB) matches are required at application. All other matches will be initiated through IEVS upon approval of benefits.~~

1. INCOME AND ELIGIBILITY VERIFICATION SYSTEM (IEVS)

THE INCOME AND ELIGIBILITY VERIFICATION SYSTEM (IEVS) PROVIDES FOR THE EXCHANGE OF INFORMATION FOR COLORADO WORKS WITH THE SOCIAL SECURITY ADMINISTRATION (SSA) AND THE COLORADO DEPARTMENT OF LABOR AND EMPLOYMENT (DOLE). THE COUNTY DEPARTMENT SHALL ACT ON ALL INFORMATION RECEIVED THROUGH THE INCOME AND ELIGIBILITY VERIFICATION SYSTEM (IEVS). THE COUNTY DEPARTMENT SHALL AT A MINIMUM PRIOR TO APPROVAL OF BENEFITS, VERIFY POTENTIAL EARNINGS AND UNEMPLOYMENT BENEFITS THROUGH DOLE FOR ALL APPLICANTS, EXCEPT INSTITUTIONALIZED APPLICANTS. BENEFITS SHALL NOT BE DELAYED PENDING RECEIPT OF VERIFICATION FROM A COLLATERAL CONTACT (E.G., EMPLOYERS). IN CASES WHERE THE COUNTY DEPARTMENT HAS INFORMATION THAT AN INSTITUTIONALIZED OR GROUP HOME RECIPIENT IS WORKING, WAGE AND UNEMPLOYMENT INSURANCE BENEFITS (UIB) MATCHES ARE REQUIRED AT APPLICATION. ALL OTHER MATCHES WILL BE INITIATED THROUGH IEVS UPON APPROVAL OF BENEFITS. THROUGH IEVS, RECIPIENT SOCIAL SECURITY NUMBERS WILL BE MATCHED WITH SOURCE AGENCY RECORDS ON A REGULAR BASIS TO IDENTIFY POTENTIAL EARNED AND UNEARNED INCOME, RESOURCES AND ASSETS, INCLUDING:

a. THE FOLLOWING DATA SHALL BE CONSIDERED VERIFIED WHEN ENTERED INTO THE STATEWIDE AUTOMATED SYSTEM:

1) SSA (BENDEX, SDX) SOCIAL SECURITY BENEFITS, SSI, PENSIONS, SELF-EMPLOYMENT EARNINGS, FEDERAL EMPLOYEE EARNINGS; AND,

2) IRS UNEARNED INCOME INFORMATION INCLUDING INTEREST ON CHECKING OR SAVINGS ACCOUNTS, DIVIDENDS, ROYALTIES, WINNINGS FROM BETTING ESTABLISHMENTS, CAPITAL GAINS; AND,

3) UNEMPLOYMENT INSURANCE BENEFITS (UIB).

b. DOLE WAGE DATA SHALL NOT BE CONSIDERED VERIFIED UPON RECEIPT. ADDITIONAL VERIFICATION MUST BE OBTAINED TO VERIFY WAGE INFORMATION.

c. AT INITIAL APPLICATION AND AT REDETERMINATION, AN APPLICANT OR RECIPIENT OF COLORADO WORKS SHALL BE NOTIFIED THROUGH WRITTEN STATEMENT PROVIDED ON OR WITH THE APPLICATION FORM

THAT THE INFORMATION AVAILABLE THROUGH IEVS WILL BE REQUESTED, AND THAT SUCH INFORMATION WILL BE USED, AND SHALL BE VERIFIED THROUGH SOURCES, SUCH AS COLLATERAL CONTACTS WITH THE APPLICANT OR RECIPIENT, WHEN DISCREPANCIES ARE FOUND BY THE COUNTY DEPARTMENT; AND, THAT SUCH INFORMATION MAY AFFECT THE ASSISTANCE UNIT'S ELIGIBILITY AND LEVEL OF PAYMENT.

1) ALL VERIFICATION TYPES OBTAINED BY A COLLATERAL CONTACT TO VALIDATE OR INVALIDATE THE IEVS DISCREPANCY SHALL BE DOCUMENTED;

2) CASE DOCUMENTATION SHALL BE AVAILABLE IN THE CASE FILE OR STATEWIDE BENEFIT MANAGEMENT SYSTEM DOCUMENTING THE ACTION TAKEN ON THE CASE WITHIN FORTY-FIVE (45) CALENDAR DAYS OF INITIAL RECEIPT. CASE DOCUMENTATION MUST INCLUDE THE PURPOSE OF THE REVIEW, THE ACTION TAKEN ON THE CASE, AND HOW THE DETERMINATION WAS MADE THAT SUPPORTED THE ACTION TAKEN BY THE COUNTY DEPARTMENT.

d. THE COUNTY DEPARTMENT SHALL NOT DELAY PROCESSING OF IEVS BEYOND FORTY FIVE (45) DAYS ON NO MORE THAN TWENTY (20) PERCENT OF THE INFORMATION TARGETED FOR FOLLOW-UP, IF:

1) THE REASON THAT THE ACTION CANNOT BE COMPLETED WITHIN FORTY-FIVE (45) DAYS IS THE NONRECEIPT OF REQUESTED THIRD-PARTY VERIFICATION; AND,

2) ACTION IS COMPLETED PROMPTLY, WHEN THIRD PARTY VERIFICATION IS RECEIVED OR AT THE NEXT TIME ELIGIBILITY IS REDETERMINED, WHICHEVER IS EARLIER. IF ACTION IS COMPLETED WHEN ELIGIBILITY IS REDETERMINED AND THIRD PARTY VERIFICATION HAS NOT BEEN RECEIVED, THE COUNTY DEPARTMENT SHALL MAKE ITS DECISION BASED ON INFORMATION PROVIDED BY THE RECIPIENT AND ANY OTHER INFORMATION IN ITS POSSESSION.

2. PUBLIC ASSISTANCE REPORTING INFORMATION SYSTEM (PARIS)

THE COUNTY DEPARTMENT SHALL QUERY THE PUBLIC ASSISTANCE REPORTING INFORMATION SYSTEM (PARIS) AT INITIAL APPLICATION AND AT REDETERMINATION TO DETERMINE WHETHER THE CLIENT IS RECEIVING BENEFITS IN ANOTHER STATE, VETERANS' BENEFITS, OR MILITARY WAGES OR ALLOTMENTS.

3. SYSTEMATIC ALIEN VERIFICATION FOR ENTITLEMENTS (SAVE)

THE COUNTY DEPARTMENT SHALL QUERY THE SYSTEMATIC ALIEN VERIFICATION FOR ENTITLEMENTS (SAVE) AT INITIAL APPLICATION AND AT REDETERMINATION TO:

a. DETERMINE WHETHER A QUALIFIED NON-CITIZEN HAS A SPONSOR(S); AND,

b. VERIFY THE NON-CITIZEN REGISTRATION NUMBER PROVIDED BY THE APPLICANT OR RECIPIENT AND, IF THE NUMBER AND NAME SUBMITTED DO NOT MATCH, TAKE PROMPT ACTION TO TERMINATE ASSISTANCE TO THE APPLICANT OR RECIPIENT; AND,

c. DETERMINE IF THERE HAS BEEN A CHANGE IN THE NON-CITIZEN'S STATUS.

4. COLORADO DEPARTMENT OF REVENUE, DIVISION OF MOTOR VEHICLES (DMV)

THE COLORADO DEPARTMENT OF REVENUE, DIVISION OF MOTOR VEHICLES (DMV), MAY BE USED BY THE COUNTY DEPARTMENT TO VERIFY LAWFUL PRESENCE AND IDENTITY.

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3.604.2 Assistance Unit [Rev. eff. 7/1/13]
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Q. Individuals Ineligible for Colorado Works Program

The following individuals shall not be eligible under Colorado Works:

1. Fugitive or fleeing felons, parole violators, or probation violators;

2. Specified caretakers who fail to report, without good cause within normal program reporting requirements, a child(ren) who is expected to be out of the home for longer than forty-five (45) calendar days will be ineligible for assistance for ninety (90) calendar days from the date that it is determined he or she should have reported the expected absence;

3. Persons convicted of a drug-related felony on or after July 1, 1997, unless the county department has determined that the person has taken action toward rehabilitation, such as, but not limited to, participation in a drug treatment program;

4. ASSITANCE UNITS WITH AN ADULT ~~Persons~~ participating in a strike;

5. Qualified legal non-citizens or those who are not federally exempt, who entered the United States on or after August 22, 1996, are ineligible for cash assistance for five (5) years from date of entry into the United States.

R. Penalties for Disqualified and Excluded Persons

Persons who are required members of the assistance unit, but are disqualified or excluded from receiving Colorado Works basic cash assistance or diversion due to program prohibitions or violations, shall be removed from the assistance unit FOR THE PURPOSES OF DETERMINING THE ASSISTANCE UNIT SIZE.

The following disqualified or excluded individuals ~~who are removed from the assistance unit~~ shall have such month counted as a month of participation in the calculation of their overall sixty-month lifetime maximum as referenced for AN ASSISTANCE UNIT CONTAINING AN adult~~s~~ PARTICIPANT OR AN EXCLUDED MEMBER under "Time Limits". The disqualified individual's income MUST be considered when determining eligibility without applying income disregards.

1. Individuals convicted by a court or whose disqualification was obtained through an Intentional Program Violation (IPV) waiver for misrepresenting their residence in order to obtain assistance in two states at the same time shall have their Colorado Works assistance denied for ten (10) years.

2. Individuals who have committed fraud as determined by a court or determination of an IPV by administrative hearing shall result in the disqualified caretaker being removed from the grant for a twelve (12) month period for the first offense, twenty-four (24) months for the second offense, and lifetime for the third offense. An IPV from another state shall

be used to determine eligibility for an individual. The level of the IPV established by the Administrative Law Judge from the other state shall be used to determine the level of the IPV for Colorado Works. The timeframes established herein shall be used; the timeframe established from the other state shall no longer be valid.

3. Individuals who are fugitive or fleeing felons, parole violators, or probation violators (reference Section 3.604.2, J).

4. Individuals who have been convicted of a drug-related felony (reference Section 3.604.2, J).

5. Individuals who have failed to apply for a Social Security Number.

6. Individuals who are non-citizens and do not meet the definition of a qualified legal non-citizen, those who fail to prove citizenship or fail to provide proof that they are otherwise possess a qualified non-citizen status and/or proof of lawful presence (reference Sections 3.604.1, N, 5 and 3.604.2, M, 3).

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V. Family Violence Option (FVO) Waiver

The federal government allows state Temporary Assistance for Needy Family (TANF) programs to electively participate in the option to waive certain program requirements for individuals who have been identified as victims of family (domestic) violence.

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3. Requirements for Counties that Grant FVO Waivers:

When a county department and applicant/participant invoke the Family Violence Option the following are required:

a. Implement County written policies which at a minimum address:

1) Domestic violence and FVO;

2) How counties intend to provide information about the FVO waiver, related benefits, domestic violence services, and options provided by Colorado Works and others to all participants on an ongoing basis.

This information should be provided in accordance with Section 3.602.1 and at a minimum shall include (1) Procedures for voluntarily and confidentially self-identifying as a victim of domestic violence and how self-disclosed information will be used and (2) Benefits of and procedures for applying for waivers from any program requirements and extension of time limits;

3) The process for screening and assessing domestic violence continually.

b. Training and case actions for county staff.

1) The Core FVO/Domestic Violence training shall be mandatory for all staff who play a role in determining, modifying, or granting waivers, including intake, assessment, case management, or workforce development staff. CDHS strongly recommends that all county staff, including experienced staff, supervisors, and/or managers, attend the Core FVO training at least once every five (5) years, and attend ongoing and specific training offered or recommended by Colorado Works and local agencies that address domestic violence issues.

2) County staff who have participated in the Core FVO training shall be the only staff who shall provide information about and screen for domestic violence, assess for domestic violence waiver eligibility, make waiver determinations, review waivers and extensions, consider sanctions, and/or develop and modify ~~an IRC~~ AN INDIVIDUALIZED PLAN of a participant who has a waiver.

c. Follow certain processes with regard to all TANF applicants and participants includes:

1) Screen Colorado Works applicants and participants by identifying those who are or have been victims of domestic violence by using the Domestic Violence Screening form.

2) Assess Colorado Works applicants and participants who are identified as a victim of domestic violence by:

a) The nature and extent to which the individual may engage in work activities;

b) The resources and services needed to assist the individual in obtaining safety and self-sufficiency; and,

c) A plan to increase the individual's safety and self-sufficiency.

3) Grant to victims of domestic violence exemptions (or waivers) of certain TANF requirements, good cause based on circumstances that warrant non-participation in program work requirements of this section, non-cooperation with Child Support Enforcement as defined in Section 3.604.2, L, or by allowing a program extension. Good cause may also be determined through the use of the prudent person principle standard as specified in Section 3.604.1, G.

a) Good cause for granting an FVO waiver of work activities and/or the 60-month time limit is defined as anything that would potentially endanger or unfairly penalize a participant or the participant's family if he/she participated in the county's standard program/work activity requirements.

b) Good cause for granting a waiver of the child support enforcement cooperation requirement is defined as anything that is not in the best interest of the child, e.g., potentially endanger or unfairly penalize the individual or child if the individual cooperated with child support enforcement.

d. Provide certain resources to all TANF applicants and victims of domestic violence. Counties are to make immediate referrals to appropriate services, including: domestic violence services, legal services, health care, emergency shelter, child protection, and law enforcement. Such referrals are to be documented in the individual's case file.

4. FVO Provisions

a. Screening applicants and participants includes:

1) All applicants and ongoing participants are to be screened continually for domestic violence by trained workers.

2) At any point in Colorado Works program participation, an applicant or participant may be identified or may self-identify as a victim of domestic violence.

3) Workers are to use sensitivity and discretion in selecting the appropriate setting for domestic violence screening. The screening and any information related to the customer's domestic violence shall remain confidential in accordance with Section 3.609.94.

b. Waiver Provisions, Case Documentation, and the ~~IRC~~ INDIVIDUALIZED PLAN (IP)

1) The county shall use only FVO-trained workers to work with victims of domestic violence throughout the application, screening, waiver/~~IRC~~ IP development, and case management processes, and when implementing, modifying, and monitoring sanctions for domestic violence victims.

2) Workers shall use the prudent person standard in determining what FVO waiver(s) will most benefit the individual. The ~~IRC~~ IP shall be developed with a priority on safety and self-sufficiency for the individual and the individual's child(ren).

3) Waivers shall be based on need, and may be granted as long as need is demonstrated. This can be accomplished at application or throughout the life of the case.

4) Waivers shall be accompanied by documentation (e.g., case comments, ~~the waiver, an IRC~~ AN IP, and other information gathered to support case actions) describing and taking into account:

a) The past, present, and ongoing impact of domestic violence on the individual and the family;

b) The individual's available resources;

c) The maximized safety of the individual and the individual's family while leading to self-sufficiency;

d) Identification of specific program/work activities requirements being required and/or waived;

e) Prioritization of work, excepting those cases where work would lead to greater risk of family violence; re-assessment should ~~occor~~ OCCUR every six (6) months, at minimum

c. Appeal of a Waiver Denial

1) If a waiver is denied, and the applicant wishes to dispute this decision, he or she may appeal through the state Colorado Works Division. The Division will review and make decisions on the appeal. The appellant shall be granted all requested waivers and continue to receive benefits through the appeal process.

2) Any individual may reapply for a waiver at any time.

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3.605.2 Income [Rev. eff. 9/15/12]
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E. Income from Short-Term Employment

Income received from short-term employment such as temporary employment and subsidized employment (ninety days or less). Such income shall not be considered to determine eligibility as long as the participant has not been terminated or has terminated the employment due to a fault of their own. This employment may be documented in the INDIVIDUALIZED PLAN ~~Individual Responsibility Contract~~.

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3.606.6 Time Limits and Extensions [Rev. eff. 4/1/13]

A. Time Limits

Each month for which a basic cash assistance grant is received shall be counted toward the time limits TO AN ASSISTANCE UNIT CONTAINING AN ~~for any~~ adult participant OR AN EXCLUDED MEMBER. Any ASSISTANCE UNIT CONTAINING AN adult participant OR AN EXCLUDED MEMBER may receive Federal TANF assistance for up to sixty (60) cumulative months.

B. Time Limits and Sanction Periods

Months spent in first and second sanction periods shall be counted toward the time limit.

C. Extensions

An assistance unit containing an individual who has received Federal TANF assistance in Colorado or another state as an adult for sixty (60) or more cumulative months shall not be eligible for Federal TANF assistance in Colorado unless granted an extension by the county department due to hardship or domestic violence. ASSISTANCE UNITS THAT CONTAIN EXCLUDED MEMBERS SHALL NOT BE ELIGIBLE FOR CONSIDERATION OF AN EXTENSION.

1. The State shall send a notification to participants who are approaching the sixty (60) month time limit on Federal TANF assistance. The county department shall make all reasonable efforts to contact these participants by phone or in person to explain the extension process and to accept a request for an extension.

2. All participants shall have the opportunity to request an extension. Requests for an extension of Federal TANF assistance shall be made in the county of residence and may be made in person, by phone, or in writing. The applicant’s county of residence shall approve or deny an extension request.

   The county department shall provide to the individual applying for an extension notification of the decision pursuant to "Applicant/Recipient's Right to Notice of Action", Section 3.609.7.

3. The county department shall have thirty (30) days after the receipt of a request for an extension to make a decision whether to grant or deny the extension. The county shall send a notice to the participant concerning the decision.

4. If the request for an extension is denied, the notice shall include the reason for the denial and the right to appeal the decision per Section 3.609.8. A participant who has been

granted an extension may request an additional extension prior to the end of the current extension period. If a timely request is not made, the county department may grant an extension if the participant is able to demonstrate good cause. Good cause shall be determined by the county department and may not be appealed.

5. An extension may be granted for up to six (6) months. A participant who has been granted an extension may request additional extensions, but the request must be made prior to end of the current extension period.

6. Nothing in these rules shall be construed to prohibit a former participant from requesting a hardship or domestic violence extension, after the lapse of the 60-month lifetime limit, when new hardship or domestic violence factors occur, to the extent permissible under state and federal law.

7. The participant receiving an extension shall meet with the county worker on a regular basis to address specific needs and to identify a plan TO MOVE OFF OF ASSISTANCE in an ~~IRC~~ INDIVIDUALIZED PLAN ~~to move off of assistance~~.

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F. Required INDIVIDUALIZED PLAN (IP) ~~Individual Responsibility Contract (IRC)~~ and Participation

All appropriate members of the assistance unit that are granted an extension of Colorado Works assistance due to any hardship, including domestic violence, shall complete an INDIVIDUALIZED PLAN (IP) ~~Individual Responsibility Contract (IRC)~~. The IP ~~IRC~~ shall include the participation activities required of the participant(s) as a condition of eligibility, the extension, as well as the IP ~~IRC~~ requirements at Section 3.607.2. Failure to comply with all terms and conditions of the IP ~~IRC~~ without a determination of good cause shall result in sanctions or termination of assistance pursuant to Section, 3.608.4, "Sanctions and Disqualifications for Basic Cash Assistance Grants."

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3.606.8 Diversion, Supportive Services, Other Assistance, and Family Needs Payments [Rev. eff. 9/15/12]

A. State and County Diversion

A Colorado Works applicant or participant may receive a diversion payment to address a specific crisis situation or episode of need. Such payments are not designed to meet participants' basic ongoing needs. A diversion payment may address needs over a period of no more than four months. In addition to a diversion payment, a participant who is eligible for diversion may receive supportive services based on a defined need.

A Colorado Works applicant or participant may receive a diversion payment (diversion grant) under the following terms and conditions:

1. The applicant or participant does not need long-term cash assistance or basic cash assistance as determined by the assessment.

2. The applicant or participant demonstrates a need for a specific item or type of assistance, including but not limited to, cash, supportive services, housing, or transportation. Such assistance may be provided in the form of cash payment, vendor payments, or in-kind services.

3. The applicant or participant enters into a written mutual agreement that shall be the INDIVIDUALIZED PLAN (IP) ~~IRC~~. The IP ~~IRC~~ shall:

    a. Document the reason why the participant does not need basic cash assistance; and,

    b. Define the expectations and the terms of the diversion payment; and,

    c. Specify the need(s) for and the specific type(s) of non-recurring cash payment; and,

    d. Specify the possible impacts on other assistance including Medicaid, Food Assistance, and Child Care.

4. The applicant or participant shall agree not to apply for any further Colorado Works assistance in the county where he or she received the diversion payment or any other county for a period of time to be established by the county that issued the payment. This Period of Ineligibility (POI) shall start in the month that the payment is provided.

5. If the participant is unable to sustain the agreement of the IP ~~IRC~~ because of circumstances beyond his or her control he or she may apply for and the county may grant basic cash assistance or another diversion payment prior to the end of the POI. The county department can end the POI before it expires if good cause exists and is granted by the county department.

6. There are two types of diversion payments, state and county.

    a. A state diversion payment is a needs-based, cash or cash-equivalent payment made to a participant who is eligible for basic cash assistance. All recipients of a state diversion payment who receive a one-time cash payment are not required to assign child support rights, and receipt of such payment does not count toward their Federal TANF assistance time limit.

    b. A county diversion payment is a needs-based, cash or cash-equivalent payment made to a participant who is eligible for assistance pursuant to the maximum

eligibility criteria for non-recurrent, short-term benefits established in the state plan. Counties shall define in county policy expanded eligibility criteria up to this maximum, and based on federal poverty and other standardized guidelines.

1) A county may establish a separate and optional county diversion program for applicants who are not eligible for basic cash assistance under Colorado Works. The county may use Colorado Works funds to fund this optional program.

2) A county shall establish any other eligibility criteria for such a diversion program. The county diversion program shall be based upon fair and objective criteria and shall include eligibility criteria as determined by county policy.

3) Supportive services (see below) paid to working families as an county diversion payment is non-assistance and is not cash assistance.

7. Two Payments of Assistance in the Same Month

A participant shall not receive a state diversion grant for any month in which he/she receives basic cash assistance.

B. Supportive Services

1. Supportive services paid to WORK ELIGIBLE PARTICIPANTS OR employed participants ~~and/~~or participants who are engaged in a work activity per Colorado Works program rules shall be intended to provide the appropriate supports to gain or maintain employment. These services may include but are not limited to transportation, CHILD CARE, IMMEDIATE NEEDS, personal care items, and INDIVIDUALIZED PLAN ~~Individual Responsibility Contract~~ bonuses INTENDED TO INCENTIVIZE WORK and do not apply towards the Unreimbursed Public Assistance (UPA).

2. Counties shall provide referrals for any available supportive services to applicants and participants who are:

a. Homeless; AND/or,

b. In need of mental health services; AND/or,

c. In need of substance abuse counseling or services.

3. Counties may provide the following assistance to an assistance unit whose income is below seventy-five thousand dollars ($75,000) per year, or lower, as defined by the county department policy. The assistance unit must meet all non-financial eligibility criteria for the Colorado Works program.

a. Work subsidies such as payments to employers or third parties to help cover the cost of employee wages, benefits, supervision and training;

b. Supportive services such as child care and transportation provided to families who are employed;

c. Refundable Earned Income Tax Credits;

d. Contributions to, and distributions from, Individual Development Accounts (IDAs); AND,

e. Services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support.

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3.607.2 INDIVIDUALIZED PLAN (IP) ~~Individual Responsibility Contract (IRC)~~ [Rev. eff. 9/15/12]

As a condition of continued eligibility, individuals applying for Colorado Works benefits are subject to the required assessment and those deemed work eligible shall be required to enter into an INDIVIDUALIZED PLAN (IP) ~~Individual Responsibility Contract (IRC)~~ with the county department. COUNTY DEPARTMENTS HAVE THE DISCRETION IN DESIGNATING THE INDIVIDUALIZED PLAN AS A ROADMAP OR AN INDIVIDUAL RESPONSIBILITY CONTRACT (IRC) PER COUNTY PRACTICE.

A. Developing an INDIVIDUALIZED PLAN ~~IRC~~

As a condition of eligibility, county departments shall develop an INDIVIDUALIZED PLAN (IP) ~~Individual Responsibility Contract (IRC)~~ for applicants/participants receiving Basic Cash Assistance (BCA) or diversion payments DESIGNED TO SATISFY THEIR INDIVIDUAL AND FAMILY NEEDS AND EMPLOYMENT GOALS. The initial IP ~~IRC~~ for receiving BCA MUST BE BASED ON THE ASSESSMENT COMPLETED BY THE WORK ELIGIBLE MEMBER AND COUNTY WORKER AND shall be completed within thirty (30) calendar days after completion of the applicant's/participant's initial assessment. THE IP ~~IRCs~~ shall be COMPREHENSIVE INCLUDING ~~limited in scope to~~ matters relating to securing and maintaining training, education, or work. The initial IP ~~IRC~~ for receiving diversion payments are a requirement for the receipt of such payments. THE IP ~~IRCs~~ must at a minimum ~~outline~~ clearly OUTLINE the expectations of the COUNTY AND participant ~~and county~~. No abbreviations or acronyms shall be used. THE PARTICIPANT SHALL ESTABLISH GOALS, OBJECTIVES FOR ACHIEVING ESTABLISHED GOALS, AND DETERMINE MANAGEABLE ACTION STEPS FOR SATISFYING OBJECTIVES IN HIS/HER OWN WORDS. The county department shall ASSIST AND SUPPORT ~~involve~~ the participant in developing the IP ~~IRC~~.

The IP ~~IRC~~ shall be clearly written, signed and dated by the participant and the county worker shall ensure the participant understands the terms of the IP ~~contract~~. An applicant or participant shall indicate by his or her signature and date on the IP ~~IRC~~ that he or she either agrees with the terms and conditions of the IP ~~IRC~~ or that the he or she requests a county dispute resolution conference of the proposed IP ~~IRC~~, pursuant to a county department's written policy. The county worker shall also indicate by his or her signature and date on the IP ~~IRC~~ that he or she agrees with the terms and conditions of the IP ~~IRC~~.

B. Consequences and Conditions

All consequences and conditions associated with the IP ~~IRC~~ shall be listed clearly on the IP ~~IRC~~ and explained to the applicant/participant. AN APPLICANT OR PARTICIPANT SHALL INDICATE BY HIS OR HER SIGNATURE AND DATE ON THE IP THAT HE OR SHE EITHER AGREES WITH THE TERMS AND CONDITIONS OR THAT HE OR SHE REQUESTS A COUNTY DISPUTE RESOLUTION CONFERENCE OF THE PROPOSED IP, PURSUANT TO A COUNTY DEPARTMENT'S WRITTEN POLICY. THE COUNTY WORKER SHALL ALSO INDICATE BY HIS OR HER SIGNATURE AND DATE ON THE IP THAT HE OR SHE AGREES WITH THE TERMS AND CONDITIONS OF THE IP.

C. Notification

THE IP ~~EVERY IRC~~ must notify a participant of the following in bold print at the top of the document:

1. No individual is legally entitled to any form of assistance under Colorado Works; and,

2. The IP ~~IRC~~ is a contract between the participant and the county department that specifies the terms and conditions under which a participant may receive assistance under Colorado Works and specifies the responsibilities of the county and the participant. The INDIVIDUALIZED PLAN ~~Individual Responsibility Contract~~ does not create a legal entitlement to benefits; and,

3. A participant's failure to comply with the IP ~~IRC~~ without a determination of good cause shall result in sanctions or termination of assistance; and,

4. A participant's refusal to comply with EVERY components outlined in the IP ~~IRC~~ without good cause may result in the termination of the basic cash assistance grant by closure for demonstrable evidence; and,

5. Either a county or applicant/participant may request modification of the IP ~~IRC~~.

D. Modification Request

Either AN APPLICANT OR PARTICIPANT OR a county department ~~or an applicant or participant~~ may request a modification of THE IP. Any modification made to the IP ~~IRC~~ ~~shall~~ WILL result in a new IP ~~IRC~~ that must be signed and dated by both the applicant/participant and the county worker, acknowledging the agreement made in the IP ~~contract~~. The APPLICANT OR PARTICIPANT AND county worker ~~and the applicant or participant~~ may initial changes made to the IP ~~IRC~~ that are small in scope.

E. Extension INDIVIDUALIZED PLAN ~~IRC~~

All work eligible members of the assistance unit who are granted an extension of Colorado Works assistance due to any hardship, including domestic violence, shall DEVELOP ~~have~~ an INDIVIDUALIZED PLAN ~~Individual Responsibility Contract (IRC)~~. The IP ~~IRC~~ shall include the participation activities ~~required of the participant(s)~~ and must be based on the assessment completed by the WORK ELIGIBLE MEMBER AND county worker ~~and work eligible member~~ as a condition of the extension ~~as well as the IRC requirements~~. Failure to comply with terms and conditions of the IP ~~IRC~~ without a determination of good cause shall result in sanctions or termination of assistance pursuant to Section 3.608.4 “Noncompliance.”

F. Signatures on the IP ~~IRC~~/County Dispute Resolution Request

If an applicant or participant requests a county dispute resolution conference, the county department shall facilitate the county dispute resolution conference and conduct a review that shall be limited to the terms of the IP ~~IRC~~. The facilitator shall be a county worker not directly involved in the initial determination or action taken on the case per county policy.

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3.608 COLORADO WORKS WORKFORCE DEVELOPMENT

3.608.1 Workforce Development [Rev. eff. 9/15/12]

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B. Requirements for Receipt of Cash Assistance/ Basic Cash Assistance

As a condition of continued eligibility, all assistance units that include an adult member who is receiving basic cash assistance shall have such adult member in a work activity, either federal or county defined in Section 3.608.2 “Work Activities.” Work Eligible Individuals shall have the work activity(s) outlined in his or her INDIVIDUALIZED PLAN (IP) ~~Individual Responsibility Contract (IRC)~~ in order to receive Colorado Works cash assistance. A single parent with a child(ren) under age six (6) shall be notified in writing of the terms and conditions under which a county determines that child care is unavailable.

This notification shall be in written format and shall include the county's definition of the unavailability of child care. This definition must include the criteria listed at Section 3.608.4 “Noncompliance.” This notice shall inform an individual of the procedures for applying for and being considered for an exemption from the work requirements and the procedures for applying for the exemption. The notice shall also include the statement that this exemption does not exempt the single parent from program time limits.

C. Reasonable Accommodation

County departments shall make reasonable accommodations for persons with disabilities that assure equal access to Colorado Works benefits and services based on an individualized assessment, unless the reasonable accommodation fundamentally alters the Colorado Works program.

D. Options for Including Drug and Alcohol Treatment as a Benefit Under the INDIVIDUALIZED PLAN (IP) ~~IRC~~

When an assessment and rehabilitation plan is developed by a certified drug or alcohol treatment provider, a county department may require a participant to participate in a drug or alcohol abuse ~~control~~ program ~~purchased by the county department~~. Such requirements must be written into a participant's IP ~~Individual Responsibility Contract~~. The participant's IP ~~Individual Responsibility Contract~~ may include, but is not limited to, the following:

1. Random drug and alcohol testing.

2. Drug or alcohol treatment or other rehabilitation activities. If a participant does not follow his or her rehabilitation plan, tests positive on a random test, or refuses to participate in drug and alcohol testing, the county department may impose a sanction for not participating in a work activity.

3.608.2 Work Activities [Rev. eff. 9/15/12]

A. Engaged in Work Activities

As a condition of continued eligibility, a parent or specified caretaker receiving assistance as an adult is required to engage in one or more of the following work activities or any county-defined work activities. This requirement includes dependent children between the ages of sixteen (16) and eighteen (18) years old who are not attending school. All activities in the INDIVIDUALIZED PLAN ~~IRC~~ shall relate to the outcome of both initial and ongoing assessments. A parent is required to engage in a work activity and is a mandatory member of the assistance unit. A specified caretaker has the opportunity to be a mandatory member of the assistance unit and, as such, receive a cash payment. As a mandatory member, the specified caretaker must engage in a work activity per the definition of a specified caretaker at Section 3.601 “Program Definitions.”

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C. Work Activity Outlined in the INDIVIDUALIZED PLAN ~~IRC~~

For purposes of meeting the work participation requirements of this section, a Colorado Works participant shall be considered to be engaged in work program requirements if they are participating in the work activities listed in Section 3.608.2, B, or in any other work activities designed to lead to self-sufficiency as determined by the county department and as outlined in their INDIVIDUALIZED PLAN ~~IRC~~.

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3.608.3 Work Participation Rate [Rev. eff. 9/15/12]

A separate work participation rate will be established by the State Department based on federal requirements for all families and for two parent families. The rate to be achieved by each county department shall be negotiated and will be included in the annual performance contract.

A. Federal Participation Rate Calculations

A Colorado Works participant is considered to be engaged in work for a month if he or she is participating in the work activities defined in the Work Verification Plan for at least the minimum number of hours per week as required by Federal law. The federal work participation rate guidelines are outlined below:

1. The federal all families work participation rate requirement is an average of thirty (30) hours per week per calendar month.

2. The federal two-parent participation rate requirement is an average of thirty-five (35) hours per week if no federally funded child care is provided. If federal child care is provided, the average weekly hours must meet or exceed fifty-five (55) hours per calendar month.

3. A parent(s) under twenty (20) years of age is considered to be engaged in a work activity if he or she is maintaining satisfactory attendance in high school or GED, or participating in education directly related to employment for an average of at least twenty (20) hours per week during a calendar month.

4. A single parent with a child(ren) under age six (6) is deemed to be meeting work participation requirements if he or she is engaged in work for an average of twenty (20) hours per week during a calendar month.

5. Excused absences and holidays will be counted as hours toward the federal work participation rate for only scheduled work activities as outlined in Section 3.608.2, B, and contained in the participant's INDIVIDUALIZED PLAN ~~Individual Responsibility Contract~~. Absences and holiday hours are allowed only as approved in the most current Colorado Works work verification plan submitted and approved by the U.S. Department of Health and Human Services, Office of Family Assistance.

6. All cases subject to time limitations shall be included in the denominator for calculating the work participation rate.

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3.608.4 Noncompliance [Rev. eff. 7/1/13]

A. Reasons for Counties to Impose Sanctions or Closures for Demonstrable Evidence

Counties shall impose sanctions or closures for demonstrable evidence on all Colorado Works applicants or participants who fail to comply with the terms and conditions of his or her Colorado Works INDIVIDUALIZED PLAN (IP) ~~IRC~~ without good cause. County departments must follow the state prescribed non-compliance process to include the conciliation process, sanctioning a participant, and closing a case for demonstrable evidence.

Sanctions for failure to participate cannot be imposed if transportation or child care is not available, if services required are not available, or if the costs of the services are prohibitive as determined by the county department.

B. Sanctioning/Closing a Case for Demonstrable Evidence

1. Colorado Works applicants and participants shall not be required to participate in work activities if good cause exists as defined in county policy. Good cause does not constitute an exemption from work or time limits. However, good cause is a proper basis for not imposing a sanction for non-participation in a work activity.

2. Colorado Works applicants and participants who are caring for a child(ren) who is under age six (6) may not be sanctioned if the individual has a demonstrated inability to obtain needed child care due to the lack of:

   a. Appropriate child care within a reasonable distance from the person's home or work site; or,

   b. Available or suitable child care by a relative or other individual; or,

   c. Appropriate and affordable child care arrangements within the rate structure defined in the approved county child care rate plan.

3. Denial or Discontinuation Due to Refusal to Cooperate with the Terms of an IP ~~IRC~~

   Refusal to participate in training, education, or work as evidenced by an affirmative statement by the applicant or participant or demonstrable evidence, may result in denial or termination of the basic cash assistance grant in its entirety. Basic cash assistance for an applicant or participant of Colorado Works may be denied or discontinued in its entirety as determined by the county for a minimum of one month, if the applicant or participant refuses to participate in the IP ~~IRC~~. A refusal for this purpose is:

   a. An affirmative statement by the applicant or participant that he or she will not comply WITH PROGRAM REQUIREMENTS; or,

   b. Demonstrable evidence that the applicant or participant has made no attempt to comply with ALL TERMS AND CONDITIONS OF the IP ~~IRC~~; or,

   c. The applicant or participant fails to update the IP ~~IRC~~ without good cause.

      Demonstrable evidence of refusal to participate is demonstrated when a participant complies with none of the IP ~~IRC~~ requirements, has given an affirmative statement that he or she will not comply, or the county has repeated documentation of non-compliance. If a participant complies with some of the tasks agreed to in the IP ~~IRC~~ but not all, demonstrable evidence of refusal to participate is not present and a sanction may be imposed rather than denial or termination.

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E. Recognizing Sanctions from Other States

INDIVIDUALIZED PLAN ~~IRC~~ sanctions coming from other states will not be recognized in the State of Colorado.

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H. Affect of a Sanction on the Basic Cash Assistance Grant

The Colorado Works basic cash assistance grant shall be affected due to a sanction imposed against a member of the assistance unit as follows:

1. First Level Sanction

The sanction for the first violation of rules shall be twenty-five percent (25%) of an assistance unit's cash payment. The first sanction shall be in effect for one (1) month. A first violation not cured by the end of the sanction time period shall be subject to the sanction as set forth in "H, 2", below.

2. Second Level Sanction

The sanction for a second violation by a member of the assistance unit, or as a progression of the sanction from "H, 1", above, shall be fifty percent (50%) of an assistance unit's cash assistance. The second sanction shall be in effect for one (1) month. A violation, sanctioned in accordance with this subsection and not cured by the end of the sanction time period, shall progress to the sanction set forth in "H, 3", below.

3. Third Level Sanction

The sanction for a third violation by a member of the assistance unit, or as a progression from sanction level "H, 2", above, shall result in the termination of cash assistance for the assistance unit. The sanction shall be in effect for three (3) months. If a participant has had a break in payment for more than ONE HUNDRED EIGHTY (180) calendar days due to a closure of the case for a reason other than the sanction, the sanction shall be considered served.

4. Serving a Sanction

A sanction shall be considered served if there has been a break in benefits for more than one hundred ~~and~~ eighty (180) days due to a closure of the case for a reason other than the sanction. If a participant reapplies for benefits anytime within the one hundred ~~and~~ eighty (180) calendar days, the participant must serve the sanction by having a reduction in benefits according to the first and second level sanctions, or by having a case closed for a third level sanction.

5. Continuing a Sanction that has not Been Cured

Assistance units that include an individual who has not cured a third level sanction by the end of the sanction time period shall continue to have cash assistance terminated until the sanction is cured. A new application shall cure the sanction. A new application must be completed prior to receipt of cash assistance.

6. Sanctioning a Participant That Has Been Sanctioned Previously

Once a participant serves a sanction, all subsequent sanctions shall be sanctioned in accordance with the level following the sanction previously served.

7. Sanctioning More Than One Participant in an Assistance Unit

Each violation of these rules by a member of the assistance unit shall be counted separately and sanctioned cumulatively if the violations occur in the same month. If two members of the same assistance unit each violate a requirement at Section 3.608.4, A, the sanction(s) would result in a fifty percent (50%) reduction in the grant for the assistance unit.

8. Serving and Curing A Sanction

All sanctions imposed by a county must be served and cured by the individual. If that sanction is not otherwise cured, a new application following a sanction shall be considered the action for curing that sanction.

a. Revision to the INDIVIDUALIZED PLAN ~~Individual Responsibility Contract~~

For the purpose of this section, revisions to the INDIVIDUALIZED PLAN (IP) ~~Individual Responsibility Contract (IRC)~~ means that once an IP ~~IRC~~ is negotiated, agreed upon and signed by both THE PARTICIPANT AND the county worker ~~and the participant~~ that ~~IRC~~ IP agreement is binding and the participant is subject to sanction or closure if the terms of the agreement are not met by the participant, without good cause. If, at any time during the timeframe of the IP ~~IRC~~, the participant and the county worker revise the IP ~~IRC~~ for any reason, the prior IP ~~IRC~~ is void. The new IP ~~IRC~~ with new time periods and new requirements will be used as the basis for determining whether the participant is complying, or failing or refusing to cooperate with the requirements of the IP ~~IRC~~. If a new IP ~~IRC~~ is the result of a "good cause" conciliation meeting, the content of the new IP ~~IRC~~ and not any prior IP ~~IRC~~ and/or activities associated with a prior IP ~~IRC~~ shall be taken into consideration when determining failure or refusal to participate.

b. Good Cause Conciliation Period

For the purpose of this section, good cause conciliation period means the period prior to sanction or closure for demonstrable evidence, during which the program participant and the county worker are attempting to resolve any dispute related to the IP ~~IRC~~. If, during the state specified timeframe, it becomes apparent that the participation dispute cannot be resolved through good cause conciliation efforts, the process shall terminate and the participant shall be sanctioned or the participant’s case closed for demonstrable evidence. The criteria for the determination of sanction versus closure for demonstrable evidence are outlined in 3.608.4, B. The county department must provide the participant with the following Good Cause Conciliation Period for both the sanction process and closure for demonstrable evidence:

1) Good cause conciliation period shall begin on the day the county worker determines that the participant is non-compliant.

2) The county worker must send a conciliation letter to the participant within five (5) working days from the date the worker becomes aware of the non-compliance. The letter must:

a) Explain the reason why the participant is out of compliance; and

b) Specify the time, date, and location of the conciliation appointment, the worker’s name with whom the participant will meet, and the contact information of the worker requesting the conciliation appointment.

3) The conciliation appointment must take place within approximately 10+1 calendar days but no longer than fifteen (15) working days, from the date that the letter is sent to the participant.

4) If the participant is unable to make it to the conciliation appointment, only one rescheduled appointment shall occur unless good cause exists. If good cause exists due to employment or circumstances beyond the participant's control, the county department shall make other arrangements as defined in each county policy to complete an IP ~~IRC~~ and resolve any issues related to non-compliance with work program requirements.

5) During the good cause conciliation appointment, the participant and the county worker meet in person to renegotiate the IP ~~IRC~~. The participant shall enter into the Good Cause Conciliation period/and continue in the activity for no longer than thirty (30) calendar days. In this period, the participant has the opportunity to come back into compliance with Colorado Works. All activities and expectations of the participant must be clearly outlined in THE IP ~~an IRC~~. The participant shall not be expected to do hours of work participation above and beyond those identified through program rules at Section 3.608.1, B, for that assistance unit.

6) When a Good Cause Conciliation period ends due to participation/compliance with work program activities, the case shall continue with no sanction request or closure for demonstrable evidence.

7) When a Good Cause Conciliation period ends due to non-participation/non-compliance with work program activities, and within the thirty (30) calendar days after the Good Cause Conciliation appointment and the participant:

   a) Did not attend the scheduled meeting; and/or,

   b) Failed to participate without good cause; and/or,

   c) Failed to provide good cause for not participating.

   The Notice of Adverse Action shall be sent to the participant with the result of the good cause conciliation period within five (5) working days of that determination.

8) In general, good cause is considered to be a circumstance or circumstances beyond the participant's control. Good cause reasons for not imposing sanctions for failure to cooperate with Colorado Works include but are not limited to:

   a) Physical or mental disability or illness of the participant or an individual in the participants care.

   b) A parent being called frequently to a child's school.

   c) Required/frequent court appearances of client or child in client's care.

   d) Temporary breakdown in transportation.

   e) Temporary breakdown in child care ARRANGEMENTS AND/OR unavailability of child care.

   f) Homelessness/eviction/housing crisis.

9) County departments shall submit policies and procedures defining good cause in each county. The policy and procedure at a minimum shall include general guidelines specified by the state.

10) The Good Cause Conciliation period begins the date the worker becomes aware that the participant is not in compliance with Colorado Works and shall also be the date that the formal conciliation period commences. The case worker shall contact the participant and:

a) Enter the date and activity of the contact by the county worker into the statewide benefit management system; and,

b) If the participant fails to show for the appointment to revise the IP ~~IRC~~, the Good Cause Conciliation period is considered failed and the sanction or closure due to demonstrable evidence shall be entered. Only one reschedule of this meeting will be allowed unless the county determines good cause exists; or,

c) If the participant attends the appointment, revises the IP ~~IRC~~, and is scheduled to attend work activities as outlined in the IP ~~IRC~~, the sanction/case closure shall not be initiated as long as the participant continues successfully in implementing the IP ~~IRC~~ through the Good Cause Conciliation period.

d) The Good Cause Conciliation period, as outlined in 3.608.4, H. ~~"x"~~, above, shall not last for more than thirty (30) calendar days. On or before the thirtieth (30th) day, action shall be taken to request a sanction, closure for demonstrable evidence or to continue the participant in a work activity as agreed upon in a revised IP ~~IRC~~.

e) If the determination is made that the sanction or closure for demonstrable evidence shall be initiated because the Good Cause Conciliation period ended due to noncompliance, the notice of proposed action shall be issued to the participant and the sanction/case closure entered into the statewide benefit management system within five (5) working days of the determination.

I. Curing a Sanction

For the purpose of this section, curing the sanction occurs after a notice of proposed action has been sent to a participant notifying him or her of the impending sanction. When the participant contacts the county worker and indicates an interest in participating or curing the cause of the sanction, that conference or meeting shall be set. The appointment must take place within TEN PLUS ONE (10+1) calendar days but not to exceed fifteen (15) calendar days. The notice of the scheduled meeting shall be sent to the participant once the meeting or conference is set or documented in the case file or statewide benefit management system if the meeting is set through a telephone conversation. The date the participant contacts the county worker shall be the date that the formal cure process commences which shall include:

1. Entering the date and activity of the contact by the county worker, the formal cure start date, into the statewide benefit management system.

2. If the participant fails to show for the meeting or conference to revise the IP ~~IRC~~, the cure is considered failed and the sanction remains uncured. Only one reschedule of this meeting will be allowed unless good cause exists.

3. If the participant attends the cure meeting, revises the IP ~~IRC~~ and is scheduled to attend work activity and/or county defined work activities as outlined in the IP ~~IRC~~.

4. The cure period, as outlined in "3," above, shall not last for more than ten (10) working days. On or before the tenth (10th) day, action shall be taken to continue a sanction or to cure.

5. If the determination is made that the sanction is cured, the notice to cure shall be issued to the participant within 10+1 calendar days and the determination entered into the statewide benefit management system within five (5) working days of the determination.

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3.609.961 Optional Noncustodial Parent Programs [Rev. eff. 9/15/12]

A county may provide services under the Colorado Works Program to a noncustodial parent (as defined in Section 3.601), in accordance with the county's policy. A noncustodial parent shall not be eligible to receive basic cash assistance under the program.

A. Such services provided to a noncustodial parent shall be intended to promote the sustainable employment of the noncustodial parent and enable such parent to pay child support.

B. Provision of such services shall not negatively impact the custodial parent's eligibility for benefits or services.

C. Any services offered to a noncustodial parent shall be based on the county's review of:

1. The noncustodial parent's request for services; and,

2. The county's assessment of the noncustodial parent's needs.

D. All services offered to a noncustodial parent shall be outlined in an INDIVIDUALIZED PLAN ~~Individual Responsibility Contract~~ entered into by the county and the noncustodial parent.

E. Services may include, but are not limited to, parenting skills, mediation, workforce development, job training activities, job search, and county diversion.

3.609.962 Options for Including Drug and Alcohol Treatment as a Benefit Under the INDIVIDUALIZED PLAN ~~IRC~~ [Rev. eff. 9/15/12]

When an assessment and rehabilitation plan is developed by a certified drug or alcohol treatment provider, a county department may require a participant to participate in a drug or alcohol abuse ~~control~~ program ~~purchased by the county~~ and incorporate those requirements into a participant's INDIVIDUALIZED PLAN (IP) ~~Individual Responsibility Contract~~. The participant's IP ~~Individual Responsibility Contract~~ may include, but is not limited to, the following:

A. Random drug and alcohol testing.

B. Drug or alcohol treatment or other rehabilitation activities.

If a participant does not follow his or her rehabilitation plan, tests positive on a random test, or refuses to participate in drug and alcohol testing, the county department may impose a sanction for not participating in a work activity.

Sanctions for failure to participate cannot be imposed if transportation or child care is NOT available, if services required are not available, or if the costs of the services are prohibitive as determined by the county.

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Notice of Proposed Rulemaking

Tracking number

2015-00184

Department

2505,1305 - Department of Health Care Policy and Financing

Agency

2505 - Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)

CCR number

10 CCR 2505-3

Rule title

FINANCIAL MANAGEMENT OF THE CHILDREN'S BASIC HEALTH PLAN

Rulemaking Hearing

Date

05/08/2015

Time

09:00 AM

Location

303 East 17th Avenue, 7th Floor, Denver, CO 80203

Subjects and issues involved

see attached

Statutory authority

25.5-1-301 through 25.5-1-303, CRS (2014)

Contact information

Name

Judi Carey

Title

MSB Coordinator

Telephone

303-866-4416

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judith.carey@state.co.us

COLORADO
Department of Health Care Policy & Financing
Medical Services Board

March 31, 2015

The Honorable Wayne W. Williams
Secretary of State
1560 Broadway, 2nd Floor
Denver, Colorado 80203

Dear Mr. Williams:

Attached is the Notice of Proposed Rules concerning Child Health Plan *Plus* rules to be considered for final adoption at the April 2015 meeting of the Medical Services Board of the Department of Health Care Policy and Financing. The meeting will be held on Friday, May 8, 2015, beginning at 9:00 A.M., in the seventh floor conference room at 303 East 17th Avenue, Denver, CO 80203.

This notice is submitted to you for publication, pursuant to § 24-4-103(3)(a) and (11)(a), C.R.S.

Respectfully,

Judi Carey,
Medical Services Board Coordinator
Department of Health Care Policy and Financing

1570 Grant Street, Denver, CO 80203-1818 P 303.866.2993 F 303.866.4411
www.colorado.gov/hcpf

NOTICE OF PROPOSED RULES

The Medical Services Board of the Colorado Department of Health Care Policy and Financing will hold a public meeting on Friday, May 8, 2015, beginning at 9:00 a.m., in the seventh floor conference room at 303 East 17th Avenue, Denver, CO 80203. Reasonable accommodations will be provided upon request prior to the meeting by contacting the Medical Services Board Coordinator at 303-866-4416 or by e-mail at judith.carey@state.co.us.

A copy of the full text of these proposed rule changes is available for review from the Medical Services Board Office, 1570 Grant Street, Denver, Colorado 80203, (303) 866-4416, fax (303) 866-4411. Written comments may be submitted to the Medical Services Board Office on or before close of business the Wednesday prior to the meeting. Additionally, the full text of all proposed changes will be available approximately one week prior to the meeting on the Department's website.

MSB 15-02-23-B Revision to the Child Health Plan Plus Rule Concerning Removal of the Five Year Waiting Period Pursuant to Section 214 of the Children's Health Insurance Program Reauthorization act of 2009 (CHIPRA), Section 110

Child Health Plan Plus. The proposed rule amends 10 CCR 2505-3 § Section 110 and 170 to incorporate changes to the rule authorized by Section 214 of the Children's Health Insurance Program Reauthorization act of 2009 (CHIPRA) which amends section 2107 of the Act granting states the option to provide benefits to children and pregnant women in both Medicaid and Child Health Plan Plus (CHP+), who are lawfully residing in the United States and who have not met the 5-year waiting period. This is also authorized through Colorado House Bill 09-1353.

The proposed rule will impact children and pregnant women eligible for Presumptive Eligibility and CHP+ who are lawfully residing and who have not met the 5-year waiting period. This rule will benefit these children and pregnant women by eliminating the 5-year waiting period and making them eligible for Presumptive Eligibility and CHP+, as long as all other eligibility criteria are met. Changes to the Colorado Benefits Management System (CBMS) will be made to be in alignment with our federal and state regulations effective July 1, 2015.

The Department expects an increase in expenditure of $898,378 total funds in FFY 2014-15 and $4,056,176 in FFY 2015-16.This rule was authorized through House Bill 09-1353 and was partially implemented. Currently Colorado provides Presumptive Eligibility and Medicaid coverage to legally residing pregnant women that have not met the 5-year waiting period. This proposed rule change would complete the implementation of House Bill 09-1353. Inaction would leave Presumptive Eligibility and CHP+ eligible children and CHP+ eligible pregnant women who have been lawfully residing in the United States for less than 5 years without medical assistance.

The authority for this rule is contained in Section 214 of the Children's Health Insurance Program Reauthorization act of 2009 (CHIPRA); and sections 25.5-1-301 through 25.5-1-303, C.R.S. (2014).

Notice of Proposed Rulemaking

Tracking number

2015-00185

Department

2505,1305 - Department of Health Care Policy and Financing

Agency

2505 - Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)

CCR number

10 CCR 2505-10

Rule title

MEDICAL ASSISTANCE - STATEMENT OF BASIS AND PURPOSE, AND RULE HISTORY

Rulemaking Hearing

Date

05/08/2015

Time

09:00 AM

Location

303 East 17th Avenue, 7th Floor, Denver, CO 80203

Subjects and issues involved

see attached

Statutory authority

25.5-1-301 through 25.5-1-303, CRS (2014)

Contact information

Name

Judi Carey

Title

MSB Coordinator

Telephone

303-866-4416

Email

judith.carey@state.co.us

COLORADO
Department of Health Care Policy & Financing
Medical Services Board

March 31, 2015

The Honorable Wayne W. Williams
Secretary of State
1560 Broadway, 2nd Floor
Denver, Colorado 80203

Dear Mr. Williams:

Attached is the Notice of Proposed Rules concerning Medical Assistance rules to be considered for final adoption at the May 2015 meeting of the Medical Services Board of the Department of Health Care Policy and Financing. The meeting will be held on Friday, May 8, 2015, beginning at 9:00 A.M., in the seventh floor conference room at 303 East 17th Avenue, Denver, CO 80203.

This notice is submitted to you for publication, pursuant to § 24-4-103(3)(a) and (11)(a), C.R.S.

Respectfully,

Judi Carey,
Medical Services Board Coordinator
Department of Health Care Policy and Financing

1570 Grant Street, Denver, CO 80203-1818 P 303.866.2993 F 303.866.4411
www.colorado.gov/hcpf

NOTICE OF PROPOSED RULES

The Medical Services Board of the Colorado Department of Health Care Policy and Financing will hold a public meeting on Friday, May 8, 2015, beginning at 9:00 a.m., in the seventh floor conference room at 303 East 17th Avenue, Denver, CO 80203. Reasonable accommodations will be provided upon request prior to the meeting, by contacting the Medical Services Board Coordinator at 303-866-4416.

A copy of the full text of these proposed rule changes is available for review from the Medical Services Board Office, 1570 Grant Street, Denver, Colorado 80203, (303) 866-4416, fax (303) 866-4411. Written comments may be submitted to the Medical Services Board Office on or before close of business the Wednesday prior to the meeting. Additionally, the full text of all proposed changes will be available approximately one week prior to the meeting on the Department's website.

MSB 15-02-23-A, Revision to the Medical Assistance Eligibility Rules Concerning Removal of the Five Year Waiting Period Pursuant to Section 214 of the Children's Health Insurance Program Reauthorization act of 2009 (CHIPRA) at section 8.100.4.G.2

Medical Assistance. The proposed rule amends 10 CCR 2505-10 § 8.100 to incorporate changes to the rule authorized by Section 214 of the Children's Health Insurance Program Reauthorization act of 2009 (CHIPRA) which amends section 2107 of the Act granting states the option to provide benefits to children and pregnant women in both Medicaid and Child Health Plan Plus (CHP+), who are lawfully residing in the United States and who have not met the 5-year waiting period. This is also authorized through Colorado House Bill 09-1353.

The proposed rule will impact children eligible for Presumptive Eligibility and Medicaid who are lawfully residing and who have not met the 5-year waiting period. This rule will benefit these children by eliminating the 5-year waiting period and making them eligible for Presumptive Eligibility and Medicaid, as long as all other eligibility criteria are met. Changes to the Colorado Benefits Management System (CBMS) will be made to be in alignment with our federal and state regulations effective July 1, 2015.

The Department expects an increase in expenditure of $898,378 total funds in FFY 2014-15 and $4,056,176 in FFY 2015-16.This rule was authorized through House Bill 09-1353 and was partially implemented. Currently Colorado provides Presumptive Eligibility and Medicaid coverage to legally residing pregnant women that have not met the 5-year waiting period. This proposed rule change would complete the implementation of House Bill 09-1353. Inaction would leave Presumptive Eligibility and Medicaid eligible children who have been lawfully residing in the United States for less than 5 years without medical assistance.

The authority for this rule is contained Section 214 of the Children's Health Insurance Program Reauthorization act of 2009 (CHIPRA) which amends section 2107 of the Act and House Bill 09-1353 and sections 25.5-1-301 through 25.5-1-303, CRS (2014).

MSB 14-10-15-B, Revision to the Medical Assistance Health Programs Benefits Management Rule Concerning Family Planning, Section 8.730
Medical Assistance. This rule change will define the amount, scope and duration of the Family Planning Services benefit. In order to define amount, scope and duration, the Department is amending the existing Family Planning Services rule to reformat and clarify the rule language while removing abortion services and hysterectomy services to be placed in other rules.

The authority for this rule is contained in section 1905(a) of the Social Security Act, codified at 42 U.S.C. 1396d(a)(2); 42 CFR § 440.230 and in sections 25.5-1-301 through 25.5-1-303, C.R.S (2014).

MSB 14-11-19-D, Revision to the Medical Assistance Health Programs Office Benefits and Operations Division Rule Concerning Women's Health Services, Section 8.731
Medical Assistance. This rule will define the amount, scope, and duration of the Women's Health Services benefit. In order to define amount, scope, and duration, the Department is creating the Women's Health Services rule to place all of the substantive content from the Benefit Coverage Standards into rule.

The authority for this rule is contained in section 1905(a) of the Social Security Act, codified at 42 U.S.C. 1396d(a)(2); 42 CFR § 440.230 and in sections 25.5-1-301 through 25.5-1-303, C.R.S (2014).

MSB 14-09-16-B, Revision to the Medical Assistance Health Programs Benefits and Operations Division Rule Concerning Family Planning Services Section 8.730.4 and 8.770 Abortion Services.
Medical Assistance. This rule change will define the amount, scope, and duration of the Abortion Services benefit. The Department is removing the substantive content for Abortion Services from the Family Planning rule under 10 CCR 2505-10 § 8.730.4 to a stand-alone rule under § 8.770.

The authority for this rule is contained in section 1905(a) of the Social Security Act, codified at 42 U.S.C. 1396d(a)(2); 42 CFR § 440.230 and in sections 25.5-1-301 through 25.5-1-303, C.R.S (2014).

MSB 15-01-26-A, Revision to the Medical Assistance Home and Community Based Services for Elderly, Blind and Disabled Rule Concerning Respite Care, Section 8.492
Medical Assistance. The Medical Assistance Home and Community Based Services for Elderly, Blind, and Disabled Rule Concerning Respite Care C.C.R. 2505-10, Section 8.492 is being revised to provide clarification of policy and allow for potential rate increases.

The authority for this rule is contained in sections 25.5-6-303 through 25.5-1-307 and 25.5-1-301 through 25.5-1-303, C.R.S. (2014).

MSB 15-02-18-B, Revision to the Medical Assistance Health Information Office Rule Concerning Provider Screening Regulations, Section 8.125
Medical Assistance Health Information Office. Pursuant to the Affordable Care Act, the Department will submit a provider screening rule for implementation to comply with federal regulations. This rule applies to Medicaid and CHP+ providers.

The authority for this rule is contained in 42 CFR § 455 (b) and (e) and sections 25.5-1-301 through 25.5-1-303, C.R.S (2014).

MSB 15-02-18-C, Revision to the Medical Assistance Health Information Office Rule Concerning Enrollment Procedures, Section 8.013.1
Medical Assistance Health Information Office. Pursuant to the Affordable Care Act, the Department will submit changes to the out of state provider enrollment requirements found in 10 C.C.R. 2505-10, Section 8.013.1 to comply with federal regulations. Out of state providers are required to follow the same requirements as an in state provider.

The authority for this rule is contained in 42 CFR § 455 (b) and (e) and sections 25.5-1-301 through 25.5-1-303, C.R.S. (2014)

8.492 is being revised to provide clarification of policy and allow for potential rate increases.

The authority for this rule is contained in sections 25.5-6-303 through 25.5-1-307 and 25.5-1-301 through 25.5-1-303, C.R.S. (2014).

MSB 15-02-18-B, Revision to the Medical Assistance Health Information Office Rule Concerning Provider Screening Regulations, Section 8.125
Medical Assistance Health Information Office. Pursuant to the Affordable Care Act, the Department will submit a provider screening rule for implementation to comply with federal regulations. This rule applies to Medicaid and CHP+ providers.

The authority for this rule is contained in 42 CFR § 455 (b) and (e) and sections 25.5-1-301 through 25.5-1-303, C.R.S (2014).

MSB 15-02-18-C, Revision to the Medical Assistance Health Information Office Rule Concerning Enrollment Procedures, Section 8.013.1
Medical Assistance Health Information Office. Pursuant to the Affordable Care Act, the Department will submit changes to the out of state provider enrollment requirements found in 10 C.C.R. 2505-10, Section 8.013.1 to comply with federal regulations. Out of state providers are required to follow the same requirements as an in state provider.

The authority for this rule is contained in 42 CFR § 455 (b) and (e) and sections 25.5-1-301 through 25.5-1-303, C.R.S. (2014)

Notice of Proposed Rulemaking

Tracking number

2015-00179

Department

500,1008,2500 - Department of Human Services

Agency

2506 - Food Assistance Program (Volume 4B)

CCR number

10 CCR 2506-1

Rule title

RULE MANUAL VOLUME 4B, FOOD ASSISTANCE

Rulemaking Hearing

Date

05/08/2015

Time

10:00 AM

Location

El Paso County Department of Human Services, Nautilus Room, 1675 W. Garden of the Gods Road, Colorado Springs, Colorado 80907

Subjects and issues involved

#15-2-11-1: Transitional Food Assistance

Statutory authority

26-1-107; 26-1-109; 26-1-111; 26-2-301, C.R.S. (2014); 7 CFR 273.26 7 CFR 273.32; Pub. L. 113-79

Contact information

Name

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Title

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Title of Proposed Rule: Transitional Food Assistance

Rule-making#: 15-2-11-1

Office/Division or Program: Office of Economic Security/ Food Assistance Program

Rule Author: Amanda Dyer

Phone: 303-866-2538

E-Mail: amanda.dyer@state.co.us

STATEMENT OF BASIS AND PURPOSE

Summary of the basis and purpose for the rule or rule change. *(State what the rule says or does, explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule. How do these rule changes align with the outcomes that we are trying to achieve, such as those measured in C-Stat?)*

The purpose of the proposed rule is to implement a Food Assistance federal policy option called Transitional Benefit Alternative (TBA), which is known as Transitional Food Assistance (TFA) in Colorado. The aim of implementing the TFA policy option is to provide stable food benefits to families that receive Food Assistance and Colorado Works (CW) basic cash assistance but become ineligible for Colorado Works cash assistance during the middle of the household's certification period because the family's income makes them ineligible. Transitional Food Assistance is meant to help meet a family's nutritional needs for five (5) months as they transition into self-sufficiency.

When a household leaves Colorado Works, the household's Food Assistance allotment will be frozen for a period of five (5) months. The household's food assistance allotment will be frozen in an amount based on what the household received prior to when the family's income makes them ineligible for Colorado Works, after accounting for three (3) criteria, which are:

1. The loss of the Colorado Works cash grant;
2. Changes in household composition that result in a household member applying for food assistance in another household;
3. Updates to the Food Assistance eligibility standards that change each October 1st as a result of the annual cost-of-living adjustments.

After the Food Assistance allotment is frozen, the only changes that can affect the household's food assistance benefits are the second and third criterion listed above. If a household feels they are eligible for a higher benefit amount, they can reapply anytime during the five (5) month transitional period.

After the end of the five (5) month transitional period, the household must undergo the renewal process to have their eligibility and benefit allotment re-determined based on the household's most current circumstances. The renewal process will be the same as it is for all other households.

A new section of rules is being created within the Food Assistance rules (10 CCR 2506-1) to promulgate the requirements for Transitional Food Assistance, which are derived from the Code of Federal Regulations at 7 CFR 273.26 through 7 CFR 273.32.

Initial Review	04/03/2015	Final Adoption	05/08/2015
Proposed Effective Date	07/01/2015	EMERGENCY Adoption	N/A

[Note: "Strikethrough" indicates deletion from existing rules and "all caps" indicates addition of new rules.]

Title of Proposed Rule: Transitional Food Assistance

Rule-making#: 15-2-11-1

Office/Division or Program: Office of Economic Security/ Food Assistance Program

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STATEMENT OF BASIS AND PURPOSE (continued)

An emergency rule-making (which waives the initial Administrative Procedure Act noticing requirements) is necessary:

[ ] to comply with state/federal law and/or

[ ] to preserve public health, safety and welfare

Explain:

Authority for Rule:

State Board Authority: 26-1-107, C.R.S. (2014) - State Board to promulgate rules; 26-1-109, C.R.S. (2014) - state department rules to coordinate with federal programs; 26-1-111, C.R.S. (2014) - state department to promulgate rules for public assistance and welfare activities.

Program Authority: *(give federal and/or state citations and a summary of the language authorizing the rule-making)* 26-2-301, C.R.S. (2014) – allows the state department, with the approval of the state board, to enter into an agreement with the secretary of the United States Department of Agriculture to accept federal food assistance benefits for disbursement to qualified households in accordance with federal law

Public Law 113-79 – Federal program authority is found in the Agricultural Act of 2014 (2014 Farm Bill)

7 CFR 273.26 through 7 CFR 273.32 – Federal regulations governing the administration of the Transitional Benefits Alternative

Does the rule incorporate material by reference?	[ ]	Yes	[X]	No
Does this rule repeat language found in statute?	[ ]	Yes	[X]	No
If yes, please explain.				

The program has sent this proposed rule-making package to which stakeholders?

Aurora Community Connection outreach partner;
Hunger Free Colorado outreach partner;
Weld Food Bank outreach partner;
Care and Share outreach partner;
Colorado Legal Services;
The Legal Center for Persons with Disabilities and Older Persons;
Colorado Center on Law and Policy;
Colorado Human Services Directors Association (CHSDA);
Office of Economic Security Sub-PAC;
Food Assistance Performance Improvement Plan monthly meeting which consists of representatives from the ten largest counties; and,
CDHS Colorado Works Program, Adult Financial Program, and Office of Appeals

Title of Proposed Rule: Transitional Food Assistance

Rule-making#: 15-2-11-1

Office/Division or Program: Office of Economic Security/ Food Assistance Program

Rule Author: Amanda Dyer

Phone: 303-866-2538

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Attachments:
Regulatory Analysis
Overview of Proposed Rule
Stakeholder Comment Summary

Title of Proposed Rule: Transitional Food Assistance

Rule-making#: 15-2-11-1

Office/Division or Program: Office of Economic Security/ Food Assistance Program

Rule Author: Amanda Dyer

Phone: 303-866-2538

REGULATORY ANALYSIS

(*complete each question; answers may take more than the space provided*)

1. List of groups impacted by this rule:
Which groups of persons will benefit, bear the burdens or be adversely impacted by this rule?

Households that receive Colorado Works basic cash assistance and Food Assistance benefits that transition out of the Colorado Works program due to increased household income will benefit from this rule.

No groups of persons will be adversely impacted by this rule.

State staff will bear the burdens of administering the implementation of the new policy.

There should be limited workload impact for county departments, as this rule change does not increase the number of applications or changes that are required to be submitted by the household from what is currently required. As a result, TFA should not increase the number of applications and changes that are submitted to the county for processing.

Additionally, when a household leaves Colorado Works and the Food Assistance allotment is frozen, this will be completed by the automated system when the user is updating the household's circumstances and income. Additional steps are not required by county staff to initiate the five (5) month transitional period. After the five month transitional period, the household must undergo the renewal process. Completing the renewal process will be the same as it is for all other households and will not result in additional workload. County departments have not expressed opposition to the proposed rule change.

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?

Implementing Transitional Food Assistance (TFA) will help stabilize nutritional support for five months for families that have become over-income for eligibility in the Colorado Works (CW) program. The five months of stable food assistance benefits will soften the household's transition as the household loses CW cash assistance and stabilizes into employment. Data shows that approximately one thousand nine hundred (1,900) households leave the Colorado Works program each month due to income.

State staff will bear the burden, in the short-term, with conducting training for county staff that will monitor the new policy at the county level. Staff resources that currently deliver training will be utilized. In the long-term, more households will receive stable, nutritional support when transitioning into employment.

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.

REGULATORY ANALYSIS (continued**)**

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)*

There is no state fiscal impact in regards to the funding of the food assistance benefit. All food assistance benefits are one hundred percent (100%) federally funded.

Changes to the Colorado Benefits Management System (CBMS) will be completed with funds already available to the program areas.

Costs to provide training will be absorbed within current state positions that currently conduct training.

County Fiscal Impact

There are no county fiscal impacts associated with this rule change.

Federal Fiscal Impact

Three are no federal fiscal impacts associated with this rule change. The United States Department of Agriculture, Food Nutrition Service (USDA, FNS), has been informed of the implementation of Transitional Food Assistance, and no concerns have been raised regarding the potential increase in food assistance benefit issuance and the associated federal fiscal costs. All food assistance benefits issued to households are 100% federally funded.

Other Fiscal Impact *(such as providers, local governments, etc.)*

There are no other fiscal impacts associated with this rule change.

4. Data Description:
List and explain any data, such as studies, federal announcements, or questionnaires, which were relied upon when developing this rule?

Available data indicates that an average of one thousand nine hundred (1,900) households each month could be eligible for Transitional Food Assistance.

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.

No other alternatives to rule-making are available to provide temporary, stable nutritional support to households that are transitioning away from receiving Colorado Works cash assistance due to increased household income. The Department chose to leverage policy options available within the Food Assistance Program since all food assistance benefits are 100% federally funded.

Title of Proposed Rule: Transitional Food Assistance

Rule-making#: 15-2-11-1

Office/Division or Program: Office of Economic Security/ Food Assistance Program

Rule Author: Amanda Dyer

Phone: 303-866-2538

OVERVIEW OF PROPOSED RULE

Compare and/or contrast the content of the current regulation and the proposed change.

Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment			
4.609	None	Creates new rule Section 4.609, et seq., "Transitional Food Assistance"	__	Yes	X	No
4.609.1	None	Outlines the general eligibility guidelines for Transitional Food Assistance	__	Yes	X	No
4.609.2	None	Outlines how to act on household changes that occur in the middle of the transitional period; outlines the household's reporting requirements during the transitional period	__	Yes	X	No
4.609.3	None	In the final month of the household's certification period, the household must undergo the recertification process	__	Yes	X	No
4.609.4	None	If a household returns to Colorado Works during the middle of the transitional period, then the household must complete the recertification process for Food Assistance	__	Yes	X	No
4.609.5	None	Outlines the requirements for households that want to reapply for Food Assistance during the middle of the transitional period to see if they are eligible for a higher food assistance allotment	__	Yes	X	No

Title of Proposed Rule: Transitional Food Assistance

Rule-making#: 15-2-11-1

Office/Division or Program: Office of Economic Security/ Food Assistance Program

Rule Author: Amanda Dyer

Phone: 303-866-2538

OVERVIEW OF PROPOSED RULE (continued)

Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment
4.609.6	None	Outlines the requirements that must be contained on the notice that is given to households when they are approved for Transitional Food Assistance	__ Yes X No

Title of Proposed Rule: Transitional Food Assistance

Rule-making#: 15-2-11-1

Office/Division or Program: Office of Economic Security/ Food Assistance Program

Rule Author: Amanda Dyer

Phone: 303-866-2538

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):

Colorado Works Program area

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:

Aurora Community Connection outreach partner;
Hunger Free Colorado outreach partner;
Weld Food Bank outreach partner;
Care and Share outreach partner;
Colorado Legal Services;
The Legal Center for Persons with Disabilities and Older Persons;
Colorado Center on Law and Policy;
Colorado Human Services Directors Association (CHSDA);
Office of Economic Security Sub-PAC;
Food Assistance Performance Improvement Plan monthly meeting which consists of representatives from the ten largest counties; and,
CDHS Colorado Works Program, Adult Financial Program, and Office of Appeals

Are other State Agencies (such as Colorado Department of Health Care Policy and Financing) impacted by these rules? If so, have they been contacted and provided input on the proposed rules?

[ ] Yes [X] No

Have these rules been reviewed by the appropriate Sub-PAC Committee?

[X] Yes [ ] No

Date presented _March 5, 2015____. Were there any issues raised? ____ Yes __X__ No

If not, why.

Participants of sub-PAC did not raise concerns due to the little, to no impact, the change will have on county departments, as well as to the consensus the group expressed in agreeing with the purpose and intent of the proposed rule change.

Title of Proposed Rule: Transitional Food Assistance

Rule-making#: 15-2-11-1

Office/Division or Program: Office of Economic Security/ Food Assistance Program

Rule Author: Amanda Dyer

Phone: 303-866-2538

STAKEHOLDER COMMENT SUMMARY (continued)

Comments were received from stakeholders on the proposed rules:

☐ 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.

4.609 TRANSITIONAL FOOD ASSISTANCE

4.609.1 GENERAL ELIGIBILITY GUIDELINES

A. HOUSEHOLDS THAT RECEIVE FOOD ASSISTANCE AND COLORADO WORKS BASIC CASH ASSISTANCE THAT BECOME INELIGIBLE FOR CONTINUED RECEIPT OF COLORADO WORKS (CW) BASIC CASH ASSISTANCE AS A RESULT OF CHANGES IN HOUSEHOLD INCOME ARE ELIGIBLE TO RECEIVE TRANSITIONAL FOOD ASSISTANCE (TFA), AS PROVIDED FOR WITHIN THIS SECTION. COLORADO WORKS DIVERSION PAYMENTS ARE NOT CONSIDERED BASIC CASH ASSISTANCE. COLORADO WORKS BASIC CASH ASSISTANCE IS DEFINED IN SECTION 3.601 OF THE CODE OF COLORADO REGULATIONS (9 CCR 2503-6).

B. HOUSEHOLDS THAT ARE ELIGIBLE TO RECEIVE TRANSITIONAL FOOD ASSISTANCE WILL HAVE THE FOOD ASSISTANCE BENEFIT AMOUNT FROZEN FOR FIVE (5) MONTHS. THE HOUSEHOLD'S FOOD ASSISTANCE ALLOTMENT WILL BE FROZEN IN AN AMOUNT BASED ON WHAT THE HOUSEHOLD RECEIVED PRIOR TO WHEN THE HOUSEHOLD'S INCOME MADE THEM INELIGIBLE FOR COLORADO WORKS BASIC CASH ASSISTANCE. ONLY THE FOLLOWING THREE (3) CHANGES WILL BE ACTED UPON WHEN DETERMINING THE FOOD ASSISTANCE ALLOTMENT THAT IS TO BE FROZEN.

1. THE LOSS OF THE COLORADO WORKS CASH GRANT;

2. CHANGES IN HOUSEHOLD COMPOSITION THAT RESULT IN A HOUSEHOLD MEMBER LEAVING AND APPLYING FOR FOOD ASSISTANCE IN ANOTHER HOUSEHOLD;

3. UPDATES TO THE FOOD ASSISTANCE ELIGIBILITY STANDARDS THAT CHANGE EACH OCTOBER 1ST AS A RESULT OF THE ANNUAL COST-OF-LIVING ADJUSTMENTS (SEE SECTION 4.607).

C. WHEN THE FOOD ASSISTANCE BENEFIT AMOUNT IS FROZEN, THE HOUSEHOLD'S EXISTING CERTIFICATION PERIOD SHALL END, AND THE HOUSEHOLD SHALL BE ASSIGNED A NEW FIVE (5) MONTH CERTIFICATION PERIOD. THE RECERTIFICATION REQUIREMENTS LOCATED WITHIN SECTION 4.209 THAT WOULD NORMALLY APPLY WHEN THE HOUSEHOLD'S CERTIFICATION PERIOD ENDS MUST BE POSTPONED UNTIL THE END OF THE FIVE (5) MONTH TRANSITIONAL CERTIFICATION PERIOD.

D. HOUSEHOLDS WHO ARE DENIED OR NOT ELIGIBLE FOR TRANSITIONAL FOOD ASSISTANCE MUST HAVE CONTINUED ELIGIBILITY AND BENEFIT LEVEL DETERMINED IN ACCORDANCE WITH SECTION 4.604.

E. THE FOLLOWING HOUSEHOLDS ARE NOT ELIGIBLE TO RECEIVE TRANSITIONAL FOOD ASSISTANCE:

1. HOUSEHOLD LEAVING THE COLORADO WORKS PROGRAM DUE TO A CW SANCTION; OR,

2. HOUSEHOLDS THAT ARE INELIGIBLE TO RECEIVE FOOD ASSISTANCE BECAUSE ALL INDIVIDUALS IN THE HOUSEHOLD MEET ONE OF THE FOLLOWING CRITERIA:

a. DISQUALIFIED FOR INTENTIONAL PROGRAM VIOLATION IN ACCORDANCE WITH SECTION 4.803

b. INELIGIBLE FOR FAILURE TO COMPLY WITH A WORK REQUIREMENT IN ACCORDANCE WITH SECTION 4.310

c. INELIGIBLE STUDENT IN ACCORDANCE WITH 4.306

d. INELIGIBLE NON-CITIZEN IN ACCORDANCE WITH SECTION 4.305.1

e. DISQUALIFIED FOR FAILING TO PROVIDE INFORMATION NECESSARY FOR MAKING A DETERMINATION OF ELIGIBILITY IN ACCORDANCE WITH SECTION 4.500 OR FOR COMPLETING ANY SUBSEQUENT REVIEW OF ITS ELIGIBILITY IN ACCORDANCE WITH SECTION 4.209 AND 4.210

f. DISQUALIFIED FOR RECEIVING FOOD ASSISTANCE BENEFITS IN MORE THAN ONE HOUSEHOLD IN THE SAME MONTH IN ACCORDANCE WITH SECTION 4.803.3

g. DISQUALIFIED FOR BEING A FLEEING FELON IN ACCORDANCE WITH SECTION 4.304.4

h. ABLE-BODIED ADULTS WITHOUT DEPENDENTS WHO FAIL TO COMPLY WITH THE REQUIREMENTS OF SECTION 4.310

4.609.2 HOUSEHOLD CHANGES DURING THE TRANSITIONAL PERIOD

A. THE HOUSEHOLD IS NOT REQUIRED TO REPORT ANY CHANGES DURING THE FIVE (5) MONTH TRANSITIONAL PERIOD, INCLUDING CHANGES THAT PUT THE HOUSEHOLD OVER ONE HUNDRED THIRTY PERCENT (130%) OF THE FEDERAL POVERTY LEVEL (FPL).

B. HOUSEHOLD CHANGES THAT OCCUR IN THE MIDDLE OF THE TRANSITIONAL PERIOD, INCLUDING INFORMATION CONSIDERED VERIFIED UPON RECEIPT AS OUTLINED IN SECTION 4.504.6, E, SHALL NOT BE ACTED UPON, WITH THE FOLLOWING EXCEPTIONS:

1. CHANGES IN HOUSEHOLD COMPOSITION THAT RESULT IN A HOUSEHOLD MEMBER APPLYING FOR FOOD ASSISTANCE IN ANOTHER HOUSEHOLD. THE LOCAL OFFICE MUST REMOVE ANY INCOME, RESOURCES AND DEDUCTIBLE EXPENSES CLEARLY ATTRIBUTABLE TO THE DEPARTING MEMBER.

2. UPDATES TO THE FOOD ASSISTANCE ELIGIBILITY STANDARDS THAT CHANGE EACH OCTOBER 1ST AS A RESULT OF THE ANNUAL COST-OF-LIVING ADJUSTMENTS. SEE SECTION 4.607.

4.609.3 CLOSING THE TRANSITIONAL PERIOD

IN THE FINAL MONTH OF THE TRANSITIONAL PERIOD, THE HOUSEHOLD MUST UNDERGO THE RECERTIFICATION PROCESS TO DETERMINE THE HOUSEHOLD'S CONTINUED ELIGIBILITY AND BENEFIT AMOUNT (SEE SECTION 4.209).

4.609.4 HOUSEHOLDS WHO RETURN TO COLORADO WORKS DURING THE TRANSITIONAL PERIOD

IF A HOUSEHOLD RECEIVING TRANSITIONAL FOOD ASSISTANCE RETURNS TO COLORADO WORKS DURING THE TRANSITIONAL PERIOD, THE LOCAL OFFICE SHALL COMPLETE THE RECERTIFICATION PROCESS FOR FOOD ASSISTANCE TO DETERMINE THE HOUSEHOLD'S CONTINUED ELIGIBILITY AND BENEFIT AMOUNT. SEE SECTION 4.209. IF THE HOUSEHOLD REMAINS ELIGIBLE FOR FOOD ASSISTANCE, THE HOUSEHOLD SHALL BE ASSIGNED A NEW CERTIFICATION PERIOD IN ACCORDANCE WITH SECTION 4.208.1.

4.609.5 HOUSEHOLDS WHO REAPPLY FOR FOOD ASSISTANCE DURING THE TRANSITIONAL PERIOD

A. AT ANY TIME DURING THE TRANSITIONAL PERIOD, THE HOUSEHOLD MAY SUBMIT AN APPLICATION FOR RECERTIFICATION TO DETERMINE IF THE HOUSEHOLD IS ELIGIBLE FOR A HIGHER FOOD ASSISTANCE ALLOTMENT. IN DETERMINING IF THE HOUSEHOLD IS ELIGIBLE FOR A HIGHER ALLOTMENT, ALL CHANGES IN HOUSEHOLD CIRCUMSTANCES SHALL BE ACTED UPON.

1. IF THE HOUSEHOLD IS DETERMINED ELIGIBLE FOR A BENEFIT LOWER THAN ITS TRANSITIONAL BENEFIT, THE LOCAL OFFICE SHALL ENCOURAGE THE HOUSEHOLD TO WITHDRAW ITS APPLICATION FOR RECERTIFICATION AND CONTINUE TO RECEIVE TRANSITIONAL BENEFITS. IF THE HOUSEHOLD CHOOSES NOT TO WITHDRAW ITS APPLICATION, THE LOCAL OFFICE SHALL DENY THE APPLICATION AND ALLOW THE TRANSITIONAL PERIOD TO RUN ITS COURSE.

2. IF THE HOUSEHOLD IS ELIGIBLE FOR BENEFITS HIGHER THAN ITS TRANSITIONAL BENEFIT AMOUNT, THE INCREASED BENEFITS SHALL TAKE EFFECT WITH THE FIRST DAY OF THE MONTH FOLLOWING THE MONTH IN WHICH THE REAPPLICATION WAS RECEIVED. THE TRANSITIONAL CERTIFICATION PERIOD SHALL BE ENDED, AND THE HOUSEHOLD SHALL BE ASSIGNED A NEW CERTIFICATION PERIOD THAT BEGINS WITH THE FIRST DAY OF THE MONTH FOLLOWING THE MONTH IN WHICH THE HOUSEHOLD SUBMITTED THE APPLICATION FOR RECERTIFICATION. THE NEW CERTIFICATION PERIOD SHALL BE ASSIGNED IN ACCORDANCE WITH SECTION 4.208.1

B. IF A HOUSEHOLD APPLIES FOR RECERTIFICATION DURING ITS TRANSITIONAL PERIOD, THE LOCAL OFFICE SHALL OBSERVE THE FOLLOWING PROCEDURES:

1. THE LOCAL OFFICE MUST SCHEDULE AND COMPLETE AN INTERVIEW IN ACCORDANCE WITH 4.204 AND 4.209, D;

2. THE LOCAL OFFICE MUST PROVIDE THE HOUSEHOLD WITH A NOTICE OF REQUIRED VERIFICATION IN ACCORDANCE WITH SECTION 4.500, C, AND PROVIDE THE HOUSEHOLD A MINIMUM OF TEN (10) CALENDAR DAYS TO PROVIDE THE REQUIRED VERIFICATION IN ACCORDANCE WITH SECTION 4.209.1, D, 3.

3. HOUSEHOLDS SHALL BE NOTIFIED OF THEIR ELIGIBILITY OR INELIGIBILITY AS SOON AS POSSIBLE, BUT NO LATER THAN THIRTY (30) CALENDAR DAYS FOLLOWING THE DATE THE APPLICATION WAS FILED.

a. IF THE LOCAL OFFICE DOES NOT DETERMINE A HOUSEHOLD'S ELIGIBILITY WITHIN THIRTY (30) CALENDAR DAYS FOLLOWING THE APPLICATION DATE, THEN THE LOCAL OFFICE SHALL CONTINUE PROCESSING THE APPLICATION WHILE CONTINUING THE HOUSEHOLD'S TRANSITIONAL BENEFITS. SEE SECTION 4.205.3 FOR DELAYS IN PROCESSING.

b. IF THE APPLICATION PROCESS CANNOT BE COMPLETED BECAUSE THE HOUSEHOLD FAILED TO TAKE A REQUIRED ACTION, THE LOCAL OFFICE MAY DENY THE APPLICATION AT THAT TIME OR AT THE END OF THE THIRTY (30) CALENDAR DAYS.

c. IF THE HOUSEHOLD IS DETERMINED TO BE INELIGIBLE, THE LOCAL OFFICE SHALL DENY THE HOUSEHOLD'S APPLICATION FOR RECERTIFICATION AND CONTINUE THE HOUSEHOLD'S TRANSITIONAL BENEFITS TO THE END OF THE TRANSITIONAL BENEFIT PERIOD, AT

WHICH TIME THE LOCAL OFFICE SHALL RECERTIFY THE HOUSEHOLD IN ACCORDANCE WITH SECTION 4.209.

C. APPLICATIONS FOR RECERTIFICATION SUBMITTED IN THE FIFTH MONTH OF THE TRANSITIONAL PERIOD MUST BE PROCESSED IN ACCORDANCE WITH RECERTIFICATION PROCEDURES CONTAINED WITHIN SECTION 4.209.

4.609.6 TRANSITIONAL NOTICE REQUIREMENTS

WHEN A HOUSEHOLD IS APPROVED FOR TRANSITIONAL FOOD ASSISTANCE, THE HOUSEHOLD SHALL BE NOTIFIED OF THE FOLLOWING INFORMATION:

A. A STATEMENT INFORMING THE HOUSEHOLD THAT IT WILL BE RECEIVING TRANSITIONAL BENEFITS AND THE LENGTH OF ITS TRANSITIONAL PERIOD; AND,

B. A STATEMENT INFORMING THE HOUSEHOLD THAT IT HAS THE OPTION OF APPLYING FOR RECERTIFICATION AT ANY TIME DURING THE TRANSITIONAL PERIOD. THE HOUSEHOLD MUST BE INFORMED THAT IF IT DOES NOT APPLY FOR RECERTIFICATION DURING THE TRANSITIONAL PERIOD, AT THE END OF THE TRANSITIONAL PERIOD, THE HOUSEHOLD MUST UNDERGO THE RECERTIFICATION PROCESS; AND,

C. A STATEMENT THAT IF THE HOUSEHOLD RETURNS TO COLORADO WORKS DURING ITS TRANSITIONAL BENEFIT PERIOD, THE HOUSEHOLD MUST UNDERGO THE RECERTIFICATION PROCESS TO DETERMINE THE HOUSEHOLD'S CONTINUED ELIGIBILITY AND FOOD ASSISTANCE ALLOTMENT FOR FOOD ASSISTANCE; AND,

D. A STATEMENT EXPLAINING ANY CHANGES IN THE HOUSEHOLD'S BENEFIT AMOUNT DUE TO THE LOSS OF COLORADO WORKS BASIC CASH ASSISTANCE OR DUE TO CHANGES OUTLINED IN SECTION 4.609.1, B AND C; AND,

E. A STATEMENT INFORMING THE HOUSEHOLD THAT IT IS NOT REQUIRED TO REPORT AND PROVIDE VERIFICATION FOR ANY CHANGES IN HOUSEHOLD CIRCUMSTANCES UNTIL THE HOUSEHOLD COMPLETES THE RECERTIFICATION PROCESS AS REQUIRED BY SECTION 4.609.3; AND,

F. A STATEMENT INFORMING THE HOUSEHOLD THAT THE LOCAL OFFICE WILL NOT ACT ON CHANGES THAT THE HOUSEHOLD REPORTS DURING THE TRANSITIONAL PERIOD PRIOR TO THE DEADLINE SPECIFIED IN SECTION 4.609.3, E, AND THAT IF THE HOUSEHOLD EXPERIENCES A DECREASE IN INCOME OR AN INCREASE IN EXPENSES OR HOUSEHOLD SIZE PRIOR TO THAT DEADLINE, THE HOUSEHOLD SHOULD APPLY FOR RECERTIFICATION.

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Notice of Proposed Rulemaking

Tracking number

2015-00178

Department

500,1008,2500 - Department of Human Services

Agency

2509 - Social Services Rules (Staff Manual Volume 7; Child Welfare, Child Care Facilities)

CCR number

12 CCR 2509-10

Rule title

EARLY INTERVENTION PROGRAM

Rulemaking Hearing

Date

05/08/2015

Time

10:00 AM

Location

El Paso County Department of Human Services, Nautilus Room, 1675 W. Garden of the Gods Road, Colorado Springs, Colorado 80907

Subjects and issues involved

#15-1-14-1: Revisions of Early Intervention Program Rules

Statutory authority

26-1-107; 26-1-109; 26-1-111; 27-10.5-703(2), (3)(b), C.R.S. (2014); 34 CFR 303 (9/28/2011 as amended)

Contact information

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Title

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Title of Proposed Rule: Revisions of Early Intervention Program Rules

Rule-making#: 15-1-14-1

Office/Division or Program: Office of Early Childhood/ Early Intervention Program

Rule Author: Ardith Ferguson

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STATEMENT OF BASIS AND PURPOSE

Summary of the basis and purpose for the rule or rule change. *(State what the rule says or does, explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule. How do these rule changes align with the outcomes that we are trying to achieve, such as those measured in C-Stat?)*

Revisions are needed to make several content and technical changes to support local early intervention programs to implement evidence-based practices, conduct family assessments appropriately, and document services on Individualized Family Service Plans in a standard way statewide. It is necessary to make these changes in order to ensure that the State is in compliance with federal regulations, continues to make progress in meeting C-Stat measures and implements high quality services statewide that have a positive impact on child and family outcomes.

A minor technical change is made in "Data Collection" Section 7.914 to rename the Early Intervention (EI) data system.

Content revisions are made to "Definitions" Section 7.901, "Child Identification" Section 7.920, and "Individualized Family Service Plan" Section 7.940 in order to meet statutory requirements to design early intervention services in a consistent manner, to monitor and evaluate services, facilitate family assessment responsibilities, and delete one requirement in "Service Coordination" Section 7.930 in order to follow the statutory requirement of a coordinated system of payment and reduce the burden on Community Centered Boards (CCBs).

Rule changes are necessary in order to enforce the requirements statewide. No other action will provide the necessary and effective level of authority.

An emergency rule-making (which waives the initial Administrative Procedure Act noticing requirements) is necessary:

☐ to comply with state/federal law and/or

☐ to preserve public health, safety and welfare

Explain:

Initial Review	04/03/2015	Final Adoption	05/08/2015
Proposed Effective Date	07/01/2015	EMERGENCY Adoption	N/A

[Note: "Strikethrough" indicates deletion from existing rules and "all caps" indicates addition of new rules.]

Title of Proposed Rule: Revisions of Early Intervention Program Rules

Rule-making#: 15-1-14-1

Office/Division or Program: Office of Early Childhood/ Early Intervention Program

Rule Author: Ardith Ferguson

Phone: 303-866-5468

E-Mail: ardith.ferguson@state.co.us

STATEMENT OF BASIS AND PURPOSE (continued)

Authority for Rule:

State Board Authority: 26-1-107, C.R.S. (2014) – State Board to promulgate rules; 26-1-109, C.R.S. (2014) – State Board rules to coordinate with federal programs; 26-1-111, C.R.S. (2014) – State Board to promulgate rules for public assistance and welfare activities.

Program Authority:
27-10.5-703(2), (3)(b), C.R.S. (2014) – department shall develop and promulgate rules in consultation with the state interagency coordinating council;
34 C.F.R. Part 303 – Federal Part C of IDEA, Early Intervention Program for Infants and Toddlers with Disabilities, published September 28, 2011, as amended.

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.

Some of the definitions incorporate federal regulation references.

The program has sent this proposed rule-making package to which stakeholders?

ARCs and other disability advocacy organizations
Office of Special Education Programs
Colorado Department of Education
Division of Child Welfare
Community Centered Boards (CCBs)
Alliance/OEC EI Task Force
Child Find teams in Administrative Units
Early intervention providers
Parent to Parent
PEAK Parent Center
Colorado School for the Deaf and Blind
University of Colorado Denver and University of Northern Colorado Special Education Faculty
Colorado Interagency Coordinating Council (CICC) members

Attachments:
Regulatory Analysis
Overview of Proposed Rule
Stakeholder Comment Summary

Title of Proposed Rule: Revisions of Early Intervention Program Rules

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REGULATORY ANALYSIS

(*complete each question; answers may take more than the space provided*)

1. List of groups impacted by this rule:
Which groups of persons will benefit, bear the burdens or be adversely impacted by this rule?

Beneficiaries
Eligible infants, toddlers, and their families
Advocates for persons with disabilities
Community Centered Boards (CCBs)
Early Intervention Service providers
Colorado Interagency Coordinating Council (CICC)
Administrative Unit Child Find teams

Bear the Burden
Community Centered Boards

Adversely Affected
None

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?

One of the changes in Section 7.914 is a simple technical change to rename the early intervention data system and provides consistent language that the state staff and local programs use.

Three rules, Sections 7.901, 7.920, and 7.940, have changes that:
- Add clarifying language to address recent issues with local programs;
- Provide guidance that will result in the use of evidence-based practices by early intervention providers; and,
- Establish common terminology by which the State staff can ensure statewide consistency.

One change in Section 7.920 adds a new requirement necessary to meet federal assurances. This is necessary to be in compliance with the requirements of the federal Part C grant.

One change in Section 7.930 removes a requirement from the required activities conducted by service coordinators within the twenty (20) Community Centered Boards. The former rule was more stringent than what is federally required and was having a negative impact on the use of available funding.

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.

REGULATORY ANALYSIS (continued)

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)*

There could be a fiscal impact if the State is found to be out of compliance with the federal Part C of IDEA regulations.

County Fiscal Impact

N/A

Federal Fiscal Impact

N/A

Other Fiscal Impact *(such as providers, local governments, etc.)*

Community Centered Boards may need to purchase family assessment tools, depending which tool their community prefers to use. Some of the choices offered by the State do not incur additional costs.

4. Data Description:
List and explain any data, such as studies, federal announcements, or questionnaires, which were relied upon when developing this rule?

- Communication with the federal Office of Special Education Programs about the new requirements for Results-Driven Accountability and State Systemic Improvement Plan measures.
- Communication with the Colorado Department of Education on the requirements for family assessment.
- Results of drill down activities through C-Stat that highlight the need for standard definitions, and methods and models of service delivery.
- Data compiled from Insurance Exemption forms that indicate the barrier created by one of the service coordination rule requirements that is stricter than federal requirements.

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.

The level of authority that is needed to implement required policies and evidence-based practices warrants the promulgation of the rule revisions.

Title of Proposed Rule: Revisions of Early Intervention Program Rules

Rule-making#: 15-1-14-1

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OVERVIEW OF PROPOSED RULE

Compare and/or contrast the content of the current regulation and the proposed change.

Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment			
7.900	Federal Statute	Added federal reference citation for 42 USC 11431	__	Yes	X	No
7.901	Definitions	Revised definitions to provide necessary guidance to local programs and ensure statewide consistency	_X_	Yes	_	No
7.914, B, 1-3 and C, 2	"Database"	Revised proposed name to "data system"	__	Yes	X	No
7.920, E, 1, b	Evaluation and assessment	Revised proposed language for clarification that the evaluation is multidisciplinary and an assessment is for an eligible child	_X_	Yes	_	No
7.920, E, 8	Assessment	Revised proposed language to clarify that assessment is for an eligible child	_X_	Yes	_	No
7.920, E, 9, c, 1 - 2	Family assessment	Added that one of the state-approved family assessment tools shall be used	_X_	Yes	_	No
7.930, B, 9	Reasonable choice of providers	Revised to remove the requirement that a parent has to be given choice of providers	_X_	Yes	_	No
7.940, E, 3	Content of an Individualized Family Service Plan	Revised the word "persons" to read "A person(s)" to be consistent with regulations	_X_	Yes	_	No
7.940, I, 1 - 2	Content of an Individualized Family Service Plan	Revised required content to include standard way to document model and method types	X	Yes	_	No

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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):

Lorendia Schmidt, CDHS, Division of Child Welfare;
Priscilla Irvine, Office of Special Education Programs;
Penny Dell and Heidi McCaslin, Colorado Department of Education;
Keisha Davis, Envision (a CCB), EI Program Director;
David Ervin, The Resource Exchange (TRE) (a CCB), Executive Director;
Colleen Head, TRE (CCB), EI Program Director;
Alliance/Office of Early Childhood Early Intervention Task Force members;
Fiscal Cohort Advisory Team members;
Arlene Stredler Brown, Speech Language Pathologist, Co-Investigator; TACIT Study; University of Colorado;
Diane Behl, National Center for Hearing Assessment and Management;
Colorado Interagency Coordinating Council (CICC);
Elizabeth Steed, University of Colorado Denver;
Rashida Banerjee, University of Northern Colorado;
Lisa Thomason, Colorado Division of Early Childhood, Board President;
Dayle Axman, Department of Regulatory Agencies, Division of Insurance

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:

ARCs and other disability advocacy organizations;
Colorado Department of Education;
Division of Child Welfare;
Colorado School for the Deaf and Blind;
Community Centered Boards (CCBs);
Alliance/OEC EI Task Force;
Early intervention providers;
Colorado Interagency Coordinating Council;
Parent to Parent;
PEAK Parent Center;
Child Find teams in Administrative Units;
University of Colorado Denver and University of Northern Colorado Special Education Faculty;
Colorado Interagency Coordinating Council; and,
Colorado Chapter of the Division of Early Childhood

Title of Proposed Rule: Revisions of Early Intervention Program Rules

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STAKEHOLDER COMMENT SUMMARY (continued)

Three public hearings were held: February 19, 3:00-4:30, Lakewood; March 12, 2:30-4:00, Canon City; and March 16, 3:30-5:00, Evans. A webinar for the CCBs and the CICC members was also held on March 11 from 11:00-12:00 to review the proposed changes.

Are other State Agencies (such as Colorado Department of Health Care Policy and Financing) impacted by these rules? If so, have they been contacted and provided input on the proposed rules?

[X] Yes [ ] No

The Colorado Department of Education provided input on the development of the changes in 7.920. Administrative Units will not be impacted by the family assessment changes unless they engage in the option to conduct the family assessment through an interagency agreement with the CCBs.

The Colorado Department of Health Care Policy and Financing and the Colorado Department of Regulatory Agencies, Division of Insurance, have reviewed the definition of tele-intervention and recommended no changes.

Have these rules been reviewed by the appropriate Sub-PAC Committee?

[ ] Yes [X] No

Date presented _____. Were there any issues raised? ____ Yes ____ No

If not, why. The Early Childhood Sub-PAC only addresses those policies that affect counties, which these do not.

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 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.

7.901 – Definitions Section

- Keisha Davis, Envision: She is thankful for the addition of more clearly defining types of service and asked a few clarifying questions. For the definition of "tele-intervention" she recommended adding the word "secure" before the words "interactive videoconferencing". Response: That change has been made.
- Lorendia Schmidt, Division of Child Welfare Services: She recommended that the definition of abuse and neglect duplicates what DCWS has in its rules. She recommended making a reference to statute so that there is consistency of definitions across Offices. Her suggestion was incorporated into the rule definition. Response: Her suggestion was incorporated into the rule definition.

STAKEHOLDER COMMENT SUMMARY (continued)

- Arlene Stredler-Brown, University of Colorado Boulder, and Diane Behr, Utah State University, offered recommended language for the definition of tele-intervention. Response: The recommendations were incorporated into the rule.
- David Ervin and Colleen Head, TRE: They provided feedback on several definitions. Response: (see attached summary).
- Dayle Axman, Department of Regulatory Agencies, Division of Insurance: She recommend switching to "telehealth" as she stated that is a more inclusive term for the types of services that could be provided. Response: The recommendations were incorporated into the rule.
- Developmental Disabilities Resource Center (CCB) staff during public hearing: They provided feedback on several definitions. Response: (see attached summary).

7.920, E – Child Identification

- Heidi McCaslin, Colorado Department of Education: Overall, her feedback is that the family assessment is fine but worries about those situations when a school district Child Find team is conducting the family assessment for the CCB, that CDE has no way to monitor that approved family assessment tools are used. She is okay though with that being a requirement for CCBs. Response: No change proposed.

7.930, B, 9 – Service Coordination

- Priscilla Irvine, Office of Special Education Programs confirmed that there is no federal regulation that requires parental choice for providers of early intervention services and that allowing so actually makes it difficult to implement a coordinated system of payment and assure the payor of last resort requirement for Part C funds. Response: No change proposed.
- Developmental Disabilities Resource Center (CCB) staff during public hearing: They provided feedback in support of striking the requirement of parental choice for providers. Response: No action needed.

7.940, E, 3. – Individualized Family Service Plan

- Heidi, McCaslin, Colorado Department of Education: Recommended that the word “persons” be made singular and plural to account for those situations where there is only one person representing the evaluation team which is allowable under the federal Part C regulations. Response: The recommendation was incorporated into the rule.
- John Miles, public citizen: Recommended that on Rule 7.940, I, 1, d, be added to match the wording in the definitions for model. Response: The recommendation was incorporated in the rule.

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David Ervin, Executive Director, The Resource Exchange
Questions Received 1/13/15; and Responses sent via email 1/14/15

1. The Child Abuse and Neglect section change. I'm unfamiliar with the new statutory reference, but I assume it comports with other rules-based definitions of abuse and neglect, and is expansive enough to include exploitation, mistreatment and virtually anything else that would put a child at risk at the hands of a person of trust, adult or system of care. I ask because the definitions that are being struck came out *of the DDS rules, and take a fairly conservative run at defining abuse and neglect.*

Response: The references were given to me by Lorendia Schmidt from the Division of Child Welfare. She said that they decided to reference the statute and recommended we be consistent.

2. On page 2, the Children Experiencing Homelessness—the definition has three parts: children who meet this criteria must lack a fixed, regular and "adequate" nighttime residence. Does "adequate" have a basis either in rule or statute? It's a very subjective term otherwise.

Response: The wording is directly from the McKinney-Vento Act. This definition was originally worded the same way but used the term "homeless children". In our effort to use people-first language, we changed the term to "children experiencing homelessness" and moved the definition up to be alphabetically ordered. To date, we have not had anyone question the meaning of "adequate". If that did occur we would refer back to the very detailed definition in the Act.

3. On page 4, Evidence Based Practice makes reference to "research that documents effectiveness." Not every method used has research that, either in enough volume or using adequate data sets, demonstrates effectiveness. For example, qualitative research, which is frequently built on anecdotal or narrative evidence, is far different to applied or quantitative research, which relies heavily on massive datasets and statistical analyses to reach levels of "significance."

Response: Thank you. I have revised the wording as follows:

"EVIDENCE-BASED PRACTICES" MEAN INTERVENTION STRATEGIES AND SUPPORTS THAT CONSIDER THE SITUATION, GOALS, AND VALUES OF THE CHILD AND FAMILY AND HAVE QUANTITATIVE AND/OR QUALITATIVE RESEARCH THAT DOCUMENTS EFFECTIVENESS."

4. On page 5, the Models…are these the only three that the State formally recognizes? Are there others that either exist or might emerge in the future that would be considered? If so, it may be useful to add a letter D to the list that says something like "any other model that would be approved by the State."

Response: Thank you for that feedback. I have added "OR, D. OTHER MODEL APPROVED BY THE STATE." This will allow the State to review and approve another model that may emerge as the most appropriate way to deliver services for an individual child and their unique circumstances.

5. On page 9, Tele-Intervention is introduced—excellent! I wonder if there isn't a reference in statute that allows this that should be shown in this section. I seem to recall a bill from a couple years ago, for example, that formally allowed—for insurance reimbursement purposes, among many—tele-mental health. I don't want EI providers to encounter difficulties in billing for tele-intervention, which may be allowed by way of Rule but not allowed by third party payers, State Medicaid Plan, etc.

Response: Please see the attached summary of the various statutory references. The primary definition that is closely related is for "tele-health" under Section 12-36-102.5, C.R.S. I've also attached the information from HCPF's website. We know that they have an approved code for billing tele-therapy and providers are successful in billing for services. Regarding the Trust fund coverage, I will discuss this with Dayle Axman to ensure that Section 10-16-123, C.R.S., that has a population density requirement does not affect the use of the Trust fund to cover services in this manner.

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Rule-making#: 15-1-14-1

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Rule Author: Ardith Ferguson

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Public Hearing
February 19, 2015
Developmental Disabilities Resource Center (DDRC)

Comments made by DDRC staff: Susan Johnson, Gena Colbert, Rob DeHerrera, Roanna Davis, Micki Klawes; and Responses discussed via phone on 3/11/15 and sent via email on 3/13/15 by Ardith Ferguson, EI Colorado Program Director

1. P. 5, Evidence-based practices – DDRC staff prefer the revised version that was shared during the public hearing.

Response: The revised version of the definition will be incorporated into the rules packet.

2. P. 6, Definition of Methods – there are concerns about having "teaming" only tied to the primary service provider (PSP) model. Since none of the CCBs in the state are actually using that model to fidelity, it essentially removes the ability for a CCB to bill for teaming and is discouraging to those CCBs who are working towards a PSP model, but aren't there yet. DDRC staff would prefer to have a "Transdisciplinary Team" as a model and include that as being approved to be able to bill for teaming. This will allow time for programs to develop into using the PSP model to fidelity.

Response: The definition of "teaming" as a billable method has been revised to be used not only with the PSP model. This change will allow those programs that are working together across disciplines to support the work with individual children while expanding their skills to eventually transition from a multidisciplinary model into a PSP model. The term "transdisciplinary team" is not going to be added as that is inherent in the PSP model.

3. P. 6 – the comment was that the "Method and Model" aren't typically known at the time of the writing of the initial IFSP.

Response: "Method" has always been a required component of an IFSP and should be noted before a family gives consent to any services. The "model" component is new and should also be known at the time of the completion of the initial IFSP so that families are informed of how their services will be delivered.

4. P. 22 – removal of #9, parent choice – DDRC staff believes that this is a good thing and that it leads into how the PSP model works.

Response: No change needed.

5. P. 26 – IFSP – in order to be consistent with page 6, add Transdisciplinary Team as a Model. It was also suggested that there be multiple boxes available for CCBs to check when it comes to Method, as the method won't always be known when the IFSP is developed, and in certain cases, there may be multiple models being used (individual, teaming, co-visit). It was also requested that when this is finalized, the State produce examples of how to document Method and Model, using different scenarios.

Response: The recommendation is not being considered as a rule change because the PSP model is inherently transdisciplinary and therefore another definition is not necessary. As far as checking multiple methods, the method has always been required as a required component of the IFSP and is required to be noted before a family provides consent. If more than one service is noted on an IFSP, they may have different methods.

7.900 EARLY INTERVENTION PROGRAM [Rev. eff. 7/1/14]

The Early Intervention Program shall provide services for an infant or toddler, birth through two (2) years of age, with a developmental delay or disability and his or her family through a statewide, comprehensive, coordinated, multidisciplinary, interagency system of Early Intervention Services.

A. The Early Intervention Program shall provide services consistent with the following requirements:

1. The Colorado Revised Statutes (C.R.S.) Title 27, Article 10.5, Sections 101 and 701, which are incorporated by reference; no later amendments or editions are included. The documents may be examined at any state publications depository library and at the Colorado Department of Human Services, Office of Early Childhood, Division of Community and Family Support, 1575 Sherman Street, Denver, Colorado 80203.

2. The Colorado Revised Statutes (C.R.S.) Title 10, Article 16, Sections 102 (28.5) and 104(1.3), which are incorporated by reference; no later amendments or editions are included. The documents may be examined at any state publications depository library and at the Colorado Department of Human Services, Office of Early Childhood, Division of Community and Family Support, 1575 Sherman Street, Denver, Colorado 80203.

3. The Colorado Revised Statutes (C.R.S.) Title 22, Article 20, Sections 103 and 118, which are incorporated by reference; no later amendments or editions are included. The documents may be examined at any state publications depository library and at the Colorado Department of Human Services, Office of Early Childhood, Division of Community and Family Support, 1575 Sherman Street, Denver, Colorado 80203.

4. The United States Code (U.S.C.), Title 20, Parts 1232, 1401, 1419, 1431-1441 (the federal Individuals with Disabilities Education Act of 2004), U.S.C. Title 42, Part 1320, as amended (the Public Health Service Act), ~~and~~ Title 42, Part 9801 (the Head Start Act), AND TITLE 42, PART 11431, AS AMENDED (MCKINNEY-VENTO HOMELESS ASSISTANCE ACT) published by Office of the Law Revision Counsel of the U.S. House of Representatives, which are incorporated by reference; no later amendments or editions are included. These documents are for sale by the Superintendent of Documents, U.S Government Printing Office, Washington, D.C., 20402 and can be found at www.gpoaccess.gov/uscode. The documents may also be examined at any state publications depository library and at the Colorado Department of Human Services, Office of Early Childhood, Division of Community and Family Support, 1575 Sherman Street, Denver, Colorado 80203.

5. The Code of Federal Regulations (C.F.R.), Title 34, Part 303 published by the Office of the Federal Register, National Archives and Records Administration, which is incorporated by reference; no later amendments or editions are included. The document is for sale by the Superintendent of Documents, U.S Government Printing Office, Washington, D.C., 20402 and can be found on the Government Printing Office website at www.gpoaccess.gov/nara. The document may also be examined at any state publications depository library and at the Colorado Department of Human Services, Office of Early Childhood, Division of Community and Family Support, 1575 Sherman Street, Denver, Colorado 80203.

6. The General Education Provisions Act (GEPA), Section 427 of the Improving America's Schools Act of 1994 that applies to applicants for new grant awards under the federal Department of Education which is incorporated by reference; no later amendments or editions are included. The document is for sale by the Superintendent of Documents, U.S Government Printing Office, Washington, D.C., 20402, and can be found on the

Government Printing Office website at www.gpoaccess.gov/nara. The document may also be examined at any state publications depository library and at the Colorado Department of Human Services, Office of Early Childhood, Division of Community and Family Support, 1575 Sherman Street, Denver, Colorado 80203.

B. The Early Intervention Program shall design services to meet the developmental needs of an eligible infant or toddler and the needs of his or her family related to functional outcomes to enhance the child's development in the domains of adaptive development, cognitive development, communication development, physical development (including vision and hearing), and, social emotional development.

C. Based on the unique needs of each child, Early Intervention Services shall be delivered through a combination of individualized intervention methods and strategies designed to:

1. Enhance the capacity of a parent or other caregiver to support a child's well-being, development, and learning; and,

2. Support full participation of a child in his or her community; and,

3. Meet a child's developmental needs within the context of the concerns and priorities of his or her family.

D. All available resources that pay for Early Intervention Services shall be Identified and coordinated, including, but not limited to, federal, state, local, and private sources.

E. A system for the resolution of intra- and interagency disputes shall be used.

F. Formal interagency operating agreements, as needed, shall be developed to facilitate the development and implementation of a statewide, comprehensive, coordinated, multidisciplinary, interagency system of Early Intervention Services.

G. A statewide system for compiling data on the Early Intervention Services shall be used to comply with state and federal reporting requirements.

7.901 EARLY INTERVENTION PROGRAM DEFINITIONS [Rev. eff. 7/1/13]

As used in these rules and regulations, unless the context requires otherwise:

"Abuse OR CHILD ABUSE AND/OR NEGLECT" IS DEFINED PURSUANT TO SECTIONS 19-1-102, C.R.S. and 19-1-103(1), C.R.S. ~~includes, but is not limited to:~~

~~A. "Physical abuse", which means the infliction of physical pain, injury, or the imposition of unreasonable confinement or restraint on a person. This includes directing a person to physically abuse another person receiving services.~~

~~B. "Sexual abuse", which means subjecting a person to nonconsensual sexual conduct or contact classified as a crime under the "Colorado Criminal Code", Title 18, C.R.S. This may include, but is not limited to, such actions as sexual assault, rape, fondling, or sexual exploitation. Additionally, any sexual interaction between employees or contractors and persons receiving services shall constitute sexual abuse.~~

~~C. "Mental or psychological abuse", which means any verbal or nonverbal act which creates, is intended to create, or reasonably could be expected to create mental anguish for a person. This includes, but is not limited to, such actions as discriminatory remarks, belittlement, derogatory name calling, teasing, and unreasonable exclusion from conversations or activities.~~

"Access to records" means the right for a parent to have the opportunity to inspect, review and obtain copies of records related to evaluation, assessment, eligibility determination, development and implementation of an Individualized Family Service Plan, individual complaints pertaining to the child, and

any other relevant information regarding his or her child and family, unless restricted under authority of applicable state law governing such matters of guardianship, separation, or divorce.

“Administrative unit”, as defined in Colorado Department of Education rules in 1 CCR 301-8, 2220-R-2.02, means a School District, Board of Cooperative Services, or the State Charter School Institute, that is approved by the Colorado Department of Education and provides educational services to exceptional children.

"Assessment" means the ongoing procedures used throughout the period of eligibility of a child for early intervention services to identify:

A. The unique strengths and needs of the child and the early intervention services appropriate to meet those needs; and,

B. The resources, priorities, and concerns of a parent and the early intervention services necessary to enhance the capacity of a parent or other caregiver to meet the developmental needs of the eligible child WITHIN EVERYDAY ROUTINES, ACTIVITIES AND PLACES.

“Certified Early Intervention Service Broker” is DEFINED pursuant to ~~the Colorado Revised Statutes (~~C.R.S.~~) Title 27, Article 10.5, Section 702(3)~~SECTION 27-10.5-702(3), C.R.S.

“Child Abuse Prevention and Treatment Act” (CAPTA) means the CAPTA state grant program provides states with flexible funds to improve their child protective service systems. Reauthorized by the Keeping Children and Families Safe Act of 2003, the program requires states to provide assurances in their five (5) year child and family services plan that the state is operating a statewide child abuse and neglect program. This program includes policies and procedures that address the needs of drug-exposed infants and provisions for referral of children under age three (3) who are involved in a substantiated case of abuse and neglect to early intervention services under IDEA Part C.

“Child Find” means ~~the program of~~ Part C of the Individuals with Disabilities Education Improvement Act of 2004 (P.L. 108-446) (IDEA) AS DEFINED IN SECTION 27-10.5-702 and pursuant to Section 22-20-103(4), C.R.S.

“Child Find program” means the multidisciplinary team within an administrative unit that conducts screening and evaluation activities for young children.

“CHILDREN EXPERIENCING HOMELESSNESS” MEANS CHILDREN WHO LACK A FIXED, REGULAR, AND ADEQUATE NIGHTTIME RESIDENCE, IN ACCORDANCE WITH THE MCKINNEY-VENTO HOMELESS ASSISTANCE ACT, AS AMENDED, 42 U.S.C. 11431, ET SEQ., WHICH IS INCORPORATED BY REFERENCE AS DEFINED IN SECTION 7.900, A, 4 AND 34 C.F.R. 303.17, WHICH IS INCORPORATED BY REFERENCE AS DEFINED IN SECTION 7.900, A, 5.

“COACHING” MEANS A RELATIONSHIP-BASED STRATEGY USED BY TRAINED PERSONNEL WITH A FAMILY MEMBER, OTHER CAREGIVER, OR ANOTHER PROVIDER TO SUPPORT WHAT IS ALREADY WORKING TO HELP A CHILD DEVELOP AND TO INCREASE THEIR KNOWLEDGE AND USE OF NEW IDEAS TO ACHIEVE CHILD OR FAMILY OUTCOMES.

“Consent” means that the parent has been fully informed of all information relevant to the activity for which consent is sought in the parent’s native language and the parent understands and agrees in writing to the carrying out of the activity.

“Co-payment” means a specified dollar amount that an insured person must pay for covered health care services. The insured person pays this amount to the provider at the time of service.

“Criteria” means standards on which a judgment or decision may be based.

"Days" means calendar days unless otherwise indicated.

“Deductible” means the amount that must be paid out-of-pocket before a health insurance company pays its share.

“Developmental delay” for an infant or toddler is defined as the existence of at least one (1) of the following measurements:

A. Equivalence of twenty-five percent (25%) or greater delay in one (1) or more of the five (5) domains of development as defined in Section 7.920, E, 7, a, when compared with chronological age; or,

B. Equivalence of one and a half (1.5) standard deviations or more below the mean in one (1) or more of the five (5) domains of development.

“Developmental disability” is defined pursuant to the Colorado Revised Statutes (C.R.S.) Title 27, Article 10.5, Section 102 (11).

“Due process procedures” means formal procedures used to resolve a dispute involving an individual child or parent related to any matter described in 34 C.F.R., Sections 303.435-438, which are incorporated by reference as defined in Section 7.900, A, 5.

“Duration” means the specific and measurable period of time a service is provided, specifying the start and end date.

“Early Head Start” means a program funded under the Head Start Act, pursuant to 42 U.S.C. 9801, incorporated by reference as defined in section 7.900, A, 4, and carried out by a local agency or grantee that provides ongoing comprehensive child development services for pregnant women, infants, toddlers, and their families.

"Early Intervention Provider Database" means the State database located at www.eicolorado.org that contains information and Community Centered Board affiliation on all early intervention providers, including personnel qualifications. It also serves as the database for the collection of child outcomes data.

“Established condition” for an infant or toddler means a diagnosed physical or mental condition that has a high probability of resulting in significant delays in development and is listed in the Established Conditions Database.

"Established conditions database" means the state database located at www.eicolorado.org that includes the state approved list of established conditions.

"Evaluation" for early intervention services means the procedures used to determine initial and continuing eligibility.

“Everyday routines, activities and places” means routines that are customarily a part of families’ typical days including, but not limited to: meal time; bath time; shopping; play time; outdoor play; activities a family does with its infant or toddler on a regular basis; and, places where the family participates on a regular basis, such as, but not limited to, home, place of worship, store, and child care.

"EVIDENCE-BASED PRACTICES” MEAN PRACTICES THAT INTEGRATE RESEARCH THAT HAS DEMONSTRATED EFFICACY AND WITH CONSIDERATION OF THE SITUATION, GOALS, AND VALUES OF THE CHILD, FAMILY AND PROFESSIONALS.

“EVIDENCE-INFORMED STRATEGIES” MEAN METHODS THAT USE NATIONALLY RECOGNIZED RECOMMENDED PRACTICES TO INFORM THE EFFECTIVE DELIVERY OF EARLY INTERVENTION SERVICES.

“FAMILY ASSESSMENT” MEANS A PROCESS USING A STATE-APPROVED ASSESSMENT TOOL AND PARENT INTERVIEW PRIOR TO THE DEVELOPMENT OF AN INITIAL INDIVIDUALIZED FAMILY SERVICE PLAN.

“Family Educational Rights and Privacy Act” (FERPA) means the federal law that protects the privacy of students’ “education records” under 20 U.S.C. Section 1232g; 34 C.F.R. Part 99, which is incorporated by

reference as defined in Section 7.900, A, ~~4~~. FERPA requirements apply to educational agencies and institutions that receive funds under any program administered by the United States Department of Education.

“FREQUENCY” MEANS HOW OFTEN AN EARLY INTERVENTION SERVICE IS PROVIDED.

"Guardian” means a person appointed by the court or named in a will and charged with limited, temporary, or full guardian's power and duties, pursuant to Section 15-14-312, C.R.S.

“Health Insurance Portability and Accountability Act (HIPAA)” means the privacy rule that establishes national standards and requirements for electronic health care transactions and protects the privacy and security of individually identifiable health information, which is incorporated by reference as defined in Section 7.900, A, 4.

“Homeless children” means children who lack a fixed, regular, and adequate nighttime residence, in accordance with the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11431, et seq. and 34 C.F.R. 303.17, which is incorporated by reference as defined in section 7.900, A, 5.

“Individualized Family Service Plan” (IFSP) means a written plan for providing early intervention services to eligible children and their families, in accordance with 34 C.F.R. Section 303.340, et seq., which is incorporated by reference as defined in section 7.900, A, 5.

“Informed clinical opinion” means the process used for determining current levels of development in all developmental domains based on a synthesis of objective qualitative and quantitative information from multiple sources that, at a minimum, includes:

A. A review of pertinent records related to current health status and medical history; and,

B. A family report about their perceptions and observations of the child’s development; and,

C. The results of appropriate methods and procedures.

“Initial assessment” means the assessment of the child and the family conducted before a child’s first Individualized Family Service Plan meeting.

“INTENSITY” MEANS THE LENGTH OF TIME THAT A SERVICE IS PROVIDED EACH SESSION.

“Mediation” means voluntary procedures used to resolve a dispute involving any matter described in 34 C.F.R. Section 303.430-437, which is incorporated by reference as defined in Section 7.900, A, 5.

“METHOD” MEANS HOW AN EARLY INTERVENTION SERVICE IS PROVIDED. THE TYPE OF METHOD MAY BE ONE OF THE FOLLOWING:

A. INDIVIDUAL SERVICE PROVIDED TO A CHILD AND FAMILY; OR,

B. CO-VISIT DURING WHICH SERVICES ARE PROVIDED BY TWO PROFESSIONALS DURING A SESSION; OR,

C. TEAMING THROUGH REGULARLY SCHEDULED MEETINGS AS THE FORMAL TIME FOR PROVIDER-TO-PROVIDER INFORMATION SHARING AND SUPPORT IN ORDER TO DEVELOP STRATEGIES DESIGNED TO BUILD THE CAPACITY OF PARENTS AND OTHER CAREGIVERS TO MEET CHILD AND FAMILY OUTCOMES; OR,

D. SUPERVISION BY A QUALIFIED PROVIDER WHO OVERSEES THE WORK OF A STUDENT OR PARAPROFESSIONAL THROUGH OBSERVATION AND GUIDANCE, INCLUDING DIRECTION AND EVALUATION OF THE ACTIVITIES PERFORMED BY THE SUPERVISEE.

“MODEL” MEANS ONE OF THE FOLLOWING CONSTRUCTS IN WHICH A CHILD’S AND FAMILY’S EARLY INTERVENTION SERVICES SHALL BE PROVIDED:

A. PRIMARY SERVICE PROVIDER; OR,

B. MULTIDISCIPLINARY SERVICE PROVIDERS; OR,

C. SINGLE PROVIDER; OR,

D. OTHER MODEL APPROVED BY THE STATE.

“Multidisciplinary evaluation team” means a group that is made up of two (2) or more qualified personnel who have different training and experience.

“MULTIDISCIPLINARY SERVICE PROVIDERS MODEL” MEANS A MODEL IN WHICH TWO (2) OR MORE QUALIFIED PROVIDERS WHO HAVE DIFFERENT TRAINING AND EXPERIENCE PROVIDE ONGOING SERVICES AS IDENTIFIED IN AN INDIVIDUALIZED FAMILY SERVICE PLAN. IN THIS MODEL THE PROVIDERS WORK INDEPENDENTLY OF EACH OTHER WITH MINIMAL INTERACTION WITH OTHER TEAM MEMBERS, AND PERFORM INTERVENTIONS SEPARATELY FROM OTHERS WHILE WORKING ON DISCIPLINE-SPECIFIC GOALS.

“Native language”, when used with respect to an individual who has limited English proficiency means:

A. The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided below in “B”; and,

B. For evaluations and assessments conducted pursuant to section 7.920, E, the language normally used by the child, if determined developmentally appropriate for the child by qualified personnel conducting the evaluation and assessment.

“Native language”, when used with respect to an individual who is deaf or hard of hearing, blind or visually impaired, or for an individual with no written language, means the mode of communication that is normally used by the individual, such as sign language, Braille or oral communication.

“Natural environments” means the day-to-day routines, activities and places that promote learning opportunities for an individual child and family, in settings such as the family’s home and community that are natural or typical for the child’s peer who have no disabilities.

"Neglect" means an act or failure to act by a person who is responsible for another's well being so that inadequate food, clothing, shelter, psychological care, physical care, medical care, or supervision is provided. This may include, but is not limited to, denial of meals, medication, habilitation, or other treatment necessities and which is not otherwise within the scope of Section 27-10.5, C.R.S., or these rules and regulations.

"Parent”, within early intervention services means:

A. The biological or adoptive parent; or,

B. A guardian in a parental relation to the child authorized to act as the child’s parent or authorized to make early intervention, educational, health or developmental decisions, but not the State if the child is under the jurisdiction of a court; or,

C. A foster parent; or,

D. An individual acting in the place of a biological or adoptive parent, including a grandparent, stepparent, or other relative with whom the child lives, or an individual who is legally responsible for the child’s welfare; or,

E. A surrogate parent who has been appointed in accordance with 34 CFR Section 303.422, incorporated as identified in Section 7.900, A, 5.

“Part C” means Part C of the Individuals with Disabilities Education Improvement Act of 2004 that addresses infants and toddlers, birth through two (2) years of age, with developmental delays or disabilities, or physical or mental conditions with a high probability of resulting in significant delays in development, in accordance with 34 C.F.R. 303, which is incorporated by reference as defined in Section 7.900, A, 5.

“Participating agency” means, as used in early intervention services, any individual, agency, program or entity that collects, maintains, or uses personally identifiable information to implement the requirements and regulations of Part C of the IDEA with respect to a particular child.

A. This includes:

1. The Colorado Department of Human Services; and,

2. Community Centered Boards (CCB) or a Certified Early Intervention Service Broker; and,

3. Any individual or entity that provides any Part C services, including service coordination, evaluations and assessments, and other Part C services.

B. This does not include:

1. Primary referral sources; or,

2. Public agencies, such as the Medicaid program, private entities, or private health insurance carriers, that act solely as funding sources for early intervention services.

“Personally identifiable information” as used in early intervention services means, but is not limited to:

A. The infant or toddler’s name; or,

B. The name of the infant or toddler’s parent or other family member; or,

C. The address of the infant or toddler, or their family; or,

D. A personal identifier, such as a Social Security Number or other biometric record; or,

E. Other indirect identifiers such as the child’s date of birth, place of birth, or mother’s maiden name; or,

F. Other information that, alone or in combination, is linkable to a specific infant or toddler by a person in the early intervention community, who does not have personal knowledge of the relevant circumstances, to identify the infant or toddler with reasonable certainty; or,

G. Information about a child whose identity is believed by the Early Intervention Program to be known by the requester of that information.

"Physician" means a person licensed to practice medicine under Section 12-36-101, C.R.S., et seq., the Colorado Medical Practice Act.

“Post-referral screening” means the early intervention activities that take place after a child is referred to the Early Intervention Program and the administrative unit to identify infants and toddlers who are in need of more intensive evaluation and assessment in order to determine eligibility due to a developmental delay.

“PRIMARY SERVICE PROVIDER MODEL” MEANS A MODEL OF SERVICE DELIVERY THAT UTILIZES ONE MAIN QUALIFIED PROVIDER FROM ANY DISCIPLINE WHO IS THE BEST FIT TO ADDRESS THE CHILD AND FAMILY OUTCOMES AS IDENTIED IN AN INDIVIDUALIZED FAMILY SERVICE PLAN. OTHER TEAM MEMBERS SUPPORT THE PRIMARY SERVICE PROVIDER THROUGH TEAMING AND MAY PROVIDE CO-VISITS UNDER THIS MODEL.

“Prior written notice” for early intervention services means written notice that is given to parents a reasonable time before a Community Centered Board or other Certified Early Intervention Service Broker proposes or refuses to initiate or change the identification, evaluation, or placement of the infant or toddler, or the provision of appropriate early intervention services to the child and family.

“Qualified personnel” means personnel who have met the state approved or recognized certification, licensing, registration, or other comparable requirements, to provide evaluations, assessments or early intervention services.

“Referral” for early intervention services means a verbal or written notification from a referral source to the Community Centered Board or administrative unit for the provision of information regarding an infant or toddler, birth through two (2) years of age, in order to identify those who are in need of early intervention services.

"Service coordination” means the activities carried out by a service coordinator to assist and enable a child eligible for early intervention services, and the child’s family, to receive the rights, procedural safeguards, and services that are authorized to be provided under Section 7.900, et seq.

“SINGLE PROVIDER MODEL” MEANS A MODEL OF EARLY INTERVENTION SERVICE PROVISION IN WHICH ONE PROVIDER IS UTILIZED TO MEET THE CHILD’S AND FAMILY’S NEEDS AS IDENTIFIED IN AN INDIVIDUALIZED FAMILY SERVICE PLAN.

“Surrogate parent” means an individual appointed by the local early intervention services program to act in the place of a parent in safeguarding an infant’s or toddler’s rights in the decision-making process regarding screening, evaluation, assessment, development of the individualized family service plan, delivery of early intervention services and transition planning.

“State complaint procedures” mean actions taken by the Department to resolve a complaint lodged by an individual or organization regarding any agency or local service provider participating in the delivery of early intervention services that is violating a state or federal requirement.

"Targeted case management services" means those case management services which are provided as a Medicaid benefit for a specific target group of Medicaid recipients who have a developmental disability and who meet the program eligibility criteria identified in the Medical Assistance rules (10 CCR 2505-10) of the Colorado Department of Health Care Policy and Financing.

“TELEHEALTH” MEANS A FORM OF SERVICE PROVISION THAT UTILIZES SECURE INTERACTIVE VIDEOCONFERENCING TO DELIVER EARLY INTERVENTION SERVICES TO FAMILIES.

"Waiver Services" means those optional Medicaid services defined in the current federally approved HCBS waiver document and do not include Medicaid State Plan services.

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7.914 DATA COLLECTION [Eff. 7/1/13]

A. A Community Centered Board shall ensure that policies and procedures are developed and maintained, and that information regarding early intervention services is collected and documented as defined by the Department.

B. A Community Centered Board shall have an Early Intervention Data Coordinator who shall:

1. Be knowledgeable of the statewide ~~database~~ DATA SYSTEM, data entry requirements and timelines, and report information; and,

2. Ensure that each staff who enters data into the statewide ~~database~~ DATA SYSTEM is trained in the use of the system and procedures to protect personally identifiable information; and,

3. Ensure that all data is entered into the statewide ~~database~~ DATA SYSTEM as defined by the Department.

C. A Community Centered Board shall ensure that for each child who is referred for early intervention services:

1. An early intervention record is established and maintained; and,

2. All required data from the record be entered into the statewide ~~database~~ DATA SYSTEM from the date of the referral and tracked through eligibility or ineligibility and exit from early intervention services.

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7.920 CHILD IDENTIFICATION [Rev. eff. 7/1/14]

The Early Intervention Program shall have a comprehensive Child Find system, pursuant to 34 C.F.R. Section 303.302, which is incorporated by reference as defined in Section 7.900, A, 5, that focuses on the early identification of infants and toddlers who have developmental delays or disabilities, including a system for making referrals so that timely and rigorous identification in accordance with Section 7.920, B – F, shall occur.

A. Pre-Referral Public Awareness

1. A Community Centered Board shall work with special education Administrative Units, the Local Interagency Coordinating Council, and, other community members, as necessary in order to develop a coordinated program of public awareness that identifies infants and toddlers with disabilities who are eligible for early intervention services.

2. A Community Centered Board shall ensure that it has an Internet link on its website to the Early Intervention Colorado website at www.eicolorado.org and that families are informed of the website and the statewide toll free number 1-888-777-4041.

3. A Community Centered Board shall ensure that information on the Early Intervention Colorado Program is available via an Internet website, and in a written format, upon request of a family.

4. A Community Centered Board shall ensure that printed materials from the Department and other products are made available to families and the general public, as well as through state and local interagency efforts for outreach to primary referral sources,

including hospitals, physicians, other health providers, child care providers and other public and non-profit agencies.

B. Referral

1. A Community Centered Board shall work collaboratively with community partners and primary referral sources to develop effective procedures for referral of children, birth through two (2) years of age, to the Early Intervention Program, in order to identify infants and toddlers who are in need of early intervention services.

2. Referral of a child, birth through two (2) years of age, means a verbal or written notification from a referral source to the Community Centered Board or Administrative Unit about a child who:

   a. Is known to have or suspected of having a developmental delay; or,

   b. Has an established condition, as defined in Section 7.920, H; or,

   c. Lives with a parent with a developmental disability; or,

   d. Has been identified as the subject of a substantiated case of child abuse or neglect; or,

   e. Is identified as directly affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure.

C. Post-Referral Process

1. A Community Centered Board shall accept a referral from community sources, including, but not limited to, a family, health provider, child care provider, Administrative Unit, county department of social/human services, county department of health, and others.

2. A Community Centered Board shall use the state referral form and procedures as defined by the Department, and shall facilitate, to the extent possible, the use of the early intervention referral form by other referral sources in its designated service area.

3. A Community Centered Board shall assign a service coordinator within three (3) working days from the date of a referral.

4. The family shall be contacted as soon as possible after being assigned a service coordinator, but no longer than seven (7) calendar days from the date of the referral, to provide the service coordinator's contact information and inform the family of their procedural safeguards.

5. A Community Centered Board shall notify the appropriate Administrative Unit within three (3) working days of a child being referred for early intervention services for whom a Child Find evaluation needs to be conducted.

6. Community Centered Board shall:

   a. Notify the referral source of the receipt of the referral using the state referral form; and,

   b. Provide the contact information for the assigned service coordinator; and,

   c. With written parent consent, notify the referral source and the child's primary health provider of the results of the evaluation and/or assessment using the state referral form.

7. Referral information sent to an Administrative Unit by a Community Centered Board shall contain at least the following:

   a. The first, middle, and last name of the child; and,

   b. Date of birth of the child; and,

   c. Gender of the child; and,

   d. Parent name, address, and telephone number; and,

   e. Primary language spoken; and,

   f. Name and telephone number of an assigned service coordinator; and,

   g. Date of the referral.

D. Post-Referral Screening

1. A Community Centered Board shall work with the Administrative Unit(s) to identify in the interagency agreement if the Child Find process will include post-referral screening.

2. If post-referral screening is used, the Community Centered Board shall assure the following requirements are met:

   a. A parent shall receive prior written notice of and provide consent to the post-referral screening, and be informed of the right to request evaluation in place of or in addition to post-referral screening; and,

   b. Appropriate instruments shall be used by personnel trained to administer those instruments; and,

   c. Written screening results are provided to a parent; and,

   d. A parent shall receive prior written notice of the action that is being proposed or refused as a result of the post-referral screening, and the reasons for taking the action.

E. Evaluation and Assessment

1. A Community Centered Board shall work with Administrative Units, the Local Interagency Coordinating Council, and other community members, as necessary, to develop a local child identification process to ensure that:

   a. Procedures, as identified in Section 7.920, are adhered to; and,

   b. ~~A~~n MULTIDISCIPLINARY evaluation ~~and assessment~~, as defined in Section 7.901, ~~are~~ IS conducted within forty-five (45) calendar days of the date of the referral of a child, birth through two (2) years of age, who is referred for early intervention services, and, if the child is eligible, completion of an ASSESSMENT AND INITIAL Individualized Family Service Plan MEETING.

2. Each child, birth through two (2) years of age, who is referred for early intervention services shall receive:

   a. An evaluation by a multidisciplinary team to determine if there is a developmental delay and an assessment as defined in Section 7.901 to identify a child's current levels of development in all developmental domains; or,

b. A multidisciplinary assessment by a multidisciplinary team for a child who is eligible due to an established condition or due to living with a parent with a developmental disability to identify the child's current levels of development in all developmental domains.

3. Written notice shall be provided to the parent prior to the scheduling of an evaluation and/or assessment and a copy of the notice shall be maintained in the child's record.

4. Written parental consent shall be obtained prior to any evaluation and/or assessment being conducted and a copy of the consent shall be maintained in the child's record.

5. An evaluation shall include a multidisciplinary process by a team comprised of a minimum of two (2) appropriately licensed/qualified professionals, at least one (1) of whom is qualified in the primary area of developmental concern.

6. An evaluation and assessment shall be based on an informed clinical opinion and shall be administered so that it is not racially or culturally discriminatory.

7. Procedures for the evaluation of an infant or toddler shall include:

a. Administering an evaluation instrument; and,

b. Documenting the child's history, including interviewing the parent; and,

c. Identifying the child's level of functioning in each of the following developmental domains:

1) Adaptive development; and,

2) Cognitive development; and,

3) Communication development; and,

4) Physical development, including vision and hearing; and,

5) Social or emotional development.

d. Gathering information from other sources such as family member, other caregivers, medical providers and other professionals working with the child and family.

8. Procedures for an assessment OF AN ELIGIBLE CHILD shall include identification of:

a. The child's and family's unique strengths and needs; and,

b. Early intervention services that would meet a child's and family's needs; and,

c. Priorities and concerns of the family and resources to which the family has access.

9. A family assessment process with a multidisciplinary evaluation and/or assessment team shall be made available to any parent or other family member.

a. A family assessment is voluntary on the part of each family member participating in the assessment.

b. A family assessment shall be family-directed and designed to determine the resources, priorities and concerns of a parent or other family member related to the enhancement of his or her child's development.

c. If completed, the family assessment ~~must~~ SHALL be:

1) Conducted by qualified personnel trained to utilize AN appropriate FAMILY ASSESSMENT TOOL, AS DEFINED BY THE STATE AND AVAILABLE ON THE EARLY INTERVENTION COLORADO WEBSITE AT www.eicolorado.org~~; and methods and procedures~~; and,

2) Based on information provided by the parent or other family member through a personal interview and THROUGH A FAMILY ASSESSMENT TOOL; and,

3) Inclusive of a parent's or other family member's description of his or her resources, priorities and concerns related to enhancing his or her child's development; and,

4) Completed within forty-five (45) calendar days of the date of referral in order to contribute to the development of the initial Individualized Family Service Plan.

10. If an Individualized Family Service Plan is developed at the same meeting as the evaluation and assessment, the service coordinator shall ensure that prior written notice about the evaluation and Individualized Family Service Plan development be sent to the parent. Notification of the date, time and location of the next meeting needs to be received by the parent far enough in advance of the meeting date so that the parent will be able to attend the meeting. A copy of the notice shall be maintained in the child's record.

F. Eligibility Criterion

An infant or toddler, birth through two (2) years of age, shall be eligible for early intervention services if he or she has a developmental delay as defined in Section 7.901, an established diagnosed physical or mental condition as defined in Section 7.901, or lives with a parent who has a developmental disability as defined in Section 7.920, I.

G. Eligibility Determination for Developmental Delay

1. Eligibility shall be based on a developmental delay as defined in Section 7.901.

2. Results derived solely from a single procedure shall not be used to determine eligibility or ineligibility.

3. The following shall be documented in an Individualized Family Service Plan:

a. Name, discipline, and signature of each team member who participated in the evaluation and assessment; and,

b. Types of methods and procedures used to conduct the evaluation and assessment; and,

c. The measurable results of the multidisciplinary evaluation and/or assessment in each of the developmental domains; and,

d. Eligibility or ineligibility determination; and,

e. Name and signature of the Community Centered Board representative who verifies that the evaluation and assessment team gathered and provided diagnostic information to establish eligibility or ineligibility; and,

f. Signature of a parent acknowledging that he or she has been informed of his or her child's eligibility determination.

4. If a child is determined ineligible for early intervention services, the family shall be provided prior written notice to inform them of:

a. The right to dispute resolution procedures as defined in Section 7.990; and,

b. Other community resources that may assist his or her child.

H. Eligibility Determination Based on an Established Condition

1. There shall be supporting documentation from a qualified health professional maintained in the child's record for a diagnosed physical or mental condition.

2. The diagnosis or condition shall be included in the Established Conditions Database.

3. There shall be documentation in the Individualized Family Service Plan regarding the name of the diagnosed condition on which eligibility is based.

4. A child with an established condition does not have to be exhibiting delays in development at the time of diagnosis to be eligible for early intervention services.

5. A multidisciplinary assessment for a child with an established condition shall be conducted to identify a child's current levels of development in all developmental domains, including hearing and vision, in order to develop an initial Individualized Family Service Plan.

I. An infant or toddler who lives with a parent who has been determined by a Community Centered Board to have a developmental disability is eligible to receive early intervention services using any funding source other than the federal Part C funds. Such services may include, but are not limited to, developmental intervention for parent education and monitoring child development.

7.930 SERVICE COORDINATION [Eff. 7/1/14]

A. A Community Centered Board shall provide service coordination for each infant and toddler from the date of the referral through transition at three (3) years of age, exit from early intervention services, or a determination of ineligibility, whichever occurs first.

B. A service coordinator shall:

1. Meet personnel standards as defined by the Department and those of the hiring agency; and,

2. Complete the following:

a. Required service coordination online orientation training modules within one (1) month of employment as a service coordinator; and,

b. All introductory training required by the Department on the service coordination core competency requirements and the development and implementation of an Individualized Family Service Plan within one hundred and twenty (120) calendar days of employment as a service coordinator; and,

c. Document all completed training in the Early Intervention Provider Database.

3. Inform a parent of his or her rights and procedural safeguards, and how to exercise them as defined in Section 7.980; and,

4. Ensure that required information for each child referred for early intervention services is provided for entry into the statewide database in accordance with reporting requirements of the Department; and,

5. Coordinate with local administrative units and other appropriate providers to ensure the completion of a child's evaluation and assessment and ensure compliance with all parts of the requirements of Section 7.920; and,

6. Facilitate and participate in the development, review and evaluation of Individualized Family Service Plans; and,

7. Make referrals to providers for early intervention services authorized in an Individualized Family Service Plan, assist with scheduling appointments, ensure initiation within twenty-eight (28) calendar days of written parent consent for early intervention services, and coordinate, facilitate and monitor the delivery of early intervention services; and,

8. Ensure that a parent is informed of the coordinated system of payment funding hierarchy and no-cost protections for families, and ensure appropriate use of all available funding for early intervention services; and,

~~9. Ensure that a parent has been given reasonable choice in the selection of available and qualified personnel to provide the early intervention services documented in the Individualized Family Service Plan; and,~~

~~10~~ **9**. Coordinate the provision of medical and other services, such as educational and social, that the child or family needs or is receiving through other sources; and,

~~11~~ **10**. Inform a parent of available advocacy services; and,

~~12~~ **11**. Facilitate development of the transition to preschool special education services or other services for a toddler approaching three (3) years of age;

~~13~~ **12**. Assist a parent with dispute resolution regarding early intervention services, if needed; and,

~~14~~ **13**. Maintain at least monthly contact with a parent whose child is enrolled in early intervention services, including written, electronic, or phone communication, and shall document the contact in the child's record.

7.940 INDIVIDUALIZED FAMILY SERVICE PLAN [Eff. 7/1/14]

A. An Individualized Family Service Plan shall serve as the Individualized Plan for a child, from birth to less than three (3) years of age, receiving early intervention services.

B. A service coordinator shall ensure that an Individualized Family Service Plan is:

1. With prior written notice given to the parent, developed within a reasonable time after an eligibility determination has been made, but no later than forty-five (45) calendar days from the date of the referral, unless a delay is due to documented exceptional family circumstances; and,

2. Developed with all required participants as defined in Section 7.940, E; and,

3. Based on, and contains the results of, the evaluation and assessment, and the family's concerns and priorities; and,

4. Inclusive of early intervention services to be provided in natural environments that are necessary to meet the unique needs of the child and the parent or other caregiver, and implement the strategies to achieve the developmental outcomes of the child; and,

5. Culturally sensitive; and,

6. With prior written notice given to the parent, reviewed every six (6) months, or more frequently if necessary or if requested by the parent, in order to:

    a. Determine progress toward achieving the identified outcomes; and,

    b. Revise or add an outcome, if needed; and,

    c. Determine if a change in early intervention services is necessary to meet the identified outcomes.

7. With prior written notice given to the parent, updated annually through a meeting of the Individualized Family Service Plan team, including the parent to:

    a. Discuss and document the child's current developmental levels in all developmental domains gathered through assessment methods as defined by the Department; and,

    b. Determine progress towards achieving the identified outcomes; and,

    c. Determine the child's ongoing need for early intervention services; and,

    d. Revise or add an outcome, if needed; and,

    e. Determine the early intervention services necessary to meet the identified outcomes.

C. If it is determined during an Individualized Family Service Plan review that a child is functioning at age expected levels when compared with chronological age, as documented in current assessment results, the following shall occur:

1. The Individualized Family Service Plan team shall determine whether one (1) or more early intervention services are no longer needed for the child to continue to progress; and,

2. If the Individualized Family Service Plan team determines that early intervention services are no longer needed, the following shall occur:

    a. The service coordinator shall explain to the parent the dispute resolution procedures, as defined in Section 7.990-7.994; and,

    b. The service coordinator shall provide prior written notice to the parent that the members of the Individualized Family Service Plan team have determined the child no longer has any identified need for early intervention services, and the child has completed the Individualized Family Service Plan; and,

    c. The child's record shall remain open for ten (10) calendar days from the prior written notice date; and,

    d. Following the ten (10) calendar-day period from the prior written notice date, if there is no dispute resolution request from the parent, the early intervention services shall cease and the child's record shall be closed.

D. Completion of an Individualized Family Service Plan

1. The decision to end early intervention services for a child based on the determination by the members of the Individualized Family Service Plan team that the child no longer needs early intervention services is not to be construed with a determination of ineligibility

based on a multidisciplinary evaluation. If future concerns arise and the child is still less than three (3) years of age, the family shall contact the Community Centered Board to conduct an assessment and develop a revised Individualized Family Service Plan, if appropriate.

2. An infant or toddler found eligible due to an established condition, as defined in Sections 7.901 and 7.920, H, shall not have his/her early intervention services ended unless the parent chooses to withdraw from services.

E. An initial, annual or periodic review meeting to evaluate an Individualized Family Service Plan shall include the following participants:

1. Parent of a child; and,

2. Service coordinator; and,

3. A person(S) directly involved in conducting the evaluations and assessments; and,

4. As appropriate, a person or persons who will be providing early intervention services to a child or family; and,

5. Additional participants may include, but are not limited to, the following:

a. Other family members, as requested by a parent; and,

b. An advocate or person outside of a family, as requested by a parent.

F. If any person who conducted an evaluation and/or assessment is unable to participate in person, he or she shall participate by:

1. Telephone or Internet web conference;

2. A knowledgeable authorized representative attending the meeting in his or her place; or,

3. The provision of appropriate reports for use at the meeting.

G. If the evaluation and assessment report is provided and there is no authorized representative at the meeting, the Community Centered Board shall ensure that at least one qualified early intervention professional reviews and interprets the developmental information in the report in order to inform the team completing the Individualized Family Service Plan.

H. An Individualized Family Service Plan shall be conducted in accordance with 34 C.F.R. Sections 303.340 - 303.345, which are incorporated by reference as defined in Section 7.900, A, 5:

1. In a setting and at a time that is convenient to the parent; and,

2. In the language or mode of communication normally used by the parent, unless clearly not feasible to do so.

I. The content of an Individualized Family Service Plan shall, at a minimum, meet the requirements of 34 C.F.R. Section 303.344, which is incorporated by reference as defined in Section 7.900, A, 5, and be completed using the state form available at the Early Intervention Program website at www.eicolorado.org, AND SHALL INCLUDE THE FOLLOWING:

1. THE TYPE OF MODEL FOR EACH SERVICE SHALL BE ONE OF THE FOLLOWING, AS DEFINED IN SECTION 7.901:

a. PRIMARY SERVICE PROVIDER; OR,

b. MULTIDISCIPLINARY SERVICE PROVIDERS; OR,

c. SINGLE PROVIDER; OR,

d. OTHER MODEL APPROVED BY THE STATE.

2. THE TYPE OF METHOD FOR EACH SERVICE SHALL BE ONE OF THE FOLLOWING, AS DEFINED IN SECTION 7.901:

a. INDIVIDUAL; OR,

b. CO-VISIT; OR,

c. TEAMING; OR,

d. SUPERVISION.

J. A parent may withhold consent for an early intervention service without jeopardizing the delivery of any other early intervention service for which consent is given.

K. If a parent and an Individualized Family Service Plan team member(s) do not agree on any aspect of an early intervention service, a service coordinator shall implement the sections of the plan that are not in dispute.

L. A parent may exercise his or her rights, as defined in Section 7.990, to resolve a dispute while continuing to receive those services in an Individualized Family Service Plan that are not subject to a dispute.

M. An interim Individualized Family Service Plan shall be developed to provide a temporary early intervention service prior to completion of an evaluation and assessment, only when the service is determined by qualified professionals to be immediately necessary and when the following conditions are met:

1. A child has been determined to be eligible for early intervention services; and,

2. Written parental consent is obtained; and,

3. An evaluation and assessment are completed within forty-five (45) calendar days of the date of the referral.

****

Permanent Rules Adopted

Department

Department of Revenue

Agency

Taxpayer Service Division - Tax Group

CCR number

1 CCR 201-2

Rule title

1 CCR 201-2 INCOME TAX 1 - eff 04/30/2015

Effective date

04/30/2015

THE NEW COLORADO INVESTMENT TAX CREDIT

39-22-507.6

(1) The investment tax credit allowed by section 39-22-507.6, C.R.S. is designated the "new" Colorado investment tax credit. The "new" investment tax credit is 1% of the qualifying investment in "Section 38 property" (disregarding the termination provisions of I.R.C. § 49 as such section existed prior to the enactment of the federal Revenue Reconciliation Act of 1990) to the extent such property would have qualified for the federal "regular percentage" investment tax credit and to the extent such property is used in Colorado. All references herein to sections of the internal revenue code are to these sections as they existed immediately prior to the enactment of the federal Revenue Reconciliation Act of 1990.

(2) **Limitations.**

(a) Only C corporations may claim the "new" investment credit. However, a C corporation cannot carry-forward unused credit to a tax year in which it elects under federal rules to be taxed as an S corporation.

(b) The "new" investment tax credit is limited to $1,000 per tax year reduced by any "old" investment tax credit claimed for the same tax year.

(c) Excess tax credits may be carried forward for up to three tax years, but may not be carried back to an earlier year.

(d) The "new" investment tax credit has no recapture provisions.

(3) **Property.**

(a) In the case of tangible personal property used both within and without Colorado, the credit shall be apportioned based on the time the property was used in Colorado during the tax year compared to the time of total usage of such property during the tax year unless the taxpayer can justify a more equitable apportionment method.

(b) Claiming the credit does not reduce the cost basis of the property.

(c) The enterprise zone investment tax credit and the new investment tax credit can be claimed for the same property.

(d) The purchase of equipment included in the purchase of business can qualify for the new investment tax credit, although the total investment in used equipment is limited to $150,000 per year.

(i) A controlled group of corporations must apportion the credit limitations of the property among its members. The election of the apportionment shall apply to the income tax year of the members with or including a common December 31. Should such members fail to agree on an allocation of the limitation amount, it shall be divided equally among all members of the controlled group.

(4) **Qualified Investment in Section 38 Property.**

(a) For new Section 38 property subject to I.R.C. § 168 (Accelerated Cost Recovery System), the amount of qualified investment is 100% of the basis of for all new property in recovery classes of more than three years, and 60% of the basis for new three-year recovery property. For used Section 38 property subject to I.R.C. § 168, the amount of qualified investment is 100% of the cost of all used recovery property in recovery classes of more than three years, and 60% of the cost for used three-year recovery property. For used property, cost is limited to a maximum of $150,000.

(b) For Section 38 property not subject to I.R.C. § 168, the basis or cost (up to $150,000 for the cost of used property) that qualifies is limited if the property has a useful life of less than seven years. The limit is only 2/3 of the basis or cost qualifies if the useful life is five years or more but less than seven years. In addition, the limit is only 1/3 of the basis or cost qualifies when the useful life is three years or more but less than five years. No credit is allowed if the useful life is less than three years.

(c) No investment tax credit is allowed to a purchaser of used property if the property is currently or was previously used by the purchaser or a related party before the purchase. This includes a leaseback of used property or a purchase of leased property by the lessee.

(d) No investment tax credit is allowed for Section 38 property to the extent such property is financed with nonqualified nonrecourse financing. This limitation applies to certain closely held corporations engaged in business activities that are subject to the loss limitation at-risk rules of I.R.C. § 465.

(5) **Section 38 property.**

(a) The "new" investment tax credit is available only for expenditures in Section 38 property. Section 38 property means Section 38 property as defined in Section 48 of the Internal Revenue Code as said Section 48 existed prior to the enactment of the federal Revenue Reconciliation Act of 1990.

(b) Section 38 property is either property subject to I.R.C. § 168 (Accelerated Cost Recovery System) or other depreciable or amortizable property having a useful life of three years or more that is:

(i) Tangible personal property (other than air conditioning units, heating units, and certain boilers fueled by petroleum or petroleum products and failing to meet special qualifications);

(ii) Other tangible property (not including a building or its components) used as an integral part of:

(A) manufacturing,

(B) extraction,

(C) production, or

(D) furnishing of transportation, communications, electrical energy, gas, water, or sewage disposal services.

(iii) Elevators and escalators;

(iv) Research facilities and facilities for the bulk storage of fungible commodities (including liquids or gases) used in connection with the activities in (5)(b)(ii) Fungibles are commodities that are mutually interchangeable, such as oil or grain;

(v) Single purpose agricultural or horticultural structures. A single purpose agricultural structure is Section 38 property if it is designed, constructed and used for housing, raising and feeding a particular type of livestock, such as cattle, hogs or poultry, and their produce, in addition to housing equipment necessary for the particular activity. A horticultural structure is Section 38 property if it is specifically designed, constructed and used for the commercial production of plants and/or mushrooms. Work space in the structure is permitted if such space is used solely for stocking or caring for the plants, for collecting their product or for maintaining the structure and equipment or stock house in it;

(vi) In the case of qualified timber property (within the meaning of I.R.C. § 194(c)(1)), that portion of the basis of such property constituting the amortizable basis acquired during the taxable year (other than that portion of such amortizable basis attributable to property which otherwise qualifies as (pre-1991) I.R.C. § 38 property) and taken into account under I.R.C. § 194 (after application of I.R.C. § 194(b)(1);

(vii) A storage facility (not including a building and its structural components) used in connection with the distribution of petroleum or any primary product of petroleum. Both new property, including property reconstructed by a taxpayer (but only to the extent of the basis that is attributable to the reconstruction), and used property qualify for the credit;

(viii) Property used predominantly to furnish lodging, or used in connection with furnishing it is <u>not</u> Section 38 property, except in the case of:

(A) a hotel or motel furnishing accommodations predominantly to transients and

(B) coin-operated vending machines, washing machines and dryers in lodging facilities. Also non-lodging commercial facilities, such as tangible personal property in a drug store or restaurant situated in an apartment building or hotel, can qualify as Section 38 property if they are available to persons not using the lodging facilities.

(ix) Livestock (not including horses) qualify for the investment credit. However, if within a one-year period starting six months before the date of acquisition, substantially identical livestock is disposed of without any federal investment credit recapture, the credit will be allowed only on the excess of the cost of the acquired livestock over the amount realized on the disposition. The age and sex of the livestock and the use to which the livestock is put determine whether the livestock disposed of is substantially identical.

(c) In the case of pollution control facilities, if the property has a useful life or recovery period of at least five years and the taxpayer elects to amortize under the 60-month rule of I.R.C. § 169, 100% of its amortizable basis qualifies for the investment credit. If the facility is financed by federally tax exempt industrial development bond proceeds, the applicable percentage is only 50% of the rapidly amortized basis

(6) **Leased property.**

(a) The owner of the leased property may elect to pass on the "new" investment credit to a C corporation lessee if the leased property is new Section 38 property and is qualifying property both to the owner and to the lessee. A lessor cannot pass on the credit for used property to the lessee. The credit to the lessee is computed on the fair market value of the property except where the property is leased by a corporation that is a member of a controlled group of corporations to another member of the same group. In the latter event, the lessee takes the owner's basis as the basis for computing the investment credit.

(b) Where new Section 38 property with a January 1, 1986 Asset Depreciation Range (ADR) class life of more than 14 years is leased (not a net lease) for a period which is shorter than 80% of its class life, the lessor may pass through to the C corporation lessee only that portion of the credit which is equal to the ratio of the lease period to the class life of the property.

(c) When a tax exempt entity sells depreciable property to pass the tax benefits to the new owners and then leases back the property, the "new" investment tax credit will be denied for the property.

Cross Reference

1. The new investment tax credit is allowed for tax years beginning on or after January 1, 1988, and was enacted as a partial replacement for the "regular percentage" investment tax credit flow-through from the federal investment credit, which was allowed under section 39-22-507.5, C.R.S., but which ceased to exist when the federal credit was repealed.

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Office of the Attorney General

Tracking number: 2014-01271

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

Taxpayer Service Division - Tax Group

on 03/16/2015

1 CCR 201-2

INCOME TAX

The above-referenced rules were submitted to this office on 03/16/2015 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

March 26, 2015 12:55:32

Frederick R. Yarger

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

Permanent Rules Adopted

Department

Department of Revenue

Agency

Taxpayer Service Division - Tax Group

CCR number

1 CCR 201-2

Rule title

1 CCR 201-2 INCOME TAX 1 - eff 04/30/2015

Effective date

04/30/2015

~~REGULATION 22-104.4.~~

~~The gross receipts tax applies to businesses being carried on in Colorado. It does not apply to such items as wages, salaries, and salesmens' commissions.~~

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Tracking number: 2014-01270

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

Taxpayer Service Division - Tax Group

on 03/16/2015

1 CCR 201-2

INCOME TAX

The above-referenced rules were submitted to this office on 03/16/2015 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

March 26, 2015 12:55:05

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

Permanent Rules Adopted

Department

Department of Revenue

Agency

Taxpayer Service Division - Tax Group

CCR number

1 CCR 201-4

Rule title

1 CCR 201-4 SALES AND USE TAX 1 - eff 04/30/2015

Effective date

04/30/2015

~~REGULATION 26-717.1~~

~~A "prescription" means any order in writing, dated and signed by a practitioner, or given orally by a practitioner, and immediately reduced to writing by the pharmacist, assistant pharmacist, or pharmacy intern, specifying the name and address of the person for whom a medicine, drug, or poison is ordered and directions, if any, to be placed on the label.~~

~~A "prosthetic device" is an artificial part which aids or replaces a bodily function and which is designed, manufactured or adjusted to fit a particular individual.~~

~~The foregoing descriptions also apply to prescription drugs and prosthetic devices for animals.)~~

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Taxpayer Service Division - Tax Group

on 03/16/2015

1 CCR 201-4

SALES AND USE TAX

The above-referenced rules were submitted to this office on 03/16/2015 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

March 26, 2015 12:56:00

Frederick R. Yarger

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by Frederick R. Yarger
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Permanent Rules Adopted

Department

Department of Education

Agency

Colorado State Board of Education

CCR number

1 CCR 301-25

Rule title

1 CCR 301-25 COLORADO MINIMUM STANDARDS GOVERNING SCHOOL TRANSPORTATION VEHICLES 1 - eff 04/30/2015

Effective date

04/30/2015

DEPARTMENT OF EDUCATION

Colorado State Board of Education

COLORADO MINIMUM STANDARDS GOVERNING SCHOOL TRANSPORTATION VEHICLES

1 CCR 301-25

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

2251-R-1.00 Statement of Basis and Purpose.

The statutory authority for the Colorado Minimum Standards Governing School Transportation Vehicles (hereinafter referred to as "these rules" or "Minimum Standards"), adopted by the State Board of Education on (*insert effective date*) (hereinafter referred to as "effective date"), is found in sections 22-51-108 and 42-4-1904, C.R.S.

The purpose of these rules is to provide reasonable and adequate standards of safety for school transportation vehicles that promote the welfare of the students and afford reasonable protection to the public. The purpose of the amendments approved on (*insert effective date*) is to update the minimum standards to align with recent federal standard and reflect current industry practices, to streamline and consolidate rules and eliminate rules which are redundant of and potentially contradictory to federal standards, and to reduce regulatory burdens for school districts and charter schools.

The Commissioner, or designee, may provide an exemption to these Minimum Standards to the extent the Commissioner finds an exemption to be appropriate.

2251-R-2.00 References.

FMVSS-

Federal Motor Vehicle Safety Standards

49 C.F.R. Part 571, Current Revision

National Highway Traffic Safety Administration

U.S. Department of Transportation

2251-R-3.00 Responsibility of Suppliers.

3.01 Dealers, distributors and manufacturers of school buses and multifunction buses each have a responsibility to comply with the Minimum Standards on or after the effective date of these rules.

3.02 Dealers, distributors or manufacturers which supply school buses and multifunction buses for use in the State of Colorado which do not meet the specifications of these rules shall be notified of noncompliance and a general notice will be sent to all school districts and school transportation operations within the State of Colorado advising that equipment supplied by such dealer, distributor, or manufacturer is not in compliance with the Minimum Standards.

3.02(a) If a dealer, distributor, or manufacturer has been notified of non-compliance in accordance with subsection 3.02 of these rules and replaces or modifies the equipment

to meet the Minimum Standards, a notification of compliance will be issued from the Colorado Department of Education (CDE) within 30 days after proof of compliance.

2251-R-4.00 Effective Date.

4.01 Except as indicated in 4.01(a), school transportation vehicles manufactured, per the date listed on the certification plate, on or after the effective date of these rules, for the purpose of transporting Colorado students shall meet or exceed the Minimum Standards.

4.01(a) Under federal law (49 USC 30112(a)), a new over-the-road motor coach (motor coach) bus may not be sold for the purpose of transporting school-age students to and from school or to school related events unless it meets all FMVSS requirements for school buses. Upon passage of a local board of education resolution, a school district may purchase a used over-the-road motor coach (motor coach) bus and/or attain a short-term rental of a motor coach bus from a contract carrier for the transportation of students to school related events. Such resolution shall specify that consideration was given to the standards of safety to promote the welfare of students, including recommendations of national transportation organizations. In no event shall a motor coach bus be used for the transportation of students to and from school or school to school. A board resolution is not necessary for transporting students on common carriers.

4.02 School transportation vehicles currently transporting Colorado students may continue in use.

4.03 Only school transportation vehicles that were manufactured, per the date listed on the certification plate, within the previous 20 years, may be purchased, leased, contracted, or otherwise obtained for the purpose of transporting Colorado students. These vehicles must meet Colorado minimum standards that were in effect at the time of manufacture.

2251-R-5.00 Definitions.

5.01 School District means a public school district organized pursuant to article 30 of title 22 of Colorado Revised Statutes or a board of cooperative services (BOCES) organized pursuant to article 5 of title 22 of Colorado Revised Statutes.

5.02 Local Board of Education means the board of education of a school district or the governing board of a BOCES.

5.03 Charter school means a public school organized pursuant to Section 22-30.5-103(2) of the Colorado Revised Statutes.

5.04 School Transportation Vehicle means every motor vehicle which is owned by a school district or charter school and operated for the transportation of students to and from school, from school to school, or to school related events or which is privately owned and operated for compensation provided that such transportation service is sponsored and approved by the local board of education or school's governing board.

5.04(a) This does not include informal or intermittent arrangements, such as sharing of actual gasoline expense or participation in a car pool.

5.04(b) Exemption: Vehicles that carry students as part of their operation as a common carrier under the jurisdiction of United States Department of Transportation or Public Utilities Commission are not included within the definition of school transportation vehicle.

5.05 A School Bus shall be a motor vehicle, built to FMVSS and school bus standards contained herein, designed for transporting students on either to and from school, from school to school, or to school related events.

5.05(a) **TYPE A** --Type "A" school bus is a conversion or body constructed utilizing a cutaway front-section vehicle with a left side driver's door and a gross vehicle weight rating (GVWR) of 21,500 pounds or less.

5.05(b) **TYPE B** --Type "B" school bus is a body constructed and installed upon a stripped chassis. Part of the engine is beneath and/or behind the windshield and beside the driver's seat. The entrance door is behind the front wheels.

5.05(c) **TYPE C** --Type "C" school bus is constructed utilizing a chassis with a hood and fender assembly. This includes the cutaway truck chassis, including cab, with or without a left side driver door, and with a GVWR greater than 21,500 pounds. The entrance door is behind the front wheels.

5.05(d) **TYPE D** --Type "D" school bus is constructed utilizing a stripped chassis, the engine may be behind the windshield and beside the driver's seat; it may be at the rear of the bus, behind the rear wheels. The entrance door is ahead of the front wheels.

5.06 Small Vehicle shall be a motor vehicle, which does not meet the requirements of a Type A, B, C or D school bus, designed for general purpose use. A small vehicle shall meet or exceed section 20.05 of these rules. These vehicles may be used to carry students to and from school, from school to school, or to school related events.

5.06(a) Small vehicles shall bear name of school district/service provider plainly visible on each side.

5.07 Multifunction bus shall be a motor vehicle, built to federal multifunctional school activity bus standards, designed for transporting students.

5.07(a) Multifunction buses shall also meet the standards contained in the Minimum Standards with the exception of:

5.07(a)(1) Color, as required by section 15.00 of these rules

5.07(a)(2) Lettering "SCHOOL BUS", as required by section 26.01 of these rules

5.07(a)(3) Lettering "STOP ON FLASHING RED" as required by section 26.06 of these rules

5.07(a)(4) Alternately flashing warning signal lamps, as required by section 29.07 of these rules

5.07(a)(5) Stop signal arm, as required by section 38.00 of these rules

5.07(a)(6) Retro-reflective material color, as required by section 15.02 of these rules.

2251-R-6.00 Testing and Certification.

6.01 School bus manufacturers shall provide annual certification to the Colorado Department of Education that their product(s) meet or exceed the Minimum Standards and all applicable FMVSS in effect at the time of manufacture. School bus manufacturers shall record and report to CDE the test results as required by Section 16 - Construction. All school bus bodies that meet applicable FMVSS and are in compliance with the Minimum Standards shall be certified by the school bus manufacturer by the attachment of a plate or decal.

6.02 It shall be the school district's/charter school's responsibility to ascertain whether all school buses purchased, leased, or under contract to the school district/charter school meet all specifications of the Minimum Standards. This verification should be obtained at the time of delivery, in addition to the statement of compliance in the purchase bid, contract for or lease agreement.

6.03 When selling a school transportation vehicle, it is the school district's/charter school's responsibility to eliminate the school district's/charter schools full name from the vehicle.

6.04 Used school bus dealers shall register with the Colorado Department of Education, School Transportation Unit, certifying that only school transportation vehicles meeting or exceeding Colorado Minimum Standards will be sold. There shall be no fee to register.

6.05 All school transportation vehicles must meet and continue to meet all applicable FMVSS in effect on the date of manufacture, per the date listed on the certification plate.

2251-R-7.00 Bus Delivery Requirements.

7.01 The bus manufacturer shall provide the following materials and information for direct delivery to the customer upon request:

7.01(a) Line set tickets for each individual unit including chassis and body,

7.01(b) A copy of the pre-delivery service performed and verified by a checkout form for each individual unit,

7.01(c) Warranty book and statement of warranty for each individual unit,

7.01(d) Service manual (hard copy or electronic copy) for each individual unit or identical units for all major components of the bus (e.g., body, chassis, transmission, etc.), and

7.01(e) Parts manual (hard copy or electronic copy) for each individual unit or identical units for all major components of the bus (e.g., body, chassis, transmission, etc.).

2251-R-8.00 Aisle.

8.01 Minimum aisle clearance between seats and to all emergency doors shall be 12 inches at seat level.

8.02 On forward control (front engine) Type D buses, the aisle passage area shall not be less than 12 inches, measured from floor level up, between engine cover and any other object. Hold down fastening devices used on engine cover shall be designed to prevent hooking or catching on shoes or clothing.

2251-R-9.00 Axles.

9.01 Rear axle shall be single-speed.

2251-R-10.00 Battery.

10.01 On Type B, C and D, a drawer-type pull out tray shall be provided to facilitate servicing or removal of battery(ies) not used for the motive propulsion of the bus. The battery(ies) shall be enclosed by a vented compartment, provided with drain ports, a hold down carrier mounted so as to avoid blocking filler ports and a latching device to prevent accidental opening. Under-coating

shall be provided and applied to battery box. Battery tray is to be equipped with a safety device to keep tray from sliding completely out.

10.02 On Type A buses equipped with more than one battery, all batteries should be positioned in one location.

10.03 Batteries should be equipped with sufficient battery cable to allow the drawer-type pull out tray to fully extend.

2251-R-11.00 Brakes.

11.01 Type C and D buses shall be equipped with full compressed air brake systems. Both air drum brake and air disc break applications are acceptable.

11.02 Air brakes:

11.02(a) Compressors: On buses using full compressed air brakes for service, emergency, and parking brakes, the compressor shall be a standard production model with a minimum 12 cubic foot per minute displacement.

11.02(b) Moisture ejection valve: An automatic heated, moisture ejection valve or air drying system shall be properly installed. This is made to automatically eject moisture, sludge, and/or foreign matter and maintain clean, dry air lines.

11.02(c) Control requirements: Control valve of the parking brake system shall be designed and constructed to conform with the following:

11.02(c)(1) The parking brake control valve shall be visible to the driver and shall be mounted on the dash panel within 15 inches to the right of the steering column.

2251-R-12.00 Bumpers.

12.01 Front bumper shall:

12.01(a) Be at least 3/16 inch thick of pressed steel channel, one piece construction with minimum of eight inch width (high), except Type A buses under 14,500 GWVR.

12.01(b) Be of extended design to offer maximum protection of fender lines without permitting snagging or hooking.

12.01(c) Be attached to the frame and extend forward of grille, head lamps, fender or hood sections to provide maximum protection.

12.01(c) Be of sufficient strength to ensure that the front of the bus may be lifted by means of a bumper type jack without permanent deformation of the bumper.

12.02 Rear bumper shall:

12.02(a) Be of pressed steel channel or equivalent material, at least 3/16-inch thick, and shall be a minimum of 8 inches wide (high) on Type A buses, and shall be a minimum of 9 ½ inches wide (high) on Type B, C and D buses.

12.02(b) Be wrapped around back corners of bus and extend forward at least 12 inches from rear-most point of body at floor line.

12.02(c) Be fastened to chassis frame side rails in such a manner as to develop full strength of bumper section from rear or side impact. Bracing materials shall have an impact ratio comparable to that of bumper material and shall be fastened at the ends and radii of the bumper, attached to the side of the frame only, and not to body at any point.

12.02(d) Extend beyond rear-most part of body surface at least one inch, measured at floor lines.

12.02(e) Not allow any spaces, projections, or cut-outs that will permit a hand hold or foot hold.

12.02(f) Have the front ends enclosed by end caps or other protective metal or have the ends rounded or tucked in, and shall be free from sharp edges or projections likely to cause injury or snagging.

12.02(g) Have a gasket, rubber or equivalent, installed to close opening between the top of the rear bumper and body metal.

12.02(h) Be of sufficient strength to permit being pushed by another vehicle of similar size. The bumper shall be of sufficient strength to ensure that the rear of the bus may be lifted by means of a bumper type jack without permanent deformation of the bumper.

2251-R-13.00 Color.

13.01 All exterior metal shall be painted National School Bus Yellow (NSBY) with the exception of:

13.01(a) Lettering and numbering shall be black, white, or yellow for bumper area.

13.01(b) Bumpers and frame shall be black

13.01(c) Rub rails may be black or yellow at purchaser option

13.01(d) Background area for alternating flashing warning lamps shall be black

13.01(e) The roof of the bus may be painted white, not to extend below the drip rails on the sides of the body.

13.01(f) Student window frames, posts and service door frame may be black.

13.02 Retro-Reflective material shall be installed on the bus conforming to the requirements of FMVSS 131.

13.02(a) Rear of bus body: strips of between 1 and 2 inch Retro-Reflective NSBY material shall be applied horizontally above the rear windows and above the rear bumper, extending from the rear emergency exit perimeter marking outward to the left and right rear corners of the bus, with vertical strips applied at the corners connecting the horizontal strips.

13.02(b) "School Bus" signs: Shall be marked with Retro-Reflective NSBY material comprising background for lettering of the front and/or rear "school bus" signs.

13.02(c) Sides of bus body: Shall be marked with Retro-Reflective NSBY material at least 1 ¾ inches in width, extending the length of the bus body and located (vertically) as close as practicable to the floor line.

2251-R-14.00 Construction.

14.01 All metal surfaces that will be painted shall be (in addition to above requirements) chemically cleaned, etched, zinc-phosphate-coated and zinc-chromate or epoxy primed or conditioned by equivalent process. Particular attention shall be given to lapped surfaces, welded connections of structural members, cut edges, punched or drilled hole areas in sheet metal, closed or box sections, unvented or undrained areas and surfaces subject to abrasion during vehicle operation.

14.02 The floor shall be at least 14 gauge mill applied zinc-coated steel sheet and shall be on one plane. There shall be a main floor cross member of at least 10 gauge steel or equivalent extending the full width of the floor plate and permanently attached. There shall be a minimum of two intermediate floor cross members of at least 16 gauge steel equally between the main floor cross members and permanently attached.

14.02(a) Type A buses 14,500 GVWR or less may use other metal or material with strength and corrosion resistance at least equivalent to all-steel construction as certified by the bus body manufacturer.

14.03 Subfloor shall be either 5 ply nominal 5/8 inches thick plywood, or a material of equal or greater strength and insulation R value and it will equal or exceed properties of exterior-type softwood plywood C-D grade, as specified in National Bureau of Standards (NBS) Product Standard 1-83. Type A buses, 14,500 GVWR or less, shall have nominal ½ inch thick plywood or equivalent material equal to or exceeding properties listed above.

14.04 Ceiling Panels: If the ceiling is constructed to contain lap joints, the forward panel shall be lapped by the rear panel and the exposed edges shall be beaded, hemmed, or flanged or otherwise treated to eliminate sharp edges.

14.05 All body components shall be designed and constructed so as to avoid the entrapment of moisture and dust.

14.06 All openings between chassis and passenger-carrying compartment made for any reason must be sealed.

14.07 On Type B, C, and D buses, the bus body shall meet the test standards of the Kentucky Pole test.

14.08 In addition to complying with FMVSS 220 test procedures, the body manufacturers shall record and report the downward vertical movement of the force at 0, 25, 50, 75, and 100% of the maximum force (both loading and unloading). The expected force deflection curve is illustrated schematically in Figure 1a. Low load nonlinearities may indicate joint conformation; high load nonlinearities may indicate yielding structural members.

14.08(a) A second load cycle shall be performed following the procedure given in the first paragraph. The expected force-deflection curve is illustrated schematically in Figure 1b. Any hysteresis following the initial shakedown will be revealed by this second cycle.

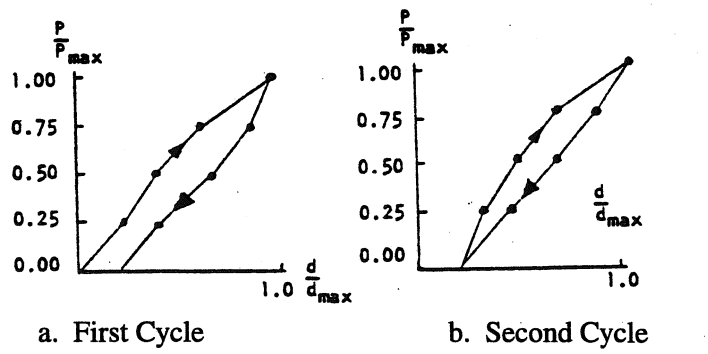


Figure 1. Static Load Test Load-Deflection Curves

14.09 A diagonal (racking) load test shall be performed on Type A, B, C and D school buses to assure adequate shear stiffness and strength of the bus body. Details of the test are provided below.

A two cycle loading sequence shall be conducted following the procedure described in Section 14.08.

14.09(a) Requirements: When a force equal to 1 ½ times the GVW is applied to the edge of the roof of the vehicle's body structure through a force application plate as specified in (b), Test Procedures:

14.09(a)(1) The diagonal movement of the force at any point on the application plate shall not exceed 5 1/8 inches; and

14.09(a)(2) Each emergency exit of the vehicle provided in accordance with FMVSS 217 shall be capable of operation as specified in that standard during the full application of the force and after release of the force.

14.09(b) Test Procedures: Each vehicle shall be capable of meeting the requirements of (1) and (2) when tested in accordance with the procedures set forth below.

14.09(b)(1) The vehicle shall be supported on a rigid surface along the lower edge of the frame or along the body sills in the absence of a frame.

14.09(b)(2) The load shall be applied through a force application plate that is flat and rigid. The dimensions of the plate shall be chosen to assure that the plate edges never make contact with the vehicle skin during testing. A typical width is 18 inches. A typical length is 20 inches less than the length of the vehicle's roof measured along its longitudinal centerline.

14.09(b)(3) Place the force application plate in contact with the edge of the vehicle roof. Orient the plate so that its flat, rigid surface is perpendicular to a diagonal line connecting the most distant points on an interior cross section of the vehicle. The rear edge of the plate shall be positioned approximately 20 inches from the rear edge of the vehicle roof. A temporary stand may be used to support the plate until a force is applied.

14.09(b)(4) Apply an evenly distributed force in a diagonally downward direction through the force application plate at any rate not more than 0.5 inch per second, until a force of 500 pounds has been applied.

14.09(b)(5) Apply additional force in a diagonally downward direction through the force application plate at a rate of not more than 0.5 inch per second until the force specified in (a) has been applied and maintain this application of force.

14.09(b)(6) Measure the diagonal movement of any point on the force application plate which occurred during the application of force in accordance with (5) and open the emergency exits as specified in (a)(2).

14.09(b)(7) Release all diagonal force applied through the force application plate and operate the emergency exits as specified in 14.09(a)(2).

14.09(c) Test Conditions: The following conditions apply to the requirements specified in (3).

14.09(c)(1) Temperature: The ambient temperature is any level between 32 degrees Fahrenheit and 90 degrees Fahrenheit.

14.09(c)(2) Windows and Doors: Vehicle windows, doors and emergency exits are in the fully-closed position and latched but not locked.

14.09(d) An alternative method of testing for the racking load test shall be as follows:

14.09(d)(1) The racking load shall be applied along a line connecting the most distant points on a transverse cross section of the bus interior. It produces a shear distortion of the cross section as shown in figure 2.

A representative method of loading which employs a hydraulic jack to load a two-frame test assembly is illustrated in figure 2.

The maximum jack load for the two-frame assembly is determined by the following formula:

J = 2P J - maximum jack load for two-frame test assembly

P = load/frame

where P = DVW divided by N

DVW - dynamic vehicle weight

N - total number of bus body frames

and DVW = DF x GVW

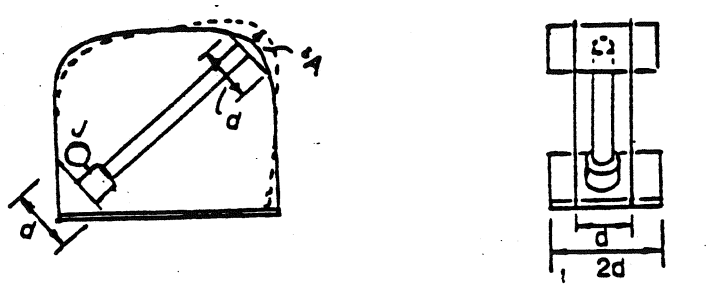
DF - dynamic factor, not less than 1.5

GVW - gross vehicle weight

Thus, for a DF = 1.5, a GVW = 22,000 pounds-force (lbf), and N= 11, the dynamic vehicle weight is DVW = 33,000 lbf, the load/frame is P = 3000 lbf and the maximum jack load is J = 6000 lbf.

14.09(d)(2) When a complete bus body is rack-loaded, the total load DVW must be distributed uniformly along the bus body. One method is to mount a series of hydraulic jacks along the length of the bus interior. Seats may be removed to facilitate jack mounting. The rack load will be considered to be uniformly distributed when the variation

in the hydraulic jack readings is less than 10 percent. A maximum load for DVW shall be the sum of all jack readings.



Transverse Cross Section Side View

Figure 2. Arrangement of Hydraulic Jack for Rack-Loading of Two-Frame Assembly

14.09(d)(2)(A) The test may be performed on a complete bus body or on a representative section composed of at least two complete frames (body posts plus roof bows) and floor. Standard seats may be installed in the test section in a manner identical to that of the full bus body. Fabrication procedures for the test assembly shall be identical to normal bus body production.

14.09(d)(2)(B) A two-cycle loading sequence shall be conducted, with intermediate and final load and deflection readings recorded according to the procedure described.

14.09(d)(2)(C) The maximum deflection in line with the jack (A, maximum) shall not exceed 4 inches.

14.09(d)(3) Manufacturers shall specify which testing method was used and submit appropriate certification information as called for in 6.02.

2251-R-15.00 Cooling System.

15.01 Permanent ethylene-glycol base or environmentally safe equivalent anti-freeze shall be provided to protect the cooling system to -30 degrees Fahrenheit when tested at normal engine temperature.

15.02 Cooling system shall be equipped with a visual fluid level indicator.

2251-R-16.00 Defrosters.

16.01 A defroster system shall be installed of sufficient capacity to keep windshield area, left front side window to rear of driver's vision, and service door glass area free of condensation or ice.

16.02 The defrosting system shall conform to the requirements of the Society of Automotive Engineers, Inc. (SAE) J1945.

16.03 Adjustable 6 inch auxiliary fans may be installed to complement the defroster system used by the manufacturer. Such fans shall be controlled individually by two-speed switches located on control panel. Fan blades shall be covered with a protective cage.

16.03(a) The fans shall be located so as to not interfere with the driver's horizontal line of sight vision.

2251-R-17.00 Doors.

17.01 Service door shall be power or manually operated, under control of the driver, and so designed to afford easy release and prevent accidental opening. When manual lever is used, no parts shall come together so as to shear or crush fingers.

17.02 Manual door controls shall not require more than 25 pounds of force to operate at any point throughout the range of operation as tested on a 10% grade both uphill and downhill. Power door controls shall be located within easy access of driver.

17.03 Service door shall be located on right side of bus opposite driver and within driver's direct view.

17.04 Power operated doors shall be equipped with a separate manual emergency release, readily accessible in the door area, either above the service door, to the side of the service door or on the dash, so that the door may be opened in event of an emergency. The release shall be plainly labeled with instruction for use.

17.05 There shall be a head bumper pad installed on the inside at the top of the entrance door. The pad shall be approximately 3 inches wide (high), at least 1 inch thick, and extend across the entire top of the entrance door opening.

2251-R-18.00 Drive Shaft.

18.01 Each drive shaft or section thereof shall be equipped with adequate metal guard(s) to prevent whipping through floor or dropping to ground, if broken.

2251-R-19.00 Emergency Exits.

19.01 All emergency exits shall conform to FMVSS 217.

19.02 The minimum number of emergency exits is shown in the following table. A district may choose to have more emergency exits installed. Emergency doors may be installed in place of emergency windows.

EMERGENCY EXITS TABLE

BUS CAPACITY	ROOF HATCH	LEFT SIDE EMERGENCY WINDOW	RIGHT SIDE EMERGENCY WINDOW
1 – 45	1	0	0
46 – 70	2	1	1
71 - above	2	2	2

19.03 Emergency door:

19.03(a) Emergency door(s) shall be equipped with a 3-point latch mechanism. The inside door handle shall be designed with a guard for protection against accidental release.

19.03(b) Exterior door handle shall be of permanent hitch-proof design and mounted with enough clearance to permit opening without touching door surface.

19.03(c) All emergency door openings shall be completely weather stripped. No obstruction shall be higher than 1/4 inch across the bottom of any emergency door opening.

19.03(d) A head bumper pad shall be installed over the emergency door on the inside of the bus body. The pad shall be approximately 3 inches wide (high), at least 1 inch thick, and extend across the entire top of the emergency door opening. Padding shall be of the same materials as the padding used over the service door.

2251-R-20.00 Emergency Equipment.

20.01 The bus shall be equipped with at least one pressurized, 5-pound, dry-chemical fire extinguisher, with a total rating of not less than 2A10BC. The operating mechanism shall be sealed with a type of seal that will not interfere with use of the fire extinguisher.

20.01(a) Fire extinguisher shall be securely mounted in an extinguisher bracket (automotive type) and located in full view of and readily accessible to the driver. A pressure gauge shall be so mounted on the extinguisher as to be easily read without removing the extinguisher from its mounted position.

20.02 First Aid Kit: The bus shall carry one first aid kit which shall be securely mounted in full view of the driver or with the location plainly indicated by appropriate markings. Additional kits may be installed. The kit(s) shall be mounted for easy removal.

20.02(a) The kit shall be sealed. The seal verifies the integrity of the contents without opening the kit. The seal shall be designed to allow easy access to the kit's contents.

Contents of the 24 unit First Aid Kit:

Item	**Unit(s)**
Adhesive Tape	1
1 inch adhesive bandage	2
2 inch bandage compress	1
3 inch bandage compress	1
4 inch bandage compress	1
3 inch x 3 inch plain gauze pads	1
Gauze roller bandage 2 inch wide	2
Plain absorbent gauze – ½ square yard	4
Plain absorbent gauze – 24 inch x 72 inch	3
Triangular bandages	4
Scissors, tweezers	1
Space rescue blanket	1

Non-latex disposable gloves, pair.	1
CPR mask or mouth to mouth airway	1

Moisture and dustproof kit of sufficient capacity to store the required items.

20.03 Emergency Reflectors: All buses shall carry three (3) emergency triangle reflectors in compliance with Section 42-4-230, C.R.S. and with FMVSS 125, contained in a securely mounted case easily accessible to the driver or in a location plainly indicated by appropriate markings.

20.04 Body fluid cleanup kit: Each school bus shall have one removable body fluid clean-up kit accessible to the driver.

Contents of the Basic Body Fluid Clean-up Kit:

Item	**Unit(s)**
Antiseptic towelette	1
Disinfectant towelette	1
Absorbing powder (capable of ½ gallon absorption)	1
Non-latex disposable gloves, pair	1
Disposable wiper towels	2
Disposable scoop bag with closure mechanism and scraper	

Moisture and dustproof container of sufficient capacity to store the required items.

20.05 Each bus shall be equipped with one durable webbing cutter having a full width handgrip and a protected blade. The cutter shall be mounted in a location accessible to the seated driver.

20.06 Small vehicles shall carry the following emergency equipment:

20.06(a) Three (3) emergency triangle reflectors in a securely mounted case,

20.06(b) One 24 unit first aid kit as found in 20.02,

20.06(c) One securely mounted, 2 ½ pound, dry chemical fire extinguisher with a minimum rating of 1A10BC,

20.06(d) One durable webbing cutter having a full width handgrip and a protected blade. The cutter shall be mounted in a location accessible to the seated driver.

20.06(e) One basic body fluid clean-up kit as found in 20.04,

20.07 Emergency equipment shall be securely mounted. Emergency equipment shall be clearly visible or in a location plainly indicated by appropriate markings.

2251-R-21.00 Exhaust System.

21.01 Tailpipe shall not exit the right side of the bus body.

21.02 Exhaust system shall be insulated in a manner to prevent any damage to any fuel system component.

21.03 There shall be a switch to manually start the diesel particulate filter regeneration process.

21.04 The tailpipe shall be flush with but not extend more than one inch beyond the perimeter of the body for side exit or the bumper for rear exit except when not needed by an electric powered bus.

21.05 Tailpipe shall not exit beneath any fuel filler location or beneath any emergency door or lift door.

2251-R-22.00 Floor Coverings.

22.01 Floor in under seat area, including tops of wheel housings, driver's compartment, and toe board shall be covered with fire-resistant rubber floor covering or equivalent having a minimum overall thickness of .125 inch.

22.02 Floor covering in aisle shall be aisle-type, fire-resistant rubber or equivalent, non-skid, wear resistant, and ribbed. Minimum overall thickness shall be .1875 inch measured from tops of ribs.

22.03 Floor covering shall be permanently bonded to floor and must not crack when subjected to sudden changes in temperature. Bonding or adhesive material shall be waterproof and shall be of type recommended by manufacturer of floor-covering material. All seams must be sealed with waterproof sealer.

22.04 Cove molding shall be used along the side walls and rear corners. All floor seam separations shall be properly bonded or secured.

22.05 The entrance step treads, including the edge at floor level, shall be of the same quality as the aisle material. Step treads shall have an integral white or yellow nosing of 1 ½ inch or more or use diagonal stripes. Treads shall be permanently bonded to the metal steps and sealed to prevent water from getting underneath the step tread.

22.06 A sealed and insulated plate shall be provided when required to access fuel tank sending unit. The plate shall not be installed under flooring material. Type A buses 14,500 GVWR and under are exempt.

2251-R-23.00 Frame.

23.01 No holes shall be permitted in the chassis rails except when drilled at the manufacturing plant or authorized by the manufacturer.

23.02 Welding to frame side rails necessary by design to strengthen, modify or alter basic vehicle configuration shall be authorized and documented by the manufacturer.

2251-R-24.00 Fuel System.

24.01 All fuel tank specifications shall conform to FMVSS 301, FMVSS 303, FMVSS 305, National Fire Protection Association code 52, and/or National Fire Protection Association code 58, as applicable.

24.02 Engine supply line shall not be mounted below fuel tank.

24.03 The fuel fill cap opening in the body skirt shall be equipped with a hinged cover held closed by a spring or other conveniently operated device except when not needed by an electric powered bus. Type A buses under 14,500 GVWR are exempt.

2251-R- 25.00 Heating System.

25.01 All school buses shall be equipped with two or more hot water heaters capable of delivering water to the system at a rate of six gallons per minute using an ambient temperature of 0 degree Fahrenheit to +10 degrees Fahrenheit and maintaining passenger compartment temperature of 50 degrees Fahrenheit. One of the heaters shall be located in the rear half of the bus on or behind the rear wheel axle line.

25.01(a) Lift equipped buses may place the rear heater under the last row of seats or wall mount. The front heater may be wall mounted.

25.02 Buses shall be equipped with front heater(s) and integrated defroster system of capacity to provide heat for the front part of the bus (including driver's compartment) and to keep windshield area, service door glass, driver's left glass area and step well clear of moisture, ice and snow.

25.03 Heater cores and fans shall be completely encased but designed to permit servicing heater assembly by removing all or part of the case.

25.04 Heater hose installation in the engine compartment shall include two shut-off valves shutting off coolant completely when necessary.

25.04(a) One shut-off valve mounted between the water pump outlet and heater hose connection.

25.04(b) One shut-off valve mounted between the motor block and the return heater hose connection.

25.04(c) Heater hoses shall be adequately supported to guard against excessive wear due to vibration. Hoses shall not rub against the chassis, body or other edges.

25.05 The body manufacturer shall add the required amount of permanent ethylene glycol base or environmentally safe equivalent anti-freeze after heaters have been connected to protect cooling system of bus to -30 degrees Fahrenheit tested at normal engine temperature.

25.06 A heater water flow regulating valve shall be installed for convenient operation by the driver.

2251-R-26.00 Identification.

26.01 School buses shall bear words **"SCHOOL BUS"** in black letters at least 8 inches high on both front and rear of body. Lettering shall be placed without impairment of its visibility. All lettering shall conform to Standard Alphabets for Highway Signs, Series B 2000. Lettering shall have a retro-reflective NSBY material background (see 15.02B)

26.02 School buses shall bear name of school district/service provider on each side of the bus. The lettering must be black, standard, unshaded letters, 5 inches in height. If there is insufficient space due to the length of the name of the school district, terms such as community, consolidated, and district may be abbreviated.

26.03 The manufacturer’s original rated capacity of the vehicle shall be printed to the left of the entrance door on the lower skirt in 2 inch characters. The word “capacity” may be abbreviated. (Example: Cap. 48)

26.04 The numbering of individual buses for identification purposes is permissible.

26.05 Lettering and numerals shall be painted or may be pressure sensitive marking of similar performance quality.

26.06 **"STOP"** shall be printed on the rear of the bus in letters at least 8 inches high. "**ON FLASHING RED"** shall be printed below "**STOP,"** in letters at least 4 ½ inches high. An LED message panel giving safety messages to alert motorists may be used instead of the above lettering. These letters shall be placed in area(s) visible to the approaching motorist.

26.07 The school district logo may be placed above the side window drip line or along the side of the bus, but shall not interfere with any required lettering.

26.08 Only signs and lettering specifically permitted by state law or regulation, and any marking necessary for safety and identification, shall appear on the outside of the bus.

26.08(a) Advertising, approved by the local board of education or charter school's governing board, may appear only on the side(s) of the bus in the following areas:

26.08(a)(1) The location and securement of the advertising shall have prior written CDE approval.

26.08(a)(2) The signs shall not extend from the body so as to allow a handhold or present a danger to pedestrians.

26.08(a)(3) The signs shall not interfere with the operation of any door, window, required lettering, lamps, reflectors or other device.

26.08(a)(4) The signs shall not be placed on side emergency door(s).

26.08(a)(5) Advertising signs shall not interfere with retro-reflective tape on the side of the bus.

26.09 The exterior of the Battery compartment shall be labeled with the word "Battery".

26.10 Identification of fuel type shall be located outside and adjacent to the fuel filler opening.

2251-R-27.00 Insulation.

27.01 Bus body shall be fully insulated in the roof including roof bows and all body panels. Insulation 1 inch minimum thickness shall be fiber-glass or equivalent and fire resistant.

2251-R-28.00 Interior.

28.01 Inside body height shall be 72 inches or more, measured metal to metal at any point on longitudinal center line from front vertical bow to rear vertical bow. Type A school buses of 14,500 GVWR or less shall have 62 inches or more inside height, measured metal to metal. Neither measurement shall include air conditioning units.

28.02 Interior of bus shall be free of all projections likely to cause injury.

2251-R-29.00 Lamps and Signals.

29.01 All lamps, signals, reflectors and their installation shall conform to the requirements of the Society of Automotive Engineers, Inc. (SAE) J1945. No lettering, symbols or arrows, except manufacturer's markings, shall be on any lens.

29.02 Tail and stop (brake) lamps:

29.02(a) Bus shall be equipped with four combination red stop/tail lamps. Two combination stop lamps shall have a lens diameter of at least 7 inches or 38.48 square inches. Two combination tail lamps shall have a lens diameter of at least 4 inches or 12 ½ square inches.

29.02(b) If the bus is equipped with a retarder, the four stop lamps shall be illuminated when the retarder is activated.

29.03 Interior lamps: Interior lamps shall be provided which adequately illuminate aisle. A separate lamp shall be provided in step well.

29.04 Back-up lamps: Back-up lamps of minimum diameter 7 inch or 38.48 square inches, or 4 inch LED shall be provided.

29.05 Turn signal lamps:

29.05(a) The bus shall be equipped with two amber turn signals in front and two amber turn signals in the rear. Rear turn signals shall be at least 7 inches or a total of 38.48 square inches in diameter.

29.05(b) Type D buses will still be required to be equipped with two amber turn signals in front with a minimum diameter of 7 inches or 38.48 square inches.

29.05(c) On buses over 30 feet, a minimum of one additional turn signal shall be mounted on each side below window and behind the service door axis plane.

29.06 School bus alternately flashing warning signal lamps:

Definition: School bus alternately flashing warning signal lamps mounted at the same horizontal level intended to identify vehicle as school bus and to inform other users of highway that such vehicle is stopped or about to stop on roadway to take on or discharge school children.

29.06(a) The amber flashing warning signal lamps shall be energized manually by a switch mounted on the driver control panel. The flashing warning signal lamp system shall be a sequential mode type.

29.06 (b) The flashing warning signal lamp system shall have two pilot or indicator lights; one shall show amber light when the amber signal lamps are flashing and the other shall show red light when the red signal lamps are flashing.

29.06 (c) The areas around the lens of each alternately flashing signal lamp shall be black.

29.06 (d) Visors shall be provided and securely mounted above the dual-lamp flashing warning signals to adequately shade and protect the dual-lamp assemblies from sunlight above but not to obstruct the rear and side effectiveness of the warning lamps. LED warning signal lamps are not required to use visors.

29.07 Type D rear engine buses shall have two hazard lamps each visible to the rear when the engine door is open. The lamps shall be wired to be illuminated when the main hazard lamp circuit is energized.

29.08 A white flashing strobe light may be installed on the roof of a school bus. Amber lens may be used upon approval of local traffic regulatory authority. Light shall have a single clear lens emitting light 360 degrees around its vertical axis and may not extend above the roof more than 8

inches. A manual switch and a pilot light must be included to indicate when light is in operation. Lamp must not be capable of activating emergency traffic control light switches.

2251-R-30.00 Mirrors.

30.00 Exterior mirrors shall meet FMVSS 111.

2251-R-31.00 Mounting, Body, and Chassis.

31.01 Insulation material shall be placed at all attachment points between body and chassis frame on all buses, and shall be so attached to the chassis frame or body to prevent movement under severe operating conditions.

31.02 Body front shall be attached and sealed to the chassis cowl to prevent entry of moisture and gases.

2251-R-32.00 Overall Size.

32.01 Overall length of school buses shall not exceed 40 feet pursuant to Section 42-4-504 C.R.S.

32.02 Overall width of the school bus shall not exceed 8 feet, except under the provisions of Section 42-4-502 (5)(a) C.R.S.

2251-R-33.00 Retarder (optional, see Section 42-4-1901, C.R.S.)

33.01 Retarder manufacturers shall certify that their product system shall maintain the speed of the bus loaded to maximum GVW at 19.0 miles per hour on a 7 percent grade for 3.6 miles.

33.02 School buses equipped with electro-magnetic retarder(s) shall have increased electrical system capacity commensurate with the needs of the retarder system.

33.03 Indicator light(s) shall indicate when retarder is in operation.

2251-R-34.00 Rub Rails.

34.01 There shall be one rub rail located on each side of bus at approximately seat level which shall extend from rear side of entrance door completely around bus body (except for emergency and/or access door) to point of curvature near outside cowl on left side.

34.02 There shall be one rub rail located at approximately floor line which shall cover same longitudinal areas as upper rub rail, except at wheel housing, and shall extend at least to radii of right and left rear corners.

34.03 There shall be one rub rail located on each side of bus at the bottom of the side skirts, or a side skirt stiffener of equivalent strength.

34.04 Rub rails shall be attached at each body post and all other upright structural members.

34.05 Rub rails shall be 4 inches or more in width, 16-gauge steel, or equivalent strength, constructed in corrugated or ribbed fashion and shall be self-draining.

34.06 Rub rails shall be applied to the outside of the body panels. Pressed-in or snap-on rub rails do not satisfy this requirement.

2251-R-35.00 Seats/Restraining Barriers.

35.01 Type A school buses shall be equipped with restraining barriers conforming to FMVSS 222.

35.02 No bus shall be equipped with jump seats or portable seats.

35.03 Forward-most pupil seat on right side of bus shall be located not to interfere with driver's vision. The seat shall not be farther forward than the barrier behind driver or rear of driver's seat when adjusted to its rear-most position.

35.04 Use of a flip seat at any side emergency door location in conformance with FMVSS 222, including required aisle width to side door, is acceptable. Any flip seat shall be free of sharp projections on the underside of the seat bottom. The underside of the flip-up seat bottoms shall be padded or contoured to reduce the possibility of snagged clothing or injury during use. Flip seats shall be constructed to prevent passenger limbs from becoming entrapped between the seat back and the seat cushion when in the upright position. The seat cushion shall be designed to rise to a vertical position automatically when not occupied.

35.05 School bus student seats and seat spacing shall meet FMVSS 222.

35.06 School bus seat materials shall meet FMVSS 302.

2251-R-36.00 Steering Gear Assembly.

36.01 All school bus chassis, in all passenger capacities shall be equipped with heavy-duty, truck-type integral power steering. Power steering components shall be compatible with the GVW rating.

36.02 No changes shall be made in steering apparatus that are not authorized in writing by manufacturer.

36.03 There shall be a clearance of at least 2 inches between steering wheel and any other surface or control.

2251-R-37.00 Steps.

37.01 First service door step shall be not less than 10 inches from the ground (12 inch for Type D) and not more than 14 inches from the ground (16 inches for Type D).

37.02 Step risers shall not exceed a height of 10 inches. When plywood is used on the top step, the riser height may be increased by the thickness of the wood.

37.03 An assist hand rail not less than 20 inches in length designed to provide maximum loading assistance, shall be provided in an unobstructed location inside doorway.

37.04 Surface of steps shall be of non-skid material.

2251-R-38.00 Stop Signal Arm.

38.01 The stop signal arm shall meet FMVSS 131.

38.02 Rubber spacers shall be installed on either the side of the bus or the stop arm so as to prevent sign from making abrasive contact with the side of the bus.

38.03 Wind guard shall be provided to keep sign in retracted position.

2251-R-39.00 Storage Compartment.

39.01 A metal container of adequate strength and capacity for the storage of tire chains, tow chains, and such tools as may be necessary for minor emergency repairs while bus is in route may be provided. The storage container may be located either inside or outside the passenger compartment. If inside, the storage compartment shall be securely fastened to prevent the contents from spilling and shall have a latched or secured cover other than a seat cushion.

2251-R-40.00 Sun Visor.

40.01 An interior, adjustable, sun visor shall be installed not less than 6 inches wide and 30 inches long. Type A school buses 14,500 GVWR or less shall have a sun visor according to manufacturer's standard size.

2251-R-41.00 Tires and Rims.

41.01 Minimum tire and rim sizes shall be in accordance with FMVSS 120.

41.02 Dual rear tires shall be provided on Type B, C and D school buses.

41.03 All wheels shall be one-piece disc type. Split or multi-piece rims are not acceptable.

2251-R-42.00 Tow Hooks.

42.01 Two front heavy duty tow hooks or two eyes shall be furnished and factory installed, except on Type A and B buses. Hooks shall not extend beyond the front bumper on any school bus.

42.02 Two rear heavy-duty tow hooks or eyes shall be fastened securely to the rear of the frame and shall not protrude beyond outer edge of the bumper.

2251-R-43.00 Undercoating.

43.01 The entire underside of the bus body, including floor sections, cross members, and below floor line side panels, shall be coated with rust-proofing material meeting or exceeding performance requirements of Society of Automotive Engineers, Inc. (SAE) J1945.

43.02 The undercoating material shall be applied with suitable airless or conventional spray equipment as per manufacturer recommended film thickness and shall show no evidence of voids in the cured film.

43.03 The undercoating material shall not cover any exhaust components of the chassis.

2251-R-44.00 Ventilation.

44.01 Buses in excess of 20 feet in length shall be equipped with a multi-speed powered exhaust roof ventilator or powered vent fan in roof hatch, mounted in the rear half of the bus.

2251-R-45.00 Windshield Wipers and Washers.

45.01 The wipers shall be operated by one or more air or electric motors. If one motor is used, the wipers shall work in tandem to give full sweep of windshield.

45.02 All wiper controls shall be located within easy reach of the driver and designed to move blades from the driver's direct view when in stop position.

45.03 For Type A over 14,500 GVWR, B, C and D buses, the system reservoir capacity shall be a minimum of one gallon.

2251-R-46.00 Wiring.

46.01 Wiring: All wiring shall conform to the requirements of the Society of Automotive Engineers, Inc. (SAE) J1945.

46.01(a) An appropriate identifying diagram (color plus a name or number code) for all chassis electrical circuits shall be provided to the body manufacter for distribution to the end user.

46.01(b) A body wiring diagram, sized to be easily read, shall be furnished with each bus body or affixed to an area convenient to the electrical accessory control panel.

46.01(c) Each wire passing through metal openings shall be protected by a grommet.

2251-R-47.00 Specially Equipped Buses.

47.01 Equipping buses to accommodate students with disabilities is dependent upon the needs of the passengers. Buses equipped with equipment to accommodate the student needs are not to be considered a separate class of school bus, but a regular school bus equipped for special accommodations. It is recognized by the entire industry that the field of special transportation is characterized by varied needs for individual cases and by a rapidly emerging technology. A flexible, “common-sense” approach to the adoption and enforcement of specifications is prudent.

47.02 Buses equipped for transporting students with special transportation needs shall comply with applicable FMVSS.

47.02(a) Buses with power lifts shall comply with FMVSS 403, *Platform Lift Systems for Motor Vehicles,* and FMVSS 404, *Platform Lift Installation in Motor Vehicles*

47.02(b) A ramp device may be used in lieu of a mechanical lift if the ramp meets all the requirements of the Americans with Disabilities Act (ADA) as found in 36 CFR § 1192.23, *Vehicle Ramp*.

47.02(c) Buses with power lifts or ramps shall display the international symbol of accessibility on all four sides of the bus. The symbols shall be a minimum of 6 inches and not exceed 12 inches. Such emblems shall be white on blue background.

47.02(d) The term *wheelchair tiedown and occupant restraint system (WTORS)* is used to refer to the total system that secures the wheelchair and restrains the wheelchair occupant. A wheelchair tiedown and occupant restraint system installed in specially equipped buses shall be designed, installed, and operated for use with forward-facing wheelchair-seated passengers and shall comply with all applicable requirements of FMVSS 222, *School Bus Passenger Seating and Crash Protection and* FMVSS 302 *Flammability of Interior Materials*.

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Office of the Attorney General

Tracking number: 2015-00028

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

Colorado State Board of Education

on 03/13/2015

1 CCR 301-25

COLORADO MINIMUM STANDARDS GOVERNING SCHOOL TRANSPORTATION VEHICLES

The above-referenced rules were submitted to this office on 03/13/2015 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

March 30, 2015 13:32:41

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

Permanent Rules Adopted

Department

Department of Natural Resources

Agency

Oil and Gas Conservation Commission

CCR number

2 CCR 404-1

Rule title

2 CCR 404-1 PRACTICE AND PROCEDURE 1 - eff 04/30/2015

Effective date

04/30/2015

Appendix A
Final Rule for Floodplains
Adopted 3/2/2015

600 SERIES - SERIES SAFETY REGULATIONS

603. STATEWIDE LOCATION REQUIREMENTS FOR OIL AND GAS FACILITIES, DRILLING, AND WELL SERVICING OPERATIONS

603.g. **Statewide equipment anchoring requirements**. All equipment at drilling and production sites in geological hazard areas shall be anchored. Anchors must be engineered to support the equipment and to resist flotation, collapse, lateral movement, or subsidence. Anchoring requirements in Floodplains are governed by Rule 603.h.

603.h. **Statewide Floodplain Requirements.** When operating within a defined Floodplain:

(1) The following requirements apply to new Oil and Gas Locations and Wells:

A. Effective August 1, 2015, Operators must notify the Director when a new proposed Oil and Gas Location is within a defined Floodplain, via the Form 2A.

B. Effective June 1, 2015, new Wells must be equipped with remote shut-in capabilities prior to commencing production. Remote shut-in capabilities include, at a minimum, the ability to shut-in the well from outside the relevant Floodplain.

C. Effective June 1, 2015, new Oil and Gas Locations must have secondary containment areas around Tanks constructed with a synthetic or geosynthetic liner that is mechanically connected to the steel ring or another engineered technology that provides equivalent protection from floodwaters and debris.

(2) The following requirements apply to both new and existing Wells, Tanks, separation equipment, containment berms, Production Pits, Special Purpose Pits, and flowback pits:

A. Effective April 1, 2016, Operators must maintain a current inventory of all existing Wells, Tanks, and separation equipment in a defined Floodplain. Operators shall ensure that a list of all such Wells, Tanks, and separation equipment is filed with the Director. As part of this inventory, Operators must maintain a current and documented plan describing how Wells within a defined Floodplain will be timely shut-in. This plan must include what triggers will activate the plan and must be made available for inspection by the Director upon request.

B. Effective June 1, 2015 for new and April 1, 2016 for existing, tanks, including partially buried tanks, and separation equipment must be anchored to the ground. Anchors must be engineered to support the Tank and separation equipment and to resist flotation, collapse, lateral movement, or subsidence.

C. Effective June 1, 2015 for new and April 1, 2016 for existing, containment berms around all Tanks must be constructed of steel rings or another engineered technology that provides equivalent protection from floodwaters and debris.

D. Effective June 1, 2015 for new and April 1, 2016 for existing, Production Pits, Special Purpose Pits (other than Emergency Pits), and flowback pits containing E&P waste shall not be allowed within a defined Floodplain without prior Director approval, pursuant to Rule 502.b.

E. An Operator may seek a variance from the effective date for the requirements for existing facilities referenced in subparts 603.h(2)B, C or D by filing a request for an alternative compliance plan with the Director on or before February 1, 2016.

100 SERIES - DEFINITIONS

FLOODPLAIN shall mean any area of land officially declared to be in a 100 year floodplain by any Colorado Municipality, Colorado County, State Agency, or Federal Agency.

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Office of the Attorney General

Tracking number: 2015-00060

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

Oil and Gas Conservation Commission

on 03/02/2015

2 CCR 404-1

PRACTICE AND PROCEDURE

The above-referenced rules were submitted to this office on 03/10/2015 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

March 17, 2015 17:00:40

Cynthia H. Coffman
Attorney General
by Daniel D. Domenico
Solicitor General

Permanent Rules Adopted

Department

Department of Natural Resources

Agency

Colorado Parks and Wildlife (405 Series, Parks)

CCR number

2 CCR 405-1

Rule title

2 CCR 405-1 CHAPTER P-1 - PARKS AND OUTDOOR RECREATION LANDS 1 - eff 05/01/2015

Effective date

05/01/2015

FILING - 03/24/2015

FINAL REGULATIONS - CHAPTER P-1 - PARKS AND OUTDOOR RECREATION LANDS

ARTICLE I - GENERAL PROVISIONS RELATING TO PARKS AND OUTDOOR RECREATION LANDS AND WATERS

 # 100 - PARKS AND OUTDOOR RECREATION LANDS

a. "Parks and Outdoor Recreation Lands" shall mean, whenever used throughout these regulations, all parks and outdoor recreation lands and waters under the administration and jurisdiction of the Division of Parks and Wildlife.

b. "Wearable Personal Flotation Device" shall mean a U.S. Coast Guard approved personal flotation device that is intended to be worn or otherwise attached to the body. A personal flotation device labeled or marked as Type I, II, III, or V (with Type I, II, or III performance) is considered a wearable personal flotation device as set forth in the Code of Federal Regulations, Title 33, Parts 175 and 181(2014). c. It shall be prohibited:

1. To enter, use or occupy Parks and Outdoor Recreation Lands when same are posted against such entry, use or occupancy. (Access to Parks and Outdoor Recreation lands and waters is generally allowed between 5:00 a.m. and 10:00 p.m. daily. Restricted access generally will be allowed during other hours for camping and fishing.)

2. To remove, destroy, mutilate, modify or deface any structure, water control device, poster, notice, sign or marker, tree, shrub or other plant or vegetation, including dead timber and forest litter, or any object of archaeological, geological, historical, zoological or natural/environmental value or interest on Parks and Outdoor Recreation Lands. (This regulation does not include removal of firewood from designated firewood areas, noxious weeds as defined by statute, or recreational gold mining within the Arkansas Headwaters Recreation Area, except where prohibited as indicated by posted signs.)

3. To remove, destroy or harass any wildlife or livestock on Parks and Outdoor Recreation Lands. (Hunting will be allowed in areas designated by the Division during hunting seasons.)

BEARS

d. Where necessary to prevent or address bear/human interactions or related issues, the park manager may designate all or a portion of any state park where: food, trash and equipment used to cook or store food must be kept sealed in a hard-sided vehicle, in a camping unit that is constructed of solid, non-pliable material, or in a food storage box provided by the park for those persons entering the park in something other than a hard-sided vehicle or appropriate camping unit. This restriction does not apply to food that is being transported, consumed, or prepared for consumption. A hard-sided vehicle is defined as: the trunk of an automobile, the cab of a pickup truck, the interior of a motor home, fifth wheel, camping trailer or pickup camper. A hard-sided vehicle does not include any type of tent, pop-up campers or pickup campers with nylon, canvas, or other pliable materials, car top carriers or camper shells on the back of pickup trucks.

PARK-SPECIFIC RESTRICTIONS

e. In addition to the general land and water regulations, the following restrictions shall also apply:

1. Barr Lake State Park

(a) No dogs or other pets shall be permitted in the wildlife refuge area.
(b) Visitors shall be required to remain on designated trails and boardwalks in the wildlife refuge area.
(c) No fishing or boating shall be permitted in the wildlife refuge area.
(d) Visitors shall be required to remain on the designated trails on Barr Lake Dam.
(e) No horses shall be permitted on the Barr Lake Dam.

2. Highline Canal State Trail

(a) No swimming, tubing or rafting shall be permitted.
(b) No fires shall be permitted.

3. Roxborough State Park

(a) No dogs or other pets shall be permitted.
(b) No fires shall be permitted.
(c) It shall be unlawful to climb, traverse or rappel on or from rock formations.

4. Chatfield State Recreation Area

(a) A valid permit is required to launch or land any hot-air balloon.

5. Harvey Gap State Recreation Area

(a) No dogs or other pets shall be permitted except when used for hunting during the period beginning the Tuesday after Labor Day and continuing through the Friday prior to Memorial Day.

6. Bonny State Recreation Area

(a) No public access, hunting, fishing or boating shall be permitted in the North Cove Waterfowl Refuge Area from the first day in November through the last day in January.

7. Mueller State Park and Wildlife Area

(a) No dogs or other pets shall be permitted outside of the developed facilities area.
(b) It shall be unlawful, except by law enforcement officers on official duty, to operate snowmobiles.

8. James M. Robb - Colorado River State Park - Colorado River Wildlife Area

(a) In accordance with applicable management plans, no dogs or other pets shall be permitted, except on designated trails.
(b) No fires shall be permitted.
(c) No swimming shall be permitted.
(d) In accordance with applicable management plans, public access is restricted to designated roads and trails from March 15 to May 30 of each year.

9. Ridgway State Park

(a) No boats, rafts, or other floating devices shall be permitted on any waters within the Pa-Co-Chu-Puk Recreation Site, below Ridgway Dam.

10. Arkansas Headwaters Recreation Area

(a) Except in established campgrounds where toilet facilities are provided, all overnight campers must provide and use a portable toilet device capable of carrying human waste out of the Arkansas Headwaters Recreation Area. Contents of the portable toilet must be emptied in compliance with law and may not be deposited within the Arkansas Headwaters Recreation Area, unless at a facility specifically designated by the Arkansas Headwaters Recreation Area.

(b) Building or tending fires is allowed pursuant to regulation # 100b.7., except at the Arkansas Headwaters Recreation Area fire containers must have at least a two inch rigid side. Fire containers must be elevated up off the ground.

(c) Swimming is permitted in the Arkansas River from the confluence of the East Fork/Lake Fork of the Arkansas within the boundaries of the Arkansas Headwaters Recreation Area. All persons under the age of 13 swimming in the Arkansas River within the Arkansas Headwaters Recreation Area must wear a properly fitting U.S. Coast Guard approved wearable personal flotation device.

11. John Martin Reservoir State Recreation Area

(a) No public access shall be permitted on the north shore area of John Martin Reservoir State Recreation Area from the first day of November through March 15 of every year or as posted except to retrieve downed waterfowl.

12. Cheyenne Mountain State Park

(a) No dogs or other pets shall be permitted outside of the developed facilities area.

(b) Smoking shall be limited to developed areas only and shall not be permitted in the backcountry, or on the archery range, parking lot or trail system.

(c) Hunting shall be prohibited.

(d) It shall be unlawful to climb, traverse or rappel on or from rock formations.

(e) Any person 17 years of age or older who is shooting on the field/3D portion of the archery range must obtain and maintain on one's person a proper and valid daily or annual Cheyenne Mountain Park archery range individual permit.

(f) Public access is prohibited on the archery range from sunset to sunrise.

(g) Any person 16 years of age or younger entering the archery range must be under adult supervision at all times.

(h) Broadheads, crossbows, alcoholic beverages, and firearms, including, but not limited to, BB guns, pellet guns, and air rifles, are prohibited on the archery range.

(i) No dogs or other pets shall be permitted on the archery range.

13. Castlewood Canyon State Park

(a) No dogs or other pets shall be permitted in the East Canyon area.

(b) No horses shall be permitted in the east canyon area.

(c) It shall be unlawful to climb, traverse, or rappel, on or from rock formations in the East Canyon area.

(d) Visitors shall be required to remain on the designated trails in the East Canyon area.

14. Rifle Falls State Park

(a) It shall be unlawful to climb, traverse, or rappel on or from rock formations.

15. Chatfield State Park

(a) Entrance to and exit from the dog off leash areas are permitted only at designated access points.

(b) A handler may bring a maximum of three dogs at one time into the designated dog off leash area.

(c) Handlers must possess a leash and at least one waste bag for each dog in the designated dog off leash area.

(d) Sport dog trainers shall obtain a special use permit to access and use the designated upland and flat-water sport dog training areas.

(e) Handlers in the dog off leash area and the sport dog training areas must have a visible and valid dog off leash annual pass or dog off leash daily pass.

16. Cherry Creek State Park

(a) Entrance to and exit from the dog off leash areas is permitted only at designated access points.

(b) A handler may bring a maximum of three dogs at one time into the designated dog off leash area.

(c) Handlers must possess a leash and at least one waste bag for each dog in the designated dog off leash area.

(d) Sport dog trainers shall obtain a special use permit to access and use the designated upland sport dog training area.

(e) Handlers in the dog off leash area and the sport dog training area must have a visible and valid dog off leash annual pass or dog off leash daily pass.

(f) Use of shotgun shells on the trap/skeet range with shot size larger than size 7 is prohibited.

17. Lake Pueblo State Park

(a) Jumping, diving or swinging from cliffs, ledges or man-made structures is prohibited, including, but not limited to, boat docks, marina infrastructure and the railroad trestle in Turkey Creek.

18. Eldorado Canyon State Park

(a) The use of all portable grills and stoves (including, but not limited to, charcoal, gas, and wood) is prohibited outside of designated high-use pads.

ARTICLE II -WATER RESTRICTIONS: USE OF BOATS AND OTHER FLOATING DEVICES AND OTHER USES ON PARKS AND OUTDOOR RECREATION WATERS

 # 103

a. No boats, rafts or other floating devices of any kind shall be permitted on lakes within:

1. Golden Gate Canyon State Park, except as part of an organized class in canoeing sponsored by the Division.

2. The State Forest, except that wakeless boating shall be allowed on North Michigan Reservoir.

3. Mueller State Park and Wildlife Area.

4. James M. Robb – Colorado River State Park – Pear Park Section between 30 Road and 29 Road

5. James M. Robb – Colorado River State Park - Colorado River Wildlife Area

6. Staunton State Park.

b. No motorboats shall be permitted on the Arkansas River from the confluence of the East Fork/Lake Fork of the Arkansas to the west end of Pueblo Reservoir.

c. Only hand-propelled craft, sailboats and boats with electric motors shall be permitted on the following lakes and reservoirs:

1. All waters within James M. Robb – Colorado River State Park – Island Acres section except Swimmin' Hole

2. Mack Mesa Reservoir – Highline Lake State Recreation Area

3. St. Vrain State Recreation Area, except Blue Heron Reservoir

4. Sylvan Lake State Recreation Area

5. All waters within James M. Robb – Colorado River State Park – Connected Lakes section

6. All waters within James M. Robb – Colorado River State Park – Fruita section

7. Lake Hasty at John Martin Reservoir State Recreation Area

8. James M. Robb – Colorado River State Park – Corn Lake section.

d. Only hand-propelled craft, sailboats and boats with electric trolling motors or gasoline motors of 10 horsepower or less shall be permitted on Barr Lake.

e. Only hand or trailer launched vessels with electric or gasoline motors of 10 horsepower or less, operated at a wakeless speed shall be permitted on Blue Heron Reservoir at St. Vrain State Park.

f. Only hand-propelled craft, sailboats, boats with electric trolling motors and boats with gasoline motors operated at a wakeless speed shall be permitted on the following lakes and reservoirs:

1. North Michigan Reservoir

2. Mancos Reservoir

3. Pearl Lake

g. Only hand-propelled craft, sailboats and boats with electric trolling motors or gasoline motors of 20 horsepower or less shall be permitted on the following lakes and reservoirs:

1. Harvey Gap Reservoir

h. No unauthorized boats, rafts, or other floating devices of any kind shall be permitted on any waters:

1. Within the Pa-Co-Chu-Puk Recreation Site at Ridgway State Park

2. On the waters below John Martin Dam to the Arkansas River bridge at John Martin Reservoir State Recreation Area

i. All Parks and Outdoor recreation waters are open to boating during migratory waterfowl seasons, except as follows:

1. Boating closures during migratory waterfowl season - Specific exceptions:

Boats shall be prohibited on the following lakes, reservoirs and ponds from the first Monday in November through the last day of migratory waterfowl seasons, except as posted and except that hand-propelled craft may be used to set out and pick up decoys and retrieve downed waterfowl on the areas of such lakes open to hunting of migratory waterfowl:

(a) Horseshoe Reservoir within Lathrop State Park

(b) Jackson Reservoir

(c) North Sterling Reservoir

2. Boats shall be prohibited on Highline Lake from the first day in October through the last day in February, except that hand-propelled craft may be used to set out and pick up decoys and retrieve downed waterfowl in the area open to hunting.

3. No public access shall be permitted at John Martin Reservoir State Recreation Area east of the waterfowl closure line to the dam from the first day of November through March 15 of every year or as posted except to retrieve downed waterfowl.

VESSELS

j. It shall be unlawful:

UNATTENDED

1. To anchor or beach boats and leave them unattended overnight within Parks and Outdoor Recreation Lands in areas other than those designated or posted.

LAUNCHING

2. To launch or load within Parks and Outdoor Recreation Lands any boat from a trailer, car, truck or other conveyance, except at an established launch area if the same is provided.

WATER SKIING RESTRICTIONS

k. Water skiing shall not be permitted on the following lakes or reservoirs:

1. Eleven Mile Reservoir

2. Spinney Mountain Reservoir

3. Pearl Lake

4. Horseshoe Lake within Lathrop State Park

5. Harvey Gap Reservoir

6. Mancos Reservoir

7. Sylvan Lake

8. North Michigan Reservoir

TAKE-OFF/DROP OFF

l. No person, while operating any vessel, shall park, moor, anchor, stop or operate said vessel so as to be considered a hazard in any area marked as a water ski take-off or drop zone.

m. Use of air-inflated floating devices:

1. It shall be unlawful to use any air-inflated floating device on waters located on Parks and Outdoor Recreation Lands, except as follows:

(a) Innertubes, air mattresses and similar devices may be used in designated swimming areas only, except as follows:

(1) Innertubes, air mattresses and similar devices are permitted, below the dam on that part of the Arkansas River within the boundaries of Pueblo State Recreation Area. All occupants of these devices must wear a U.S. Coast Guard approved wearable personal flotation device.

(2) Inflatable fishing waders may be used as an aid to fishing.

(3) Innertubes, air mattresses, and similar devices are permitted on the Arkansas River from the confluence of the East Fork/Lake Fork of the Arkansas within the boundaries of the Arkansas Headwaters Recreation Area. All occupants of these devices must wear a U.S. Coast Guard approved wearable personal flotation device.

(b) All other air-inflated devices capable of being used as a means of transportation on the water shall be of separate multi-compartment construction so as to prohibit air from escaping from one compartment to another. Such devices with a motor attached shall have a rigid motor mount.

HUNT AREAS

(c) The following designated methods of hunting may be used in the following areas during hunting seasons:

(1) During the period beginning the Tuesday after Labor Day and continuing through the Friday prior to Memorial Day, only bows and arrows including crossbow and hand-held bow, unless otherwise restricted, and shotguns loaded with birdshot may be used for hunting during hunting seasons, and only in areas not posted as prohibiting such use, on:

(i) Boyd Lake State Recreation Area

(ii) Jackson State Recreation Area

(iii) Lothrop State Park west from a north-south line corresponding with the existing barbed-wire fence between Horseshoe Lake and Martin Lake.

(iv) Pueblo State Recreation Area

(v) Stagecoach Reservoir State Recreation Area, western half of the reservoir

(vi) Sweitzer State Recreation Area

(vii) Trinidad State Recreation Area

(viii) Harvey Gap State Recreation Area

(ix) Eldorado Canyon State Park, western portion known as crescent meadows from the Tuesday after Labor Day through March 31, using a hand-held bow and shotguns loaded with birdshot.

(x) North Sterling Reservoir State Park

(xi) Vega State Recreation Area

(2) Only shotguns loaded with birdshot may be used for waterfowl hunting during the regular waterfowl hunting seasons, in the areas and at the times posted, at Barr Lake State Park, at Corn Lake and Island Acres at James M. Robb State Park, and at Highline Lake State Park.

(i) All hunters must register prior to beginning hunting and check out at the conclusion of hunting, at the hunter registration area.

(3) During deer and elk seasons, any lawful method of hunting may be used for hunting such big game; and, during the period stated in section # 106a.1. (c)(1), above any lawful method of hunting may be used during hunting seasons for small game, in areas not posted as prohibiting such use or uses, on:

(i) The portion of Golden Gate Canyon State Park located in Jefferson County, excluding the 160-acre parcel known as the Vigil Ranch and the posted strip of land along Gilpin County Road 2. Provided further that hunters must visit the designated check station to check in prior to hunting and check out after hunting.

(ii) Lory State Park; except that hunting is not permitted on Saturdays and Sundays.

(iii) Steamboat Lake State Park (including Pearl Lake).

(iv) Ridgway State Park, all lands open to the public access east of Highway 550.

(v) Bonny State Recreation Area.

(4) During deer and elk seasons that are in the period described in 106-a.1. (c)(1), any lawful method of hunting deer and elk may be used in areas not posted as prohibiting such use in that portion of Golden Gate Canyon State Park located in Gilpin County, otherwise known as the Green Ranch. Only hunters selected through a special drawing prior to the beginning of big game seasons are permitted to hunt the Green Ranch portion of Golden Gate Canyon State Park.

(5) During any hunting season all year, lawful methods of hunting may be used in areas not prohibiting such use on:

(i) Crawford State Recreation Area

(ii) Eleven Mile State Recreation Area

(iii) Navajo State Recreation Area

(iv) Paonia State Recreation Area

(v) Rifle Gap State Recreation Area

(vi) State Forest State Park

(vii) Spinney Mountain State Recreation Area

(viii) Sylvan Lake State Recreation Area

(ix) Arkansas Headwaters Recreation Area

(x) Mueller State Park

(xi) San Luis State Park

(6) During the period described in 106-a.1.(c)(1)(x), only primitive weapons (hand-held bow and muzzle-loading rifles) may be used to hunt big game animals in the western portion of Eldorado Canyon State Park known as Crescent Meadows.

(7) During the period beginning the Tuesday after Labor Day and continuing through the Friday prior to Memorial Day, any lawful method of controlled hunting may be used, during hunting seasons, in areas not prohibiting such use on Mueller State Park. Hunters may access the posted hunting area only from Trail 5 at the Visitor Center, Trail 11 at the Livery parking lot or Lost Pond Picnic Area and Trail 13 at the group campground. All weapons must be unloaded when the hunter is outside the posted hunting area boundary.

(8) During any authorized hunting season from October 1 to April 30 of each year, and any approved special season, any lawful method of hunting may be used in the following areas:

(i) All lands at Ridgway State Park open to public access west of Ridgway Reservoir, except that the area bounded by Dallas Creek on the south and the site closure signs on the north shall be closed to all hunting.

(9) During any authorized waterfowl hunting season from October 1 to April 30 of each year, and any approved special season, waterfowl hunting shall be permitted within the Dallas Creek Recreation Site at Ridgway State Park; except that hunting shall be prohibited between the park road and U.S. Highway 550 and in other areas posted as prohibiting such use.

(10) During approved special seasons, any lawful method of hunting may be used in the following areas (or special hunting zones) as defined:

(i) (Zone 1) Elk Ridge Mesa, including the closed Elk Ridge Campground, and

(ii) (Zone 2) That area bounded by a distance of 100 yards south of park headquarters, on the north; Ridgway Reservoir on the west; ¼ mile from Colorado Highway 550 on the south; and ¼ mile from the main park road on the east and,

(iii) That area bounded by Ridgway reservoir's main cove on the north; ¼ mile from the Elk Ridge road on the west; the intersection of the Elk Ridge and main park roads on the south; and ¼ mile from the main park road on the east at Ridgway State Park and,

(iv) The Pa-Co-Chu-Puk Recreation site at Ridgway State Park.

(11) During any authorized big game hunting season, any lawful method of hunting deer, elk, and bear may be used in areas not posted as prohibiting such use in Lone Mesa State Park. Only hunters who possess a valid Lone Mesa State Park hunting permit are permitted to hunt.

(12) During the spring turkey hunt at Lory State Park, it shall be permitted to hunt turkey by legal methods on Mondays and Tuesdays only. All other days of the week shall be closed to spring turkey hunting.

(13) During the period described in 106.a.1.(c)(1) only bows and arrows and shotguns loaded with birdshot may be used for hunting in areas not prohibiting such use on North Sterling State Park, except as follows:

(i) Hunting is prohibited from the dam, and

(ii) Hunting is prohibited from the frozen surface of the lake.

(d) Park Managers may post an area on a park or recreation area as being closed to hunting due to public safety considerations or sound park management practices.

1. To discharge explosives, firearms, and/or other weapons within 100 yards of any designated campground, picnic area, boat ramp, swimming or water skiing beach or nature trail and study area, except as may be otherwise posted.

2. To discharge explosives, firearms, and/or other weapons from any location so that projectiles are caused to cross over or fall upon Parks and Outdoor Recreation Lands.

TRAPPING

1. To place or set traps on Parks and Outdoor Recreation Lands and Waters, except as authorized by wildlife regulations and with a valid Special-Activities Permit.

RAPTOR HUNTING

1. To hunt by the use of raptors on Parks and Outdoor Recreation Lands and Waters, except as authorized by wildlife regulations and with a valid Special-Activities Permit.

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Office of the Attorney General

Tracking number: 2015-00086

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

Colorado Parks and Wildlife (405 Series, Parks)

on 03/04/2015

2 CCR 405-1

CHAPTER P-1 - PARKS AND OUTDOOR RECREATION LANDS

The above-referenced rules were submitted to this office on 03/11/2015 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

March 20, 2015 09:18:28

Frederick R. Yarger

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

Permanent Rules Adopted

Department

Department of Natural Resources

Agency

Colorado Parks and Wildlife (405 Series, Parks)

CCR number

2 CCR 405-2

Rule title

2 CCR 405-2 CHAPTER P-2 - BOATING 1 - eff 05/01/2015

Effective date

05/01/2015

FILING - 03/24/2015

FINAL REGULATIONS - CHAPTER P-2 - BOATING

 # 212 - PERSONAL FLOTATION DEVICES (PFD's)

1. No person may operate or give permission to operate a vessel less than sixteen feet in length unless at least one wearable personal flotation device is on board for each person. For sailboards, an operator may elect to wear a wet suit in lieu of carrying any type of personal flotation device, so long as the wetsuit meets the requirements of paragraph 6, of this regulation. For vessels used in river running activities, no person may operate or give permission to operate a vessel for the purpose of river running unless at least one wearable personal flotation device is on board for each person.

2. No person may operate or give permission to operate a vessel sixteen feet or more in length unless at least one wearable personal flotation device is on board for each person, plus at least one throwable personal flotation device, which is immediately available. For vessels used in river running activities, that portion of this regulation requiring a throwable personal flotation device does not apply. No person may operate or give permission to operate a vessel for the purpose of river running unless at least one wearable personal flotation device is on board for each person.

3. No person may operate or give permission to operate a vessel carrying passengers for hire on any reservoir or lake unless at least one wearable personal floatation device is on board for each person and they are being worn when required. For vessels used during commercial river running trips conducted by river outfitters, the personal flotation device requirements are contained in regulation # 305.

4. The operator shall require each person who is surfing or being towed on water skis, aquaplane, inner tube or similar device, to wear a properly fitting wearable personal flotation device. A United States Coast Guard Approved wearable personal flotation device is recommended, but a ski belt (preferably with at least 2 straps and buckles), water sports jacket or foam wetsuit jacket will be accepted if there is an extra wearable personal flotation device aboard for each person as required above.

5. No person may operate or give permission to operate a recreational vessel unless each wearable personal flotation device required is readily accessible and is legibly marked with the U.S. Coast Guard approval number and is of appropriate size for the person wearing it or for whom it is intended.

6. Sailboard operators may elect to wear, at their own risk, in lieu of carrying a U.S. Coast Guard approved personal flotation device, a wetsuit constructed of nylon covered neoprene or similar material that covers the full torso of the wearer. The wetsuit shall be capable of providing flotation to the wearer, when at rest on the surface of the water.

7. All equipment shall be in good and serviceable condition.

8. **“Wearable Personal Flotation Device”** shall mean a U.S. Coast Guard approved personal flotation device that is intended to be worn or otherwise attached to the body. A personal flotation device labeled or marked as Type I, II, III, or V (with Type I, II, or III performance) is considered a wearable personal flotation device as set forth in the Code of Federal Regulations, Title 33, Parts 175 and 181(2014).

9. **“Throwable Personal Flotation Device”** shall mean a U.S. Coast Guard approved personal flotation device that is intended to be thrown to a person in the water. A personal floatation device labeled as Type IV or V (with type IV performance) is considered a throwable personal flotation device as set forth in the Code of Federal Regulations, Title 33, Parts 175 and 181(2014).

 # 217 - RIVER USE RESTRICTIONS

1. As used in this regulation:

   a. “Public Advisement” means a formal statement publicly issued or announced for the purpose of informing the public. A public advisement shall not prohibit the use of vessels, whitewater canoes, single-chambered air-inflated devices, or kayaks. A public advisement may include a recommendation that, in addition to any safety equipment required by law, additional items of safety equipment and additional safety precautions are recommended. Such additional safety precautions may include the recommendation that inexperienced or inadequately prepared individuals should postpone the river trip or seek the professional services of state licensed river outfitters.

   b. “Partial Use Restriction” means any order issued prohibiting the operation of single-chambered air-inflated devices on any waters of the state. A partial use restriction shall not prohibit the use of vessels, whitewater canoes, or kayaks.

   c. “Use Restriction” means any order issued prohibiting the operation of vessels and single-chambered air-inflated devices on any waters of the state and requiring the removal of vessels and single-chambered air-inflated devices from any waters when such operation constitutes, or may constitute, a hazard to human life or safety. A use restriction order shall apply to whitewater canoes or kayaks.

   d. “Peace Officer” means a sheriff, undersheriff, deputy sheriff, police officer, Colorado State Patrol officer, or marshal, a district attorney, assistant district attorney, deputy district attorney, or special deputy district attorney, an authorized investigator of a district attorney, an agent of the Colorado Bureau of Investigation, a district wildlife manager or special district wildlife manager, or a parks and recreation officer.

   e. “Single-Chambered Air-Inflated Device” means an air-inflated device that has only one air compartment, such as innertube and certain types of air mattresses and small inflatable rafts.

   f. “Vessel” Is defined in 33-13-102 (5) C.R.S.

2. A public advisement or partial use restriction order may be issued by a peace officer whenever the peace officer determines that normal or above average runoff or water levels or other circumstances or conditions may increase incidences of water recreation accidents or injuries within the peace officer’s jurisdiction.

3. A use restriction order shall be issued by a peace officer whenever the peace officer determines that a hazard to human life and safety exists within his jurisdiction.

   a. For the purpose of issuing a use restriction order, a peace officer may deem a hazard to human life and safety to exist whenever one or more of the following circumstances or conditions exists:

      (1) A state of disaster emergency has been declared to exist pursuant to 24-32-2104 or 24-32-2109, C.R.S.

(2) Disaster relief efforts, which may include debris removal, are underway.

(3) An accident or other emergency occurs in or immediately adjacent to the waterbody.

(4) Rescue efforts for victims are actively underway and such efforts would be hindered by additional waterway traffic, or

(5) Active construction or transportation projects authorized under state or federal law.

b. A hazard to human life and safety shall not be deemed to exist based solely upon the river's flow rate, which is usually measured in cubic feet per second.

c. The partial use restriction or use restriction order shall specify the beginning and ending sections of the water body closed, the proposed duration of the order, and the facts establishing the basis for the partial use restriction or use restriction order.

d. The use restriction order shall prohibit the operation of and order the removal of vessels and single-chambered air-inflated devices.

e. The law enforcement agency issuing the partial use restriction or use restriction order shall prominently post closure signs at all commonly used boating and floating access sites along the closed section.

4. Following the issuance of a public advisement, a partial use restriction, or use restriction, the law enforcement agency issuing the advisement or order shall immediately contact the Division of Parks and Wildlife and advise the Division of the existence of the advisement or order. Further, the law enforcement agency issuing the advisement or order shall file with the Division a report. Such report shall be on forms furnished by the Division.

5. The penalty for operating a vessel, as defined in subsection 1.f. of this regulation, in violation of use restriction order is specified in 33-13-111(3), C.R.S. The penalty for operating or using a single-chambered air-inflated device, as defined in subsection 1.e. of this regulation, in violation or a use restriction order or partial use restriction order specifically prohibiting their use is specified in 33-13-110(2)(d), C.R.S.

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Office of the Attorney General

Tracking number: 2015-00087

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

Colorado Parks and Wildlife (405 Series, Parks)

on 03/04/2015

2 CCR 405-2

CHAPTER P-2 - BOATING

The above-referenced rules were submitted to this office on 03/11/2015 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

March 20, 2015 09:21:11

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

Permanent Rules Adopted

Department

Department of Natural Resources

Agency

Colorado Parks and Wildlife (405 Series, Parks)

CCR number

2 CCR 405-7

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2 CCR 405-7 CHAPTER P-7 - PASSES, PERMITS AND REGISTRATIONS 1 - eff 05/01/2015

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FILING - 03/24/2015

FINAL REGULATIONS - CHAPTER P-7 - PASSES, PERMITS AND REGISTRATIONS

ARTICLE I - GENERAL PROVISIONS AND FEES RELATING TO PASSES, PERMITS AND REGISTRATIONS

INDIVIDUAL PASSES

 # 701 - INDIVIDUAL PASSES

1. Individuals entering state recreation areas and state parks by means other than a motor vehicle, such as on foot, bicycle, horseback, etc., may enter without purchasing a parks pass, except as otherwise required by these regulations. No individual pass shall be required under the circumstances identified in regulation # 700-2.a. through # 700-2.e. and # 700-2.g. through # 700-2.i.

2. A disabled resident may obtain a Columbine annual pass pursuant to 33-12-103.5, C.R.S. A resident who qualifies for a Centennial annual pass may obtain such pass as provided for in this regulation. The Columbine and the Centennial annual passes are transferable and are valid whenever temporarily affixed to any vehicle used to bring the pass holder into a park.

3. A Columbine or a Centennial annual pass shall authorize entrance by motor vehicle, when and where motor vehicle access is permitted, to all state recreation areas and state parks. Such authorization shall apply to the holder of the Columbine or the Centennial annual pass and all the passengers in, and the driver of, the motor vehicle carrying the holder of such annual pass. Such annual parks pass must be continuously displayed in the manner described on the pass while the motor vehicle transporting the holder of the pass is operated or parked on division properties. Additional fees may be required at some facilities such as campgrounds, group picnic areas and swim beaches.

4. A Columbine or a Centennial annual parks pass shall be issued following the Division's receipt of a completed application from a qualified resident of the state and the payment of the necessary fee.

5. In order to qualify for a Columbine annual parks pass, a resident must provide written proof to the Division:

    a. That he or she has been determined to be totally and permanently disabled by the Social Security Administration; or

    b. That he or she has been determined to be totally and permanently disabled by the Division of Workers' Compensation; or

    c. That he or she has been determined by a physician to have a physical or mental impairment which prevents gainful employment and is reasonably certain to continue throughout the person's lifetime.

6. In order to qualify for a Centennial annual parks pass, a resident must show a photo identification card and provide written proof, in the form of a federal income tax return from the immediately preceding calendar year, that the federal total annual income of such individual is at or below the threshold amount, based on the number of dependents, for a state parks Centennial annual pass.

The federal total annual income amounts, based on the number of dependents, cannot be greater than those listed in the poverty guidelines set forth in the *Federal Register Volume 79, Number 14* (January 22, 2014) issued by the U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, Room 404E, Humphrey Building, Department of Health and Human Services, Washington, DC 20201 under the authority of 42 U.S.C. 9902(2). This federal guideline, but not later amendments to or editions thereof, has been incorporated by reference. Information regarding how and where the incorporated materials may be examined, or copies obtained, is available from:

Regulations Manager
Policy and Planning Unit
Colorado Division of Parks and Wildlife
1313 Sherman Street, Room 111
Denver, Colorado 80203

If the individual's income is at a level where he or she was not required to file a federal income tax return for the immediately preceding calendar year, such individual shall sign a statement under penalty of perjury in the second degree to such effect. No such affidavit shall be required to be notarized.

7. The Columbine and the Centennial annual parks pass application shall be on a form provided by the Division. Blank applications shall be available, during regular business hours, at the Divisions' regional offices, Denver offices, and service centers.

8. Individuals applying to the Division for a Columbine or a Centennial annual parks pass must provide the following information:

   a. Full name and address, including city, county, state and zip code; and

   b. Phone number, unless the phone number is unlisted or non-published; and

   c. Date of birth and age; and

   d. Physical description, including sex, height, weight, hair and eye color; and

   e. Applicant's signature and date of application; and

   f. If applying for a Columbine annual parks, information concerning the nature of the applicant's disability, together with supporting evidence of the same.

   g. If applying for a Centennial annual parks pass, information concerning the applicant's total annual income and number of dependents together with supporting evidence of the same.

9. The Columbine and the Centennial annual parks pass application form shall contain language explaining that the completed and signed application, once submitted to the Division, will be treated in all respects as a sworn statement. The form shall also contain an oath that includes an affirmation attesting to the truth of that which is stated, the applicant is aware that statements made are intended to be represented as true and correct statements, and that false statements are punishable by law.

10. At the time that an application for a Columbine or a Centennial annual parks pass is submitted to the Division, the appropriate fee shall also be paid.

11. Pending the issuance of a Columbine or a Centennial annual parks pass, possession on the applicant of a bona fide copy of the application permits the applicant and others in the motor vehicle carrying the applicant entrance by motor vehicle to all state parks and state recreation areas, when and where motor vehicle access is permitted, for a period of thirty days following the date of filing the application with the Division or until receipt of notice from the Division either granting or denying the application request, whichever period of time is shorter.

12. Within 15 days of the Division's receipt of a completed Columbine or Centennial annual parks pass application and the appropriate fee payment, the Division shall review and approve or deny the application.

    a. Completed applications shall be approved if the minimum qualifications set forth in this regulation are met.

    b. Conversely, if the minimum qualifications are not met, then the application shall be denied. The applicant shall be notified in writing within five working days upon denial of a request. Such written notification shall include an explanation of the basis for denial and a refund of any fee paid.

    c. The applicant may appeal this decision to the Division Director by notifying the Director in writing within sixty days of the Division's mailing of the denial notice. A faster appeal will be necessary when the calendar year will end prior to the expiration of the sixty-day appeal period.

    d. The address utilized by the Division for all mailings associated with the processing of a Columbine or Centennial annual parks pass application shall be the address indicated on the application.

13. If a Columbine or a Centennial annual pass is lost or destroyed during the period of time that it would otherwise would have been valid, the person to whom the pass was issued may obtain a duplicate thereof, upon signing an affidavit reciting where and by whom it was issued and circumstances under which it was lost. Upon payment of a fee of $5.00, a new pass may be issued only by the Division to the original owner of such Columbine or Centennial annual pass.

14. The receipt for the annual vehicle pass shall be used as an annual walk-in pass for visitors entering Eldorado Canyon State Park, Lory State Park, Colorado State Forest State Park, Arkansas Headwaters Recreation Area.

15. Individual daily pass fees are as follows:

    a. A fee of $3.00 per person for any person of the age of sixteen or more years shall be charged for a daily pass for all visitors entering Eldorado Canyon, Colorado State Forest, and Lory State Parks, except those entering the park in a motor vehicle with a valid parks pass.

    b. A fee of $3.00 per person for any person of the age of sixteen or more years shall be charged for a daily pass for all visitors entering the developed and posted fee sites of Arkansas Headwaters Recreation Area, except those entering the park in a motor vehicle with a valid parks pass.

16. Volunteers for the division of parks and outdoor recreation are eligible for a volunteer park pass while serving in accordance with a signed individual volunteer agreement and after donating a minimum of 48 hours of approved volunteer service within a previous consecutive 12-month period.

a. A valid volunteer pass shall be accepted in lieu of a fee assessed for a park pass.

b. The volunteer park pass is valid for one year from the date of issue.

c. The volunteer park pass is transferable and valid whenever temporarily affixed to any vehicle used to bring the pass holder into a park, or for walk-in use, when in possession of the eligible pass holder.

17. Volunteers for the Division of Parks and Outdoor Recreation who are 64 years of age or older, regardless of their state of residence, are eligible for the senior volunteer park pass while serving in accordance with a signed individual volunteer agreement and after donating a minimum of 48 hours of approved volunteer service within a previous consecutive 12 month period.

a. A valid senior volunteer pass shall be accepted in lieu of a fee assessed for a park pass.

b. The senior volunteer park pass is valid for one year from the date of issue.

c. The senior volunteer park pass is transferable and valid whenever temporarily affixed to any vehicle used to bring the pass holder into a park, or for walk-in use, when in the possession of the eligible pass holder.

d. Senior volunteer pass holders shall receive campground use permits at a reduced rate equal to the current aspen leaf pass holder camping permit rate, as specified in regulation # 705. This reduced rate applies to all days of the year when such areas are open, except weekends and holiday. For the purpose of determining reduced rate campground permit eligibility, “weekend” means the time period beginning at noon on Friday through 12 noon on Sunday, and “holiday” shall mean the time period beginning at noon on the day prior to the legal holiday through 12 midnight on the legal holiday. The camping permit reduced fees associated with the senior volunteer pass are identified in regulation # 708.

 # 705 - ASPEN LEAF ANNUAL PASSHOLDERS

1. A resident of this state who is sixty-four years of age or older may obtain an Aspen Leaf annual pass. The fee for an Aspen Leaf annual pass is identified in regulation #708.

2. Individuals possessing a valid Aspen Leaf annual pass shall receive campground use permits at a reduced rate all days of the year when such areas are open, except weekends and holidays. For the purpose of determining reduced rate campground permit eligibility, “weekend” means the time period beginning at 12 noon on Friday through 12 noon on Sunday, and “Holiday” shall mean the time period beginning at 12 noon on the day prior to the legal holiday through 12 midnight of the legal holiday. The camping permit reduced fees associated with the Aspen Leaf annual pass are identified in regulation # 708.

3. The aspen Leaf Annual pass holder must own in whole or in part any vehicle to which the Aspen Leaf annual pass is affixed and used to enter a park area.

4. Current Aspen Leaf Lifetime Passholders may obtain an annual Aspen Leaf Lifetime Free Pass for a single vehicle the holder owns in whole or in part for the lifetime of the passholder and provided the passholder is a resident of Colorado. The annual Aspen Leaf Lifetime Free Pass shall be affixed to such vehicle owned by the passholder. Additional passes may be purchased pursuant to regulation 708(1)(e)(2).

 # 706 - GROUP PICNIC AREA PERMITS

1. No person shall use any facility of any group picnic area unless such use is by authority of a valid permit issued by the Division of Parks and Outdoor Recreation.

2. All permits and reservations must be received in advance. The group picnic area cancellation fee for all group picnic sites within the system shall be equal to 25% of the base fee if the cancellation is made more than fourteen days prior to the reserved date. If the cancellation is made within fourteen days of the reserved date, then the cancellation fee shall be 100% of the base fee.

3. Definitions as used in these regulations, unless the context requires otherwise:

    a. "Class A – Deluxe Group Picnic Area" means those with highly developed facilities. The picnic area will be designated and include a covered shelter, picnic tables, a grill, and electrical connections. Restroom facilities, trash receptacles, water and lighting will be available.

    b. "Class B – Improved Group Picnic Area" means those with fairly developed facilities. The picnic area will be designated and include picnic tables and a grill. Trash receptacles and water will be available.

    c. "Class C – Basic Group Picnic Area" means those providing basic facilities. The picnic area will be designated and include picnic tables and a grill. Sanitary facilities shall generally consist of vault-type toilets.

 # 707 - SWIM BEACH PASSES – "Reserved"

1. A daily or annual swimbeach pass shall be required for a person to enter the Rock Canyon swim beach within Pueblo State Recreation Area.

 # 708 - PASS AND PERMIT FEE SCHEDULE

1. The fees for the types of vehicle passes issued by the Division are as follows.

    a. Aspen leaf annual pass.....$60.00

    b. Annual vehicle pass.....$70.00

    c. Annual vehicle passes purchased in large quantities during a single sale, transaction will be discounted as follows.

        (1) Twenty or more passes, but less than fifty……...20% discount

        (2) Fifty or more passes, but less than one hundred…….....25% discount

        (3) One hundred passes or more.....30% discount

    d.

        (1) Each additional annual vehicle pass for noncommercial vehicles……....$35.00

        (2) Each additional Aspen Leaf vehicle pass for noncommercial vehicles..….$30.00

e. Each replacement annual vehicle pass……$5.00

f. Each daily vehicle pass (exceptions follow)……$7.00

(1) At Cherry Creek, Chatfield, and Boyd Lake State Recreation Areas, and Eldorado Canyon State Park.....$8.00

g. Each daily vehicle pass for a passenger van or bus operated by a commercial business:

(1) carrying up to fifteen passengers…….....$10.00

(2) carrying sixteen to thirty passengers……..…....$40.00

(3) carrying more than thirty passengers……..…....$50.00

2. The fees for the types of individual passes issued by the Division are as follows. Eligibility requirements are stated in regulation # 701.

a. Columbine or Centennial annual pass……..$14.00

b. Each replacement Columbine or Centennial annual pass……$5.00

c. Individual daily passes (applies to persons sixteen years of age or older) for Eldorado Canyon, Colorado State Forest, Lory State Parks and Arkansas Headwaters Recreation Area.....$3.00

3. The fees associated with special activities, as provided for in regulation # 703 are:

a. Special activity alternate individual fee (applies to groups of twenty or more people in size).....$2.00

b. Special activity application filing fee.....$20.00

4. The fees for the type of campground-use permits issued by the Division are as follows. Campground classes are defined in regulation # 704.

a. Campground-use permit for "Full Hookup Campgrounds" ……..……$24.00/night

b. Campground-use permit for "Electrical Campgrounds" ……$20.00/night

c Campground-use permit for "Basic Campgrounds" ……..……$16.00/night

d. Campground-use permit for "Primitive Campgrounds" ……..……..$10.00/night

e. From May 1 through September 30 at Chatfield, Cherry Creek, Cheyenne Mountain, Golden Gate, Highline, Mueller, Pearl Lake, Rifle Falls, Ridgway, St. Vrain, Steamboat and Sylvan Lake the camping fees shall be:

(1) Campground-use permit for "full hookup campgrounds" ……...$26.00/night

(2) Campground-use permit for "electrical campgrounds" ……..$22.00/night

(3) Campground-use permit for "basic campgrounds" ……..$18.00/night

(4) Campground-use permit for "primitive campgrounds" ……..$12.00/night

5. The fees for reduced rate Aspen Leaf and senior volunteer park pass campground-use permits issued by the Division are as follows. Eligibility requirements are stated in regulation # 701 and regulation # 705. Reduced rates are offered all days of the year when the campground is open, except weekends and holidays.

a. Campground-use permit for "Full Hookup Campgrounds" ……..…….$21.00/night

b. Campground-use permit for "Electrical Campgrounds" ……..……..$17.00/night

c. Campground-use permit for "Basic Campgrounds" ……...…$13.00/night

d. Campground-use permit for "Primitive Campgrounds" ……..……...$7.00/night

e. From May 1 through September 30 at Chatfield, Cherry Creek, Cheyenne Mountain, Golden Gate, Highline, Mueller, Pearl Lake, Rifle Falls, Ridgway, St. Vrain, Steamboat and Sylvan Lake the camping fees for reduced rate Aspen Leaf and senior volunteer pass campground-use permits shall be:

(1) Campground-use permit for "full hookup campgrounds" ……..$23.00/night

(2) Campground-use permit for "electrical campgrounds" ……..$19.00/night

(3) Campground-use permit for "basic campgrounds" ……....$15.00/night

(4) Campground-use permit for "primitive campgrounds" …..……..…....$9.00/night

6. The fees for types of campground-use areas are as follows. Campground classes are defined in regulation # 704.

a. In group camp areas of “Full Hookup Campgrounds,” the fee shall be $24.00 per night per campsite assigned to such group area.

b. In group camp areas of “Electrical Campgrounds,” the fee shall be $20.00 per night per campsite assigned to such group area.

c. In group camp areas of “Basic Campgrounds,” the fee shall be $16.00 per night per campsite assigned to such group area.

d. In group camp areas of “Primitive Campgrounds,” the fee shall be $10.00 per night per campsite assigned to such group area.

e. From May 1 through September 30 at Chatfield, Cherry Creek, Cheyenne Mountain, Golden Gate, Highline, Mueller, Pearl Lake, Rifle Falls, Ridgway, St. Vrain, Steamboat and Sylvan Lake the camping fees for group camp areas shall be:

(1) Campground-use permit for “Full Hookup Campgrounds” ……$26.00/night

(2) Campground-use permit for “Electrical Campgrounds” ……....$22.00/night

(3) Campground-use permit for “Basic Campgrounds” ……..$18.00/night

(4) Campground-use permit for “Primitive Campgrounds” ..……..$12.00/night

7. The fees for types of cabins and yurts are as follows:

   a. For small cabins and yurts that may accommodate a maximum of six people:

      (1) Standard……..…….$70.00/night

      (2) Premium……..……..……$100.00/night

   b. For large cabins and yurts that may accommodate seven or more people:

      (1) Standard……..…….....$100.00/night

      (2) Premium two bedroom.....$130.00/night

      (3) Premium three bedroom…….....$170.00/night

      (4) Premium four bedroom…….$230.00/night

      (5) Each additional premium bedroom over four bedrooms……...$60.00/night

   c. For Mueller State Park Cabins and Harmsen Ranch at Golden Gate Canyon State Park:

      (1) Premium two bedroom……$140.00/night

      (2) Premium three bedroom…… ……$200.00/night

      (3) Premium four bedroom…… ……..$260.00/night

   d. The maximum occupancy shall be posted in each cabin and yurt.

   e. There shall be an additional fee of $10.00/night for pets where pets are allowed. For barn and corral facilities, there shall be a boarding fee of $10.00/animal/night.

   f. Premium facilities contain showers and flush toilets.

   g. Notwithstanding the established cabin and yurt fees, the Regional Manager may reduce the fees for use of cabins and yurts when determined necessary to encourage occupancy and otherwise increase use, subject to the following limitations:

      (1) From May 1 through October 31, weekday (Monday to Thursday, excluding holidays) fees may be reduced up to 50 percent.

      (2) From November 1 through April 30, fees may be reduced up to 50 percent.

      (3) Reduced fees, if any, and the time periods for such reductions will be established by March 1 annually and posted at the park and on the Division website. Reservations made prior to the March 1st posting shall not be subject to any such fee reduction.

8. The fees associated with the reservation system are as follows:

   a. Campsite, cabin and yurt reservation fee……$10.00/campsite, cabin or yurt

   b. Each reservation change or cancellation……..$6.00/each

(1) For cancellations made fourteen days or more prior to the beginning date of the reservation, the campsite reservation fee will be retained and the cancellation fee will be charged.

(2) For cancellations made less than fourteen days prior to the beginning date of the reservation, the campsite reservation fee will be retained and the first night's camping fee will be charged.

c. On-park facility reservation fee……..……...$10.00/facility

(1) For group camping areas, group picnic areas, and event facilities, the cancellation fees shall be as described in regulations # 704, # 706, and # 708, respectively.

9. The group picnic area permit fees for the permits issued by the Division are as follows. Group picnic area classes are defined in regulation # 706.

a. Permit for “Class A - Deluxe Group Picnic Area” ……$90.00

b. Permit for “Class B - Improved Group Picnic Area” ……$60.00

c. Permit for “Class C - Basic Group Picnic Area” ……...$30.00

10. Event facility permit fees are as follows.

a. For Bridge Canyon Overlook and Pikes Peak Amphitheater at Castlewood Canyon State Park, Prairie Falcon Amphitheater at Cheyenne Mountain State Park, Panorama Point at Golden Gate Canyon State Park, Soldier Canyon Shelter at Lory State Park, and Lyons Overlook at Roxborough State Park:

(1) Monday through Friday……$150.00/2 HOURS

(2) Saturday and Sunday……$300.00/2 HOURS

b. For event facilities numbers 1 and 3 at Castlewood Canyon State Park and Timber Event Facility at Lory State Park:

(1) Monday through Friday……..$100.00

(2) Saturday and Sunday…….$150.00

c. For event facility number 2 at Castlewood Canyon State Park, Fountain Valley Overlook at Roxborough State Park and South Eltuck Event Facility at Lory State Park:

(1) Monday through Friday……..$75.00

(2) Saturday and Sunday……...$125.00

d. For the Red Barn at Golden Gate Canyon State Park:

(1) Monday through Friday……$150.00

(2) Saturday and Sunday……..$200.00

e. For Mariner Point at Boyd Lake State Park:

(1) Monday through Friday……..$90.00

(2) Saturday, Sunday, and holidays…….$180.00

f. For Prairie Skipper event facility at Cheyenne Mountain State Park:

(1) Monday through Friday ……$150.00/DAY

(2) Saturday and Sunday……..…….$200.00/DAY

g. For PA-CO-CHU-PUK event facilities at Ridgway State Park:

(1) Single event shelter A or B:

(a) Monday through Thursday……$125.00 plus $10 non-refundable reservation fee/DAY

(b) Friday through Sunday and holidays ….$190.00 plus $10 non-refundable reservation fee/DAY

h. For Overlook event facility at Ridgway State Park:

(1) Monday through Thursday…….$190 plus $10 non-refundable reservation fee/ 4 HOURS

(2) Friday through Sunday and holidays….$240 plus $10 non-refundable reservation fee/ 4 HOURS

i. Conference and/or meeting rooms……..……...$100.00/DAY

j. Cancellation fees for event facility reservations are equal to 25% of the base fee if the cancellation is made more than fourteen days prior to the reserved date. If a cancellation is made within fourteen days prior to the event, the cancellation fee shall be 100% of the total event permit fee.

k. The maximum occupancy and hours of operation shall be posted at each event facility.

l. Notwithstanding the established event facility permit fees, the Regional Manager may offer half-day facility rentals and reduce the fees for use of event facilities when determined necessary to encourage occupancy and otherwise increase use, subject to the following limitations:

(1) Fees may be reduced up to 50 percent.

(2) Reduced fees, if any, and the time periods for such reductions will be established by March 1 annually and posted at the park and on the Division website. Reservations made prior to the March 1st posting shall not be subject to any such fee reduction.

11. The fees associated with dog off leash areas at Chatfield State Park and Cherry Creek State Park, as provided for in regulation # 100 are:

    a. Dog off-leash annual pass……..$20.00

    b. Dog off-leash daily pass……...$2.00

12. The fee associated with the mandatory youth education course for motorboat operators…$15.00

13. The fees associated with the Lone Mesa State Park Hunting Special Use Permits are as follows:

    a. Resident archery……$100.00

    b. Non-resident archery……$200.00

    c. Resident antlerless muzzleloading……..$100.00

    d. Resident antlered muzzleloading…….$200.00

    e. Non-resident antlerless muzzleloading.....$200.00

    f. Non-resident antlered muzzleloading.....$300.00

    g. Resident either sex elk only first season……..$150.00

    h. Non-resident either sex elk only first season……..$250.00

    i. Resident antlerless second, third or fourth season……$100.00

    j. Resident antlered second, third, or fourth season…….$200.00

    k. Non-resident antlerless second, third, or fourth season.....$200.00

    l. Non-resident antlered second, third, or fourth season……..$300.00

14. The fees associated with the Cheyenne Mountain State Park Field/3D Archery Range are as follows:

    a. Daily individual archery range permit……$3.00

    b. Annual individual archery range permit……$30.00

15. It is unlawful for any person to transfer, sell, or assign any permit issued by the Division of Parks and Outdoor Recreation, including special activity permits, campground use permits, and group picnic area permits.

16. The fees associated with the Golden Gate Canyon State Park hunting special use permit are as follows:

    a. Application filing fee $10.00 per application

    b. Resident and non-resident archery, muzzleloading, antlered, antlerless, or either sex, for first, second, third or fourth season permit $100.00.

c. Resident and non-resident archery, muzzleloading, antlered, antlerless, or either sex, for first, second, third or fourth season permit $100.00.

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Office of the Attorney General

Tracking number: 2015-00088

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

Colorado Parks and Wildlife (405 Series, Parks)

on 03/04/2015

2 CCR 405-7

CHAPTER P-7 - PASSES, PERMITS AND REGISTRATIONS

The above-referenced rules were submitted to this office on 03/11/2015 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

March 20, 2015 09:20:49

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

Permanent Rules Adopted

Department

Department of Natural Resources

Agency

Colorado Parks and Wildlife (406 Series, Wildlife)

CCR number

2 CCR 406-0

Rule title

2 CCR 406-0 CHAPTER W-0 - GENERAL PROVISIONS 1 - eff 05/01/2015

Effective date

05/01/2015

FILING - 03/24/2015

FINAL REGULATIONS - CHAPTER W-0 - GENERAL PROVISIONS

ARTICLE I - DEFINITIONS

#000 – The following definitions supplement the statutory definitions found in the Wildlife Act including, but not limited to, those definitions found in section 33-1-102, C.R.S.

A. General Definitions Including Manner of Take Definitions

1. "Aggregate" when applied to bag and possession limits, means the total number of species which are covered by such bag and possession limits. Any combination of the species may be possessed up to the total number established as the aggregate bag and possession limits.

2. "Archery" means the use of a hand-held bow.

3. "Bag Limit" means the maximum number of wildlife which may be taken in a single day during an established open season. This includes any wildlife which are consumed or donated during the same day they were legally taken. The terms "bag limit," "daily bag" and "bag" are considered to have the same meaning.

4. "Baiting" means the placing, exposing, depositing, distributing, or scattering of any salt, mineral, grain, or other feed so as to constitute a lure, attraction or enticement for wildlife.

5. "Crossbow" means a bow which is attached at a right angle to a stock with a mechanical mechanism for holding the bow string in a cocked position and fired from the shoulder.

6. "Feral Hog" means any species or hybrid of species from the family *Suidae* (European boar, Eurasian boar, Russian boar, feral hog) or the family *Tayassuidae* (Javelina and peccary), which possesses one or more morphological characteristic distinguishing it from domestic swine including, but not limited to, an elongated snout, visible tusks, muscular shoulders with small hams and short loins, coarse hair, or a predominant ridge of hair along its back. For the purposes of these regulations, any swine running at large which possesses one or more of the above characteristics, may be presumed to be a feral hog, unless a person has received actual notice that the swine has escaped containment and its return is actively sought, in which case the person should report its location to the owner, if known, and the Division and the Department of Agriculture.

7. "Handgun" means any pistol or revolver having no shoulder stock or attachment.

8. "Hand-held bow" means a long bow, recurved bow, or compound bow on which the string is not drawn mechanically or held mechanically under tension. String releases or mechanical releases which are hand-drawn and hand-held with no other attachment or connection to the bow other than to the bowstring are lawful devices.

9. Licenses

a. **"Leftover license"** means a limited license which is leftover after the primary application and drawing process.

b. **"Limited license"** means any license which is limited in number by regulation and which is issued through the drawing process.

c. **"Over the counter license"** means a license that may be purchased at a license agent. Most over the counter licenses are unlimited in number, but some may have an established cap.

d. **"Private Land Only license"** means a limited license valid only for use on private land and State Trust Lands not leased by the Division, excluding those limited licenses issued as part of the Ranching for Wildlife program. Contact the State Land Board for access restrictions.

e. **"Unlimited license"** means a hunting license and carcass tag when appropriate which is not restricted in quantity and which is sold by license agents throughout the state and is not valid in any unit where licenses are available only through application and computer or hand drawn selection.

10. **"Muzzle-loading rifle or musket"** means a firearm fired from the shoulder, with a single barrel which fires a single patched round ball or bullet.

11. **"Pellet gun"** means any handgun or rifle of .177 caliber or larger firing pellets and powered by compressed air or gas.

12. **"Private use"** means the possession of wildlife only for private enjoyment and not intended to be sold, traded, bartered, or entered into commerce.

13. **"Privately-owned game birds"** means game birds held in private ownership and otherwise acquired in accordance with Commission regulations.

14. **"Processed meat"** means those edible parts of wildlife which have been cut into normal portions and wrapped for storage. It does not include game meat that is whole, has been quartered, or has not been packaged into normally accepted butcher's portions including but not limited to steaks, roasts, loins, chops, and ground meat.

15. **"Rifle"** means a firearm fired from the shoulder, with a rifled bore, having a barrel length of sixteen (16) inches or more and a minimum overall length of twenty-six (26) inches.

16. **"Shotgun"** means a firearm fired from the shoulder with a smooth bore, having a barrel length of eighteen (18) inches or more and a minimum overall length of twenty-six (26) inches.

17. **"Slingshot"** means a hand-held device, not drawn or held mechanically, with the arms or attachment points to which an elastic band is attached for propelling small stones or metal projectiles. Wrist-brace attachments and non-elastic projectile pouches are considered normal components of a slingshot.

18. **"State Trust Lands"** means those lands owned or under the control of the State Board of Land Commissioners.

ARTICLE IV - MANNER OF TAKING WILDLIFE

#004 - AIDS IN TAKING WILDLIFE

A. Aids Used in Taking Big Game, Small Game and Furbearers - Except as expressly authorized by these regulations, the use of baits and other aids in hunting or taking big game, small game and furbearers is prohibited.
   1. Baits
      a. Furbearers may be taken with the aid of baiting. Where permitted, baits shall consist solely of material of animal or plant origin and shall not contain any

materials of metal, glass, porcelain, plastic, cardboard or paper. Wildlife used as bait shall be the carcass, or parts thereof, of legally taken furbearers, carp, shad, white and longnose suckers, and nonedible portions of legally obtained game mammals, birds and game fish.

2. Dogs
   a. Use of dogs in the taking of wildlife is prohibited except as authorized in Commission Regulations. (See also: §33-4-101.3, C.R.S.)
      1. Dogs may be used to hunt or take mountain lion, small game, waterfowl, and furbearers, only as an aid to pursue, bring to bay, retrieve, flush or point, but not otherwise. Except as provided in (3) of this subsection, dogs shall not be used to hunt or take cottontail rabbits, snowshoe hares, and tree squirrels where a regular deer, elk, pronghorn or moose season is in progress.
      2. A leashed dog may be used as an aid in locating and recovering wounded big game wildlife, except for black bears, with the purchase of an annual tracking permit. Tracking permits can be purchased for $40.00 from any Colorado Parks and Wildlife Office by the dog handler. Prior to using the permit, the dog handler must notify a Colorado Parks and Wildlife Office and provide the following information: the dog handler's name, hunter's name (if different than the handler), hunter's CID number, location of use, species to recover, and time of use. Within five business days of using the permit, the handler must also notify the Division regarding whether they recovered the carcass. A dog may only be used to pursue or locate wounded big game during legal big game hunting hours. Provided however, that such pursuit may continue after legal big game hunting hours if the handler contacts and obtains the permission of a Wildlife Officer prior to continuing such pursuit. In acting on any such request, the Wildlife Officer shall consider the general public safety and may authorize the dispatch of the wounded animal after legal hunting hours. The dog must be leashed at all times and can not be used to kill, chase, or harass wildlife. The properly licensed hunter is required to be present while the dog is tracking and the animal must be dispatched by the hunter using a legal method of take based on their license. The dog handler is required to wear daylight fluorescent orange while tracking, unless the handler is tracking an animal shot on an archery license.
      3. Organized dog pursuit events involving the hunting of rabbits or hares conducted by state or nationally-recognized sporting associations may be conducted on private lands or public lands not concurrently open to big game hunting during the extended dog pursuit season for such species.
      4. A valid small game license is required for all dog handlers participating in any dog pursuit event involving the hunting of rabbits or hares, in accordance with regulation #004(A)(2)(a)(3).

3. Other Aids
   a. Mechanical calls may be used to take all species of wildlife during established seasons.
   b. Except as otherwise provided in these regulations, electronic calls may be used as an aid in taking furbearers only.
   c. Decoys may be used.
   d. European ferret may be used as an aid in taking small game only in conjunction with hawking. All ferrets used in this activity must be neutered, permanently tattooed on the left inguinal area and dyed along one-fourth (1/4) of their body length for easy field identification.
   e. Manner of take accommodations may be issued to persons with disabilities, in accordance with #005.

B. It shall be unlawful to hunt any game birds, small game mammals or furbearers, with a centerfire rifle larger than .23 caliber during the regular deer and elk seasons west of Interstate 25, unless the hunter holds an unfilled deer or elk license for the season he is hunting.

C. It shall be unlawful to use a drone to look for, scout, or detect wildlife as an aid in the hunting or taking of wildlife.
   1. For the purposes of this regulation, drone shall be defined as including, without limitation, any contrivance invented, used or designed for navigation of, or flight in the air that is unmanned or guided remotely. A drone may also be referred to as "Unmanned Aerial Vehicle" (UAV) or "Unmanned Aerial Vehicle System" (UAVS).

ARTICLE XI - SPECIAL RESTRICTIONS

#020 -

A. Most restrictive Federal or State law - In all cases of licensing, taking, possession, importation, exportation, release, marking and sale of any wildlife, irrespective of current status (threatened, endangered, game or nongame), the most restrictive state or federal regulation shall apply by species.

B. Live Capture – Common snapping turtles may be taken in any number and maintained alive.

C. Tagging and carcass tag requirements.

   1. A carcass tag is required for all big game and for turkey.

   2. When any person kills a wildlife species for which a carcass tag is required such person must immediately void the carcass tag by signing, dating and detaching it. Such tag must be attached to the carcass immediately prior to and during transportation in any vehicle or while in camp or at a residence or other place of storage. Such tag, when so dated, signed and attached to the species lawfully taken or killed and lawfully in possession, authorizes the possession, use, storage, and transportation of the carcass, or any part thereof.

   3. If the carcass tag and/or license are inadvertently or accidentally detached, lost or destroyed, the licensee must obtain a duplicate carcass tag and/or license before he can lawfully hunt with such license. The duplicate carcass tag may be obtained upon furnishing satisfactory proof as to the inadvertent or accidental nature of detachment, loss, or destruction to the Division.

D. Waste of Wildlife

   1. Except for furbearers, Terrestrial Invasive Species listed in Commission Regulation #002(K)(1), wildlife listed in Commission Regulation #300(A)(3), or any wildlife taken under the authority of §33-6-107(9), C.R.S., all edible portions of game wildlife taken under the authority of a license shall be properly prepared to provide for human consumption. For the purpose of this restriction edible portions shall not include internal organs.
   2. Any consumption or spoilage of game wildlife by a falconry raptor upon the raptor's capture of the game wildlife shall not be considered waste of wildlife, provided the falconer makes a reasonable and timely attempt to retrieve the game wildlife and prepare some remaining edible portion for human consumption.

E. Closures

   1. Federal fish hatcheries and rearing units except that persons designated by the United States Fish and Wildlife Service may take fish or amphibians within the boundaries of said hatcheries or rearing units.

2. Except as otherwise provided in these regulations all Division hatcheries, rearing units and holding basins shall be closed to the taking of fish and amphibians.

3. State Refuges, Parks and Monuments - Public access to any refuge, park or monument, the jurisdiction over which is by law given to any federal or state agency or municipality, may be limited by order of said agency or municipality to the same extent as if said agency or municipality were a private person.

4. Hunting with rifles, handguns or shotguns firing a single slug, or archery equipment is prohibited within an area fifty (50) feet on each side of the center line of any state highway or municipal or county road as designated by the county. In the case of a divided road or highway this shall include the entire median area and the fifty (50) feet shall be measured from the center line of both roads.

5. Hunting is prohibited on Mt. Evans Summit Lake cirque, and within 1/2 (one-half) mile of either side of the centerline of Mt. Evans Highway (Colo 5) while the road is open to motor vehicle traffic, from its intersection with Colo 103 to the summit of Mt. Evans. When Colo 5 is closed to motor vehicle traffic, this hunting closure is lifted, except that the closure will remain in place year-round for ptarmigan hunting. (Information note: maps are available from the Division, Northeast Region Office, 6060 Broadway, Denver, Colorado 80216.)

F. Director's Authority

1. The Director of the Division may establish and enforce temporary closures of, or restrictions on, lands and waters of the state to hunting, fishing or other wildlife-related recreation, including but not limited to the collection of shed antlers, for a period not to exceed 9 months. Such temporary closures may be established and enforced only where necessary to protect public safety, protect threatened or endangered wildlife species, protect wildlife resources from significant natural or manmade threats, such as the introduction or spread of disease or nuisance species, changing environmental conditions or other similar threats, protect time-sensitive wildlife use of lands or waters, protect against additional and significant environmental damage after an area has sustained a natural or manmade disaster, or to facilitate Division-sponsored wildlife research projects or management activities. Whenever such closure is established, public notice of the closure shall be given, including the posting of the lands and waters affected, indicating the nature and purpose of the closure. Upon posting, it shall be unlawful to hunt, fish or engage in any other designated wildlife-related recreation on such lands or waters or enter the lands or waters for the purpose of hunting, fishing or any other designated wildlife-related recreation.

G. Incorporated References

1. Materials incorporated by reference in these regulations only include the edition of the material specifically identified by date in the incorporation by reference. The incorporation by reference does not include later amendments to, or editions of, the incorporated materials. Information regarding how and where the incorporated materials may be examined, or copies obtained, is available from:

   Regulations Manager
   Policy and Planning Unit
   Colorado Division of Parks and Wildlife
   1313 Sherman Street
   Denver, Colorado 80203

2. In addition, materials incorporated by reference in these regulations are maintained by, and available for examination at, any state publications depository library.

H. Possession of Edible and Non-edible Portions of Mountain Lions and Bears

The possession of the carcass, hide, skull, claws, or any part of any bear or lion is prohibited unless the animal was taken by a licensed hunter during an established hunting season or unless specifically authorized by the Division.

I. Chronic Wasting Disease Reporting

Chronic Wasting Disease (CWD) is classified as a disease which, whenever detected in the wild or in a commercial park, must be reported to the Colorado Division of Parks and Wildlife Veterinarian, 317 W. Prospect, Ft. Collins 80526, within 24 hours of the receipt of any CWD positive test result. As a condition of issuance of a license or permit, any hunter, commercial park licensee, other license holder or permittee of the Division, or any member of the public who submits a deer or elk head for CWD testing grants consent for the lab to report the test results to the Division. A written copy of the test report shall be provided to the Division at the above address within 10 days of test completion, either by the lab or by the person who submits the sample.

J. Electronic Ignition Muzzle Loaders

It is unlawful for any person, except a person authorized by law or by the division, to possess or have under his control a loaded electronic-ignition muzzle loader in or on any motor vehicle unless the chamber of such firearm is unloaded or unless the battery is disconnected and removed from its compartment.

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Office of the Attorney General

Tracking number: 2015-00089

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

Colorado Parks and Wildlife (406 Series, Wildlife)

on 03/04/2015

2 CCR 406-0

CHAPTER W-0 - GENERAL PROVISIONS

The above-referenced rules were submitted to this office on 03/11/2015 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

March 20, 2015 09:20:29

Frederick R. Yarger

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

Permanent Rules Adopted

Department

Department of Natural Resources

Agency

Colorado Parks and Wildlife (406 Series, Wildlife)

CCR number

2 CCR 406-2

Rule title

2 CCR 406-2 CHAPTER W-2 - BIG GAME 1 - eff 05/01/2015

Effective date

05/01/2015

FINAL REGULATIONS - CHAPTER W-2 - BIG GAME

ARTICLE I - GENERAL PROVISIONS

#205 - ANNUAL BAG LIMITS AND MAXIMUM NUMBERS OF LICENSES PER PERSON

A. Deer, elk, pronghorn, black bear, mountain lion, moose, rocky mountain bighorn sheep, and mountain goat

The annual bag and possession limit for deer, elk, pronghorn, black bear, mountain lion, rocky mountain bighorn sheep, and mountain goat shall be the total number of animals taken on all licenses which can be legally obtained by the hunter for each species during that license year, as established in the following lists. Big game taken during a hunting season established as a portion of the preceding license year's hunting seasons shall be counted as part of the preceding year's bag limit. When a license allows hunting in more than one Game Management Unit, the unit listed in the hunt code on the license shall determine the maximum number of annual licenses a license holder may obtain for that species.

Notwithstanding the ("List A," "List B," "List C") license categories set forth in this regulation, any license that is administratively converted to a private-land-only license as part of the Landowner Preference Program will retain the ("List A," "List B," "List C") status of its original hunt code.

2. Elk

c. Any Number of Licenses - A hunter may also obtain any number of the following elk licenses:

1. antlerless private land only license for GMUs 391 or 461 ,

2. any over the counter either-sex license, except archery license, issued for GMUs 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 105, 106, 107, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 129, 130, 132, 135, 136, 137, 138, 139, 143, 144, 145, 146, 147, or 951,

3. a license issued for hunt code EF003E1R, EF020L3R, or EF128L1R,

4. an auction license,

5. a raffle license,

6. a game damage license,

7. a special population management license (except that a hunter may not purchase more than one extra antlerless Ranching for Wildlife license as provided in #271(A)(2)) , a special allocation Ranching for Wildlife license for donation to youths or hunters with mobility impairments,

8. a disease management license,

9. a replacement license for an animal found CWD positive,

10. a rewards program license (except that a hunter may not be issued more than one Turn In Poachers (TIPS) license per year, as provided in #002(H)(11)(b)).

11. a Youth Outreach license, as provided in #206(B)(4)(d).

#206 - APPLICATIONS AND DRAWINGS FOR LIMITED LICENSES

B. Application and Drawing Provisions and Restrictions.

4. Preference Systems

Note: see also §33-4-103, C.R.S.

d. Youth Preference - a minimum of 15 percent of the number of the limited doe pronghorn licenses, limited either-sex and antlerless deer licenses and limited antlerless elk licenses established for each GMU shall be made available for purchase by qualified youth applicants. Licenses shall be available through application and computer selection from the Division headquarters, 6060 Broadway, Denver, CO 80216. Licenses not allocated to youth shall be made available to the general public in the remaining drawings.

2. Youth preference will be set at 50% for all antlerless deer licenses in GMUs 55, 66, 67, and 551.

i. Preference Points and Chances

1. Preference will be given for qualifying applications for first choice hunt codes only and shall be subject to the following provisions:

cc. Rocky Mountain Bighorn Sheep, Mountain Goat, and Moose: One preference point will be awarded to each person who qualifies for and fails to draw a first choice license, until three preference points have been accumulated. Each time an applicant with three (3) points qualifies for and fails to draw a first choice license for rocky mountain bighorn sheep, mountain goat or moose the applicant will be awarded one (1) weighted preference point to be used in future drawings for that species. Applicants with at least three (3) preference points or any number of weighted preference points will be given weighted preference during the license

drawings for each applicable species. Weighted preference is calculated by converting the applicant's original application number into a new random application number, then dividing that random application number by the number of weighted preference points the applicant currently has for that species plus one. The resulting number is the applicant's final and only application number. Final application numbers are sorted from lowest number to highest number, with licenses awarded to applicants starting on the top of the list (lowest number), working down the list until no licenses for that species remain. When an applicant obtains a first choice license, all accumulated preference points for that species become void. If an applicant both fails to apply for a species and has not purchased a license for that same species during any given 10-year period, all accumulated preference points for that species become void. If an applicant accepts a first choice license that has been returned and reissued, all accumulated preference points for that species become void.

#207 - SEASON PARTICIPATION

B. Except on Ranching for Wildlife properties, youths ages 12-17 may participate in any open regularly scheduled antlerless rifle elk or antlerless rifle deer hunt starting after the last day of the season listed on their original license, in the same DAU and for the same species listed on their original license, provided they possess an unfilled limited antlerless or either-sex elk or antlerless deer license originally valid in that same DAU from a season which has already been completed, comply with applicable regulations for the specific open regularly scheduled antlerless rifle hunt in which they participate, and are accompanied by a mentor. A mentor must be at least 18 years of age and comply with hunter education requirements. The mentor may not hunt except in units and in seasons for which they possess a valid license. Youths with an unfilled either-sex elk license who wish to hunt in any subsequent antlerless rifle season within the same DAU may do so provided that they must bring their license to the Division and have it converted to an antlerless license for the appropriate species prior to hunting.

C. Youths ages 12-17 may participate in any December pronghorn season in the following GMUs: 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 145, 146 or 147, provided they possess an unfilled pronghorn doe or either-sex license from a season which has already been completed for any other unit and comply with applicable regulations for the specific hunt in which they participate. Youths with unfilled either-sex pronghorn licenses who wish to hunt in the late youth pronghorn doe hunt may do so provided that they bring their license to the Division and have it converted to a doe pronghorn license prior to hunting.

#208 - LICENSE RESTRICTIONS

A. Cutoff of License Sales

9. After the start of each season, licenses will be sold to the licensee, in person, only at Division service centers, except that license agents are authorized to sell 14-day or longer Private Land Only, archery, disease management, special hunts, season choice, and plains either-sex elk after the start of the season. In addition, license agents may also accept landowner vouchers for licenses after the start of the season.

#209 - SPECIAL RESTRICTIONS

ARTICLE VIII – DEER

#250 - RIFLE AND ASSOCIATED METHODS DEER SEASONS - ANY LAWFUL METHOD OF TAKE PERMITTED

D. Late Deer Seasons

2. Late Plains Season, Dates (unless otherwise shown), Units (as described in Chapter 0 of these regulations), Limited Licenses.

Unit	Season Dates: 12/01/2015 – 12/14/2015 Antlered		Season Dates: 12/01/2015 – 12/14/2015 Antlerless	
	Hunt Code	Licenses (2014)	Hunt Code	Licenses (2014)
87	DM087L1R	35		
88	DM088L1R	30		
89	DM089L1R	45	DF089L1R	45
90	DM090L1R	25	DF090L1R	25
91	DM091L1R	25	DF091L1R	60
92	DM092L1R	25	DF092L1R	60
93	DM093L1R	25	DF093L1R	15
94	DM094L1R	40	DF094L1R	15
95	DM095L1R	50	DF095L1R	50
96	DM096L1R	55	DF096L1R	75
97	DM097L1R	25	DF097L1R	15
98	DM098L1R	40	DF098L1R	40
99	DM099L1R	90	DF099L1R	100
100	DM100L1R	40	DF100L1R	30
101	DM101L1R	40	DF101L1R	40
102	DM102L1R	50	DF102L1R	50
103	DM103L1R	10	DF103L1R	80
103 and the portion of 109 bounded on the west by Kit Carson CR 40 and Yuma CR V.			DF103L2R 01/01/2016 - 01/15/2016	
104	DM104L1R	55	DF104L1R	90

2. Late Plains Season, Dates (unless otherwise shown), Units (as described in Chapter 0 of these regulations), Limited Licenses.

Unit	Season Dates: 12/01/2015 – 12/14/2015 Antlered		Season Dates: 12/01/2015 – 12/14/2015 Antlerless	
	Hunt Code	Licenses (2014)	Hunt Code	Licenses (2014)
105, 106	DM105L1R	70	DF105L1R	105
107	DM107L1R	40	DF107L1R	25
109	DM109L1R	30	DF109L1R	35
116	DM116L1R	25	DF116L1R	10
117	DM117L1R	20	DF117L1R	15
122	DM122L1R	15	DF122L1R	15
125	DM125L1R	10	DF125L1R	10
126	DM126L1R	20	DF126L1R	20
127	DM127L1R	25	DF127L1R	30
129	DM129L1R	10	DF129L1R	10
130	DM130L1R	15	DF130L1R	15
132	DM132L1R	15	DF132L1R	15
136, 147	DM136L1R	15		
136			DF136L1R	10
137	DM137L1R	10	DF137L1R	10
138, 146	DM138L1R	20	DF138L1R	15
139	DM139L1R	15	DF139L1R	15
141	DM141L1R	10	DF141L1R	10
142	DM142L1R	20	DF142L1R	20
143	DM143L1R	20	DF143L1R	10
144	DM144L1R	20	DF144L1R	10
145	DM145L1R	20	DF145L1R	5
147			DF147L1R	10
951	DM951L1R	75	DF951L1R	30
TOTALS		**1225**		**1240**

ARTICLE IX - ELK

#257 - RIFLE AND ASSOCIATED METHODS ELK SEASONS - ANY LAWFUL METHOD OF TAKE PERMITTED DURING THESE SEASONS

B. Regular Rifle Elk Seasons

1. Separate and Combined Rifle Seasons, Dates, Units (as described in Chapter 0 of these regulations), Limited License Numbers or Unlimited Licenses as shown by hunt code.

Unit(s)	1st Season (Separate Limited Elk) Season Dates: 10/10/2015 – 10/14/2015 Unless Otherwise Shown			2nd Season (Combined) Season Dates: 10/17/2015 – 10/25/2015 Unless Otherwise Shown			3rd Season (Combined) Season Dates: 10/31/2015 – 11/08/2015 Unless Otherwise Shown			4th Season (Combined) Season Dates: 11/11/2015 – 11/15/2015 Unless Otherwise Shown			Float Total (2014)	Total Licenses (2014)
	License #s (2014)			License #s (2014)			License #s (2014)			License #s (2014)				
	Hunt Code			Hunt Code			Hunt Code			Hunt Code				
	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex		
1		EF001O1R			EF001O2R			EF001O3R			EF001O4R			80
		10			25			20			25			
2		EF002O1R			EF002O2R			EF002O3R			EF002O4R			115
		30			25			35			25			
3, 301											EM003O4R			550
										550				
3, 301					EF003O2R			EF003O3R					1000	1000
3, 4, 5, 214, 301, 441		EM003O1R												1300
	1300													
3, 4, 5, 214, 301, 441		EF003O1R												400
		400												
3, 4, 5, 301, 441											EF003O4R			400
											400			
4, 441											EM004O4R			350
										350				
4, 441					EF004O2R			EF004O3R					600	600
5											EM005O4R			10
										10				
5					EF005O2R			EF005O3R					100	100

#257 - RIFLE AND ASSOCIATED METHODS ELK SEASONS - ANY LAWFUL METHOD OF TAKE PERMITTED DURING THESE SEASONS

B. Regular Rifle Elk Seasons

1. Separate and Combined Rifle Seasons, Dates, Units (as described in Chapter 0 of these regulations), Limited License Numbers or Unlimited Licenses as shown by hunt code.

Unit(s)	1st Season (Separate Limited Elk) Season Dates: 10/10/2015 – 10/14/2015 Unless Otherwise Shown			2nd Season (Combined) Season Dates: 10/17/2015 – 10/25/2015 Unless Otherwise Shown			3rd Season (Combined) Season Dates: 10/31/2015 – 11/08/2015 Unless Otherwise Shown			4th Season (Combined) Season Dates: 11/11/2015 – 11/15/2015 Unless Otherwise Shown			Float Total (2014)	Total Licenses (2014)
	License #s (2014)			License #s (2014)			License #s (2014)			License #s (2014)				
	Hunt Code			Hunt Code			Hunt Code			Hunt Code				
	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex		
6											EE006O4R			80
												80		
6								EF006O3R			EF006O4R			335
								225			110			
6, 16, 17, 161, 171		EE006O1R												690
			690											
6, 16, 17, 161, 171		EF006O1R			EF006O2R									3190
		1610			1580									
7, 8		EM007O1R			EM007O2R			EM007O3R			EM007O4R		1000	1280
	280													
7, 8					EF007O2R			EF007O3R			EF007O4R		300	300
9		EM009O1R			EM009O2R			EM009O3R			EM009O4R		160	240
	80													
10		EF010O1R			EF010O2R			EF010O3R			EF010O4R			275
		55			60			75			85			
11, 12, 13, 23, 24, 25, 26, 33, 34, 131, 211, 231		EM011O1R												5000
	5000													
		EF011O1R												2000

#257 - RIFLE AND ASSOCIATED METHODS ELK SEASONS - ANY LAWFUL METHOD OF TAKE PERMITTED DURING THESE SEASONS

B. Regular Rifle Elk Seasons

1. Separate and Combined Rifle Seasons, Dates, Units (as described in Chapter 0 of these regulations), Limited License Numbers or Unlimited Licenses as shown by hunt code.

Unit(s)	1st Season (Separate Limited Elk) Season Dates: 10/10/2015 – 10/14/2015 Unless Otherwise Shown			2nd Season (Combined) Season Dates: 10/17/2015 – 10/25/2015 Unless Otherwise Shown			3rd Season (Combined) Season Dates: 10/31/2015 – 11/08/2015 Unless Otherwise Shown			4th Season (Combined) Season Dates: 11/11/2015 – 11/15/2015 Unless Otherwise Shown			Float Total (2014)	Total Licenses (2014)
	License #s (2014)			License #s (2014)			License #s (2014)			License #s (2014)				
	Hunt Code			Hunt Code			Hunt Code			Hunt Code				
	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex		
11, 12, 13, 23, 24, 25, 26, 33, 34, 131, 211, 231		2000												
11, 211										EM011O4R				420
										420				
11, 211				EF011O2R			EF011O3R							1300
					500			800						
11, 12, 23, 24, 211										EF011O4R				1700
											1700			
12, 23, 24				EF012O2R			EF012O3R						3000	3000
12, 13, 23, 24										EM012O4R				500
										500				
13				EF013O2R			EF013O3R			EF013O4R			500	500
14	EM014O1R									EM014O4R				225
	150									75				
14	EF014O1R			EF014O2R			EF014O3R			EF014O4R			250	350
		100												
15	EE015O1R									EE015O4R				400
			250									150		

#257 - RIFLE AND ASSOCIATED METHODS ELK SEASONS - ANY LAWFUL METHOD OF TAKE PERMITTED DURING THESE SEASONS

B. Regular Rifle Elk Seasons

1. Separate and Combined Rifle Seasons, Dates, Units (as described in Chapter 0 of these regulations), Limited License Numbers or Unlimited Licenses as shown by hunt code.

Unit(s)	1st Season (Separate Limited Elk) Season Dates: 10/10/2015 – 10/14/2015 Unless Otherwise Shown			2nd Season (Combined) Season Dates: 10/17/2015 – 10/25/2015 Unless Otherwise Shown			3rd Season (Combined) Season Dates: 10/31/2015 – 11/08/2015 Unless Otherwise Shown			4th Season (Combined) Season Dates: 11/11/2015 – 11/15/2015 Unless Otherwise Shown			Float Total (2014)	Total Licenses (2014)
	License #s (2014)			License #s (2014)			License #s (2014)			License #s (2014)				
	Hunt Code			Hunt Code			Hunt Code			Hunt Code				
	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex		
15	EF015O1R			EF015O2R			EF015O3R			EF015O4R			1200	1425
		225												
16										EE016O4R				75
												75		
16							EF016O3R			EF016O4R				220
								160			60			
17										EE017O4R				65
												65		
17, 171							EF017O3R			EF017O4R				485
								340			145			
18, 181	EE018O1R									EE018O4R				1400
			700									700		
18, 181	EF018O1R													400
		400												
18				EF018O2R			EF018O3R			EF018O4R				1310
					380			480			450			
19	EM019O1R			EM019O2R			EM019O3R			EM019O4R			400	510
	110													
19				EF019O2R			EF019O3R			EF019O4R			90	90
20	EM020O1R			EM020O2R			EM020O3R			EM020O4R				80
	20			20			20			20				
20				EF020O2R			EF020O3R			EF020O4R				60
					30			20			10			
	EM021O1R									EM021O4R				1260

#257 - RIFLE AND ASSOCIATED METHODS ELK SEASONS - ANY LAWFUL METHOD OF TAKE PERMITTED DURING THESE SEASONS

B. Regular Rifle Elk Seasons

1. Separate and Combined Rifle Seasons, Dates, Units (as described in Chapter 0 of these regulations), Limited License Numbers or Unlimited Licenses as shown by hunt code.

Unit(s)	1st Season (Separate Limited Elk) Season Dates: 10/10/2015 – 10/14/2015 Unless Otherwise Shown			2nd Season (Combined) Season Dates: 10/17/2015 – 10/25/2015 Unless Otherwise Shown			3rd Season (Combined) Season Dates: 10/31/2015 – 11/08/2015 Unless Otherwise Shown			4th Season (Combined) Season Dates: 11/11/2015 – 11/15/2015 Unless Otherwise Shown			Float Total (2014)	Total Licenses (2014)
	License #s (2014)			License #s (2014)			License #s (2014)			License #s (2014)				
	Hunt Code			Hunt Code			Hunt Code			Hunt Code				
	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex		
21, 22, 30, 31, 32	900									360				
21, 22, 30, 31, 32	EF021O1R													
		100												100
21, 30				EF021O2R			EF021O3R			EF021O4R			700	875
											175			
22				EF022O2R			EF022O3R			EF022O4R			575	700
											125			
25										EM025O4R				40
										40				
25, 26				EF025O2R			EF025O3R			EF025O4R			200	200
26										EM026O4R				55
										55				
27	EE027O1R									EE027O4R				125
			75									50		
27	EF027O1R			EF027O2R			EF027O3R			EF027O4R				645
		115			260			185			85			
28, 37	EE028O1R									EE028O4R				850
			500									350		
28, 37	EF028O1R			EF028O2R			EF028O3R			EF028O4R				1350
		300			300			400			350			
29	EM029O1R			EM029O2R			EM029O3R			EM029O4R			20	30
	10													

#257 - RIFLE AND ASSOCIATED METHODS ELK SEASONS - ANY LAWFUL METHOD OF TAKE PERMITTED DURING THESE SEASONS

B. Regular Rifle Elk Seasons

1. Separate and Combined Rifle Seasons, Dates, Units (as described in Chapter 0 of these regulations), Limited License Numbers or Unlimited Licenses as shown by hunt code.

Unit(s)	1st Season (Separate Limited Elk) Season Dates: 10/10/2015 – 10/14/2015 Unless Otherwise Shown			2nd Season (Combined) Season Dates: 10/17/2015 – 10/25/2015 Unless Otherwise Shown			3rd Season (Combined) Season Dates: 10/31/2015 – 11/08/2015 Unless Otherwise Shown			4th Season (Combined) Season Dates: 11/11/2015 – 11/15/2015 Unless Otherwise Shown			Float Total (2014)	Total Licenses (2014)
	License #s (2014)			License #s (2014)			License #s (2014)			License #s (2014)				
	Hunt Code			Hunt Code			Hunt Code			Hunt Code				
	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex		
29		EF029O1R			EF029O2R			EF029O3R			EF029O4R		40	55
		15												
31					EF031O2R			EF031O3R			EF031O4R		500	500
32					EF032O2R			EF032O3R			EF032O4R		300	300
33											EM033O4R			115
										115				
33					EF033O2R			EF033O3R			EF033O4R		850	850
34											EM034O4R			35
										35				
34					EF034O2R			EF034O3R			EF034O4R		325	325
35											EE035O4R			50
												50		
35					EF035O2R			EF035O3R			EF035O4R		210	210
35, 36, 361		EE035O1R												250
			250											
35, 36, 361		EF035O1R												225
		225												
36, 361											EE036O4R			50
												50		
36, 361					EF036O2R			EF036O3R			EF036O4R		445	445

#257 - RIFLE AND ASSOCIATED METHODS ELK SEASONS - ANY LAWFUL METHOD OF TAKE PERMITTED DURING THESE SEASONS

B. Regular Rifle Elk Seasons

1. Separate and Combined Rifle Seasons, Dates, Units (as described in Chapter 0 of these regulations), Limited License Numbers or Unlimited Licenses as shown by hunt code.

Unit(s)	1st Season (Separate Limited Elk) Season Dates: 10/10/2015 – 10/14/2015 Unless Otherwise Shown			2nd Season (Combined) Season Dates: 10/17/2015 – 10/25/2015 Unless Otherwise Shown			3rd Season (Combined) Season Dates: 10/31/2015 – 11/08/2015 Unless Otherwise Shown			4th Season (Combined) Season Dates: 11/11/2015 – 11/15/2015 Unless Otherwise Shown			Float Total (2014)	Total Licenses (2014)
	License #s (2014)			License #s (2014)			License #s (2014)			License #s (2014)				
	Hunt Code			Hunt Code			Hunt Code			Hunt Code				
	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex		
38	EM038O1R									EM038O4R				
	35									30				65
38	EF038O1R			EF038O2R			EF038O3R			EF038O4R				
		20											40	60
39	EM039O1R			EM039O2R			EM039O3R			EM039O4R				
	70			70			70			20				230
39	EF039O1R			EF039O2R			EF039O3R			EF039O4R				
		30											150	180
40	EE040O1R			EE040O2R			EE040O3R			EE040O4R				
			35			32			32			20		119
40	EF040O1R			EF040O2R			EF040O3R			EF040O4R				
		40			35			35			40			150
41, 42, 52, 411, 421, 521	EM041O1R									EM041O4R				
	1000									400				1400
41, 42, 52, 411, 421, 521	EF041O1R													
		900												900
41				EF041O2R			EF041O3R			EF041O4R				
													600	600
42				EF042O2R			EF042O3R			EF042O4R				
					650								900	1550
43, 471	EE043O1R													
			250											250
43, 471	EF043O1R													
		125												125

#257 - RIFLE AND ASSOCIATED METHODS ELK SEASONS - ANY LAWFUL METHOD OF TAKE PERMITTED DURING THESE SEASONS

B. Regular Rifle Elk Seasons

1. Separate and Combined Rifle Seasons, Dates, Units (as described in Chapter 0 of these regulations), Limited License Numbers or Unlimited Licenses as shown by hunt code.

Unit(s)	1st Season (Separate Limited Elk) Season Dates: 10/10/2015 – 10/14/2015 Unless Otherwise Shown			2nd Season (Combined) Season Dates: 10/17/2015 – 10/25/2015 Unless Otherwise Shown			3rd Season (Combined) Season Dates: 10/31/2015 – 11/08/2015 Unless Otherwise Shown			4th Season (Combined) Season Dates: 11/11/2015 – 11/15/2015 Unless Otherwise Shown			Float Total (2014)	Total Licenses (2014)
	License #s (2014)			License #s (2014)			License #s (2014)			License #s (2014)				
	Hunt Code			Hunt Code			Hunt Code			Hunt Code				
	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex		
43										EE043O4R		125		125
43				EF043O2R			EF043O3R			EF043O4R			560	560
44, 45, 47, 444	EE044O1R		300											300
44, 45, 47, 444	EF044O1R	400												400
44										EE044O4R		190		190
44				EF044O2R			EF044O3R			EF044O4R			310	310
45										EE045O4R		130		130
45				EFO45O2R			EF045O3R			EF045O4R			200	200
46	EM046O1R			EM046O2R			EM046O3R			EM046O4R			80	110
	30													
46	EF046O1R	25		EF046O2R			EF046O3R			EF046O4R			80	105
47										EE047O4R		55		55
47				EF047O2R			EF047O3R			EF047O4R			330	330
48	EM048O1R			EM048O2R			EM048O3R			EM048O4R			90	160

#257 - RIFLE AND ASSOCIATED METHODS ELK SEASONS - ANY LAWFUL METHOD OF TAKE PERMITTED DURING THESE SEASONS

B. Regular Rifle Elk Seasons

1. Separate and Combined Rifle Seasons, Dates, Units (as described in Chapter 0 of these regulations), Limited License Numbers or Unlimited Licenses as shown by hunt code.

Unit(s)	1st Season (Separate Limited Elk) Season Dates: 10/10/2015 – 10/14/2015 Unless Otherwise Shown			2nd Season (Combined) Season Dates: 10/17/2015 – 10/25/2015 Unless Otherwise Shown			3rd Season (Combined) Season Dates: 10/31/2015 – 11/08/2015 Unless Otherwise Shown			4th Season (Combined) Season Dates: 11/11/2015 – 11/15/2015 Unless Otherwise Shown			Float Total (2014)	Total Licenses (2014)
	License #s (2014)			License #s (2014)			License #s (2014)			License #s (2014)				
	Hunt Code			Hunt Code			Hunt Code			Hunt Code				
	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex		
	70													
48				EF048O2R			EF048O3R			EF048O4R			150	200
											50			
49	EM049O1R			EM049O2R			EM049O3R			EM049O4R			140	220
	80													
49				EF049O2R			EF049O3R			EF049O4R				300
					100			100			100			
49 within Lake County ONLY				EF049S2R			EF049S3R			EF049S4R				140
					50			50			40			
50	EM050O1R			EM050O2R			EM050O3R			EM050O4R			225	275
	50													
50				EF050O2R			EF050O3R			EF050O4R			400	400
51	EM051O1R			EM051O2R			EM051O3R			EM051O4R			100	140
	40													
51	EF051O1R			EF051O2R			EF051O3R			EF051O4R			100	130
		30												
52				EF052O2R			EF052O3R			EF052O4R			225	550
					325									
53, 63	EM053O1R													225
	225													
53, 63	EF053O1R													275
		275												

#257 - RIFLE AND ASSOCIATED METHODS ELK SEASONS - ANY LAWFUL METHOD OF TAKE PERMITTED DURING THESE SEASONS

B. Regular Rifle Elk Seasons

1. Separate and Combined Rifle Seasons, Dates, Units (as described in Chapter 0 of these regulations), Limited License Numbers or Unlimited Licenses as shown by hunt code.

Unit(s)	1st Season (Separate Limited Elk) Season Dates: 10/10/2015 – 10/14/2015 Unless Otherwise Shown			2nd Season (Combined) Season Dates: 10/17/2015 – 10/25/2015 Unless Otherwise Shown			3rd Season (Combined) Season Dates: 10/31/2015 – 11/08/2015 Unless Otherwise Shown			4th Season (Combined) Season Dates: 11/11/2015 – 11/15/2015 Unless Otherwise Shown			Float Total (2014)	Total Licenses (2014)
	License #s (2014)			License #s (2014)			License #s (2014)			License #s (2014)				
	Hunt Code			Hunt Code			Hunt Code			Hunt Code				
	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex		
53										EM053O4R				25
										25				
53				EF053O2R			EF053O3R			EF053O4R				320
					120			150			50			
54	EF054O1R			EF054O2R			EF054O3R			EF054O4R				595
		210			170			85			130			
54	EE054O1R						EE054O3R			EE054O4R				1060
			335						500			225		
55										EE055O4R				45
												45		
55	EM055O1R													280
	280													
55	EF055O1R			EF055O2R			EF055O3R			EF055O4R				1195
		325			305			405			160			
56	EM056O1R			EM056O2R			EM056O3R			EM056O4R				175
	50			50			50			25				
56				EF056O2R			EF056O3R			EF056O4R				130
					50			50			30			
57, 58	EM057O1R			EM057O2R			EM057O3R			EM057O4R				320
	80			80			80			80				
57, 58	EF057O1R			EF057O2R			EF057O3R			EF057O4R				400
		90			110			110			90			
59, 581	EM059O1R									EM059O4R				280
	100									180				

#257 - RIFLE AND ASSOCIATED METHODS ELK SEASONS - ANY LAWFUL METHOD OF TAKE PERMITTED DURING THESE SEASONS

B. Regular Rifle Elk Seasons

1. Separate and Combined Rifle Seasons, Dates, Units (as described in Chapter 0 of these regulations), Limited License Numbers or Unlimited Licenses as shown by hunt code.

Unit(s)	1st Season (Separate Limited Elk) Season Dates: 10/10/2015 – 10/14/2015 Unless Otherwise Shown			2nd Season (Combined) Season Dates: 10/17/2015 – 10/25/2015 Unless Otherwise Shown			3rd Season (Combined) Season Dates: 10/31/2015 – 11/08/2015 Unless Otherwise Shown			4th Season (Combined) Season Dates: 11/11/2015 – 11/15/2015 Unless Otherwise Shown			Float Total (2014)	Total Licenses (2014)
	License #s (2014)			License #s (2014)			License #s (2014)			License #s (2014)				
	Hunt Code			Hunt Code			Hunt Code			Hunt Code				
	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex		
59, 581	EF059O1R			EF059O2R			EF059O3R			EF059O4R			200	300
		100												
60										EE060O4R				50
												50		
60	EM060O1R													35
	35													
60	EF060O1R			EF060O2R			EF060O3R			EF060O4R			20	40
		10			10									
61	EM061O1R			EM061O2R			EM061O3R			EM061O4R			200	350
	150													
61	EF061O1R			EF061O2R			EF061O3R			EF061O4R				1000
		100			350			300			250			
62										EE062O4R				130
												130		
62	EM062O1R													380
	380													
62	EF062O1R			EF062O2R			EF062O3R			EF062O4R			400	1050
		250			400									
63										EM063O4R				15
										15				
63				EF063O2R			EF063O3R			EF063O4R				250
					125			75			50			
64, 65	EE064O1R									EE064O4R				475
			400									75		

#257 - RIFLE AND ASSOCIATED METHODS ELK SEASONS - ANY LAWFUL METHOD OF TAKE PERMITTED DURING THESE SEASONS

B. Regular Rifle Elk Seasons

1. Separate and Combined Rifle Seasons, Dates, Units (as described in Chapter 0 of these regulations), Limited License Numbers or Unlimited Licenses as shown by hunt code.

Unit(s)	1st Season (Separate Limited Elk) Season Dates: 10/10/2015 – 10/14/2015 Unless Otherwise Shown			2nd Season (Combined) Season Dates: 10/17/2015 – 10/25/2015 Unless Otherwise Shown			3rd Season (Combined) Season Dates: 10/31/2015 – 11/08/2015 Unless Otherwise Shown			4th Season (Combined) Season Dates: 11/11/2015 – 11/15/2015 Unless Otherwise Shown			Float Total (2014)	Total Licenses (2014)
	License #s (2014)			License #s (2014)			License #s (2014)			License #s (2014)				
	Hunt Code			Hunt Code			Hunt Code			Hunt Code				
	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex		
64, 65	EF064O1R			EF064O2R			EF064O3R			EF064O4R			300	700
		150			250									
66	EM066O1R			EM066O2R			EM066O3R			EM066O4R				785
	315			260			155			55				
66	EF066O1R			EF066O2R			EF066O3R			EF066O4R				630
		135			165			200			130			
67	EM067O1R			EM067O2R			EM067O3R			EM067O4R				800
	290			275			155			80				
67	EF067O1R			EF067O2R			EF067O3R			EF067O4R				635
		100			155			190			190			
68, 681	EM068O1R									EM068O4R				505
	375									130				
68				EF068O2R			EF068O3R			EF068O4R				540
					210			230			100			
69, 84	EM069O1R			EM069O2R			EM069O3R			EM069O4R				235
	75			80			40			40				
69, 84				EF069O2R			EF069O3R			EF069O4R				210
					80			70			60			
70				EF070O2R			EF070O3R			EF070O4R				760
					350			260			150			
70,	EE070O1R									EE070O4R				1400
			1200									200		
71, 72, 73, 711	EE071O1R									EE071O4R				
71				EF071O2R			EF071O3R			EF071O4R			215	215

#257 - RIFLE AND ASSOCIATED METHODS ELK SEASONS - ANY LAWFUL METHOD OF TAKE PERMITTED DURING THESE SEASONS

B. Regular Rifle Elk Seasons

1. Separate and Combined Rifle Seasons, Dates, Units (as described in Chapter 0 of these regulations), Limited License Numbers or Unlimited Licenses as shown by hunt code.

Unit(s)	1st Season (Separate Limited Elk) Season Dates: 10/10/2015 – 10/14/2015 Unless Otherwise Shown			2nd Season (Combined) Season Dates: 10/17/2015 – 10/25/2015 Unless Otherwise Shown			3rd Season (Combined) Season Dates: 10/31/2015 – 11/08/2015 Unless Otherwise Shown			4th Season (Combined) Season Dates: 11/11/2015 – 11/15/2015 Unless Otherwise Shown			Float Total (2014)	Total Licenses (2014)
	License #s (2014)			License #s (2014)			License #s (2014)			License #s (2014)				
	Hunt Code			Hunt Code			Hunt Code			Hunt Code				
	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex		
72				EF072O2R			EF072O3R			EF072O4R			90	90
73				EF073O2R			EF073O3R			EF073O4R			50	50
74, 741	EE074O1R													350
			350											
74, 741										EM074O4R				60
										60				
74				EF074O2R			EF074O3R			EF074O4R			150	150
75, 751	EE075O1R													650
			650											
75, 751										EM075O4R				80
										80				
75, 751				EF075O2R			EF075O3R			EF075O4R			600	600
76	EM076O1R			EM076O2R			EM076O3R							280
	190			60			30							
76				EF076O2R			EF076O3R			EF076O4R				620
					200			200			220			
77, 78, 771	EE077O1R													750
			750											
77, 78, 771										EM077O4R				80
										80				
				EF077O2R			EF077O3R			EF077O4R				245

#257 - RIFLE AND ASSOCIATED METHODS ELK SEASONS - ANY LAWFUL METHOD OF TAKE PERMITTED DURING THESE SEASONS

B. Regular Rifle Elk Seasons

1. Separate and Combined Rifle Seasons, Dates, Units (as described in Chapter 0 of these regulations), Limited License Numbers or Unlimited Licenses as shown by hunt code.

Unit(s)	1st Season (Separate Limited Elk) Season Dates: 10/10/2015 – 10/14/2015 Unless Otherwise Shown			2nd Season (Combined) Season Dates: 10/17/2015 – 10/25/2015 Unless Otherwise Shown			3rd Season (Combined) Season Dates: 10/31/2015 – 11/08/2015 Unless Otherwise Shown			4th Season (Combined) Season Dates: 11/11/2015 – 11/15/2015 Unless Otherwise Shown			Float Total (2014)	Total Licenses (2014)
	License #s (2014)			License #s (2014)			License #s (2014)			License #s (2014)				
	Hunt Code			Hunt Code			Hunt Code			Hunt Code				
	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex		
77, 78, 771					125			70			50			
79	EM079O1R			EM079O2R			EM079O3R							365
	165			100			100							
79	EF079O1R			EF079O2R			EF079O3R			EF079O4R				325
		50			100			75			100			
80, 81	EM080O1R									EM080O4R				950
	900									50				
80				EF080O2R			EF080O3R			EF080O4R				225
					5			5			215			
81				EF081O2R			EF081O3R			EF081O4R				235
					5			5			225			
82	EE082O1R									EE082O4R				350
			300									50		
82	EF082O1R			EF082O2R			EF082O3R			EF082O4R				490
		25			200			200			65			
85, 140, 851 except Bosque del Oso SWA	EE085O1R									EE085O4R				250
			100									150		

#257 - RIFLE AND ASSOCIATED METHODS ELK SEASONS - ANY LAWFUL METHOD OF TAKE PERMITTED DURING THESE SEASONS

B. Regular Rifle Elk Seasons

1. Separate and Combined Rifle Seasons, Dates, Units (as described in Chapter 0 of these regulations), Limited License Numbers or Unlimited Licenses as shown by hunt code.

Unit(s)	1st Season (Separate Limited Elk) Season Dates: 10/10/2015 – 10/14/2015 Unless Otherwise Shown			2nd Season (Combined) Season Dates: 10/17/2015 – 10/25/2015 Unless Otherwise Shown			3rd Season (Combined) Season Dates: 10/31/2015 – 11/08/2015 Unless Otherwise Shown			4th Season (Combined) Season Dates: 11/11/2015 – 11/15/2015 Unless Otherwise Shown			Float Total (2014)	Total Licenses (2014)
	License #s (2014)			License #s (2014)			License #s (2014)			License #s (2014)				
	Hunt Code			Hunt Code			Hunt Code			Hunt Code				
	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex		
85, 140, 851 except Bosque del Oso SWA				EF085O2R			EF085O3R			EF085O4R				120
					40			40			40			
86, 691, 861	EM086O1R									EM086O4R				240
	150									90				
86, 691, 861				EF086O2R			EF086O3R			EF086O4R			275	275
104	EM104O1R			EM104O2R			EM104O3R			EM104O4R			85	115
	30													
131										EM131O4R				60
										60				
131				EF131O2R			EF131O3R			EF131O4R			250	250
133, 134, 141, 142										EM133O4R				30
										30				
161										EE161O4R				100
												100		
161							EF161O3R			EF161O4R				390
								260			130			
171										EE171O4R				60
												60		

#257 - RIFLE AND ASSOCIATED METHODS ELK SEASONS - ANY LAWFUL METHOD OF TAKE PERMITTED DURING THESE SEASONS

B. Regular Rifle Elk Seasons

1. Separate and Combined Rifle Seasons, Dates, Units (as described in Chapter 0 of these regulations), Limited License Numbers or Unlimited Licenses as shown by hunt code.

Unit(s)	1st Season (Separate Limited Elk) Season Dates: 10/10/2015 – 10/14/2015 Unless Otherwise Shown			2nd Season (Combined) Season Dates: 10/17/2015 – 10/25/2015 Unless Otherwise Shown			3rd Season (Combined) Season Dates: 10/31/2015 – 11/08/2015 Unless Otherwise Shown			4th Season (Combined) Season Dates: 11/11/2015 – 11/15/2015 Unless Otherwise Shown			Float Total (2014)	Total Licenses (2014)
	License #s (2014)			License #s (2014)			License #s (2014)			License #s (2014)				
	Hunt Code			Hunt Code			Hunt Code			Hunt Code				
	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex		
181				EF181O2R			EF181O3R			EF181O4R				520
					160			200			160			
191	EM191O1R			EM191O2R			EM191O3R			EM191O4R			275	325
	50													
191				EF191O2R			EF191O3R			EF191O4R			80	80
201	EF201O1R			EF201O2R			EF201O3R			EF201O4R				145
		30			45			30			40			
214										EM214O4R				50
										50				
214				EF214O2R			EF214O3R			EF214O4R			300	300
231										EM231O4R				60
										60				
231				EF231O2R			EF231O3R			EF231O4R			250	250
371	EE371O1R									EE371O4R				240
			140									100		
371	EF371O1R			EF371O2R			EF371O3R			EF371O4R				395
		100			70			120			105			
391	EM391O1R			EM391O2R			EM391O3R			EM391O4R			60	60
411				EF411O2R			EF411O3R			EF411O4R			100	200
					100									
421				EF421O2R			EF421O3R			EF421O4R			1100	1100

#257 - RIFLE AND ASSOCIATED METHODS ELK SEASONS - ANY LAWFUL METHOD OF TAKE PERMITTED DURING THESE SEASONS

B. Regular Rifle Elk Seasons

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Unit(s)	1st Season (Separate Limited Elk) Season Dates: 10/10/2015 – 10/14/2015 Unless Otherwise Shown			2nd Season (Combined) Season Dates: 10/17/2015 – 10/25/2015 Unless Otherwise Shown			3rd Season (Combined) Season Dates: 10/31/2015 – 11/08/2015 Unless Otherwise Shown			4th Season (Combined) Season Dates: 11/11/2015 – 11/15/2015 Unless Otherwise Shown			Float Total (2014)	Total Licenses (2014)
	License #s (2014)			License #s (2014)			License #s (2014)			License #s (2014)				
	Hunt Code			Hunt Code			Hunt Code			Hunt Code				
	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex		
444										EE444O4R				
												140		140
444				EF444O2R			EF444O3R			EF444O4R				
													655	655
461	EM461O1R			EM461O2R			EM461O3R			EM461O4R				
													60	60
461	EF461O1R			EF461O2R			EF461O3R			EF461O4R				
													50	50
471										EE471O4R				
												25		25
471				EF471O2R			EF471O3R			EF471O4R				
													60	60
481	EM481O1R			EM481O2R			EM481O3R			EM481O4R				
	70												200	270
481				EF481O2R			EF481O3R			EF481O4R				
													200	200
500	EM500O1R			EM500O2R			EM500O3R			EM500O4R				
	100												125	225
500				EF500O2R			EF500O3R			EF500O4R				
													350	350
501	EM501O1R			EM501O2R			EM501O3R			EM501O4R				
	35												135	170
501				EF501O2R			EF501O3R			EF501O4R				
													200	200
511	EM511O1R									EM511O4R				
	75									100				175

#257 - RIFLE AND ASSOCIATED METHODS ELK SEASONS - ANY LAWFUL METHOD OF TAKE PERMITTED DURING THESE SEASONS

B. Regular Rifle Elk Seasons

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Unit(s)	1st Season (Separate Limited Elk) Season Dates: 10/10/2015 – 10/14/2015 Unless Otherwise Shown			2nd Season (Combined) Season Dates: 10/17/2015 – 10/25/2015 Unless Otherwise Shown			3rd Season (Combined) Season Dates: 10/31/2015 – 11/08/2015 Unless Otherwise Shown			4th Season (Combined) Season Dates: 11/11/2015 – 11/15/2015 Unless Otherwise Shown			Float Total (2014)	Total Licenses (2014)
	License #s (2014)			License #s (2014)			License #s (2014)			License #s (2014)				
	Hunt Code			Hunt Code			Hunt Code			Hunt Code				
	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex		
511	EF511O1R			EF511O2R			EF511O3R			EF511O4R			100	130
		30												
521 north of West Muddy Creek and east of Colo 133				EF521O2R			EF521O3R			EF521O4R			700	700
521 south of West Muddy Creek and west of Paonia Reservoir				EF521S2R			EF521S3R			EF521S4R			650	650
551										EE551O4R				20
												20		
551	EM551O1R													70
	70													
551	EF551O1R			EF551O2R			EF551O3R			EF551O4R				720
		120			240			280			80			
561	EM561O1R			EM561O2R			EM561O3R			EM561O4R				105

#257 - RIFLE AND ASSOCIATED METHODS ELK SEASONS - ANY LAWFUL METHOD OF TAKE PERMITTED DURING THESE SEASONS

B. Regular Rifle Elk Seasons

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Unit(s)	1st Season (Separate Limited Elk) Season Dates: 10/10/2015 – 10/14/2015 Unless Otherwise Shown			2nd Season (Combined) Season Dates: 10/17/2015 – 10/25/2015 Unless Otherwise Shown			3rd Season (Combined) Season Dates: 10/31/2015 – 11/08/2015 Unless Otherwise Shown			4th Season (Combined) Season Dates: 11/11/2015 – 11/15/2015 Unless Otherwise Shown			Float Total (2014)	Total Licenses (2014)
	License #s (2014)			License #s (2014)			License #s (2014)			License #s (2014)				
	Hunt Code			Hunt Code			Hunt Code			Hunt Code				
	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex		
	30			30			30			15				
561				EF561O2R			EF561O3R			EF561O4R				80
					30			30			20			
681				EF681O2R			EF681O3R			EF681O4R				335
					160			125			50			
711				EF711O2R			EF711O3R			EF711O4R			190	305
											115			
741				EE741O2R			EE741O3R			EE741O4R			70	70
851 Bosque del Oso SWA only	EM851O1R			EM851O2R			EM851O3R							15
	5			5			5							
851 Bosque del Oso SWA only							EF851O3R							5
								5						
851 Bosque del Oso SWA only Youth Only				EE851K2R			EE851K3R							2
						1			1					

#257 - RIFLE AND ASSOCIATED METHODS ELK SEASONS - ANY LAWFUL METHOD OF TAKE PERMITTED DURING THESE SEASONS

B. Regular Rifle Elk Seasons

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Unit(s)	1st Season (Separate Limited Elk) Season Dates: 10/10/2015 – 10/14/2015 Unless Otherwise Shown			2nd Season (Combined) Season Dates: 10/17/2015 – 10/25/2015 Unless Otherwise Shown			3rd Season (Combined) Season Dates: 10/31/2015 – 11/08/2015 Unless Otherwise Shown			4th Season (Combined) Season Dates: 11/11/2015 – 11/15/2015 Unless Otherwise Shown			Float Total (2014)	Total Licenses (2014)
	License #s (2014)			License #s (2014)			License #s (2014)			License #s (2014)				
	Hunt Code			Hunt Code			Hunt Code			Hunt Code				
	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex		
Totals	**13450**	**9255**	**7275**	**1030**	**8650**	**33**	**735**	**6695**	**533**	**4285**	**6980**	**3460**	**26190**	**88571**

ARTICLE XI - MOOSE

#270 - MOOSE SEASONS, LICENSES, AND SPECIAL RESTRICTIONS

A. Archery Moose Season

1. Archery Season Dates, Units, and Limited Licenses

Unit(s)	Hunt Code	Open Date	Close Date
1, 201	ME001O1A	09/12/2015	09/27/2015
6 except within 1/4 mile of Hwy 14 in Jackson County from Cameron Pass west to USFS Road 740 at Gould	MM006O1A	09/12/2015	09/27/2015
6 except within 1/4 mile of Hwy 14 in Jackson County from Cameron Pass west to USFS Road 740 at Gould	MF006O1A	09/12/2015	09/27/2015
7, 8, 191 except within 1/4 mile of Hwy 14	MM007O1A	09/12/2015	09/27/2015
7, 8, 191 except within 1/4 mile of Hwy 14	MF007O1A	09/12/2015	09/27/2015
12, 23, 24	MM012O1A	09/12/2015	09/27/2015
12, 23, 24	MF012O1A	09/12/2015	09/27/2015
14	MM014O1A	09/12/2015	09/27/2015
14	MF014O1A	09/12/2015	09/27/2015
15, 27	MM015O1A	09/12/2015	09/27/2015
15, 27	MF015O1A	09/12/2015	09/27/2015
16	MM016O1A	09/12/2015	09/27/2015
16	MF016O1A	09/12/2015	09/27/2015
17	MM017O1A	09/12/2015	09/27/2015
17	MF017O1A	09/12/2015	09/27/2015
18, 181	MM018O1A	09/12/2015	09/27/2015
18, 181	MF018O1A	09/12/2015	09/27/2015
18 - Those portions bounded on the north by the Continental Divide; on the east by the divide between Willow Creek and East Fork of Troublesome drainages and the divide between Corral Creek and Troublesome Creek drainages; on the south by Round Gulch; and on the west by the main fork of Troublesome Creek and Sheep Creek	MM018S1A	09/12/2015	09/27/2015
19 except within 1/4 mile of Hwy 14	MM019O1A	09/12/2015	09/27/2015
19 except within 1/4 mile of Hwy 14	MF019O1A	09/12/2015	09/27/2015
20, 29 except within 1/4 mile of the high waterline of Brainard Lake from the beginning of archery season until the US Forest Service gate closes on Brainard Lake Road.	MM020O1A	09/12/2015	09/27/2015
20, 29 except within 1/4 mile of the high waterline of Brainard Lake from the beginning of archery season until the US Forest Service gate closes on Brainard Lake Road.	MF020O1A	09/12/2015	09/27/2015
28	MM028O1A	09/12/2015	09/27/2015
28	MF028O1A	09/12/2015	09/27/2015
36, 361	MM036O1A	09/12/2015	09/27/2015

Unit(s)	Hunt Code	Open Date	Close Date
37, 371	MM037O1A	09/12/2015	09/27/2015
37, 371	MF037O1A	09/12/2015	09/27/2015
38	MM038O1A	09/12/2015	09/27/2015
38	MF038O1A	09/12/2015	09/27/2015
39, 46, 49, 500, 501	MM039O1A	09/12/2015	09/27/2015
39, 46, 49, 500, 501	MF039O1A	09/12/2015	09/27/2015
41, 42, 52, 411, 421, 521	MM041O1A	09/12/2015	09/27/2015
41, 42, 421	MF041O1A	09/12/2015	09/27/2015
44, 45	MM044O1A	09/12/2015	09/27/2015
48, 55, 56, 481, 551, 561	MM048O1A	09/12/2015	09/27/2015
52, 411, 521	MF052O1A	09/12/2015	09/27/2015
65	MM065O1A	09/12/2015	09/27/2015
66	MM066O1A	09/12/2015	09/27/2015
66	MF066O1A	09/12/2015	09/27/2015
67	MM067O1A	09/12/2015	09/27/2015
67	MF067O1A	09/12/2015	09/27/2015
68, 79, 681	MM068O1A	09/12/2015	09/27/2015
74, 75	MM074O1A	09/12/2015	09/27/2015
76	MM076O1A	09/12/2015	09/27/2015
76, 77, 751 Weminuche Wilderness Only	MM076S1A	09/12/2015	09/27/2015
161	MM161O1A	09/12/2015	09/27/2015
161	MF161O1A	09/12/2015	09/27/2015
171 except within 1/4 mile of Hwy 14 in Jackson County from Cameron Pass west to USFS Road 740 at Gould	MM171O1A	09/12/2015	09/27/2015
171 except within 1/4 mile of Hwy 14 in Jackson County from Cameron Pass west to USFS Road 740 at Gould	MF171O1A	09/12/2015	09/27/2015
191 except within 1/4 mile of Hwy 14	MF191O1A	09/12/2015	09/27/2015

B. Muzzle-loading firearms (rifle and smoothbore musket) seasons.

1. Muzzle-loading, Moose, Dates, Units, Licenses

Unit	Hunt Code	Open Date	Close Date
1, 201	ME001O1M	09/12/2015	09/20/2015
6 except within 1/4 mile of Hwy 14 in Jackson County from Cameron Pass west to USFS Road 740 at Gould	MM006O1M	09/12/2015	09/20/2015
6 except within 1/4 mile of Hwy 14 in Jackson County from Cameron Pass west to USFS Road 740 at Gould	MF006O1M	09/12/2015	09/20/2015
7, 8, 191 except within 1/4 mile of Hwy 14	MM007O1M	09/12/2015	09/20/2015
7, 8, 191 except within 1/4 mile of Hwy 14	MF007O1M	09/12/2015	09/20/2015
12, 23, 24	MM012O1M	09/12/2015	09/20/2015
12, 23, 24	MF012O1M	09/12/2015	09/20/2015

Unit	Hunt Code	Open Date	Close Date
14	MM014O1M	09/12/2015	09/20/2015
14	MF014O1M	09/12/2015	09/20/2015
15, 27	MM015O1M	09/12/2015	09/20/2015
15, 27	MF015O1M	09/12/2015	09/20/2015
16	MM016O1M	09/12/2015	09/20/2015
16	MF016O1M	09/12/2015	09/20/2015
17	MM017O1M	09/12/2015	09/20/2015
17	MF017O1M	09/12/2015	09/20/2015
18, 181	MM018O1M	09/12/2015	09/20/2015
18, 181	MF018O1M	09/12/2015	09/20/2015
18 - Those portions bounded on the north by the Continental Divide; on the east by the divide between Willow Creek and East Fork of Troublesome drainages and the divide between Corral Creek and Troublesome Creek drainages; on the south by Round Gulch; and on the west by the main fork of Troublesome Creek and Sheep Creek	MM018S1M	09/12/2015	09/20/2015
19 except within 1/4 mile of Hwy 14	MM019O1M	09/12/2015	09/20/2015
19 except within 1/4 mile of Hwy 14	MF019O1M	09/12/2015	09/20/2015
20, 29 except within 1/4 mile of the high waterline of Brainard Lake from the beginning of archery season until the US Forest Service gate closes on Brainard Lake Road.	MM020O1M	09/12/2015	09/20/2015
20, 29 except within 1/4 mile of the high waterline of Brainard Lake from the beginning of archery season until the US Forest Service gate closes on Brainard Lake Road.	MF020O1M	09/12/2015	09/20/2015
28	MM028O1M	09/12/2015	09/20/2015
28	MF028O1M	09/12/2015	09/20/2015
36, 361	MM036O1M	09/12/2015	09/20/2015
37, 371	MM037O1M	09/12/2015	09/20/2015
37, 371	MF037O1M	09/12/2015	09/20/2015
38	MM038O1M	09/12/2015	09/20/2015
38	MF038O1M	09/12/2015	09/20/2015
39, 46, 49, 500, 501	MM039O1M	09/12/2015	09/20/2015
39, 46, 49, 500, 501	MF039O1M	09/12/2015	09/20/2015
41, 42, 52, 411, 421, 521	MM041O1M	09/12/2015	09/20/2015
41, 42, 421	MF041O1M	09/12/2015	09/20/2015
44, 45	MM044O1M	09/12/2015	09/20/2015
48, 55, 56, 481, 551, 561	MM048O1M	09/12/2015	09/20/2015
52, 411, 521	MF052O1M	09/12/2015	09/20/2015
65	MM065O1M	09/12/2015	09/20/2015
66	MM066O1M	09/12/2015	09/20/2015
66	MF066O1M	09/12/2015	09/20/2015
67	MM067O1M	09/12/2015	09/20/2015
67	MF067O1M	09/12/2015	09/20/2015
68, 79, 681	MM068O1M	09/12/2015	09/20/2015
74, 75	MM074O1M	09/12/2015	09/20/2015

Unit	Hunt Code	Open Date	Close Date
76	MM076O1M	09/12/2015	09/20/2015
76, 77, 751 Weminuche Wilderness Only	MM076S1M	09/12/2015	09/20/2015
161	MM161O1M	09/12/2015	09/20/2015
161	MF161O1M	09/12/2015	09/20/2015
171 except within 1/4 mile of Hwy 14 in Jackson County from Cameron Pass west to USFS Road 740 at Gould	MM171O1M	09/12/2015	09/20/2015
171 except within 1/4 mile of Hwy 14 in Jackson County from Cameron Pass west to USFS Road 740 at Gould	MF171O1M	09/12/2015	09/20/2015
191 except within 1/4 mile of Hwy 14	MF191O1M	09/12/2015	09/20/2015

C. Regular Rifle Seasons

Unit	Hunt Code	Open Date	Close Date
1, 201	ME001O1R	10/01/2015	10/14/2015
6 except within 1/4 mile of Hwy 14 in Jackson County from Cameron Pass west to USFS Road 740 at Gould	MM006O1R	10/01/2015	10/14/2015
6 except within 1/4 mile of Hwy 14 in Jackson County from Cameron Pass west to USFS Road 740 at Gould	MF006O1R	10/01/2015	10/14/2015
7, 8, 191 except within 1/4 mile of Hwy 14	MM007O1R	10/01/2015	10/14/2015
7, 8, 191 except within 1/4 mile of Hwy 14	MF007O1R	10/01/2015	10/14/2015
12, 23, 24	MM012O1R	10/01/2015	10/14/2015
12, 23, 24	MF012O1R	10/01/2015	10/14/2015
14	MM014O1R	10/01/2015	10/14/2015
14	MF014O1R	10/01/2015	10/14/2015
15, 27	MM015O1R	10/01/2015	10/14/2015
15, 27	MF015O1R	10/01/2015	10/14/2015
16	MM016O1R	10/01/2015	10/14/2015
16	MF016O1R	10/01/2015	10/14/2015
17	MM017O1R	10/01/2015	10/14/2015
17	MF017O1R	10/01/2015	10/14/2015
18, 181	MM018O1R	10/01/2015	10/14/2015
18, 181	MF018O1R	10/01/2015	10/14/2015
18 - Those portions bounded on the north by the Continental Divide; on the east by the divide between Willow Creek and East Fork of Troublesome drainages and the divide between Corral Creek and Troublesome Creek drainages; on the south by Round Gulch; and on the west by the main fork of Troublesome Creek and Sheep Creek	MM018S1R	10/01/2015	10/14/2015
19 except within 1/4 mile of Hwy 14	MM019O1R	10/01/2015	10/14/2015
19 except within 1/4 mile of Hwy 14	MF019O1R	10/01/2015	10/14/2015
20, 29 except within 1/4 mile of the high waterline of Brainard Lake from the beginning of archery season until the US Forest Service gate closes on Brainard Lake Road.	MM020O1R	10/01/2015	10/14/2015

Unit	Hunt Code	Open Date	Close Date
20, 29 except within 1/4 mile of the high waterline of Brainard Lake from the beginning of archery season until the US Forest Service gate closes on Brainard Lake Road.	MF020O1R	10/01/2015	10/14/2015
28	MM028O1R	10/01/2015	10/14/2015
28	MF028O1R	10/01/2015	10/14/2015
36, 361	MM036O1R	10/01/2015	10/14/2015
37, 371	MM037O1R	10/01/2015	10/14/2015
37, 371	MF037O1R	10/01/2015	10/14/2015
38	MM038O1R	10/01/2015	10/14/2015
38	MF038O1R	10/01/2015	10/14/2015
39, 46, 49, 500, 501	MM039O1R	10/01/2015	10/14/2015
39, 46, 49, 500, 501	MF039O1R	10/01/2015	10/14/2015
41, 42, 52, 411, 421, 521	MM041O1R	10/01/2015	10/14/2015
41, 42, 421	MF041O1R	10/01/2015	10/14/2015
44, 45	MM044O1R	10/01/2015	10/14/2015
48, 55, 56, 481, 551, 561	MM048O1R	10/01/2015	10/14/2015
52, 411, 521	MF052O1R	10/01/2015	10/14/2015
65	MM065O1R	10/01/2015	10/14/2015
66	MM066O1R	10/01/2015	10/14/2015
66	MF066O1R	10/01/2015	10/14/2015
67	MM067O1R	10/01/2015	10/14/2015
67	MF067O1R	10/01/2015	10/14/2015
68, 79, 681	MM068O1R	10/01/2015	10/14/2015
74, 75	MM074O1R	10/01/2015	10/14/2015
76	MM076O1R	10/01/2015	10/14/2015
76, 77, 751 Weminuche Wilderness Only	MM076S1R	10/01/2015	10/14/2015
161	MM161O1R	10/01/2015	10/14/2015
161	MF161O1R	10/01/2015	10/14/2015
171 except within 1/4 mile of Hwy 14 in Jackson County from Cameron Pass west to USFS Road 740 at Gould	MM171O1R	10/01/2015	10/14/2015
171 except within 1/4 mile of Hwy 14 in Jackson County from Cameron Pass west to USFS Road 740 at Gould	MF171O1R	10/01/2015	10/14/2015
191 except within 1/4 mile of Hwy 14	MF191O1R	10/01/2015	10/14/2015

D. Moose License Numbers

1. Moose license numbers will be set as resident and nonresident antlered and antlerless licenses by Game Management Unit. For the Moose Seasons the following numbers of resident and nonresident licenses will be issued:

Units	2014 Resident Antlered Licenses	2014 Resident Antlerless Licenses	2014 Nonresident Antlered Licenses	2014 Nonresident Antlerless Licenses	2014 Resident Either Sex Licenses
1, 201	0	0	0	0	1

Units	2014 Resident Antlered Licenses	2014 Resident Antlerless Licenses	2014 Nonresident Antlered Licenses	2014 Nonresident Antlerless Licenses	2014 Resident Either Sex Licenses
17	4	11	1	1	
18, 181	13	14	2	2	
18 (Those portions bounded on the north by the Continental Divide; on the east by the divide between Willow Creek and East Fork of Troublesome drainages and the divide between Corral Creek and Troublesome Creek drainages; on the south by Round Gulch; and on the west by the main fork of Troublesome Creek and Sheep Creek	1	0	0	0	
19 except within 1/4 mile of Hwy 14	3	9	0	0	
20, 29 except within 1/4 mile of the high waterline of Brainard Lake from the beginning of archery season until the US Forest Service gate closes on Brainard Lake Road.	2	3	0	0	
28	8	7	2	2	
36, 361	2	0	0	0	
37, 371	4	4	0	0	
38					
39, 46, 49, 500, 501	3	5	0	0	
41, 42, 52, 411, 421, 521	9	0	0	0	
41, 42, 421	0	10	0	2	
44, 45					
48, 55, 56, 481, 551, 561					
52, 411, 512	0	8	0	0	
65					
66	2	0	0	0	
67	1	0	0	0	

Units	2014 Resident Antlered Licenses	2014 Resident Antlerless Licenses	2014 Nonresident Antlered Licenses	2014 Nonresident Antlerless Licenses	2014 Resident Either Sex Licenses
68, 79, 681					
74, 75					
76	4	0	0	0	
76, 77, 751 Weminuche Wilderness Only	4	0	0	0	
161	5	3	0	0	
171	5	16	2	2	
191 except within 1/4 mile of Hwy 14					
TOTALS	**98**	**131**	**11**	**14**	**1**

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Tracking number: 2015-00090

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

Colorado Parks and Wildlife (406 Series, Wildlife)

on 03/05/2015

2 CCR 406-2

CHAPTER W-2 - BIG GAME

The above-referenced rules were submitted to this office on 03/11/2015 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

March 20, 2015 09:19:28

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

Permanent Rules Adopted

Department

Department of Natural Resources

Agency

Colorado Parks and Wildlife (406 Series, Wildlife)

CCR number

2 CCR 406-9

Rule title

2 CCR 406-9 CHAPTER W-9 - WILDLIFE PROPERTIES 1 - eff 05/01/2015

Effective date

05/01/2015

FILING - 03/24/2015

FINAL REGULATIONS - CHAPTER W-9 - WILDLIFE PROPERTIES

ARTICLE I - GENERAL PROVISIONS

#900 - REGULATIONS APPLICABLE TO ALL WILDLIFE PROPERTIES, EXCEPT STATE TRUST LANDS

C. Prohibited Activities

Except as specifically authorized by contractual agreement, official document, public notice, permit or by posted sign, the following activities are prohibited on all lands, waters, the frozen surface of waters, rights-of-way, buildings, and other structures or devices owned, operated, or under the administrative control of Colorado Parks and Wildlife:

1. To enter, use, or occupy any area or portion thereof for any purpose when posted against such entry, use, or occupancy.

2. To enter, use, or occupy any area for any commercial purpose or to conduct land, water, oil, gas, or mineral investigations, surveys, or explorations of any kind.

3. To operate any form of vehicle (motorized or non-motorized) except on established roads or within designated camping or parking areas. All motor vehicles and the operators thereof must be in compliance with all Colorado statutes and regulations pertaining to motor vehicle operation.

4. To operate a motor vehicle in excess of posted speed limits or in excess of 25 miles per hour where not posted.

5. To leave a camp, pitched tent, shelter, motor vehicle, or trailer unattended for more than 48 hours, or to camp or to park a travel trailer or camper on any one state wildlife area for more than 14 days in any 45-day period.

6. To build, erect, or establish any permanent structure or to plant any vegetation. Only portable blinds or tree stands and steps may be erected by the public on state wildlife areas. No nails may be driven into trees. Portable blinds or tree stands intended for use to hunt any big game or waterfowl during an established season may be erected on state wildlife areas no earlier than 30 days prior to the season in which they are used. All man-made materials used for blinds or tree stands during big game or waterfowl seasons must be removed within 10 days after the end of the season in which they are used. Any other portable blind or tree stand used for any other purpose must be removed at the end of the day in which they are used. The Customer Identification Number of the owner and the date(s) to be used must be displayed on the outside of all portable blinds and on the underside of all tree stands in a readily visible area. However, the erection or placement of any blind or tree stand by any person does not reserve the blind or tree stand for personal use. All such blinds and tree stands remain available for use to the general public on a first come, first-served basis.

7. To remove, modify, adjust, deface, destroy, or mutilate any building, structure, water control device, fence, gate, poster, notice, sign, survey or section marker, tree, shrub or other vegetation or any object of archaeological, geological, or historical value or interest.

8. To litter in any form, to leave fish, fish entrails, human excrement, waste water, containers or cartons, boxes or other trash, garbage or toxic substance on any area or

to bring any household or commercial trash, garbage or toxic substance to a Division-controlled area for disposal, or to dump trailer waste into any toilet or sanitary facility.

9. To set or build a fire without provision to prevent the spreading thereof, or to leave a fire unattended.

10. To release or allow livestock to graze or range on any area, except that horses, mules, llamas, and burros may be used when in direct association with wildlife recreational activities.

11. To possess, use or apply explosives (other than lawful firearm ammunition), poisons, herbicides, insecticides or other pesticides.

12. To release wildlife or privately-owned game birds, except privately-owned game birds released for field trials, including group dog training, or on those state wildlife areas where release for dog training is specifically authorized in #901.B of these regulations; or to permit dogs, cats, or other domestic pets to run at large (not on a leash) on any area, except dogs lawfully used while actively hunting, or while training dogs for hunting, or during Division licensed field trials.

13. To excavate or dig trenches, holes, or pits.

14. To leave vessels beached, at anchor, moored or docked unattended overnight, except in areas designated for that purpose.

15. To fish from Division-controlled boat ramps or boat docks when in conflict with boaters or as posted.

16. To snorkel, scuba dive, or spearfish with the aid of diving mask, swim fins, snorkel, and/or air tanks, except in waters where swimming is permitted, when location is properly identified by a "divers down flag," and when the scuba diver has a valid S.C.U.B.A. diver's certificate issued by a recognized S.C.U.B.A. training organization.

17. To engage in any unlawful conduct or act as defined in Title 18, C.R.S.

18. To utilize any air or gas inflated floating device as a means of transportation upon or across the surface of the water unless such device is of multi-compartment construction and has a rigid motor mount for those devices propelled by gasoline or electric motors. Single compartment air or gas filled flotation devices are restricted to designated swimming areas.

19. To promote, sponsor, or conduct or participate in boat regattas, paintball shooting, questing, or other non-wildlife oriented activities.

20. To launch or land any aircraft.

21. To leave any decoys or anything used as decoys set up in the field or on the water overnight.

22. To swim, except in designated waters or in association with specifically authorized water contact activities.

23. To discharge a firearm or bow within designated parking, camping, or picnic areas.

24. To possess the following types of ammunition and/or firearms: tracer rounds, armor-piercing rounds, military hardened rounds with explosive or radioactive substances, .50 caliber BMG rounds, or fully automatic firearms.

25. To fish in any waters within the any Division fish hatchery, rearing, or distribution unit, including but not limited to, streams, rearing ponds, holding areas, and raceways, except in designated areas of these properties which are managed for public fishing; and to fish in fish rearing ponds on any other Wildlife property, as posted.

26. To possess, store, or use hay, straw, or mulch which has not been certified as noxious weed free in accordance with the Weed Free Forage Crop Certification Act, Sections 35-27.5-101 to 108, C.R.S., or any other state or province participating in the Regional Certified Weed Free Forage Program. See Appendix A of this chapter. All materials so certified shall be clearly marked as such by the certifying state or province. Exempted from this prohibition are persons transporting such materials on Federal, State, or County roads that cross CDOW property; and hay produced on the property where it is being used.

27. Upon notification by authorized Colorado Parks and Wildlife personnel of a violation of any of the above (or any other law of the State of Colorado) and where the unlawful activity is not immediately and permanently discontinued or if it is of a continuing nature, the violator(s) may be required to leave Colorado Parks and Wildlife property for a minimum of 72 hours.

28. To trap, unless such trapping is done in accordance with the provisions of 33-6-204 (General Exemptions), 33-6-205 (Exemptions for Departments of Health), 33-6-206 (Nonlethal Methods Exemptions), #901 and Chapter 3 of these regulations. Persons wishing to use the above-mentioned exemptions must have prior authorization from Colorado Parks and Wildlife.

29. To conduct field trials or group dog training without first obtaining a field trial license, in accordance with the provisions of Chapter 8 of these regulations.

D. Limitation of People and Vehicle Usage

1. The Director of Colorado Parks and Wildlife may establish and enforce a limitation not to exceed sixty (60) days, on public occupancy of the land and water areas owned or leased by the Division.

   The Director shall use only the following criteria when establishing such limitation:
   a. The location and size of the area.
   b. The location, type and condition of roads, vehicle parking areas and the number and type of sanitary facilities available.
   c. The number of users and vehicles the area will tolerate without significant degradation to wildlife resources, and public or private property.
   d. Opportunity to assure public safety, health and welfare.

2. Whenever such limitation is exercised, the area(s) involved shall be posted indicating the specific number of persons or vehicles permitted within the area at all times when such area is posted. It shall be unlawful for any person or vehicle to enter any such area(s) posted as being fully occupied or after being advised by an officer of the Division that the area is full.

3. The Division may waive these restrictions for daytime use during a specified period of time for organized supervised groups whose numbers exceed the limitations set forth. Written approval must first be obtained from the appropriate Regional Manager.

E. Closure of Properties to Public Use

1. The Director of Colorado Parks and Wildlife may establish and enforce temporary closures of, or restrictions on, lands or waters owned or leased by the Division, or portions thereof, for a period not to exceed nine months, when any one of the following criteria apply:

    a. The property has sustained a natural or man-made disaster such as drought, wildfire, flooding, or disease outbreak which makes public access unsafe, or where access by the public could result in additional and significant environmental damage.
    b. The facilities on the property are unsafe.
    c. To protect threatened or endangered wildlife species, protect wildlife resources from significant natural or manmade threats, such as the introduction or spread of disease or nuisance species, changing environmental conditions or other similar threats, protect time-sensitive wildlife use of lands or waters, or facilitate Division-sponsored wildlife research projects or management activities.

2. Whenever such closure is instituted, the area(s) involved shall be posted indicating the nature and purpose of the closure. It shall be unlawful for any person or vehicle to enter any such area(s) posted as closed.

ARTICLE II - PROPERTY-SPECIFIC PROVISIONS

#901 - PROPERTY-SPECIFIC REGULATIONS

(See Appendix B for a list of properties without property-specific regulations, to which only restrictions in #900 apply)

A. Except as specified in #901.A.1 below, on those properties which have reservations available or required, reservations may be made by calling 1-800-846-9453. Reservations are not accepted more than 14 days in advance of the hunt date, nor after 12:00 noon on the day before the hunt date, or Friday at 12:00 noon for Sundays and holidays falling on Monday. Hunters who wish to cancel a reservation must do so no later than 12:00 noon on the day before the hunt date. Failure to hunt a reserved area without prior cancellation, or follow check station procedures, may cause forfeiture of the privilege to make reservations for the remainder of the hunting season. Hunters are limited to a maximum of one reservation per hunt date and one reservation per phone call. Hunters must possess a valid license for the species to be hunted in order to make a reservation. Reservations are not transferable. The individual named on the reservation must be at the property on the day of the hunt and be a licensed hunter for the species to be hunted. Hunters with reservations may only hunt the hunt area specified on the reservation.

1. Reservations may be made on the following properties by calling 970-255-6161. All other restrictions listed in #901.A apply.
    a. Colorado River Island State Wildlife Area
    b. Franklin Island State Wildlife Area
    c. Highline Lake State Park
    d. Horsethief Canyon State Wildlife Area
    e. James M. Robb Colorado River State Park
    f. Orchard Mesa State Wildlife Area
    g. Tilman Bishop State Wildlife Area

B. In addition to or in place of those restrictions listed in regulation #900, the following provisions or restrictions apply:

1. Adams State Wildlife Area - Routt County

a. Public access is prohibited from December 1 through June 30.
b. Camping is prohibited.
c. Campfires are prohibited.
d. Dogs are prohibited, except as an aid in hunting grouse.
e. Vehicle access is prohibited beyond the parking area.

2. Adobe Creek Reservoir State Wildlife Area - Bent and Kiowa Counties

a. Public access is prohibited from one hour after sunset to one hour before sunrise daily, except for fishing.
b. All terrain vehicles, dirt bikes, and snowmobiles are prohibited.
c. Public access to the frozen surface of the lake is prohibited.
d. Public access to the dams, inlets, and outlet structures is prohibited, except for fishing.

3. Almont Triangle State Wildlife Area - Gunnison County

a. Public access is prohibited from December 20 through March 31.

4. Andrick Ponds State Wildlife Area - Morgan County

a. Camping is prohibited.
b. Fires are prohibited.
c. Discharge of firearms or bows is prohibited, except when hunting.
d. Hunting is prohibited with center-fire rifles.
e. Access allowed only through designated parking areas.
f. Public access is restricted to foot traffic only.
g. Dog training is prohibited.
h. Year-round public access is limited to Saturday, Sunday, Wednesday, and legal holidays. During these days, public access is prohibited from 9:00 pm to 3:00 am. Night hunting is prohibited.
i. From the first Saturday prior to Memorial Day holiday through August 31, access is limited to wildlife observation only with access limited to areas posted at the property. Dogs must be on a leash during this period.
j. From September 1 through the end of the regular dark goose season, all public use is prohibited, except for migratory bird hunting within designated hunting areas.

k. From the Thursday before September 1 through the end of the spring turkey season, scouting is permitted only on Thursdays that are not open to hunting within and immediately prior to established waterfowl and turkey seasons. Scouting will be permitted from 10:00 am until 2:00 pm. All persons scouting must check in and check out at the check station. During scouting dates, firearms and dogs are prohibited.
l. From the end of the dark goose season through the Friday prior to Memorial Day holiday only spring turkey hunting is permitted. Turkey hunters must check in at the check station on CR AA, but may hunt the entire property.
m. Hunting is prohibited on Clark Lake.
n. Reservations are required and valid until sunrise. Hunters may check in on a first-come, first-served basis after a hunter with a reservation checks out, or after sunrise if there is no check-in card in the check station. Hunters with reservations may not check in until 3:00 am immediately preceding the hunt. Hunters may only hunt the area specified on the reservation or which they check into. Reservations may be made in accordance with #901.A of these regulations. No more than four hunters are allowed in each area at any one time.
o. From September 1 through the end of the regular goose season reservations are limited to three per hunter annually.
p. Hunters must follow check-in and check-out procedures as posted at the property.

q. The property will be open outside of these regulations for CPW-sanctioned education and outreach events with AWM approval.

5. Arikaree State Wildlife Area – Yuma County

a. Public access is prohibited from June 1 through August 31.
b. Public access is restricted to foot traffic only.
c. Camping is prohibited.
d. Fires are prohibited.
e. Dog training is prohibited.
f. Target practice is allowed only when authorized by the area wildlife manager.
g. Horseback riding is prohibited.
h. Parking is restricted to designated parking areas only.
i. In designated areas, hunting is limited to youth mentor hunting only. No more than one mentor per youth hunter may engage in hunting within these designated areas.

6. Atwood State Wildlife Area - Logan County

a. Access allowed only through designated parking area.
b. Public access is restricted to foot traffic only.
c. Fires are prohibited.
d. Camping is prohibited.
e. Discharge of bows and firearms is prohibited, except while hunting or for target practice. Target practice is allowed only when authorized by the area wildlife manager.
f. Discharge of bows is allowed for bowfishing.
g. All recreational activities, except deer hunting, are prohibited on the opening weekend of the regular plains rifle deer season and on the opening day and first weekend of the late plains rifle deer season.
h. Dog training is prohibited.
i. Horse use is prohibited.
j. The launching or takeout of vessels is prohibited from the first day of the September teal season until the last day of the dark goose season.

7. Badger Basin State Wildlife Area - Park County

a. Camping is prohibited.
b. Fires are prohibited.
c. Hunting is prohibited.
d. Parking is prohibited, except in designated areas.
e. Public access is allowed only from designated parking areas and is prohibited beyond the fenced and posted easement.

8. Banner Lakes State Wildlife Area - Weld County

a. Boating is prohibited, except for float tubes or craft propelled by hand.
b. Camping is prohibited.
c. Fires are prohibited.
d. Discharge of firearms or bows is prohibited, except when hunting or training hunting dogs.
e. Discharge of bows is allowed for bowfishing.
f. Horseback riding is prohibited.
g. Bicycling is prohibited.
h. Fishing is prohibited from the opening of the first regular duck season through the last day of the regular waterfowl season.
i. Public access is prohibited from the first day of the regular waterfowl season to the day before the first day of pheasant season, except for waterfowl hunting on Saturdays, Sundays, Mondays and legal holidays. During this period reservations are available for waterfowl, but not required. Reservations are valid throughout the reserved day until the hunter with the reservation checks

out. Hunters may check in on a first come, first served basis after a hunter with a reservation checks out, or if no reservation exists for a hunt area after 12:00 midnight immediately preceding the hunt, or if a reserved area is not claimed by legal sunrise. Reservations may be made in accordance with #901.A of these regulations. No more than four hunters are allowed per reservation. Hunters with reservations may only hunt the hunt area specified on the reservation.

j. From the Thursday before September 1 through the end of the dark goose season, scouting is permitted only on Thursdays that are not open to hunting within and immediately prior to established waterfowl seasons. Scouting will be permitted from 10:00 am until 2:00 pm with a reservation confirmation number or letter issued by the Division, and all persons scouting must check in and check out at the check station. During scouting dates, firearms and dogs are prohibited.
k. Waterfowl hunters must check in and check out at the designated check station.
l. Public access is allowed only through designated parking areas.
m. Public access is prohibited north of Colo 52 from April 1 through July 15.
n. Public access is restricted to foot traffic only.
o. Dog training is permitted north of Colo 52 during February, March and July 16 to August 31 only. Dog training is permitted south of Colo 52 from February 1 through August 31 only.
p. Field trials may be authorized during February, March, and August only. No more than four (4) field trials will be allowed per year, except that the number of group training events will not be limited.
q. Domestic birds, feral birds, or privately-owned game birds may be released for field trials and for dog training south of Colo 52 by permit only, in accordance with the provisions of this chapter and other applicable regulations, including, but not limited to, #007, #008, #009, #801 and #804 of these regulations. All such birds taken during training activities shall be removed from the State Wildlife Area by the dog training permittee and all privately-owned game birds shall be prepared for human consumption.
r. The Division is authorized to implement a dog training reservation system should overcrowding become an issue on the State Wildlife Area.

9. Basalt State Wildlife Area (Basalt Unit, Christine Unit, Toner Unit, Peachblow Unit, 7 Castles Unit, Schuck Unit) - Eagle and Pitkin Counties

a. Alcoholic beverages are prohibited on shooting range.
b. Except for muzzle-loaders, firearms on the shooting range are restricted to those lower than .50 caliber. Discharge of shotguns is allowed.
c. Fully automatic firearms are prohibited.
d. Firearms may only be discharged on the shooting range on Monday through Friday from 7:00 a.m. until 7:00 p.m., and on Saturday through Sunday from 9:00a.m. until 5:00 p.m.
e. Boating is prohibited on Christine Lake.
f. Camping is prohibited, except during a regular or late big game season plus three (3) days before and three (3) days after such season. With the exception of the Christine Lake and rifle range areas, all human activity is prohibited from December 1 to April 15 of the following year.
g. Camping is prohibited at all times within one-quarter (1/4) mile of the Frying Pan River.
h. Fires are prohibited.
i. Water contact activities are prohibited on Christine Lake.
j. Field trials may be authorized during August and September only.
k. Dogs are prohibited, except as provided in 'j'
l. Mountain bikes are prohibited.

10. Bayfield Lions Club Shooting Range - La Plata County

a. Public access is allowed April 1 through November 30.
b. Public access is allowed from 9:00 am to 8:00 pm from April 1 - October 31.
c. Public access is allowed from 10:00 am to 5:00 pm from November 1 - November 30.
d. Alcoholic beverages and drugs are prohibited.
e. Pistol or rifle shooting is prohibited on the shotgun trap range.
f. Shotguns, shooting slugs only, are allowed on the pistol- rifle range.
g. Except for muzzleloaders, rifles are restricted to those smaller than .50 caliber.
h. Except for clay targets, glass or other breakable targets are prohibited.

11. Beaver Creek Reservoir State Wildlife Area - Rio Grande County

a. Discharge of firearms is prohibited.
b. Bowfishing is prohibited.
c. Open fires are prohibited on the ice.
d. Boating is prohibited in a manner that creates a white water wake.

12. Beaver Lake State Wildlife Area (Marble) - Gunnison County

a. Boating is prohibited, except for float tubes or craft propelled by hand.
b. Camping is prohibited.
c. Discharge of firearms or bows is prohibited.
d. Fires are prohibited.
e. Vehicles are prohibited on dam.

13. Bellaire Lake State Wildlife Area - Larimer County

a. Boating is prohibited, except for float tubes or craft propelled by hand, wind or electric motor.

14. Bellvue State Fish Unit - Larimer County

a. Dogs are prohibited.
b. Hunting is prohibited.

15. Bergen Peak State Wildlife Area - Clear Creek and Jefferson Counties

a. Public access is prohibited, except by foot and horse only.
b. Camping is prohibited.
c. Fires are prohibited.
d. Dogs must be on a leash, except when used to hunt small game.
e. The discharge of firearms or bows is prohibited, except when hunting.

16. Big Thompson Ponds State Wildlife Area - Larimer County

a. Boating is prohibited, except for float tubes used for fishing.
b. Camping is prohibited.
c. Dog training is prohibited.
d. Fires are prohibited.
e. Discharge of firearms or bows is prohibited, except when hunting.
f. Discharge of bows is allowed for bowfishing.
g. Public access is prohibited from one hour after sunset to one hour before sunrise daily, except when fishing or when authorized by a night hunting permit.
h. Horseback riding is prohibited.
i. Bicycle riding is prohibited.

17. Bighorn Springs State Wildlife Area (Fishing Easement) - Chaffee County

a. Public access is for fishing only.
b. Access is allowed only within the high water line.
c. Parking is allowed in designated parking lots only.
d. Camping is prohibited.
e. Fires are prohibited.

18. Billy Creek State Wildlife Area - Ouray and Montrose Counties

a. Snowmobile use is prohibited on the Colona Tract.
b. Public access is prohibited from January 1 through April 30.

19. Bitterbrush State Wildlife Area - Moffat County

a. Public access is prohibited from January 15 through April 30.
b. Camping is prohibited.
c. Fires are prohibited.
d. Vehicle access is restricted to Moffat Co Rds 59 and 143.
e. The placing of any portable blind, marker, stand or related structure is prohibited prior to August 1 annually.
f. Any person who places any such portable blind, marker, stand or related structure shall be responsible for the removal of such materials, which removal must take place within 24 hours after that person harvests an animal or within seven days after the end of the archery pronghorn season, whichever comes first.

20. Blacktail Conservation Easement - Routt County

a. Public access is prohibited from December 1 through June 30.
b. Camping is prohibited.
c. Campfires are prohibited.
d. Dogs are prohibited, except as an aid in hunting grouse.
e. Vehicle access is prohibited beyond designated parking areas.

21. Bliss State Wildlife Area - Larimer County

a. Vessel launching and takeouts are prohibited.

22. Blue River State Wildlife Area (Blue River Unit, Eagles Nest Unit, Sutton Unit) - Summit County

a. Camping is prohibited.
b. Discharge of firearms or bows is prohibited.
c. Fires are prohibited.
d. Firewood cutting is prohibited.
e. Vehicle parking overnight is prohibited.

23. Bodo State Wildlife Area - La Plata County

a. Public access is prohibited from December 1 through April 15, except that:
    1. Small game hunting is allowed south of CR 210.
    2. The Smelter Mountain Trail is open for foot access only from 10:00 am - 2:00 pm. Dogs are prohibited from access under this provision.
b. Camping is prohibited.
c. Discharge of firearms is prohibited, except when hunting.
d. Snowmobile use is prohibited.
e. Fires are prohibited.

24. Boedecker Reservoir State Wildlife Area - Larimer County

a. Boating is prohibited in a manner that creates a white water wake.
b. Fishing is prohibited from vessels from November 1 through the last day of the migratory waterfowl season.
c. Horseback riding is prohibited.

d. Sail surfboards are prohibited.
e. Discharge of firearms or bows is prohibited, except when hunting.
f. Discharge of bows is allowed for bowfishing.
g. Fires are prohibited.
h. Camping is prohibited.
i. Public access is prohibited from one hour after sunset to one hour before sunrise daily, except for fishing or when authorized by a night hunting permit.

25. Bosque del Oso State Wildlife Area - Las Animas County

a. Campfires are prohibited, except in designated areas and in the fire containment structures provided by the Division.
b. The discharge of firearms or bows is prohibited, except while hunting.
c. Discharge of bows is allowed for bowfishing.
d. Camping is prohibited outside designated areas, except by hunters during an established hunting season.
e. Parking is prohibited, except in designated areas.
f. Leaving unattended any food or refuse is prohibited unless it is being stored in a bear resistant manner or container.
g. Snowmobile, motorized and all-terrain vehicles and bicycle use of established roads and trails may be prohibited when necessary to protect wildlife and prevent resource damage. Closures will be posted.
h. Public access is prohibited from December 1 through March 31, except for properly licensed big game hunters and one non-hunting companion.
i. Fishing is prohibited on the South Fork of the Purgatoire River within the boundaries of the Bosque del Oso State Wildlife Area from the first day after the Labor Day holiday weekend to the first day of the Memorial Day holiday.

26. Bravo State Wildlife Area - Logan County

a. Camping is prohibited.
b. Fires are prohibited.
c. Discharge of firearms or bows is prohibited, except when hunting.
d. Target practice is prohibited, except when authorized by the area wildlife manager.
e. All recreational activities, except deer hunting, are prohibited on the opening weekend of the regular plains rifle deer season and on the opening day and first weekend of the late plains rifle deer season.
f. Field trials may be authorized during February, March and August only. Field trials are limited to one per year.
g. Horse use is prohibited, except when used in direct association with training of hunting dogs, and then only permitted in February, March, April (through the Wednesday immediately preceding the opening of the spring turkey season) and August.
h. All access must be from designated parking areas only.
i. The launching or takeout of vessels is prohibited from the first day of the September teal season until the last day of the dark goose season.
j. Beginning with the first day of the regular duck season through the last day of the regular duck season, all waterfowl and small game hunters must check out at the mandatory check station before leaving the property.
k. On the Scalva Parcel, all public access for use requires a reservation. Reservations must be made in accordance with #901.A of these regulations.
    1. Access is allowed only through the designated parking area and through use of the mandatory check station.
    2. Public access is restricted to foot traffic only and only between the hours of 4:00 a.m. and 9:00 p.m.
    3. Access is limited to three (3) groups with up to four (4) people per group per day.

4. From September 1 through May 31 only hunting is allowed and is limited to archery, muzzle loading, and shotgun during established seasons and only on Saturdays, Sundays, Wednesdays, Labor Day, Columbus Day (observed), Veterans Day (observed), Thanksgiving Day, Christmas Day, New Year's Day, Martin Luther King Jr. Day and Presidents' Day.
5. From June 1 through August 31 access is limited to wildlife observation and only on Saturdays, Sundays and Wednesdays.
6. Turkey hunting is allowed on opening day, Saturdays, Sundays and Wednesdays, and holidays during the turkey seasons.
7. Fires and camping are prohibited.
8. Discharge of bows and firearms is prohibited, except while hunting.
9. Field trials and dog training are prohibited.

27. Brower State Wildlife Area - Weld County

a. Camping is prohibited.
b. Discharge of firearms or bows is prohibited, except shotguns or bows may be used while hunting from September 1 through February 28, and during the spring turkey season.
c. Public access is prohibited from March 1 through August 31, except for spring turkey hunters with a valid spring turkey license during the spring turkey hunting season.
d. Parking is only allowed in the designated parking area, and then only in designated spaces.
e. Horse use is prohibited.
f. Dogs are prohibited, except as an aid in hunting.
g. Dog training is prohibited, except when training dogs for the purpose of hunting.
h. The launching or takeout of vessels is prohibited from the first day of the September teal season until the last day of the dark goose season.

28. Brown Lakes State Wildlife Area - Hinsdale County

a. Camping is prohibited.

29. Brownlee State Wildlife Area (Fishing Lease) - (Michigan River) Jackson County

a. Public access is for fishing only.

30. Brownlee II State Wildlife Area (Fishing Lease) - (North Platte River) Jackson County

a. Public access is for fishing only.

31. Browns Park State Wildlife Area (Beaver Creek Unit, Calloway Unit Cold Spring Mountain Unit, Wiggins Unit) - Moffat County

a. Public use is prohibited within the posted administrative area of the Calloway Unit.

32. Brush State Wildlife Area - Morgan County

a. Camping is prohibited.
b. Fires are prohibited.
c. Public access is prohibited from 9:00 pm to 3:00 am daily, except when authorized by a night hunting permit.
d. Discharge of firearms or bows is prohibited, except when hunting.
e. Discharge of bows is allowed for bowfishing.
f. Target practice is prohibited, except when authorized by the area wildlife manager.

g. All recreational activities, except deer hunting, are prohibited on the opening weekend of regular plains rifle deer season and on the opening day and first weekend of the late plains rifle deer season.
h. Horse use is prohibited, except when used in direct association with training of hunting dogs, and then only permitted in February, March, April (through the Wednesday immediately preceding the opening of the spring turkey season) and August.
i. The launching or takeout of vessels is prohibited from the first day of the September teal season until the last day of the dark goose season.

33. Brush Hollow State Wildlife Area - Fremont County

a. Boating is prohibited in a manner that creates a white water wake.
b. Camping is prohibited.
c. Fires are prohibited.

34. Brush Prairie Ponds State Wildlife Area - Morgan County

a. Camping is prohibited.
b. Fires are prohibited.
c. Public access is prohibited from 9:00 p.m. to 3:00 a.m. daily, except when authorized by a night hunting permit.
d. All hunters and other users must check in and check out at the designated check station located at Brush Memorial Park. User numbers are regulated through the check station, and no more than four hunters are allowed in each area.
e. From the last day of the regular goose season until August 31, only wildlife observation is permitted with access limited to areas posted at the property, to protect nesting waterfowl, depending on water levels. Public access is restricted to foot traffic only.
f. From September 1 through November 30, only migratory bird hunting is allowed; and only on Saturdays, Sundays, Wednesdays, Columbus Day (observed), Veterans' Day (observed), and Thanksgiving Day.
g. From September 1 through December 1, reservations are required until sunrise, and hunters are limited to three reservations per hunter annually. Reservations are valid until sunrise. Hunters may check in on a first-come, first-served basis after a hunter with a reservation checks out, or after sunrise if there is no check-in card in the check station. Hunters with reservations may not check in until 12:00 midnight immediately preceding the hunt. Reservations may be made in accordance with #901.A of these regulations. Hunters may only hunt the area specified on the reservation or which they check into.
h. Two hunting areas are reserved each year for residents of the City of Brush. Applications to enter a lottery drawing to reserve an area are available at the Brush Service Center after the August Parks and Wildlife Commission meeting. Hunters must possess a valid license for the species to be hunted in order to enter a drawing. Hunters may apply for one hunt area per day, but can list multiple requests on one application. Reservations are only valid until sunrise. Hunters may check in on a first-come, first-served basis after a hunter with a lottery reservation checks out, or after sunrise if there is no check-in card in the check station. Hunters that are successful in the lottery are subject to and required to comply with all cancellation, failure to hunt, transfer and licensing and hunting restrictions listed in Regulation 901.A of these regulations.
i. From the Thursday before the opening of the September teal season through November 30, scouting is permitted only on Thursdays that are not open to hunting within and immediately prior to established waterfowl seasons. Scouting will be permitted from 10:00 am until 2:00 pm with a reservation confirmation number or letter issued by the Division, and all persons scouting

must check in and check out at the check station. During scouting dates, firearms and dogs are prohibited.

j. From December 1 through the last day of the regular goose season, only hunting is allowed. Reservations are required until sunrise to hunt on December 1 (first day for small game and big game hunting). From December 2 through the end of the dark goose season annually, reservations are not available. Hunters may check in on a first come, first served basis, but not until 12:00 midnight immediately preceding the hunt. Five hunting areas are open for check in. Hunters properly checked into any one of these areas may hunt anywhere on the property.

k. During times the property is open to hunting, only one vehicle is allowed on the property per group. Prior to December 1, hunters must park in the area they check into. Parking is only permitted in designated parking areas.

l. The property will be open outside of these regulations for CPW-sanctioned education and outreach events with AWM approval.

35. Cabin Creek State Wildlife Area - Gunnison County

a. Public access is prohibited from December 1 through April 30.

36. Centennial State Wildlife Area - Gunnison County

a. Public access is prohibited from December 1 through June 30.
b. Motorized and mechanized vehicle use is restricted as posted.
c. Camping is prohibited.

37. Centennial Valley State Wildlife Area – Weld County

a. Camping is prohibited.
b. Dogs are prohibited, except as an aid to hunting.
c. Dog training is prohibited.
d. Fires are prohibited.
e. During regular waterfowl seasons, small game and waterfowl hunters must hunt in designated hunt areas.
f. Hunting with centerfire rifles is prohibited.
g. During the regular duck seasons, waterfowl and small game hunting requires a reservation. Reservations may be made according to #901.A of these regulations. Hunters with reservations may only hunt the hunt area specified on the reservation. No more than four hunters are allowed per reservation.
h. Waterfowl and small game hunters must check in and check out at the designated check station.
i. Public access is prohibited during all regular duck seasons, except on Saturdays, Sundays, Mondays and holidays.
j. From March 1 through August 31, public access is prohibited, except for access on the trail designated for wildlife observation and for hunters with a valid spring turkey license.
k. Small game and waterfowl hunting is prohibited on the opening weekend of the regular rifle deer season and the opening day and first weekend of the late plains rifle deer season.
l. Recreational horse use is prohibited.
m. Target practice is prohibited.
n. Vehicle parking is prohibited, except in designated parking areas. No motor vehicle access outside of the parking area.
o. The launching or takeout of vessels is prohibited from the first day of the September teal season until the last day of the dark goose season.

38. Chalk Cliffs State Fish Unit - Chaffee County

a. Dogs are prohibited.

39. Champion State Wildlife Area (Fishing Easement) - Chaffee County

a. Public access is for fishing only.
b. All access must be from designated parking areas only.

40. Charlie Meyers State Wildlife Area - Park County

a. Camping is prohibited.
b. Fires are prohibited.

41. Chatfield State Fish Unit - Douglas County

a. Dogs are prohibited.

42. Cherokee State Wildlife Area (Upper Unit, Middle Unit, Lower Unit, Lone Pine Unit, Rabbit Creek Unit,) - Larimer County

a. Motor vehicle access is permitted on established roads as posted.
b. Public access is prohibited from September 1 to May 1, except for hunting and fishing.
c. Hunting and fishing access after the close of the last big game season is by foot only.
d. Horseback and bicycle riding are restricted to designated roads and trails, except for horses used as an aid in hunting big game.

43. Chipeta Lake State Wildlife Area - Montrose County

a. Camping is prohibited.
b. Field trials may be authorized during February, March, August and September only.
c. Fires are prohibited.
d. Discharge of bows and firearms are prohibited.
e. Closed to all public use, except fishing from one hour after sunset to one hour before sunrise.
f. Boating use is limited to float tubes or craft propelled by hand.

44. Christina State Wildlife Area (Elk River Fishing Easement) - Routt County

a. Camping is prohibited.
b. Fires are prohibited.

45. Chubb Park Ranch State Wildlife Area - Chaffee County

a. Camping is prohibited.
b. Fires are prohibited.
c. Target practice is prohibited.
d. Vehicles are prohibited off the county road.
e. Snowmobiles are prohibited.

46. Chuck Lewis State Wildlife Area - Routt County

a. Overnight parking is prohibited.
b. Public access is prohibited from 10:00 pm through 4:00 am daily.
c. Camping is prohibited.
d. Fires are prohibited.
e. Dogs are prohibited, except as an aid in hunting waterfowl or those dogs aiding persons with physical disabilities.
f. Big game and small game hunting are prohibited.
g. Waterfowl hunting is permitted, except within 50 yards of the bridge on Routt Co Rd 14F.
h. Horses are prohibited outside of the parking area.
i. Bicycles are prohibited.
j. The launching or takeout of all flotation devices (including, but not limited to, kayaks, canoes, rafts and tubes), except those being used exclusively for fishing, is prohibited.

47. Cimarron State Wildlife Area - Montrose and Gunnison Counties

a. Camping is prohibited.
b. Fires are prohibited.
c. Snowmobile use is prohibited.
d. Vehicle parking is prohibited, except in established parking areas.

48. Clear Creek Reservoir State Wildlife Area - Chaffee County

a. Camping is prohibited, except in established camping areas on the west end of the property.
b. Fires are prohibited, except in campgrounds.
c. Fishing is prohibited from the dam, spillway, outlet structures and downstream to US 24.

49. Cline Ranch State Wildlife Area - Park County

a. Access is by foot and horseback only.
b. Horse use is restricted to designated trails only. A reservation is required for all horse use. Reservations may be made by calling the Park County Office of Tourism and Community Development at (719) 836-4279. A maximum of two reservations per day are allowed.
c. All access must be from designated parking areas only.
d. Overnight parking is prohibited
e. Fishing is by artificial flies and lures only.
f. The bag and possession limit for trout is two fish.
g. Fishing is prohibited from October 1 through the end of February.
h. Fishing access is restricted to designated fishing areas (beats) only. Access to each fishing beat is restricted to occupants of the vehicle parked in the parking stall assigned to that beat (determined by corresponding number). No more than four anglers are allowed per vehicle, and only one vehicle is allowed per stall.
i. Hunting access is limited to occupants of vehicles parked in designated parking stalls with a maximum of four hunters per vehicle.
j. Dogs are prohibited except as an aid in hunting.
k. Dog training is prohibited
l. Camping is prohibited.
m. Fires are prohibited.
n. Discharge or firearms or bows is prohibited, except while hunting.

50. Coalbed Canyon State Wildlife Area – Dolores County

a. Camping is prohibited.
b. Fires are prohibited.
c. Discharge of firearms is prohibited, except while hunting.

51. Cochetopa State Wildlife Area - Saguache County

a. Camping is prohibited.
b. Dogs are prohibited.
c. Fires are prohibited.
d. Public access is prohibited, except by foot from established parking areas.
e. Public access is prohibited from one hour after sunset until one hour before sunrise, except when a hunter is retrieving downed game.
f. Big game hunting is prohibited north of the posted east/west center line of Section 27, Range 2 East, Township 46 North.

52. Coller State Wildlife Area - Rio Grande and Mineral Counties

a. Camping is prohibited.

b. Snowmobile use is prohibited.
c. Overnight parking is prohibited.

53. Colorado River Island State Wildlife Area - Mesa County

a. Camping is prohibited.
b. Hunting is prohibited, except for waterfowl hunting from designated blinds.
c. Dogs are prohibited, except as an aid to hunting.
d. Hunting on this property is by reservation only. Reservations may be made in accordance with #901.A of these regulations. Hunters with reservations may only hunt the hunt area specified on the reservation. Hunters must follow check-in and check-out procedures as posted at the property.
e. Hunt areas that have not been reserved will be available on a first-come, first-served basis after 5:00 am on each hunting day. Reserved hunt areas unoccupied by 7:00 am will be available on a first-come, first-served basis. However, any hunt area must be yielded at any time upon request of a hunter holding a valid and active reservation for that area.

54. Colorow Mountain State Wildlife Area - Rio Blanco County

a. Public access is prohibited from February 1 through July 15.
b. Motorized vehicles are prohibited in the Scenery Gulch Unit.
c. Motorized vehicles are prohibited in the Tschuddi Unit north of the designated camping area.
d. Parking and camping is permitted in designated areas only, as posted.
e. Discharge of firearms or bows is prohibited within 200 yards of camping or parking areas or any structure.

55. Columbine State Wildlife Area – Douglas County

a. Discharge of firearms is prohibited.
b. Fires are prohibited.
c. Fishing is prohibited.
d. Hunting is prohibited.
e. Public access is prohibited in riparian areas for the protection of Preble's meadow jumping mouse, as posted.

56. Cottonwood State Wildlife Area - Morgan County

a. Camping is prohibited.
b. Fires are prohibited.
c. Target practice is prohibited, except when authorized by the area wildlife manager.
d. Discharge of firearms or bows is prohibited, except when hunting.
e. All recreational activities, except deer hunting, are prohibited on the opening weekend of the regular plains rifle deer season and on the opening day and first weekend of the late plains rifle deer season.
f. Public access is prohibited from 9:00 pm to 3:00 am daily, except when authorized by a night hunting permit.
g. Horse use is prohibited, except when used in direct association with training of hunting dogs, and then only permitted in February, March, April (through the Wednesday immediately preceding the opening of the spring turkey season) and August.
h. The launching or takeout of vessels is prohibited from the first day of the September teal season until the last day of the dark goose season.

57. Cowdrey Lake State Wildlife Area - Jackson County

a. Boating is prohibited in a manner that creates a white water wake.
b. Sail surfboards are prohibited.

58. Crystal River State Fish Unit - Garfield County

a. Camping is prohibited.
b. Hunting is prohibited.
c. Dogs are prohibited.
d. Fishing equipment or waders are prohibited on the grounds.

59. Dan Noble State Wildlife Area - San Miguel County

a. Miramonte Reservoir Tract
    1. Camping is prohibited, except in the established campgrounds located along the Northeast, Southwest and Southeast portions of the reservoir.
    2. Discharge of firearms or bows is prohibited, except when hunting waterfowl.
    3. Waterskiing is prohibited from 6:00 pm through 10 am.
    4. Waterskiing and jet skiing are prohibited, except in designated areas located in the western half of the reservoir. Such areas will be designated as necessary to avoid conflicts with wildlife related recreational activities.
b. Greager Tract
    1. Public access is prohibited from March 1 through May 15, except under permit issued by AWM/DWM for viewing purposes.
    2. Viewing site is limited to area selected by Division personnel.
    3. Viewing parties will abide by all restrictions and conditions on the permit.
    4. Snowmobile use is prohibited.
    5. Camping is prohibited.
    6. Access by foot or horseback only.
c. John Kane Tract
    1. Public access is prohibited from March 1 through May 15.
    2. Snowmobile use is prohibited.
    3. Camping is prohibited.
    4. Access by foot or horseback only.

60. Dawn Pond State Wildlife Area - Bent County

a. Public access is for fishing only; hunting is by landowner permission only.
b. Boating is prohibited, except for float tubes or craft propelled by hand or electric motor.
c. Parking is prohibited, except in designated areas.

61. Delaney Butte Lakes State Wildlife Area - Jackson County

a. Boating is prohibited in a manner that creates a white water wake.
b. Sail surfboards are prohibited.

62. Devil Creek State Wildlife Area - Archuleta County

a. Snowmobile use is prohibited.
b. Fires are prohibited.
c. Camping is prohibited.

63. DeWeese Reservoir State Wildlife Area – Custer County

a. Off-highway vehicle (OHV) use is prohibited.

64. Diamond J State Wildlife Area (Hunting and Fishing Lease) - (Illinois River and Michigan River) Jackson County

a. Access is allowed for fishing, small game hunting, and waterfowl hunting only.
b. Hunting is restricted to shotguns only.

65. Dolores River State Wildlife Area - Montezuma County

a. Camping is prohibited.

b. Fires are prohibited.
c. Fishing is prohibited in the rearing ponds.

66. Dome Lakes State Wildlife Area - Saguache County

a. All-terrain vehicles, dirt bikes, and snowmobiles are prohibited, except on Saguache Co Rds NN14 and 15GG.
b. Camping is permitted during waterfowl seasons in the designated safety zones only.
c. Discharge of firearms and hunting is prohibited in the designated safety zones.
d. Bowfishing is prohibited.
e. Dogs are prohibited, except as an aid in hunting or when on a leash.
f. Public access is prohibited, except by foot or horseback only, from established parking areas.
g. Vehicle parking is prohibited, except in designated parking areas.

67. Dome Rock State Wildlife Area - Teller County

a. Camping is prohibited.
b. Dogs are prohibited.
c. Fires are prohibited.
d. Horseback and pack animal use is limited to designated roads and trails, except when used as an aid to big game hunting.
e. Public access is prohibited from December 1 to July 15 in the area bounded on the east by the Sand Creek Trail, on the north by the Dome Rock Trail, and on the west and south by the property boundaries. The Dome Rock Trail west of the Jack Rabbit Lodge is closed from December 1 to July 15. .
f. Public access is restricted to foot or horseback only from designated parking lots and connecting trails from Mueller State Park.
g. Rock climbing is prohibited.

68. Douglas Reservoir - Larimer County

a. Hunting is prohibited.
b. Fires are prohibited.
c. Boating in a manner that creates a white water wake is prohibited.
d. Discharge of firearms or bows is prohibited.
e. Sailboards, sailboats, and ice skating are prohibited.
f. Camping is prohibited.
g. From one hour after sunset until one hour before sunrise, use other than fishing is prohibited.
h. All-terrain type vehicles, dirt bikes and snowmobiles are prohibited.

69. Dowdy Lake State Wildlife Area - Larimer County

a. Boating is prohibited in a manner that creates a white water wake.

70. Dry Creek Basin State Wildlife Area - San Miguel County

a. Snowmobile use is prohibited.
b. Camping is prohibited, except in designated areas.

71. Duck Creek State Wildlife Area - Logan County

a. Camping is prohibited.
b. Fires are prohibited.
c. Target practice is prohibited, except when authorized by the area wildlife manager.
d. Discharge of firearms or bows is prohibited, except when hunting.
e. Field trials may be authorized during February, March and August only. Field trials are limited to one (1) per year.

72. Dune Ridge State Wildlife Area - Logan County

a. Camping is prohibited.
b. Fires are prohibited.
c. Discharge of firearms or bows is prohibited, except when hunting. .
d. Target practice is prohibited except when authorized by the area wildlife manager.
e. All recreational activities, except deer hunting, are prohibited on the opening weekend of the regular plains rifle deer season and on the opening day and first weekend of the late plains rifle deer season.
f. Horse use is prohibited, except when used in direct association with training of hunting dogs, and then only permitted in February, March, April (through the Wednesday immediately preceding the opening of the spring turkey season) and August.
g. The launching or takeout of vessels is prohibited from the first day of the September teal season until the last day of the dark goose season.

73. Durango State Fish Unit - La Plata County

a. Dogs are prohibited.

74. Dutch Gulch State Wildlife Area – Gunnison County

a. All-terrain vehicles, dirt bikes, and snowmobiles are restricted to the improved road through the property.
b. Camping is prohibited.
c. Dogs are prohibited, except when used as an aid to hunting or when on a leash.
d. Fires are prohibited.
e. Public access is prohibited from March 1 to June 15.
f. Public access is restricted to foot or horseback only from designated parking areas.
g. Vehicle parking is restricted to designated areas.

75. Eagle River State Wildlife Area (Fishing Leases) - Eagle County

a. Camping is prohibited.
b. Fires are prohibited.
c. Public access is prohibited, except for fishing.
d. Dogs are prohibited.
e. Public access (ingress and egress) is limited to designated points as posted to protect private property.

76. Echo Canyon Reservoir State Wildlife Area - Archuleta County

a. Camping is prohibited.
b. Fires are prohibited.
c. Boating in a manner that creates a white water wake is prohibited.
d. Snowmobile use is prohibited.

77. Elliott State Wildlife Area - Morgan County

a. Camping is prohibited.
b. Fires are prohibited.
c. Target practice is prohibited, except when authorized by the area wildlife manager.
d. Discharge of firearms or bows is prohibited, except when hunting or bowfishing.
e. All recreational activities, except deer hunting, are prohibited on the opening weekend of the regular plains rifle deer season and on the opening day and first weekend of the late plains rifle deer season.

f. Horse use is prohibited, except when used in direct association with training of hunting dogs, and then only permitted in February, March, April (through the Wednesday immediately preceding the opening of the spring turkey season) and August.
g. The launching or takeout of vessels is prohibited from the first day of the September teal season until the last day of the dark goose season.
h. Public access is prohibited from 9:00 p.m. to 3:00 a.m. daily, except when authorized by a night hunting permit.
i. Landowner permission is required to hunt deer on the Quint Tract.
j. On the Union Tract, all public use is prohibited, except for waterfowl hunting.
    1. Hunting is allowed only from designated blinds, as posted and/or within the area identified for each blind. No more than four hunters are allowed per area.
    2. From the September teal season through the end of the regular duck season, waterfowl hunting is allowed only on Saturdays, Sundays, Wednesdays, Columbus Day (observed), Thanksgiving Day, Christmas Day, and New Year's Day during established duck seasons. Reservations are required until sunrise, and are limited to three reservations per hunter annually. Reservations are valid until sunrise. All hunters are required to check in and check out as posted. Hunters may check in on a first-come, first-served basis after a hunter with a reservation checks out, or after sunrise if there is no check-in card in the check station. Hunters with reservations may not check in until 3:00 am immediately preceding the hunt. Reservations may be made in accordance with #901.A of these regulations. Hunters may only hunt the area specified on the reservation or which they check into.
    3. From the Thursday before the opening of the September teal season through the end of the regular duck season, scouting is permitted only on Thursdays that are not open to hunting within and immediately prior to established duck seasons. Scouting will be permitted from 10:00 am until 2:00 pm with a reservation confirmation number or letter issued by the Division, and all persons scouting must check in and check out at the check station. During scouting dates, firearms and dogs are prohibited.
    4. The property will be open outside of these regulations for CPW-sanctioned education and outreach events with AWM approval.
    5. All access is from the designated parking area only.
k. Hamlin Tracts (North and South)
    1. No more than four hunters are allowed in each area at any one time.
    2. From the beginning of September teal season through the end of the regular duck season, hunting is allowed every day for all game species. Hunters must check in and check out at the check station. Hunters may check in on a first come, first served basis after 3:00 am or after any other hunter checks out. Hunters may only hunt the area which they check into. On the Hamlin South Tract, hunters must comply with youth-mentor only area restrictions as posted.
    3.
    4. From the end of the regular duck season until the beginning of the September teal season, the property is open to hunting and wildlife viewing with no check-in or check-out requirement.

78. Emerald Mountain State Wildlife Area - Routt County

a. Public access is prohibited from December 1 through June 30.
b. Public access is prohibited from 10:00 p.m. through 4:00 a.m. daily.
c. Public access is by foot and horseback only.
d. Camping is prohibited.
e. Fires are prohibited.
f. Dogs are prohibited.

79. Escalante State Wildlife Area - Mesa, Delta & Montrose Counties

a. Field trials may be authorized during February, March, August, and September only.
b. Dog training is prohibited on the Hamilton and Lower Roubideau tracts during any upland game bird or migratory bird season.
c. Game birds listed in #009(B) of these regulations may be released by the Division or its agent for educational or training purposes without seasonal or numerical restrictions.
d. Public access is prohibited on the Hamilton and Lower Roubideau tracts from March 15 through July 31.
e. Bowfishing is prohibited.

80. Lower Roubideau Tract

a. Hunting is limited to youth mentor hunting only. No more than one mentor per youth hunter may engage in hunting.

81. Finger Rock State Fish Unit - Routt County

a. Camping is prohibited.
b. Discharge of firearms or bows is prohibited in the designated safety zones, as posted.
c. Dogs are prohibited.
d. Fires are prohibited.
e. Fishing is prohibited.

82. Fish Creek State Wildlife Area - Dolores County

a. Camping is prohibited, except during deer and elk seasons.

83. Flagler Reservoir State Wildlife Area - Kit Carson County

a. Boating is prohibited during the migratory waterfowl season, except for craft propelled by hand, wind or electric motor.
b. Boating is prohibited in a manner that creates a white water wake, except waterskiing is permitted on Sundays and Mondays from June 1 through August 31.
c. Hunting is limited to youth mentor hunting only. No more than one mentor per youth hunter may engage in hunting.

84. Forks State Wildlife Area – Larimer County

a. Camping is prohibited.
b. Fires are prohibited.
c. Hunting is prohibited.
d. Target shooting is prohibited.
e. Public access is prohibited, except from one hour before sunrise to one hour after sunset.
f. Public access is prohibited, except for walk-in only from November 1 through March 31.

85. Fort Lyon State Wildlife Area – Bent County

a. ATVs and dirt bikes are prohibited.

86. Four Mile State Wildlife Area – Douglas County

a. Access is by foot and horseback only.
b. Camping is prohibited.
c. Fires are prohibited.

87. Frank State Wildlife Area - Weld and Larimer counties

a. All public access, including fishing and wildlife-related recreation, is prohibited north of the Poudre River.
b. Discharge of firearms or bows is prohibited, except when bowfishing.
c. Fires are prohibited.
d. Hunting is prohibited.
e. Camping is prohibited.
f. Boating is prohibited in a manner that creates a white water wake.

88. Franklin Island State Wildlife Area - Mesa County

a. Camping is prohibited.
b. Hunting is prohibited, except for waterfowl hunting from designated blinds.
c. Dogs are prohibited, except as an aid to hunting.
d. Hunting on this property is by reservation only. Reservations may be made in accordance with #901.A of these regulations. Hunters with reservations may only hunt the hunt area specified on the reservation. Hunters must follow check-in and check-out procedures as posted at the property.
e. Hunt areas that have not been reserved will be available on a first-come, first-served basis after 5:00 am on each hunting day. Reserved hunt areas unoccupied by 7:00 am will be available on a first-come, first-served basis. However, any hunt area must be yielded at any time upon request of a hunter holding a valid and active reservation for that area.

89. Frantz Lake State Wildlife Area - Chaffee County

a. Camping is prohibited.
b. Discharge of bows and firearms prohibited.

90. Frenchman Creek State Wildlife Area - Phillips County

a. Camping is prohibited.
b. Fires are prohibited.
c. Target practice is prohibited, except when authorized by the area wildlife manager.
d. Discharge of firearms or bows is prohibited, except when hunting.

91. Garfield Creek State Wildlife Area - Garfield County

a. Camping is prohibited, except for seven days before the beginning of regular big game seasons through seven days after the end of regular big game seasons.
b. Hunting is prohibited in the designated safety zone as posted.
c. Hunting is prohibited within 75 yards of the center line of Garfield Co Rds 312 and 328.
d. Public access is prohibited from December 1 through July 15, except for spring turkey hunters hunting below the junction or small game hunters hunting above the junction of Garfield Co Rds 312 and 328.
e. Dogs are prohibited, except as an aid in hunting.
f. Bicycles are restricted to Garfield Co Rds 312 and 328.

92. Glenwood Springs State Fish Unit - Garfield County

a. Camping is prohibited.
b. Dogs are prohibited.

93. Granada State Wildlife Area (formerly known as the XY River Tract) - Prowers County

a. Fires are prohibited.
b. Camping is prohibited.
c. Parking is prohibited, except in designated areas.
d. ATVs and dirt bikes are prohibited. All other motor vehicle use is restricted to access roads and parking lots only.

e. Area will be closed to public access from one hour after sunset until one hour before sunrise.
f. Midwestern Farms Tract
    1. Hunting is restricted to the area south of the river road and is by shotgun and archery only.
    2. Swimming is prohibited.
    3. Boating is prohibited.
    4. Float tubes are prohibited.

94. Granby Ranch Conservation Easement - Grand County

a. Public access is prohibited from November 15 until April 15.
b. Motor vehicles are prohibited.
c. Fires are prohibited.
d. Dogs must be on a leash.

95. Granite State Wildlife Area (Fishing Easement) - Chaffee County

a. Camping is prohibited.
b. Fires are prohibited.
c. Dogs are prohibited.
d. Mining activities and panning are prohibited.
e. Vessel ingress and egress is prohibited.

96. Grieve Ranch Conservation Easement - Routt County

a Fires are prohibited
b. Dogs are prohibited, except as an aid in hunting.
c. Firearms are prohibited, except when used during lawful hunting activities.
d. Camping is prohibited, except in developed campgrounds
e. Snowmobile, all-terrain vehicle, and motorcycle use is prohibited.
f. Commercial use is prohibited.
g. Woodcutting and gathering is prohibited.
h. Public access is prohibited on the hay meadows north of Routt County Road 129.
i. Fishing access to the Little Snake River is restricted to the river corridor plus 20 feet above the high water line on either bank.

97. Groundhog Reservoir State Wildlife Area - Dolores County

a. Boating is prohibited in a manner that creates a white water wake.
b. Camping is prohibited.

98. Gunnison River State Wildlife Area (Van Tuyl and Redden) - Gunnison County

a. Public access is by foot only.
b. Discharge of firearms or bows is prohibited, except when hunting. Hunting is prohibited, except for waterfowl hunting with shotguns.

99. Gunnison State Wildlife Area - Gunnison County

a. Public access is prohibited from December 1 through March 31.
b. Camping is restricted to designated areas only.
c. Beaver Creek Trail is restricted to foot and horseback travel only.

100. Gypsum Ponds State Wildlife Area - Eagle County

a. Access is prohibited between sunset and sunrise to all users, except those in the act of hunting or fishing
b. Camping is prohibited.
c. Fires are prohibited.
d. Glass containers are prohibited.
e. Dogs are prohibited from March 15 through June 15 to protect nesting waterfowl.

f. Dogs are prohibited on the eastern ponds, except when being used for waterfowl hunting.
g. Vessel launching and takeouts are prohibited.
h. Field trials may be authorized during August and September only.

101. Hardeman State Wildlife Area (Fishing Easement) - Chaffee County

a. Camping is prohibited.
b. Fires are prohibited.
c. Dogs are prohibited.
d. Firearms are prohibited.
e. Mining activities and panning are prohibited.
f. Vessel ingress and egress is prohibited.

102. Harmon State Wildlife Area (Fishing Easement) - Chaffee County

a. Public access is for fishing only.
b. Campfires and overnight camping are prohibited.
c. Firearms and hunting are prohibited.
d. Dogs are prohibited.

103. Haviland Lake State Wildlife Area - La Plata County

a. Boating is prohibited, except for float tubes or craft propelled by hand or electric motor.

104. Heckendorf State Wildlife Area - Chaffee County

a. All access must be from designated parking areas only.
b. Camping is prohibited.
c. Fires are prohibited.

105. Higel State Wildlife Area - Alamosa County

a. Public access is prohibited from September 1 through February 14, except on Saturdays, Sundays, Wednesday, and legal holidays.
b. From September 1 through February 14, a valid access permit must be obtained. A maximum of 25 permits will be issued per day and are available at no charge on a first-come, first-served basis. From September 1 through September 30 and November 11 through February 14, permits may be obtained either through the reservation system by calling 719-587-6923, or in person at the Monte Vista Service Center. From October 1 through November 10, all permits must be obtained through the reservation system.
    1. Reservations for weekends may be made up to 14 days in advance, but not less than two days before the Saturday of the weekend requested. Reservations for Wednesdays may be made up to 14 days in advance but not less than two days before the date requested.
    2. Reservations can be made for up to two people per reservation.
c. Public access is prohibited from February 15 through July 15 annually to protect nesting water birds.
d. The Area Wildlife Manager may authorize special use of the area during closures to accommodate educational or scientific uses if it will not be detrimental to nesting or migrating water birds.

106. Hohnholz Lakes State Wildlife Area - Larimer County

a. Boating is prohibited, except for craft propelled by hand, wind or electric motor.
b. Camping is prohibited, except within the Laramie River camping area.
c. Public access is prohibited on the Grace Creek access road from December 1 through August 15.
d. Sail surfboards are prohibited.

107. Holbrook Reservoir State Wildlife Area - Otero County

a. Hunting is prohibited in the safety zone around the residence on the southwest side, as posted.

108. Holly State Wildlife Area - Prowers County

a. Camping is prohibited.
b. Open fires are prohibited.
c. ATVs and dirt bikes are prohibited.
d. Hunting prohibited in designated safety zones between US 50 and Prowers Co Rd ff.

109. Holyoke State Wildlife Area - Phillips County

a. Camping is prohibited.
b. Fires are prohibited.
c. Target practice is prohibited, except when authorized by the area wildlife manager.
d. Discharge of firearms or bows is prohibited, except when hunting.

110. Home Lake State Wildlife Area - Rio Grande County

a. Boating is prohibited, except for float tubes or craft propelled by hand, wind, electric motor, or motorboats as provided in b and c below.
b. Motorboats up to 10 horsepower may be used at anytime.
c. Motorboats greater than and including 10 horsepower may be used only between the hours of 10 a.m. and 4 p.m.
d. Public access prohibited from sunset to sunrise daily, except for fishing or when authorized by a night hunting permit.

111. Horse Creek Reservoir State Wildlife Area (Timber Lake) - Bent & Otero Counties

a. Public access is prohibited from one hour after sunset to one hour before sunrise daily, except for fishing.
b. All terrain vehicles, dirt bikes, and snowmobiles are prohibited.
c. Public access to the frozen surface of the lake is prohibited.
d. Public access to the dams, inlets, and outlet structures is prohibited, except for fishing.

112. Horsethief Canyon State Wildlife Area - Mesa County

a. Camping is prohibited.
b. Turkey hunting is prohibited, except:
    1. Youth mentor spring turkey hunting is allowed by limited access permit only.
    2. Hunters with limited GMU 30 turkey licenses may hunt on Skipper's Island only.
c. Hunting is permitted with shotguns, hand-held bows, and muzzle-loading rifles.
d. Fires are prohibited.
e. Fishing is prohibited in the rearing ponds and as posted to protect endangered fish.
f. Waterfowl hunting on Saturday is restricted to youth mentor hunting only from 100 yards east of Blind #1 to the western boundary of the property.
g. Users wishing to hunt waterfowl on the west end of the property must reserve a specific designated blind and are restricted to hunt from or within 100 yards of that blind. No more than four hunters are permitted per blind. Reservations may be made in accordance with #901.A of these regulations. Hunters with reservations may only hunt the hunt area specified on the reservation. Hunters must follow check-in and check-out procedures as posted at the property.
h. Hunt areas that have not been reserved will be available on a first-come, first-served basis after 5:00 am on each hunting day. Reserved hunt areas unoccupied by 7:00 am will be available on a first-come, first-served basis.

However, any hunt area must be yielded at any time upon request of a hunter holding a valid and active reservation for that area.

i. Permits are not required for waterfowl hunting 100 yards east of Blind #1 to the eastern boundary of the property, including Skipper's Island.
j. Public access is prohibited between 9 p.m. and 5 a.m., except for fishing.
k. Quail hunting is prohibited.
l. Waterfowl hunting is prohibited from Wednesday through Friday of each week, except on Thanksgiving Day, Christmas Day and New Year's Day.
m. Game birds listed in #009(B) of these regulations may be released by the Division or its agent for educational or training purposes without seasonal or numerical restrictions.

113. Hot Creek State Wildlife Area - Conejos County

a. Snowmobile use is prohibited.
b. Vehicles are prohibited from January 1 through April 30.

114. Hot Sulphur Springs State Wildlife Area (Joe Gerrans Unit, Byers Canyon Rifle Range, Hot Sulphur Springs State Ranch, Lone Buck Unit, Parshall Divide Unit, Paul F. Gilbert Fishing Area, Pioneer Park Unit and Jenny Williams Unit) - Grand County

a. Camping is prohibited, except in the Joe Gerrans Unit and Lone Buck campgrounds.
b. Discharge of firearms is prohibited in the Joe Gerrans Unit, Lone Buck campgrounds and Paul F. Gilbert Fishing Area.
c. Public access is prohibited on the Byers Canyon Rifle Range, except between sunrise and sunset daily when in compliance with all posted range rules.
d. Public access on the Byers Canyon Rifle Range may be prohibited for the protection of wintering big game.
e. Fires and off-road travel are prohibited on the Parshall Divide Unit.
f. Bowfishing is prohibited.

115. Hugo State Wildlife Area - Lincoln County

a. Boating is prohibited.

116. Indian Run State Wildlife Area - Routt County

a. Camping is restricted to designated areas only.
b. Discharge of firearms or bows is prohibited in designated safety areas.

117. Jackson Lake State Wildlife Area - Morgan County

a. Camping is prohibited.
b. Fishing is prohibited from October 1 through the last day of the regular waterfowl season.
c. Hunting is prohibited from the frozen surface of the lake, and elsewhere as posted, when necessary for wildlife habitat management work. Vessels are prohibited on the frozen surface of the lake.
d. Ice fishing is prohibited.
e. Fires are prohibited.
f. Discharge of firearms or bows is prohibited, except when hunting. Hunting with centerfire rifles is prohibited.
g. Discharge of bows is allowed for bowfishing.
h. Target practice is prohibited, except when authorized by the area wildlife manager.
i. All access must be from designated parking areas only.
j. Beginning with the first day of the regular duck season through the last day of the regular duck season, all hunters must check in and check out at the check station.
k. Hunters may check in on a first-come, first-served basis after 3:00 am or after

any other hunter checks out.

l. Hunters may only hunt the area which they check into.
m. During the regular duck season, small game hunters are prohibited from hunting around ponds occupied by waterfowl hunters.

118. James M. John State Wildlife Area - Las Animas County

a. Camping is prohibited within one-hundred (100) feet of any stream.
b. Public access is prohibited from December 1 through April 1.
c. Public access is prohibited, except by foot or horseback only.
d. Hunting access is restricted during the regular rifle deer and elk seasons to big game only, on a drawing basis, in accordance with #209(B)(1).

119. James Mark Jones State Wildlife Area - Park County

a. Public access is prohibited January 1 through May 1.
b. Fires are prohibited, except in established fire rings at designated parking areas.

120. Jean K. Tool State Wildlife Area (formerly Dodd Bridge SWA) - Morgan County

a. Camping is prohibited.
b. Fires are prohibited.
c. Public access is prohibited from 9:00 p.m. to 3:00 a.m. daily, except when authorized by a night hunting permit.
d. Discharge of firearms or bows is prohibited except when hunting.
e. Target practice is prohibited except when authorized by the area wildlife manager.
f. All recreational activities, except deer hunting, are prohibited on the opening weekend of the regular plains rifle deer season and on the opening day and first weekend of the late plains rifle deer season.
g. Horse use is prohibited, except when used in direct association with training of hunting dogs, and then only permitted in February, March, April (through the Wednesday immediately preceding the opening of the spring turkey season) and August.
h. The launching or takeout of vessels is prohibited from the first day of the September teal season until the last day of the dark goose season.

121. Jensen State Wildlife Area - Rio Blanco County

a. Camping is prohibited, except in designated areas.
b. Public access is prohibited from January 1 through July 15.

122. Jerry Creek Reservoirs State Wildlife Area (Jerry Creek Reservoirs #1 and #2) - Mesa County

a. Hunting is prohibited.
b. Camping is prohibited.
c. Fires are prohibited.
d. Firearms are prohibited.
e. Boating, floating, swimming and wading are prohibited.
f. Ice fishing on, and all other public access to, the frozen surface of the lake is prohibited.
g. Pets and other domestic animals are prohibited.
h. Vehicles (motorized or non-motorized) are prohibited.

123. Jim Olterman/Lone Cone State Wildlife Area - Dolores County

a. Snowmobile use is prohibited.

124. Joe Moore Reservoir State Wildlife Area - Montezuma County

a. Boating is prohibited in a manner that creates a white water wake.

b. Camping is prohibited.

125. John Martin Reservoir State Wildlife Area - Bent County

a. Field trials may be authorized during February, March, August, and September only.
b. Public access is prohibited, except to retrieve downed waterfowl from November 1 through the last day of the migratory waterfowl season as posted on US Army Corp of Engineer property under lease by Colorado Parks and Wildlife to provide for waterfowl resting as necessary depending on water levels, weather, and presence of birds.
c. ATVs and dirt bikes are prohibited.

126. Jumbo Reservoir (Julesburg) State Wildlife Area - Logan and Sedgwick Counties

a. Any person age 18 through 64 must possess an annual Jumbo Reservoir/Prewitt Reservoir access permit in order to access this property, except that any person who possesses a current and valid Colorado annual hunting or fishing license is exempt from this permit requirement. Permits shall cost $36, and are valid from April 1 - March 31 annually. Permits are available from any Total Licensing System vendor.
b. Except as provided in subsection g below, boating is prohibited from October 1 through the last day of the regular goose season, except for craft propelled by hand may be used to set and pick up decoys and retrieve downed waterfowl.
c. Fishing is restricted to the two south dams and the bank around the outlet tower from October 1 through the last day of the migratory waterfowl season, except ice fishing is allowed anywhere on the lake.
d. Vessels are prohibited within 50 feet of the outlet structure.
e. Hunting is prohibited from the frozen surface of the lake.
f. The number of vehicles on the property is limited to 250.
g. Waterskiing is prohibited before 10:00 a.m. and after 7:00 p.m. on Friday, Saturday, Sunday and Monday of the Memorial Day weekend.

127. Jumping Cow State Wildlife Area - Elbert County

a. Hunting is restricted to dove, turkey, doe pronghorn, antlerless elk, antlerless white-tailed deer, and antlerless mule deer.
b. Hunting and fishing access is allowed by permit only. Hunters and anglers must have a valid license for their activity prior to applying for a permit. Permit holders shall have their permit on their person at all times while on the property. Permits may designate specific geographic hunting zones; in this case permits are restricted to the listed zone and are not valid property-wide. Access permits for hunters and anglers will be issued free of charge. Permits may be obtained via a drawing process. Applications are available from the DOW in Denver (303)291-7227. Application due dates are as follows:
    1. Dove, fall turkey, doe pronghorn, antlerless elk, antlerless white-tailed deer, and antlerless mule deer applications due the 3rd Monday in August.
    2. Spring turkey applications due 3rd Monday in March.
    3. Fishing applications due 14 days prior to intended access date.
c. Permitted hunters and anglers may take one other person (an observer) who is not hunting or fishing with them onto the property; however that person must remain with the permit holder at all times.
d. Permitted hunters other than those hunting dove and wild turkey may not enter the property prior to the first Monday after the opening day of their individual season.
e. Vehicular access to the property is restricted. Motor vehicle use is only allowed on marked existing roadways that lead to marked parking areas. All other access is restricted to foot and horseback only.

f. All gates on the property shall be left in the condition in which they are found after passing through the gateway.
g. Access is permitted from two hours prior to sunrise to one hour after sunset. In the event that an animal has been harvested by a hunter, the hunter may remain as long as is reasonable to recover and remove the animal from the property.
h. Camping is prohibited.
i. Fires are prohibited.

128. Junction Butte State Wildlife Area - Grand County

a. Camping is prohibited.
b. Hang gliding is prohibited.
c. Vehicles are prohibited, except from the day after Labor Day through the last day of the regular big game season.

129. Karney Ranch State Wildlife Area - Bent County

a. Camping is prohibited.
b. Campfires are prohibited.
c. Firewood collection is prohibited.
d. Off-highway vehicle (OHV) use is prohibited.
e. Public access is allowed one hour before sunrise until one hour after sunset, except that when an animal is harvested the successful hunter is allowed to remain as long as is necessary to remove the animal.
f. Public access is prohibited in the building envelope safety zone, as posted.
g. Ornate box turtle collection and/or release is prohibited.
h. Night hunting with artificial light may be permitted as provided in regulation #W-303.E.10.
i. Foot access only. All vehicles are restricted to roads and parking lots.
j. Dogs are prohibited except as an aid to hunting.
k. No public access to signed safety zones.

130. Karval Reservoir State Wildlife Area - Lincoln County

a. Boating is prohibited, except for float tubes or craft propelled by hand, wind or electric motor.

131. Kemp-Breeze State Wildlife Area - Grand County

a. Fishing at the Breeze Unit Kids Pond is restricted to youth fishing only and those anglers with mobility impairments who are restricted to a wheelchair.
b. Public access on the Breeze Unit hay meadow wetland is prohibited from March 15 through July 15.

132. Kinney Lake State Wildlife Area- Lincoln County

a. Boating is prohibited, except for float tubes or craft propelled by hand, wind or electric motor.

133. Knight-Imler State Wildlife Area - Park County

a. Camping is prohibited.
b. Fires are prohibited.
c. Public access is prohibited beyond 25 feet from the center line of the stream.

134. Knudson State Wildlife Area - Logan County

a. Camping is prohibited.
b. Fires are prohibited.
c. Discharge of firearms or bows is prohibited, except when hunting.
d. All recreational activities, except deer hunting, are prohibited on the opening weekend of the regular plains rifle deer season and on the opening day and first weekend of the late plains rifle deer season.

e. Horse use is prohibited, except when used in direct association with training of hunting dogs, and then only permitted in February, March, April (through the Wednesday immediately preceding the opening of the spring turkey season) and August.
f. The launching or takeout of vessels is prohibited from the first day of the September teal season until the last day of the dark goose season.

135. La Jara State Wildlife Area - Conejos County

a. Snowmobile use is prohibited.
b. Vehicles are prohibited from January 1 through the last Thursday prior to Memorial Day.

136. Lake Beckwith State Wildlife Area - Pueblo County

a. Camping is prohibited.
b. Boating is prohibited, except for craft propelled by hand, wind or electric motor.
c. Hunting is prohibited.
d. Fires are prohibited.
e. Ice fishing and all public access to the frozen surface of the lake is prohibited.

137. Lake Dorothey State Wildlife Area - Las Animas County

a. Camping is prohibited within two hundred (200) yards of Lake Dorothey or one-hundred (100) feet of any stream, except in designated areas.
b. Discharge of firearms or bows is prohibited, except shotguns or bows are allowed while hunting.
c. Discharge of bows is allowed for bowfishing.
d. Hunting big game is prohibited, except by means of archery.
e. Public access is prohibited, except by foot or horseback from established parking areas.
f. Trapping is prohibited.

138. Lake John State Wildlife Area - Jackson County

a. Camping is prohibited, except in established camping areas.
b. Waterskiing is prohibited.
c. Sail surfboards are prohibited.

139. Las Animas State Fish Unit - Bent County

a. Camping is prohibited.
b. Dogs are prohibited.

140. Leaps Gulch State Wildlife Area - Gunnison County

a. Public access is prohibited from December 1 through April 30.

141. Leatha Jean Stassen State Wildlife Area - Mesa County

a. Camping is prohibited.
b. Fires are prohibited.
c. Hunting is prohibited.
d. Public access is prohibited from one-half (1/2) hour after sunset to one-half (1/2) hour before sunrise.
e. Motor vehicles are prohibited.

142. Lennartz State Wildlife Area - Logan County

a. Public access is prohibited.

143. Little Snake State Wildlife Area - Moffat County

a. Camping is prohibited, except in self-contained units and by all methods for three days before the beginning of regular big game seasons through three days after the end of regular big game seasons.

144. Loma Boat Launch State Wildlife Area - Mesa County

a. Camping is prohibited.
b. Discharge of firearms is prohibited.
c. The launching and/or use of personal water craft (jet skis) is prohibited.
d. Parking is restricted to designated areas only.

145. Lon Hagler State Wildlife Area - Larimer County

a. Boating is prohibited in a manner that creates a white water wake.
b. Camping is prohibited.
c. Fishing is prohibited in the inlet structure and the annex pond.
d. Horseback riding is prohibited.
e. Sail surfboards are prohibited.
f. Sailboats are prohibited.
g. Target practice is prohibited.
h. Fires are prohibited.
i. Bicycling is prohibited.
j. All pet leashes must be no longer than six feet in length.
k. Any dog on a boat is not required to be on a leash.
l. Between September 1 and the last day of February, dogs are prohibited west of the lakeside parking lots, except as an aid to hunting.
m. Between March 1 and August 31, dogs are prohibited west of the lakeside parking lots.
n. Dogs are prohibited on the annex pond and adjacent lands, as posted, to protect wildlife habitat and nesting wildlife.

146. Lone Dome State Wildlife Area - Montezuma and Dolores counties

a. Overnight parking is prohibited, except in designated areas.
b. Fires are prohibited.

147. Lone Tree Reservoir State Wildlife Area - Larimer County

a. Boating is prohibited in a manner that creates a white water wake.
b. Camping is prohibited.
c. Fishing is prohibited from vessels from November 1 through the last day of the migratory waterfowl season.
d. Fishing is prohibited in the outlet canal as posted, to prevent public access to water diversion structures.
e. Horseback riding is prohibited.
f. Public access is prohibited in the heron nesting closure area as posted.
g. Sail surfboards are prohibited.
h. Sailboats are prohibited.
i. Discharge of firearms or bows is prohibited, except when hunting.
j. Discharge of bows is allowed for bowfishing.
k. Fires are prohibited.
l. Public access is prohibited from one hour after sunset to one hour before sunrise daily, except for fishing or when authorized by a night hunting permit.
m. Bicycling is prohibited.
n. Discharge of firearms may be prohibited when necessary to protect public safety.
o. All pet leashes must be no longer than six feet in length.
p. Any dog on a boat is not required to be on a leash.
q. On all lands along the north and east shores, dogs are prohibited, except as an aid to hunting.

148. Love Meadow Watchable Wildlife Area - Chaffee County

a. Open for wildlife viewing only.

149. Lowell Ponds State Wildlife Area - Adams County

a. Boating is prohibited, except for float tubes used for fishing.
b. Boating is prohibited on Sheets Lake.
c. Camping is prohibited.
d. Discharge of firearms or bows is prohibited.
e. Dog training is prohibited.
f. Fires are prohibited.
g. Hunting is prohibited.
h. Public access is prohibited from one hour after sunset to one hour before sunrise, except for fishing.

150. Manville State Wildlife Area (Fishing Lease) - (Roaring Fork of the North Platte River) Jackson County

a. Public access is for fishing only.

151. McCluskey State Wildlife Area - Delta County

a. Camping is prohibited.
b. Dogs are prohibited.
c. Fires are prohibited.
d. Public access is prohibited, except for hunting, fishing, or trapping.
e. Public access is prohibited from the day after the regular big game season through April 30.

152. Meeker Pastures State Wildlife Area- Rio Blanco County

a. Big game hunting is restricted to the use of archery equipment only.

153. Melon Valley State Wildlife Area - Otero County

a. Hunting is limited to youth mentor hunting only. No more than one mentor per youth hunter may engage in hunting.

154. Messex State Wildlife Area - Washington and Logan Counties

a. Camping is prohibited.
b. Fires are prohibited.
c. Target practice is prohibited except when authorized by the area wildlife manager.
d. Discharge of firearms or bows is prohibited, except when hunting.
e. Discharge of bows is allowed for bowfishing.
f. Landowner permission is required for deer hunting on the Skaggs portion of the Messex State Wildlife Area as posted.
g. All recreational activities, except deer hunting, are prohibited on the opening weekend of the regular plains rifle deer season and on the opening day and first weekend of the late plains rifle deer season.
h. Public access is prohibited from 9:00 p.m. to 3:00 a.m. daily, except when authorized by a night hunting permit.
i. Field trials may be authorized during February, March, August, and September only. Field trials are limited to one per year, and require landowner permission on the easement portion of the property. Any trial held in September must be incidental to a field trial held on private property adjacent to the property.
j. Horse use is prohibited, except when used in direct association with training of hunting dogs, and then only permitted in February, March, April (through the Wednesday immediately preceding the opening of the spring turkey season) and August.
k. The launching or takeout of vessels is prohibited from the first day of the September teal season until the last day of the dark goose season.

155. Mike Higbee State Wildlife Area - Prowers County

a. ATVs and dirt bikes are prohibited.

b. Closed to public access from one hour after sunset until one hour before sunrise, unless camping in designated areas or actively hunting or fishing.

156. Miller Ranch State Wildlife Area - Gunnison County

a. Public access is prohibited from March 1 through August 30.
b. North of Gunnison Co Rd 7: Public access is prohibited except for youth mentor hunting by permit only. A maximum of four free permits will be available daily on a first-come, first-served basis. Permits are available by reservation through the Gunnison Service Center at 300 W. New York Ave., Gunnison, CO, or by calling 970-641-7060. Reservations may be made up to 30 days in advance but not less than two days before the requested hunt date. Upon reservation, the youth hunter and mentor will be provided a map with access points and restrictions. Mentors are not allowed to hunt.
c. Access is by foot or horseback only.
d. Camping is prohibited.
e. Campfires are prohibited.
f. Dogs are prohibited.
g. Discharge of firearms or bows is prohibited in the designated safety zones, as posted.

157. Mitani-Tokuyasu State Wildlife Area - Weld County

a. Camping is prohibited.
b. Discharge of firearms or bows is prohibited, except when hunting.
c. Discharge of bows is allowed for bowfishing.
d. Fires are prohibited.
e. Closed from March 1 through August 15 (excluding dates established annually for the Spring Turkey season).
f. Parking is not permitted, except in the designated parking area, and then only in one of the four designated spaces.
g. During the regular duck season, the parking area is closed one hour after sunset until 4:00 am.
h. During the regular duck season, hunting access is limited to occupants of vehicles legally parked in the designated parking area. A reservation is required to occupy a parking space from 4:00 am until noon. Reservations may be made in accordance with #901.A of these regulations. After noon each day, all parking spaces are available on a first-come, first-served basis.
i. The launching or takeout of vessels is prohibited from the first day of the September teal season until the last day of the dark goose season.

158. Mogensen Ponds State Wildlife (Fishing) Area - Mesa County

a. Hunting is prohibited, except for waterfowl from designated blinds.
b. Camping is prohibited.
c. Fires are prohibited.
d. Firearms are prohibited, except as provided in (a) above.
e. Pets or other domestic animals are prohibited.
f. Vehicles (motorized or non-motorized) are prohibited.

159. Mountain Home Reservoir State Wildlife Area - Costilla County

a. Waterskiing is prohibited.

160. Mount Evans State Wildlife Area - Clear Creek County

a. Camping shall be limited to five days in any 45 day period, except during big game seasons in designated campgrounds.
b. Dogs are prohibited, except when used in hunting or on a leash.
c. Public access is prohibited from January 1 through June 14.
d. Use of the property is restricted to only fishing and hunting activities from the day after Labor Day through the end of the 4th regular rifle season.
e. Vehicles are prohibited from the day after Labor Day through June 14, except during regular rifle deer and elk seasons.
f. Groups of 25 or more people must obtain a permit prior to use. Permits shall be issued to limit access to no more than one group at one time.

161. Mount Ouray State Wildlife Area - Chaffee County

a. Camping is prohibited.
b. Fires are prohibited.
c. Access to the property is from designated parking areas only.
d. Hunting is permitted with shotguns, hand-held bows, and muzzleloaders only.

162. Mount Shavano State Fish Unit - Chaffee County

a. Dogs are prohibited.

163. Mount Shavano State Wildlife Area - Chaffee County

a. Public access is prohibited south of Chaffee Co. Rd. 154.
b. Camping is prohibited.
c. Fires are prohibited.
d. Discharge of firearms is prohibited, except that hunting is permitted with shotguns, hand-held bows, and muzzleloaders on that portion from the Colo 291 bridge upstream to the property boundary only.

164. Murphy State Wildlife Area (Fishing Lease) - (Michigan River) Jackson County

a. Public access is for fishing only.

165. Nakagawa State Wildlife Area - Weld County

a. Camping is prohibited.
b. Discharge of firearms or bows is prohibited, except when hunting.
c. Fires are prohibited.

166. Narraguinnep Reservoir State Wildlife Area - Montezuma County

a. Camping is prohibited.
b. Fires are prohibited.
c. Alcoholic beverages are prohibited.
d. Glass containers are prohibited.
e. Public access is prohibited from one hour after sunset to one hour before sunrise, except for fishing.

167. Narrows State Wildlife Area – Larimer County

a. Camping is prohibited.
b. Fires are prohibited.
c. Hunting is prohibited.
d. Target shooting is prohibited.
e. Public access is prohibited, except from one hour before sunrise to one hour after sunset.
f. Public access is prohibited, except for walk-in only from November 1 through March 31.

168. North Fork State Wildlife Area - Larimer County

a. Public access is prohibited, except for fishing.

169. North Lake State Wildlife Area - Las Animas County

a. Boating is prohibited, except for float tubes or craft propelled by hand, wind or electric motor.
b. Camping is prohibited.
c. Fires are prohibited

170. Oak Ridge State Wildlife Area (Bel Aire Unit, Lake Avery Unit, Oak Ridge Unit, Jon Wangnild Unit, Sleepy Cat Ponds Unit, and Sleepy Cat Fishing Easement) - Rio Blanco County

a. Camping is prohibited, except in designated areas.
b. Public access is prohibited on the Oak Ridge Unit from December 1 through July 15.
c. Public access is prohibited on Sleepy Cat Ponds Unit and Sleepy Cat Fishing Easement, except for fishing.
d. Hunting is prohibited, except by archery in that portion south of Rio Blanco Co Rd 8, west of Rio Blanco Co Rd 17, and north and east of Rio Blanco Co Rd 10.
e. Water skiing, jet skis, and boating other than wakeless boating, are prohibited on Lake Avery.

171. Odd Fellows State Wildlife Area (Fishing Lease) - (Roaring Fork of the North Platte River) Jackson County

a. Public access is for fishing only.

172. Ogden-Treat State Wildlife Area (Fishing Easement) - Fremont County

a. Public access is for fishing only.

173. Orchard Mesa Wildlife Area – Mesa County

a. Access to the Wildlife Area is only from the parking area located on “C” Road between 30 and 31 Roads.
b. Camping and fires are prohibited.
c. Vehicles are prohibited beyond the parking area.
d. Horses are prohibited.
e. Public access is prohibited from March 15 to July 14 annually to protect nesting migratory birds.
f. Waterfowl hunters must hunt from designated blinds or zones identified for each blind. No more than four hunters allowed per blind.
g. No other small game hunting allowed.
h. Deer hunting allowed by permit only. Permit applications available from the DOW in Grand Junction 970-255-6100. Permits will be issued by a drawing with an application deadline of August 1.
i. Hunting restricted to bows and shotguns with shotshells only.
j. Dogs prohibited, except as an aid to hunting.
k. Waterfowl hunting on this property is by reservation only. Reservations may be made in accordance with #901.A of these regulations. Hunters with reservations may only hunt the hunt area specified on the reservation. Hunters must follow check-in and check-out procedures as posted at the property.
l. Hunt areas that have not been reserved will be available on a first-come, first-served basis after 5:00 am on each hunting day. Reserved hunt areas unoccupied by 7:00 am will be available on a first-come, first-served basis. However, any hunt area must be yielded at any time upon request of a hunter holding a valid and active reservation for that area.

174. Overland Trail State Wildlife Area – Logan County

a. Camping is prohibited.
b. Fires are prohibited.
c. Target practice is prohibited, except when authorized by the area wildlife manager.
d. Discharge of firearms or bows is prohibited, except when hunting.
e. Discharge of bows is allowed for bowfishing.
f. All recreational activities, except deer hunting, are prohibited on the opening weekend of the regular plains rifle deer season and on the opening day and first weekend of the late plains rifle deer season.
g. Horse use is prohibited, except when used in direct association with training of hunting dogs, and then only permitted in February, March, April (through the Wednesday immediately preceding the opening of the spring turkey season) and August.
h. Beginning with the first day of the regular duck season through the last day of the regular duck season, all waterfowl and small game hunters must check out at the designated check station before leaving the property.
i. All access must be from designated parking areas only.
j. The launching or takeout of vessels is prohibited from the first day of the September teal season until the last day of the dark goose season.

175. Paddock State Wildlife Area - Lake County

a. Fishing access is allowed in Iowa Gulch and Upper Empire Gulch only.
b. During bighorn sheep season and regular rifle deer, elk and bear seasons, access is restricted to hunting for those species only, and only to hunters with a current and valid license for any of those species.
d. Camping is prohibited.
e. Dogs are prohibited.
f. Fires are prohibited.
g. Access is by foot only.

176. Parachute Ponds State Wildlife Area - Garfield County

a. Camping is prohibited.
b. Fires are prohibited.
c. Swimming is prohibited.
d. Float tubes are permitted for fishing only.

177. Parvin Lake State Wildlife Area - Larimer County

a. Boating is prohibited, except for float tubes used for fishing.
b. Fishermen must enter the area on foot through the gate at the check station and must check in and out at the check station when open.

178. Pastorius Reservoir State Wildlife Area - La Plata County

a. Boating is prohibited, except for float tubes or craft propelled by hand or electric motor.
b. Camping is prohibited.
c. Discharge of firearms or bows is prohibited, except when hunting.
d. Fires are prohibited.
e. Hunting is prohibited, except on Saturdays, Sundays, and Wednesdays.

179. Perins Peak State Wildlife Area - La Plata County

a. Camping is prohibited, except during deer and elk seasons.
b. Discharge of firearms is prohibited, except when hunting.
c. Public access is prohibited from December 1 through April 15, except turkey hunters possessing a valid, unfilled spring turkey license.
d. Public access is prohibited east of La Plata Co Rd 208 and north of US 160 from April 1 through July 31.
e. Snowmobile use is prohibited.

f. Fires are prohibited.

180. Perkins State Wildlife Area - Grand County

a. Open for hunting access only.
b. Access is by foot or horseback only.
c. Motorized travel is prohibited.
d. Camping is prohibited.
e. Fires are prohibited.
f. Target shooting is prohibited.
g. Dogs are prohibited, except as an aid to hunting.

181. Pikes Peak State Wildlife Area - Teller County

a. Public access is prohibited from April 1 through July 15.

182. Pitkin State Fish Unit - Gunnison County

a. Fishing is prohibited, except in Quartz Creek.
b. Dogs are prohibited.

183. Plateau Creek State Wildlife Area - Mesa County

a. Vehicles are prohibited from December 1 through August 1.

184. Playa Blanca State Wildlife Area - Alamosa County

a. Public access is permitted in designated areas on Tuesdays, Thursdays, and Saturdays from November 1 to January 30.

185. Pony Express State Wildlife Area - Sedgwick County

a. Camping is prohibited.
b. Fires are prohibited.
c. Target practice is prohibited, except when authorized by the area wildlife manager.
d. Discharge of firearms or bows is prohibited, except when hunting.
e. All recreational activities, except deer hunting, are prohibited on the opening weekend of the regular plains rifle deer season and on the opening day and first weekend of the late plains rifle deer season.
f. Horse use is prohibited, except when used in direct association with training of hunting dogs, and then only permitted in February, March, April (through the Wednesday immediately preceding the opening of the spring turkey season) and August.
g. The launching or takeout of vessels is prohibited from the first day of the September teal season until the last day of the dark goose season.

186. Poudre River State Fish Unit - Larimer County

a. Camping is prohibited.
b. Dogs are prohibited.
c. Hunting is prohibited in the designated safety zone, as posted.
d. Vessel launching and takeouts are prohibited.

187. Poudre River State Wildlife Area - Larimer County

a. Camping is prohibited.
b. Discharge of firearms or bows is prohibited, except when hunting.
c. Discharge of bows is allowed for bowfishing.

188. Prewitt Reservoir State Wildlife Area - Logan and Washington Counties

a. Any person age 18 through 64 must possess an annual Jumbo Reservoir/Prewitt Reservoir access permit in order to access this property, except that any person who possesses a current and valid Colorado annual

hunting or fishing license is exempt from this permit requirement. Permits shall cost $36, and are valid from April 1 - March 31 annually. Permits are available from any Total Licensing System vendor.

b. Boating is prohibited in a manner that creates a white water wake.
c. Boating is prohibited from October 1 through the last day of the regular goose season, except for craft propelled by hand may be used to set and pick up decoys and retrieve downed waterfowl.
d. Camping and fires are prohibited as posted to protect the property use and livestock of the lessor.
e. Fishing is restricted to the dam from October 1 through the last day of the migratory waterfowl season. During this time period, ice fishing is restricted to within 50 yards of the dam.
f. The number of vehicles on the property is limited to 250.
g. Waterskiing is prohibited.
h. Sailing and windsurfing are prohibited, except during the months of July and August.
i. Glass beverage containers are prohibited.
j. Hunting is prohibited as posted, to protect resting waterfowl, depending on water levels.
k. Hunting is prohibited from any floating device.

189. Pueblo State Fish Unit - Pueblo County

a. Dogs are prohibited.
b. Hunting is prohibited.

190. Pueblo Reservoir State Wildlife Area - Pueblo County

a. Camping is prohibited.
b. Discharge of firearms or bows is prohibited, except shotguns or bows, are allowed while hunting.
c. Discharge of bows is allowed for bowfishing.
d. Fires are prohibited.
e. Field trials may be authorized during February, March, August, and September only.
f. Target practice is prohibited.
g. Jumping, diving or swinging from cliffs, ledges or man-made structures is prohibited, including, but not limited to, boat docks, marina infrastructure and the railroad trestle in Turkey Creek.

091. Puett Reservoir State Wildlife Area - Montezuma County

a. Camping is prohibited.
b. Fires are prohibited.
c. Boating in a manner that creates a white water wake is prohibited.

192. Queens State Wildlife Area (Nee Noshe, Nee So Pah, Nee Gronda, Upper Queens and Lower Queens (Neeskah)) - Kiowa County

a. Boating is prohibited in a manner that creates a white water wake in the channel between Upper Queens and Lower Queens (Neeskah).
b. Upper Queens (Neeskah) (including channel), Nee Noshe, and Nee Gronda.
    1. Hunters must check in and out at the check station when open.
    2. Public access is prohibited, except to retrieve downed waterfowl from November 1 through the last day of the migratory waterfowl season as posted, to provide for waterfowl resting as necessary depending on water levels, weather, and presence of birds.
c. Lower Queens (Neeskah)
    1. Boating is prohibited in a manner that creates a white water wake from the opening day of migratory waterfowl season through December 1.
    2. Hunters must check in and out at the check station when open.

3. Public access is prohibited, except to retrieve downed waterfowl from December 1 through the last day of the migratory waterfowl season as posted, to provide for waterfowl resting as necessary depending on water levels, weather, and presence of birds.

d. Nee So Pah
   1. Public access is prohibited, except to retrieve downed waterfowl from November 1 through the last day of the migratory waterfowl season as posted, to provide for waterfowl resting as necessary depending on water levels, weather, and presence of birds.

e. ATVs and dirt bikes are prohibited.

193. Radium State Wildlife Area - Grand, Routt, and Eagle Counties

a. Hunting is prohibited in the designated safety zone as posted.

194. Ralston Creek State Wildlife Area – Jefferson County

a. Camping is prohibited.
b. Fires are prohibited.
c. Discharge of firearms is prohibited, except while hunting.

195. Ramah State Wildlife Area - El Paso County

a. Boating is prohibited from November 1 through the last day of the migratory waterfowl season, except for float tubes or craft propelled by hand, wind or electric motor.
b. Camping is prohibited.
c. Discharge of firearms or bows is prohibited, except while hunting. Discharge of archery equipment is allowed on the established archery shooting range. Hunting with centerfire rifles is prohibited.
d. Discharge of bows is allowed for bowfishing.
e. Fires are prohibited.
f. Water contact activities are prohibited.
g. Game birds listed in #009(B) of these regulations may be released by the Division or its agent for educational or training purposes without seasonal or numerical restrictions.

196. Red Lion State Wildlife Area - Logan County

a. Boating is prohibited, except for float tubes or carry-on craft-propelled by hand for fishing or hunting purposes only.
b. Boating is prohibited from October 1 to March 31, except for hand-propelled craft used to place or retrieve decoys or retrieve downed waterfowl.
c. Fishing is restricted to the dam from October 1 to March 31. Ice fishing during this time is restricted to within 50 yards of the dam.
d. Hunting is prohibited from the frozen surface of the lake.
e. Hunting is prohibited from any floating device.
f. Camping is prohibited.
g. Fires are prohibited.
h. Target practice is prohibited, except when authorized by the area wildlife manager.
i. Discharge of firearms or bows is prohibited, except when hunting.
j. Discharge of bows is allowed for bowfishing.
k. During the special late light goose season and any conservation order for light geese, light goose hunting is allowed in the area bounded on the north by Logan Co Rd 970, on the east by Logan Co Rd 97 (Sedgwick Co Rd 1), on the south by US 138, and on the west by Logan Co Rd 95.
l. All access must be from designated parking areas only.

197. Red Mountain State Wildlife Area - Grand County

a. Public access is prohibited from November 15 until April 15.

b. Motor vehicles are prohibited.
c. Fires are prohibited.
d. Dogs must be on a leash.

198. Reddy State Wildlife Area (Fishing Easement) - Lake County

a. Access is limited to fishing only. No other activity is allowed.
b. Access is allowed only within 30 feet of the high water line, or as otherwise posted.
c. Access is allowed only from the Highway 24 overpass parking area or from Crystal Lake State Trust Land.
d. Dogs are prohibited.

199. Richard State Wildlife Area (Hunting and Fishing Lease) - (North Fork of the North Platte River) Jackson County

a. Access is for hunting and fishing only.
b. Hunting is prohibited within two hundred (200) yards of any building.

200. Rifle Falls State Fish Unit - Garfield County

a. Dogs are prohibited.
b. Fires are prohibited.
c. Rock-climbing is prohibited.
d. Camping is prohibited, except when authorized by the hatchery manager.
e. Hunting is prohibited in designated safety areas.

201. Rio Blanco Lake State Wildlife Area, including the Roselund parcel - Rio Blanco County

a. Field trials may be authorized during February, March, August, and September only.
b. Waterskiing is prohibited from March 1 through June 15.

202. Rio Grande River State Wildlife Area (Del Norte Fishing Easements) - Rio Grande County

a. Camping is prohibited.
b. Public access is prohibited, except for fishing.

203. Rio Grande State Wildlife Area - Rio Grande County

a. Fires are prohibited.
b. Public access is prohibited from February 15 through July 15. The Area Wildlife Manager may authorize access during this closure if the proposed access will not adversely impact nesting or wintering bird populations.
c. Camping is prohibited, except in those parking areas with toilet facilities.
d. The Area Wildlife Manager may post area specific closures to manage waterfowl hunting pressure during established waterfowl seasons, to protect maintenance and construction equipment and to protect human health and safety.

204. Rito Hondo Reservoir State Wildlife Area - Hinsdale County

a. Boating is prohibited, except for float tubes or craft propelled by hand, wind or electric motor.

205. Road Canyon Reservoir State Wildlife Area - Hinsdale County

a. Camping is prohibited.
b. Boating is prohibited in a manner that creates a white water wake.

206. Roaring Fork State Wildlife Area (formerly Carbondale SWA) - Garfield County

a. Camping is prohibited.
b. Fires are prohibited.

c. Discharge of firearms is prohibited.

207. Roaring Judy State Fish Unit - Gunnison County

a. Camping is prohibited.
b. Fires are prohibited.
c. Target practice is prohibited, except in designated areas.
d. Fishing is prohibited from sunset to sunrise.
e. Discharge of firearms is prohibited in the designated safety zone.

208. Rocky Ford State Wildlife Area - Otero County

a. Fires are prohibited.

209. Roeber State Wildlife Area - Delta County

a. Camping is prohibited.
b. Dogs are prohibited.
c. Discharge of firearms is prohibited in the open space easement area.
d. Fires are prohibited.
e. Hunting is prohibited in the open space easement area.
f. Public access is prohibited from the last day of the regular big game season through April 30.
g. Public access is prohibited, except for hunting and fishing.
h. Bowfishing is prohibited.

210. Rosemont Reservoir State Wildlife Area - Teller County

a. Boating is prohibited.
b. Camping is prohibited.
c. Dogs are prohibited.
d. Fires are prohibited.
e. Fishing is prohibited from 9:00 p.m. until 5:00 a.m.
f. Picnicking is prohibited.
g. Public access is prohibited from November 1 through May 10.
h. Public access is prohibited, except by foot from established parking areas.
i. Public access is prohibited in the dam area, vicinity of the caretaker's house, and north side of the reservoir, to protect administrative sites owned by the City of Colorado Springs, as posted.
j. Water contact activities are prohibited.

211. Ruby Mountain State Wildlife Area (Fishing Easement) - Chaffee County

a. Public access is for fishing only.
b. Access is allowed only from the high water line to mid-river.
c. Parking is allowed in designated parking lots only.
d. Camping is prohibited.
e. Fires are prohibited.

212. Runyon/Fountain Lakes State Wildlife Area - Pueblo County

a. Boating is prohibited, except for float tubes or carry-on craft propelled by hand, wind, or electric motor used for fishing only. All watercraft must be under 14 feet in length.
b. Camping is prohibited.
c. Fires are prohibited.
d. Water contact activities are prohibited.
e. Public access is prohibited from sunset to sunrise, except for fishing.

213. Russell Lakes State Wildlife Area - Saguache County

a. Camping is prohibited, except with self-contained units in designated areas.
b. Field trials may be authorized during February, March, August, and September only.
c. Public access is prohibited from February 15 through July 15.
d. Vehicle parking is prohibited, except in established parking areas.
e. Public access is prohibited, except as posted, to protect wintering and nesting waterfowl, and to protect administrative areas of the property.
f. Section 29 shall be closed during waterfowl season.
g. During the first split waterfowl season, Russell Lakes SWA shall close at 1:00 p.m.

214. Sam Caudill State Wildlife Area - Garfield County

a. Camping is prohibited.
b. Fires are prohibited.
c. Discharge of firearms is prohibited.

215. Sanchez Reservoir State Wildlife Area - Costilla County

a. Hunting is prohibited.
b. Public access is prohibited, except for fishing.
c. Camping is prohibited in the boat ramp parking area.
d. Waterskiing is prohibited.
e. Bowfishing is prohibited.
f. All crayfish taken must be returned to the water of origin immediately or killed and taken into possession immediately upon catch with kill being effected by separating the abdomen from the cephalothorax (tail from body).

216. Sand Draw State Wildlife Area - Sedgwick County

a. Camping is prohibited.
b. Fires are prohibited.
c. Target practice is prohibited, except when authorized by the area wildlife manager.
d. Discharge of firearms or bows is prohibited, except when hunting.
e. Hunting is limited to youth mentor hunting only. No more than one mentor per youth hunter may engage in hunting.

217. Sands Lake State Wildlife Area - Chaffee County

a. Camping is prohibited.

218. Sandsage State Wildlife Area - Yuma County

a. Camping is prohibited.
b. Fires are prohibited.
c. Hunting is prohibited, except with shotguns or bows.
d. Target practice is prohibited, except when authorized by the area wildlife manager.
e. Discharge of firearms or bows is prohibited, except when hunting.
f. Discharge of bows is allowed for bowfishing.

219. San Luis Lakes State Wildlife Area - Alamosa County

a. Boating is prohibited north of the buoy line.
b. Public access is prohibited north of the buoy line and east-west fence line from February 15 through July 15.
c. Camping is prohibited north of the buoy line and east-west fence line.

220. Sapinero State Wildlife Area - Gunnison County

a. Snowmobile use is prohibited.

221. Sarvis Creek State Wildlife Area - Routt County

a. Camping and campfires are prohibited, except for three (3) days before the beginning of regular big game seasons through three (3) days after the end of regular big game seasons.

222. Sawhill Ponds – Boulder County

a. Dogs must be kept on a six foot leash which must be held and controlled by the handler, except in designated areas.
b. Motorized and non-motorized vehicles (including bicycles) are prohibited beyond designated parking areas.
c. Boating and bellyboats are prohibited.
d. Hunting is prohibited.
e. Horseback riding is prohibited, except on established maintenance roads.
f. Public access is prohibited between midnight and 5:00 a.m.
g. Collecting of any kind is prohibited, except as authorized by permit.
h. Other activities may be prohibited as posted, to implement the management agreement between Colorado Parks and Wildlife and the City of Boulder.

223. Sedgwick Bar State Wildlife Area - Sedgwick County

a. Camping is prohibited.
b. Fires are prohibited.
c. Discharge of firearms or bows is prohibited, except when hunting.
d. Discharge of bows is allowed for bowfishing.
e. Target practice is prohibited, except when authorized by the area wildlife manager.
f. All recreational activities, except deer hunting, are prohibited on the opening weekend of the regular plains rifle deer season and on the opening day and first weekend of the late plains rifle deer season.
g. Horse use is prohibited, except when used in direct association with training of hunting dogs, and then only permitted in February, March, April (through the Wednesday immediately preceding the opening of the spring turkey season) and August.
h. The launching or takeout of vessels is prohibited from the first day of the September teal season until the last day of the dark goose season.

224. Sego Springs State Wildlife Area - Conejos County

a. Field trials may be authorized during August and September only.
b. Fires are prohibited.
c. Public access is prohibited from February 15 through July 15.
d. Bowfishing is prohibited.

225. Setchfield State Wildlife Area - Bent County

a. Camping is prohibited.
b. Fires are prohibited.

226. Seymour Lake State Wildlife Area - Jackson County

a. Boating is prohibited in a manner that creates a white water wake.

b. Sail surfboards are prohibited.

227. Sharptail Ridge State Wildlife Area - Douglas County

a. Access is restricted to day use only.
b. Access is permitted by foot only.
c. Camping is prohibited.
d. Hunting is restricted to deer and elk hunting only.
e. Deer and elk hunting is allowed by permit only. Hunters must have a limited deer or elk license for unit 51 before applying. No more than two hunters will be permitted daily. Group applications are allowed for a maximum of two applicants per group. Permits will be valid for a minimum of two days and a maximum of three days beginning after Labor Day, and will be based on the length of the underlying season and maximization of individual hunter opportunity. Permits will be issued by a drawing with an application deadline of the third Monday in July. Permit applications are available from the DOW in Denver 303-291-7227.
f. Permitted hunters may take one other person (an observer) who is not hunting with them while hunting, however that person must remain with the hunter at all times.
g. Permitted hunters may park inside in the parking area behind the gate during the times for which they are permitted. Driving anywhere else on the property is prohibited.

228. Shriver-Wright State Wildlife Area - Rio Grande County

a. Fires are prohibited.
b. Camping is prohibited, except in parking areas with self-contained camp trailers or campers.
c. The Area Wildlife Manager may post area-specific closures to manage waterfowl hunting pressure during established waterfowl seasons, to protect maintenance and construction equipment, and to protect human health and safety.
d. Hunting is restricted to the use of archery equipment, shotguns, or muzzle-loading only.
e. Target practice is prohibited.

229. Sikes Ranch State Wildlife Area - Baca and Las Animas Counties

a. Camping is prohibited.
b. Fires are prohibited.
c. Off-highway vehicle (OHV) use is prohibited.
d. Wood cutting or gathering is prohibited.
e. Public access is allowed one hour before sunrise until one hour after sunset, except that when an animal is harvested the successful hunter is allowed to remain as long as is necessary to remove the animal, and except when authorized by a night hunting permit.
f. Trapping is allowed by permit only. Permit holders shall have their permit on their person at all times while trapping. Permits may be obtained by calling the Lamar Service Center at 719-336-6600 or the local District Wildlife Manager at 719-980-0025.
g. Public access is prohibited in the building envelope and designated safety zones, as posted.
h. Parking is allowed in designated parking lots only.
i. All motorized travel is restricted to the primary access route (CR O).

230. Simmons State Wildlife Area – Yuma County

a. Public access is prohibited from June 1 through August 31.
b. Public access is restricted to foot traffic only.
c. Camping is prohibited.
d. Fires are prohibited.
e. Dog training is prohibited.
f. Target practice is prohibited, except when authorized by the area wildlife manager.

231. Simpson Ponds State Wildlife Area - Larimer County

a. Boating is prohibited, except for float tubes used for fishing.
b. Camping is prohibited.
c. Dog training is prohibited.
d. Fires are prohibited.
e. Discharge of firearms or bows is prohibited, except when hunting.
f. Discharge of bows is allowed for bowfishing.
g. Public access is prohibited from one hour after sunset to one hour before sunrise, except for fishing or when authorized by a night hunting permit.
h. Horseback riding is prohibited.
i. Bicycle riding is prohibited.

232. Skaguay Reservoir State Wildlife Area - Teller County

a. Boating is prohibited in a manner that creates a white water wake.

233. 63 Ranch - Park County

a. Camping is prohibited.

234. Smith Lake State Wildlife Area - Larimer County

a. Boating is prohibited in a manner that creates a white water wake.
b. Hunting is prohibited.
c. Discharge of firearms or bows is prohibited.
d. Public access is prohibited from one hour after sunset to one hour before sunrise, except for fishing.
e. Camping is prohibited.
f. Snowmobile use is prohibited.
g. Off-highway vehicle (OHV) use is prohibited.
h. Open fires are prohibited.

235. Smith Reservoir State Wildlife Area - Costilla County

a. Field trials may be authorized during February, March, August, and September only
b. Public access is prohibited from February 15 through July 15 on the north and east shore areas.
c. Fishing is prohibited from November 1 through the last day of the waterfowl season, except within two-hundred (200) yards of the dam.
d. Waterskiing is prohibited.
e. Vehicles are prohibited within fifty (50) feet of the water.

236. Smyth State Wildlife Area (Fishing Lease) - Chaffee County

a. Public access is for fishing only.

237. South Republican State Wildlife Area - Yuma County

a. Field trials may be authorized during February, March, August, and September only. No more than two trials may be authorized during the February-March period and no more than one field trial may be authorized during the August-September period.
b. Waterfowl hunting is prohibited as posted to provide resting areas for wintering waterfowl.
c. Parking for waterfowl hunting is prohibited, except in designated parking areas.
d. Waterfowl hunting access is prohibited on the downstream face of the dam.

238. Spanish Peaks State Wildlife Area - Las Animas County

a. Camping is prohibited, except in established camping areas.
b. Fires are prohibited, except in designated areas.
c. Public access is prohibited, except from established parking areas.
d. Vehicle parking is prohibited, except in designated areas.

239. Spinney Mountain State Wildlife Area - Park County

a. Camping is prohibited.
b. Fires are prohibited.

240. Stalker Lake State Wildlife Area - Yuma County

a. Boating is prohibited, except for float tubes or craft propelled by hand, wind or electric motor.
b. Camping is prohibited.
c. Fires are prohibited.
d. Hunting is prohibited, except with shotguns or bows.
e. Discharge of bows is allowed for bowfishing.
f. Target practice is prohibited, except when authorized by the area wildlife manager.
g. Discharge of firearms or bows is prohibited, except when hunting.
h. Hunting on the western half of Stalker Lake is prohibited.
i. Hunting is permitted from the closed area east to Stalker Lake dam until October 31.

241. Storm Mountain Access Road - Larimer County

a. Public access is prohibited as posted, when necessary to prevent road and habitat damage, depending on weather and habitat conditions

242. Summit Reservoir State Wildlife Area - Montezuma County

a. Camping is prohibited.
b. Fires are prohibited.
c. Boating is prohibited in a manner that creates a white water wake.

243. Tamarack Ranch State Wildlife Area - Logan County

a. Camping is prohibited, except in the established camping area.
b. Field trials may be authorized during February, March, August, and September only. No more than three trials may be authorized during the February-March and month of August period and no more than one trial may be authorized during the September period.
c. Fires are prohibited, except in the designated camping area.
d. All hunters must check in and out of the self check in station, and must park their vehicle at the parking area they are checked into. Hunters are restricted to the area they are checked into until 9:00 a.m., at which time they may walk into and hunt adjacent areas. Deer and turkey hunters are required only to check into East or West Tamarack Area (Game Management Unit 91). All hunters hunting South Tamarack Area, south of I-76, (Game Management Unit 93) are required to check-in and check-out of the self check-in station.

e. Reservations are available, but not required, on weekends as listed and the following holidays: Columbus Day (observed), Veteran's Day (observed), Thanksgiving Day, Christmas Day, New Years Day, Martin Luther King Jr. Day and President's Day. The first hunt date available for reservations is the Saturday following October 24, and the last date available is the last Sunday of the regular duck season. Weekdays, weekends, and holidays outside the reservation period and any unreserved or open units are open to hunting without reservations and as regulated through the check station. Reservations may be made in accordance with #901.A of these regulations. Hunters must follow check in and check out procedures as posted.
f. Target practice is prohibited, except when authorized by the area wildlife manager.
g. Discharge of firearms or bows is prohibited, except when hunting.
h. Discharge of bows is allowed for bowfishing.
i. All recreational activities, except deer hunting, are prohibited on the opening weekend of the regular plains rifle deer season and on the opening day and first weekend of the late plains rifle deer season.
j. Horse use is prohibited north of I-76, except when used in direct association with training of hunting dogs, and then only permitted in February, March, April (through the Wednesday immediately preceding the opening of the spring turkey season) and August.
k. The launching or takeout of vessels is prohibited from the first day of the September teal season until the last day of the dark goose season.
l. Augmentation Ponds:
    1. Waterfowl hunting is allowed only through a limited draw lottery reservation system starting on the opening day of the second duck season through the end of the regular dark goose season.
    2. Hunting is limited to the specific pond/hunt area for that day.
    3. A maximum of four hunters are allowed per party per hunt day. There is no standby hunting offered in the event that the successful lottery reservation holder does not use the reservation. No additional parties are allowed to hunt after the lottery hunter has completed their hunt for the day. The hunter drawing the access permit must be present for the hunt. All hunters must check in at the existing check station.
    4. Due to safety concerns for traffic traveling on I-76 near two of the ponds, there are blinds provided and hunters must hunt out of the blinds. Shooting out the back of the blind is prohibited.
    5. To enter a drawing to reserve a pond, hunters must send a postcard or letter with name, address, phone number, and CID number along with the desired reservation dates to CPW, Tamarack Ranch drawing, 122 E. Edison Street, Brush, CO 80723. Cards must be postmarked by September 30 annually. Successful applicants will be notified by October 21. Hunters must possess a valid license for the species to be hunted in order to enter a drawing. Hunters may apply for multiple hunt dates on one postcard. Hunters must park in designated parking areas for that hunt day but are allowed to drop off decoys via existing four-wheel-drive only roads as posted. Hunters must remain on existing roads. Failure to hunt a reserved area without prior cancellation, or to follow check station procedures, may disqualify a person from making reservations for the remainder of the hunting season.
    6. Ponds are open to hunting without a reservation during the spring light goose conservation order season. All hunters must follow check in and check out procedures as posted.

244. Tarryall Reservoir State Wildlife Area - Park County

a. Public access is prohibited from the dam, spillway and outlet structures.

b. Boating in a manner that creates a white water wake is prohibited.

245. Taylor River State Wildlife Area - Gunnison County

a. Camping is prohibited.
b. Fires are prohibited.
c. Hunting is prohibited.
d. Vehicle parking is prohibited, except in designated areas.
e. Public access is prohibited from Taylor Dam to 325 yards downstream.

246. Teter-Michigan Creek State Wildlife Area - Park County

a. Camping is prohibited.
b. Fires are prohibited.

247. Thurston Reservoir State Wildlife Area - Prowers County

a. Boating is prohibited in a manner that creates a white water wake from November 1 through the last day of the migratory waterfowl season.
b. Public access is prohibited from one hour after sunset to one hour before sunrise daily, except for fishing.
c. All terrain vehicles, dirt bikes, and snowmobiles are prohibited.
d. Public access to the frozen surface of the lake is prohibited.
e. Public access to the dams, inlets, and outlet structures is prohibited, except for fishing.

248. Tilman Bishop State Wildlife Area – Mesa County

a. Public access is prohibited during the nesting and migrating period, from March 15 through July 14.
b. Camping is prohibited.
c. Hunters must check in and out of the entrance station.
d. Waterfowl hunters are restricted to hunting from designated blinds or in the zone identified for each blind. No more than four hunters allowed per blind.
e. Hunting is restricted to bows and shotguns with shot-shells only.
f. Deer hunting is allowed by limited permit only. Permit applications will be available from Colorado Parks and Wildlife West Regional Office in 711 Independent Ave., Grand Junction, Co, 81505, phone 970-255-6100. The application deadline is August 1. Permits will be issued through a hand drawing, and successful applicants will be notified by mail. The date, time, and location of the drawing will be included on the application.
g. Turkey hunting is prohibited.
h. Dogs are prohibited, except as an aid to hunting.
i. Waterfowl hunting on this property is by reservation only. Reservations may be made in accordance with #901.A of these regulations. Hunters with reservations may only hunt the hunt area specified on the reservation. Hunters must follow check-in and check-out procedures as posted at the property.
j. Hunt areas that have not been reserved will be available on a first-come, first-served basis after 5:00 am on each hunting day. Reserved hunt areas unoccupied by 7:00 am will be available on a first-come, first-served basis. However, any hunt area must be yielded at any time upon request of a hunter holding a valid and active reservation for that area.

249. Timpas Creek State Wildlife Area - Otero County

a. Fires are prohibited.

250. Tomahawk State Wildlife Area - Park County

a. Camping is prohibited.
b. Fires are prohibited.

251. Tomichi Creek State Wildlife Area - Gunnison County

a. Camping is prohibited.
b. Fires are prohibited.
c. Dogs must be kept on a leash, except as an aid in hunting.
d. Public access is limited to foot only from designated access points.
e. From January 1 through June 30, public access south of Tomichi Creek is restricted to the area within 100 feet south of the high water line of Tomichi Creek, as posted.

252. Totten Reservoir State Wildlife Area - Montezuma County

a. Camping is prohibited.
b. Fires are prohibited.
c. Alcoholic beverages are prohibited.
d. Glass containers are prohibited.
e. Hunting is prohibited in the inlet area from September 30 through January 20, as posted, to protect resting waterfowl.
f. Boating is prohibited in a manner that creates a white water wake.
g. Public access is prohibited along the north shore from March 1 through May 31.
h. Public access is prohibited from one hour after sunset to one hour before sunrise, except for fishing.

253. Trujillo Meadows State Wildlife Area - Conejos County

a. Boating is prohibited in a manner that creates a white water wake.

254. Turk's Pond State Wildlife Area - Baca County

a. Boating is prohibited, except for float tubes or craft propelled by hand, wind or electric motor.
b. Camping is prohibited.
c. Public access is prohibited in the area of the pond and administrative building, as posted, except to retrieve downed waterfowl, from the opening day of the migratory waterfowl season through the last day of February.

255. Two Buttes Reservoir State Wildlife Area - Baca and Prowers Counties

a. Boating is prohibited in Two Buttes Ponds below the dam, except for float tubes or craft propelled by hand, wind or electric motor.

256. Urad Lake State Wildlife Area - Clear Creek County

a. Public access is allowed from June 1 through the end of the 4th regular big game rifle season, or until the road is closed due to inaccessibility, as posted. The property will open initially on June 15, 2014.
b. Access is by foot or horseback only.
c. Motor vehicle use is restricted to the designated parking lot only.
d. Camping shall be limited to five days in any 45-day period, except during the big game seasons in designated campgrounds.
e. Fires are prohibited, except in established fire rings.
f. Discharge of firearms or bows is prohibited except when hunting.
g. Boating is prohibited, except for float tubes or craft propelled by hand, wind, or electric motor.
h. Dogs must be kept on a leash, except when used as an aid in hunting.

257. Vail Deer Underpass State Wildlife Area - Eagle County

a. Hunting is prohibited.
b. Public access is prohibited from November 1 through June 15.

258. Valmont Reservoir Administrative Area - Boulder County

a. Public access is prohibited.

259. Van Tuyl State Wildlife Area (Cabin Creek Unit and Lost Canyon Unit) - Gunnison County

a. All motorized travel (including over-the-snow travel) is restricted to the primary access routes (BLM 3107 and CR 743).

260. Verner State Wildlife Area (Fishing Lease) - (North Platte River) Jackson County

a. Public access is for fishing only.

261. Viking Valley State Wildlife Area - Gunnison and Saguache counties.

a. Public access is prohibited, except when authorized by the landowner.

262. Wahatoya State Wildlife Area - Huerfano County

a. Boating is prohibited, except for float tubes or craft propelled by hand or wind.
b. Camping is prohibited.
c. Fires are prohibited.

263. Walker State Wildlife Area - Mesa County

a. Camping is prohibited.
b. Fires are prohibited.
c. Discharge of firearms or bows is prohibited, except bows are permitted for the purpose of bowfishing.
d. Hunting is prohibited.
e. Public access is prohibited from one-half (1/2) hour after sunset to one-half (1/2) hour before sunrise.
f. Trapping is prohibited.
g. Dogs are prohibited, except that dogs on leash are permitted on the paved Riverfront Trail. All dog handlers must immediately collect, remove, and properly dispose of all dog feces left by their dog.

264. Watson Lake State Fish Unit - Larimer County

a. Dogs are prohibited.
b. Hunting is prohibited.
c. Public access is prohibited along the west bank of the Poudre River adjacent to the employee housing area.

265. Watson Lake State Wildlife Area - Larimer County

a. Boating is prohibited.
b. Camping is prohibited.
c. Hunting is prohibited.
d. Ice fishing is prohibited.
e. Ice skating is prohibited.
f. Vehicle parking is prohibited on the South Dam.
g. Public access is prohibited to the northwest side as posted to prevent access to the water outtake and fish disposal area.
h. Discharge of firearms is prohibited.
i. The use or possession of live minnows is prohibited.
j. From one hour after sunset to one hour before sunrise, use other than fishing is prohibited.

266. Waunita Watchable Wildlife Area – Gunnison County

a. Camping is prohibited.
b. Discharge of firearms is prohibited.

c. Dogs are prohibited.
d. Fires are prohibited.
e. All trash must be packed out.

267. Webster State Wildlife Area - Weld County

a. All hunting, fishing, and wildlife-related recreation and access is prohibited until such time as property management activities allow the property to be re-opened to the public.

268. Wellington State Wildlife Area - Larimer and Weld Counties

a. Boating is prohibited, except for craft propelled by hand may be used in hunting waterfowl.
b. Camping is prohibited.
c. Field trials may be authorized on the Wellington and Schware units during February, March 1 through 14, and August only. Field trials may be authorized on the Cobb Lake Unit year-round.
d. Game birds listed in #009(B) of these regulations may be released on the Cobb Lake Unit by the Division or its agent for educational or training purposes without seasonal or numerical restrictions.
e. Fires are prohibited.
f. Public access is prohibited on the Wellington and Schware Units from March 15 through July 15.
g. Target practice is prohibited, except when authorized by the area wildlife manager.
h. Public access is prohibited on the Wellington Unit from the first day of the regular waterfowl season to the first day of the pheasant season, except on Saturday, Sundays, Mondays and legal holidays.
i. Horseback riding is prohibited, except at the Cobb Lake Unit, where horses may be used during field trials.
j. Domestic birds, feral birds, or privately-owned game birds may be released year-round for dog training on the Cobb Lake Unit by permit only, in accordance with the provisions of this chapter and other applicable regulations, including, but not limited to, #007, #008, #009, #801 and #804 of these regulations. All such birds taken during training activities shall be removed from the State Wildlife Area by the dog training permitee and all privately-owned game birds shall be prepared for human consumption.
k. Big game hunting on all units is restricted to the use of archery, shotguns with slugs, and muzzle-loading only.
l. The Division is authorized to implement a dog training reservation system should overcrowding become an issue on the State Wildlife Area.

269. West Lake State Wildlife Area - Larimer County

a. Boating is prohibited, except for float tubes or craft propelled by hand, wind or electric motor.

270. West Lake State Wildlife Area - Mesa County

a. Boating is prohibited.
b. Public access is prohibited from 9:00 p.m. to 7:00 a.m.
c. Water contact activities are prohibited.

271. West Rifle Creek State Wildlife Area - Garfield County

a. Camping is prohibited, except from the day after Labor Day through December 31.

272. Whitehorse State Wildlife Area - Adams County

a. Public access is prohibited, except for youth mentor waterfowl hunting only, when authorized by the Area Wildlife Manager as participants in the Division's youth hunting program.
b. A reservation is required for all waterfowl hunting. Reservations may be made in accordance with #901.A of these regulations. Hunters with reservations may only hunt the hunt area specified on the reservation, except when hunting areas where reservations are not required or on hunt areas which are unreserved and unoccupied. Hunters must follow check in and check out procedures as posted.
c. Waterfowl hunters must check in and check out at the designated check station.

273. Williams Creek Reservoir State Wildlife Area - Hinsdale County

a. Camping is prohibited.
b. Open fires are prohibited.
c. Boating in a manner that creates a white water wake is prohibited.
d. Snowmobiles are allowed only as an aid in ice fishing.
e. Sail surfboards are prohibited.

274. Willow Creek State Wildlife Area - Yuma County

a. Public access is prohibited from June 1 through August 31.
b. Public access is restricted to foot traffic only.
c. Camping is prohibited.
d. Fires are prohibited.
e. Dog training is prohibited.
f. Target practice is prohibited, except when authorized by the Area Wildlife Manager.
g. Public access for horseback riding is prohibited.

275. Windy Gap Watchable Wildlife Area - Grand County

a. Dogs are prohibited beyond the parking area.
b. Fishing is prohibited.
c. Discharge of firearms is prohibited.
d. Camping is prohibited.
e. Fires are prohibited.
f. No human activity allowed outside viewing area.
g. Public access is prohibited from sunset to sunrise.
h. Hunting is prohibited.
i. Trapping is prohibited.

276. Woodhouse State Wildlife Area - Douglas County

a. Public access is prohibited.

277. Woods Lake State Wildlife Area - San Miguel County

a. Boating is prohibited, except for float tubes or craft propelled by hand, wind or electric motor.
b. Camping is prohibited.

278. Wray State Fish Unit - Yuma County

a. Camping is prohibited.
b. Hunting is prohibited.
c. Dogs are prohibited.
d. Public access is prohibited east of Yuma Co Rd FF.

279. Yampa River State Wildlife Area - Routt County

a. Camping is prohibited.
b. Fires are prohibited.

ARTICLE III - STATE TRUST LANDS

#902 REGULATIONS APPLICABLE TO ALL STATE TRUST LANDS LEASED BY COLORADO PARKS AND WILDLIFE

A. DEFINITIONS

1. "Youth mentor hunting" means hunting by youths under 18 years of age. Youth hunters under 16 years of age shall at all times be accompanied by a mentor when hunting on youth mentor properties. A mentor must be 18 years of age or older and hold a valid hunter education certificate or be born before January 1, 1949.

B. Public Access to State Trust Lands Leased by Colorado Parks and Wildlife

1. Public access is prohibited from March 1 through August 31, unless otherwise posted.
2. All newly enrolled properties are closed to public access until September 1 of the year of enrollment, unless otherwise posted.
3. Public access is prohibited from one-half (1/2) hour after sunset to one-half (1/2) hour before sunrise, except as posted, in accordance with the lease agreement with the State Land Board.
4. Public access is restricted to hunting, fishing, and watchable wildlife activity.

C. Prohibited Activities

Except as otherwise provided in these regulations, the following provisions apply to all State Trust Lands leased by Colorado Parks and Wildlife:

1. It is unlawful for any person to enter, use or occupy any area or portion thereof for any purpose when posted against such entry, use or occupancy.
2. Motorized vehicle use is restricted to designated roads.
3. Littering is prohibited. All trash must be packed out by State Trust land users.
4. Camping and fires are prohibited, unless otherwise posted.
5. Access is by foot or horseback only, unless otherwise posted.
6. No outfitting or non-wildlife related public access is permitted.
7. Target practice or non-hunting-related shooting is prohibited.
8. It is unlawful to possess the following types of ammunition and/or firearms: tracer rounds, armor-piercing rounds, military hardened rounds with explosive or radioactive substances, .50 caliber BMG rounds, or fully automatic firearms.
9. It is unlawful to possess, store, or use hay, straw, or mulch which has not been certified as noxious weed free in accordance with the Weed Free Forage Crop Certification Act, Sections 35-27.5-101 to 108, C.R.S., or any other state or province participating in the Regional Certified Weed Free Forage Program. See Appendix A of this chapter. All materials so certified shall be clearly marked as such by the certifying state or province. Exempted from this prohibition are persons transporting such materials on Federal, State, or County roads that cross State Trust Lands leased by the Division, and hay produced on the property where it is being used.

D. Criteria for Posting Prohibited Activities

When these regulations provide that an activity is prohibited, except as posted or permitted as posted, Colorado Parks and Wildlife may control these activities by posting signs. Colorado Parks and Wildlife shall apply the following criteria in determining if an activity shall be restricted or authorized pursuant to posting:

1. Public safety.
2. Proximity to a calving or lambing area.

3. Proximity to a corral, loading chute or similar structure maintained for the purpose of handling domestic livestock.
4. Proximity to private structures such as outbuildings, houses, barns, storage sheds or similar structures.
5. Proximity to agriculture equipment.
6. Whether protection of roads or trails is necessary to prevent excessive damage causes by human use
7. Negative impacts on wildlife resources or domestic livestock, or agricultural products.
8. Whether the area can provide additional public benefits and remain consistent with all applicable agreements.

E. Closure of Properties to Public Use

1. The Director of Colorado Parks and Wildlife may establish and enforce temporary closures of, or restrictions on, lands or waters leased by the Division from the State Land Board, or portions thereof, for a period not to exceed nine months, when any one of the following criteria apply:

    a. The property has sustained a natural or man-made disaster such as drought, wildfire, flooding, or disease outbreak which makes public access unsafe, or where access by the public could result in additional and significant environmental damage.
    b. The facilities on the property are unsafe.
    c. To protect threatened or endangered wildlife species, protect wildlife resources from significant natural or manmade threats, such as the introduction or spread of disease or nuisance species, changing environmental conditions or other similar threats, protect time-sensitive wildlife use of lands or waters, or facilitate Division-sponsored wildlife research projects or management activities.

2. Whenever such closure is instituted, the area(s) involved shall be posted indicating the nature and purpose of the closure. It shall be unlawful for any person or vehicle to enter any such area(s) posted as closed.

#903 – Property Specific Regulations

A. In addition to or in place of those restrictions listed in regulation #902, the following provisions or restrictions apply:

1. Adams – Jackson County
- a. Open for public access from August 15 through the end of February.
- b. Access is restricted as posted.

2. Aguilar TV Hill – Las Animas County
- a. Access is restricted as posted on the east side of the property.

3. Alamaditas Mesa – Conejos County
- a. Public access is prohibited from March 1 through August 14.

4. Antelope Creek – Grand County
- a. ATV and snowmobile access allowed on designated route as posted at East Carter Creek gate entrance during hunting season only.

5. Antero – Park County
- a. Open for hunting from August 15 through the end of February only.
- b. Open for fishing year-round.

6. Apishapa North – Las Animas County

a. Motorized vehicles are prohibited past parking lot.

7. Atwood – Logan County

a. Public access is prohibited from June 1 through August 31.
b. Hunting is prohibited, except on Saturdays, Sundays, Wednesdays, Labor Day, Columbus Day (observed), Veteran's Day (observed), Thanksgiving Day, Christmas Day, New Year's Day, Martin Luther King Jr. Day and Presidents' Day.
c. Three reservations may be issued per day on the west side of Colo 63; two for the general public, and one for hunters with mobility impairments. No more than four people per reservation.
d. Hunting is prohibited with centerfire rifles.
e. All recreational activities, except deer hunting, are prohibited on the opening weekend of the regular plains rifle deer season and on the opening day and first weekend of the late plains rifle deer season.
f. Horse use is prohibited, except when used in direct association with training of hunting dogs, and then only permitted in February, March and April (through the Wednesday immediately preceding the opening of the spring turkey season).
g. The launching or takeout of vessels is prohibited from the first day of the September teal season until the last day of the dark goose season.
h. All small game and waterfowl hunting is regulated by a reservation system and through a mandatory check station. Reservations may be made in accordance with #901.A of these regulations. Hunters may only hunt the hunt area specified on the reservation. Hunters must follow check in and check out procedures as posted.

8. Badger Creek (Lower Badger Creek Unit, Upper Badger Creek Unit) – Fremont/Park County

a. Lower Badger Creek Unit is open for public access for fishing year-round. For all other wildlife recreation, Lower Badger Creek Unit is open for public access from September 1 through the end of February.
b. Upper Badger Creek Unit is open for public access from October 1 through the end of February.
c. Fishing is prohibited on the Upper Badger Creek Unit.

9. Bakers Peak - Moffat County

a. Open for public access from August 1 through the end of February.
b. Motorized vehicles are prohibited off of state or county roads.
c. Only portable hunting blinds are allowed.

10. Bakerville – Clear Creek County

a. Open for fishing year-round.
b. Access to the property is off of I-70 right-of-way only.
c. Access is by foot only.

11. Bald Mountain – Moffat County

a. Public access is prohibited March 1 through August 15.

12. Bear Gulch – Custer County

a. Open for public access from the first day of archery deer and elk season through May 31.

13. Beddows Mountain – Custer County

a. Open for public access from the first day of archery deer and elk season through May 31.
b. Rifle hunting is restricted to youth mentor hunting only. Mentors are not allowed to use rifles.
c. All hunting other than youth mentor hunting is restricted to bows, muzzle-loaders or shotguns.
d. Parking is prohibited on Hwy 69.
e. Shooting is prohibited within 500 feet of Hwy 69 and manmade structures.

14. Big Hole Gulch – Moffat County

a. Open for hunting from August 15 through the end of February.
b. Open year-round for fishing.
c. Only portable hunting blinds are allowed.

15. Black Hawk – Huerfano County

a. Public access is prohibited from June 1 through August 31.
b. Motorized vehicles are prohibited off of county roads.

16. Black Mountain – Huerfano County

a. Public access is prohibited from June 1 through August 31.

17. Black Sage Pass – Gunnison County

a. Open for fishing year-round.

18. Blue Lake – Bent County

a. Open for public access year-round.
b. Public access is prohibited on the islands from May 15 through August 31.
c. Camping is allowed as posted.

19. Blue Spring – Huerfano County

a. Public access is prohibited from June 1 through August 14.
b. Hunting is prohibited in the safety zone along the east boundary, as posted.

20. Boston Flats – Moffat County

a. Open for fishing and wildlife watching access year-round.
b. Open for hunting from September 1 through the end of February
c. Access is by foot only.

21. Box Creek – Lake County

a. Access is by foot only.

22. Bravo – Logan County

a. Access to the property is from Bravo SWA parking areas only.
b. The launching or takeout of vessels is prohibited from the first day of the September teal season until the last day of the dark goose season.
c. All waterfowl and small game hunters must check out at the designated check station before leaving the property.

23. Bull Mountain – Larimer County

a. Motorized vehicles are prohibited off of county roads.

24. Burchfield – Baca County

a. Access is by foot only.

25. Burro Springs 1&2 – Saguache County

a. Open for public access from August 15 through May 31.

26. Carter Creek – Grand County

a. Except as otherwise allowed in this regulation, public access is limited to hunting only.
b. ATV and snowmobile access allowed on designated route in Section 31 as posted at East Carter Creek gate entrance during hunting season only.

27. Carter Place – San Miguel County

a. Access to the property is through BLM only.

28. Castor Gulch – Moffat County

a. Open for public access from August 1 through the end of February.

29. Cedars – Moffat County

a. Open for public access from August 1 through the end of February.
b. Only portable hunting blinds are allowed.

30. Cedar Springs – Moffat County

a. Motorized vehicle access is permitted only on CR 23 and BLM #1558.

31. Chubb Park – Chaffee County

a. Camping is permitted only as posted.
b. Motorized vehicle access is permitted on county roads as posted.

32. Coal Bank Gulch – Routt County

a. Open for public access from the first day of archery deer and elk season through the end of February.
b. Hunting with archery, muzzle-loaders, shotguns firing a single slug, and rimfire rifles only.
c. Hunting is limited to youth mentor hunting only. No more than one mentor per youth hunter may engage in hunting.

33. Cody Park – Fremont County

a. Public access is prohibited from June 1 through August 14.

34. Cohagen – Jackson County

a. Open for public access from August 15 through the end of February.

35. Cold Springs Mountain – Moffat County

a. Access is allowed from August 1 through December 31.
b. Camping is allowed only during big game seasons.

36. Cottonwood Creek – Routt County

a. Open for public access from the first day of archery deer and elk season through May 31.
b. Hunter numbers may be limited through a mandatory check station when necessary to control overcrowding, resource damage or trespassing on neighboring private property.

37. Cottonwood Ridge – Fremont County

a. Open for fishing year-round.
b. Hunting is prohibited from June 1 through August 31.

38. Crooked Top - Park County

a. Access is permitted from Forest Service Rd 101 only.

39. Crystal Lake – Lake County

a. Access is by foot only.
b. Open for fishing year-round.

40. Daley Gulch – Gunnison/Saguache Counties

a. Open for public access year-round.
b. Camping is allowed only as posted.

41. Deep Creek - Routt County

a. Parking is restricted to designated area only.
b. Open for public access from the first day of archery elk season through the end of February.

42. Deer Haven – Fremont County

a. Open for hunting from September 1 through May 31.
b. Open for watchable wildlife year-round.

43. Dick's Peak – Park County

a. Access is by foot only.

44. Dirty Gulch - Fremont

a. Open for public access from September 1 through May 31.

45. Dry Creek – Rio Grande County

a. Hunting is prohibited in the safety zone along the east boundary of Section 16, as posted.
b. Hunting is prohibited from June 1 through August 14.

46. Dry Fork – Routt County

a. Open for public access from September 1 through September 16.
b. Public access is limited to sharp-tailed grouse hunting only.
c. Access is by foot only.

47. East Carter Mountain – Grand County

a. Except as otherwise allowed in this regulation, public access is limited to hunting only.
b. Motorized vehicles are restricted to Chimney Rock road unless posted otherwise.
c. Parking is allowed at designated parking lots only.
d. ATV and snowmobile use allowed on designated route as posted at gate in Section 24 during hunting season only.
e. Hunting not allowed in safety zone, as posted along east fenceline.
f. Camping and campfires only allowed as posted within 300 feet of Chimney Rock Road, with a 14-day limit on all camps.

48. East Delaney Butte Lake – Jackson County

a. Open for hunting and watchable wildlife from August 15 through the end of February.
b. Open for fishing year-round.
c. Access is by foot only.

49. Elk Mountain – Jackson County

a. Open for fishing year-round.
b. Open for hunting from August 15 through the end of February.
c. Access to the property is from the parking lot only.

50. Elk Springs #3 – Moffat County

a. Public access is prohibited from March 1 through August 14.

51. Fernleaf Gulch – Fremont County

a. Open for public access from September 1 through May 31.
a. Access is by foot and horseback only, except on BLM Sand Gulch Road.
b. Motorized vehicles are prohibited off of BLM Sand Gulch Road.

52. Florence – Fremont County

a. Public access is prohibited from June 1 through August 31.
b. Access to the property is through National Forest land only.

53. Fly Gulch – Routt County

a. Open for youth mentor hunting only.

54. Ford Bridge – Logan County

a. Hunting is prohibited with centerfire rifles.
b. Public access is prohibited from March 1 through August 31
c. All recreational activities, except deer hunting, are prohibited on the opening weekend of the regular plains rifle deer season and on the opening day and first weekend of the late plains rifle deer season.
d. Horse use is prohibited, except when used in direct association with training of hunting dogs, and then only permitted in February, March and April (through the Wednesday immediately preceding the opening of the spring turkey season).
e. The launching or takeout of vessels is prohibited from the first day of the September teal season until the last day of the dark goose season.

55. Fortification – Moffat County

a. Access and hunting allowed through Frosty Acres Ranch only. Contact the Frosty Acres Ranch for reservations at 970-824-8935 or 970-824-9568.
b. Hunting is restricted to cow elk only.
c. Access is from parking area off Highway 13 only.
d. Access is by foot only.
e. Open for hunting from day after 4th season through the end of the late season in December.

56. Froze Creek – Custer County

a. Open for public access from August 15 through the end of February.
b. Access is by foot only.

57. Godiva Rim – Moffat County

a. Open for public access from August 1 through the end of February.
b. Motorized vehicle use is restricted to BLM Rd 2124.

58. Grape Creek – Fremont County

a. Open for fishing year-round as posted along Grape Creek.
b. Open for hunting from August 15 through May 31.
c. Open for watchable wildlife year-round.

59. Greasewood – Moffat County

a. Open for public access from August 1 through the end of February.
b. Access is by foot only.

60. Greasewood Lake – Weld County

a. Access is by foot only.

61. Great Divide – Moffat County

a. Open for public access from August 1 through the end of February.

b. Only portable hunting blinds are allowed.
c. Motorized vehicle use is restricted to county roads only.

62. High Creek – Park County

a. Open for hunting from August 15 through the end of February.
b. Open for fishing year-round.

63. Homestead – Moffat County

a. Open for public access from August 15 through the end of February.

64. Independence Mountain – Jackson County

a. Open for public access from August 15 through the end of February.
b. ATVs are allowed between 10:00 a.m. and 2 p.m. on designated roads otherwise closed to motorized traffic, for game retrieval only.

65. Indian Creek – Jackson County

a. Open for public access from August 15 through the end of February.
b. Hunting is prohibited with centerfire rifles in the northeast (NE) 1/4 of Section 16.
c. Access to the property if from the parking lot off of County Road 21 only.

66. Jimmy Dunn Gulch – Moffat/Routt Counties

a. Open for public access from the last Saturday in August through the end of February.
b. Hunter numbers may be limited through a mandatory check station when necessary to control overcrowding, resource damage or trespassing on neighboring private property.

67. Johnny Moore Mountain – Jackson County

a. Open for public access from August 15 through the end of February.
b. The southern portion of the property only is open year-round for fishing as posted.

68. Jumping Cow - Elbert County

a. Hunting is restricted to dove, turkey, doe pronghorn, antlerless elk, antlerless white-tailed deer, and antlerless mule deer.
b. Hunting and fishing access is allowed by permit only. Hunters and anglers must have a valid license for their activity prior to applying for a permit. Permit holders shall have their permit on their person at all times while on the property. Permits may designate specific geographic hunting zones; in this case permits are restricted to the listed zone and are not valid property-wide. Access permits for hunters and anglers will be issued free of charge. Permits may be obtained via a drawing process. Applications are available from the DOW in Denver (303)291-7227. Application due dates are as follows:
    1. Dove, fall turkey, doe pronghorn, antlerless elk, antlerless white-tailed deer, and antlerless mule deer applications due the 3rd Monday in August.
    2. Spring turkey applications due 3rd Monday in March.
    3. Fishing applications due 14 days prior to intended access date.
c. Permitted hunters and anglers may take one other person (an observer) who is not hunting or fishing with them onto the property; however that person must remain with the permit holder at all times.
d. Permitted hunters other than those hunting dove and wild turkey may not enter the property prior to the first Monday after the opening day of their individual season.
e. Vehicular access to the property is restricted. Motor vehicle use is only allowed on marked existing roadways that lead to marked parking areas. All other access is restricted to foot and horseback only.
f. All gates on the property shall be left in the condition in which they are found after passing through the gateway.

g. Access is permitted from two hours prior to sunrise to one hour after sunset. In the event that an animal has been harvested by a hunter, the hunter may remain as long as is reasonable to recover and remove the animal from the property.
h. Camping is prohibited.
i. Fires are prohibited.

69. Karney Ranch - Bent County

a. Camping is prohibited.
b. Campfires are prohibited.
c. Firewood collection is prohibited.
d. Off-highway vehicle (OHV) use is prohibited.
e. Public access is allowed one hour before sunrise until one hour after sunset, except that when an animal is harvested the successful hunter is allowed to remain as long as is necessary to remove the animal.
f. Ornate box turtle collection and/or release is prohibited.
g. Night hunting with artificial light may be permitted as provided in regulation #W-303.E.10.
h. Foot access only. All vehicles are restricted to roads and parking lots.
i. Dogs are prohibited except as an aid to hunting.
j. No public access to signed safety zones.

70. Kemp Draw – Jackson County

a. Motorized vehicles are restricted to designated roads and Jackson County Road 21.
b. Open for public access from August 15 through the end of February.

71. LaGarde Creek – Larimer County

a. Open for fishing year-round.
b. Open for hunting from September 1 through the end of February.

72. La Jara – Conejos County

a. Open for fishing year-round.
b. Open for hunting from September 1 through the end of February.
c. Camping is permitted only as posted.
d. From the first day of archery big game season through the last day of the last regular rifle season, motor vehicle access is prohibited on that portion bounded on the north by a signed fenceline beginning at a point along La Jara Creek in the SW ¼ of section 32, T35N, R6E, extending east along this fence line approximately 2.2 miles to a signed corner post in the SW ¼ of section 34, T35N, R6E; on the east by a signed fenceline that extends from the above-described corner approximately 4 ¾ miles south to La Jara Creek; and on the south and west by La Jara Creek.

73. Landsman Creek – Kit Carson/Yuma County

a. Open for hunting from September 1 through May 31.
b. Access is by foot only.

74. Lapin Creek – Custer County

a. Open for public access from the first day of archery pronghorn season through May 31.

75. Little Cochetopa Creek – Chaffee County

a. Open for public access from September 1 through May 31.

76. Little La Garita Creek – Saguache County

a. Open for wildlife watching year-round.
b. Open for hunting from September 1 through the end of February.

77. Little Sheep Mountain – Huerfano County

a. Public access is prohibited from June 1 through August 31.
b. Motorized vehicles are prohibited off of county road.

78. Los Creek – Saguache County

a. Open for public access from August 15 through the end of February.

79. Los Mogotes Peak – Conejos County

a. Public access is prohibited from March 1 through August 14.

80. Macfarlane Reservoir – Jackson County

a. Open for public access from August 15 through the end of February.
b. Closed to motorized travel on all two-track roads from October 15 through the end of regular rifle big game seasons, except on designated routes only from 10:00 a.m. and 2:00 p.m. and ½ hour after sunset through midnight for retrieval of harvested game only.
c. Motorized travel for waterfowl hunting access to MacFarlane Reservoir is allowed at all times on designated routes only.

81. Manzanares Creek – Huerfano County

a. Open for public access from August 15 through May 31.
b. Motorized vehicle use is restricted to county roads only.

82. Maxwell Park – Chaffee County

a. Public access is prohibited from March 1 through August 14.
b. Maximum of four vehicles to parking area and maximum of three people per vehicle.
c. Access is through parking areas only.

83. Maybell – Moffat County

a. Open for fishing and wildlife watching year-round.
b. Camping is permitted only as posted.
c. Open for hunting from August 15 through the end of February.

84. Maynard Gulch – Routt County

a. Open for public access from the first day of archery deer and elk season through May 31.
c. Vehicle parking is prohibited, except in designated areas.
d. Hunter numbers are regulated through a mandatory check station, when necessary to control overcrowding, resource damage or trespassing on neighboring private property.

85. McArthur Gulch – Park County

a. Public access is prohibited from June 1 through August 31.
b. Hunting is prohibited with centerfire rifles.
c. Hunting is prohibited in the safety zone around the ranch house and outbuildings, as posted.

86. McCoy Gulch – Fremont County

a. Public access is prohibited from June 1 through August 31.

87. Meadow Creek – Larimer County

a. Open year round for wildlife-related activities north of Larimer CR 80C.
b. Open September 1 to the end of February for hunting south of Larimer CR 80C.

c. South of Larimer CR 80C, access is by foot and horseback travel only.
d. Vehicle access north of Larimer CR 80C is only allowed during specific times of year when the Middle Cherokee Management Area is open to vehicle travel.

88. Menefee Peak – Montezuma County

a. Public access is prohibited from June 1 through August 31.

89. Middle Carter (Gunsight)- Grand County

a. Except as otherwise allowed in this regulation, public access is limited to hunting only.
b. Camping and campfires are permitted within 300 feet of Chimney Rock road (CR 27/FS 103) as posted.

90. Middle Park – Grand County

a. Motorized vehicle access and parking is restricted as posted.

91. Milk Creek – Grand County

a. Motorized vehicles are restricted to County Road 184 (Hwy 40, MM 163) and parking area (MM 165) unless posted otherwise.
b. Motorized vehicle access through gate in Section 11 is restricted to use on designated track when road is dry.
c. Parking is restricted in Section 14 as posted.

92. Mineral Hot Springs - Saguache County

a. Open for public access from August 15 through the end of February.

93. Mishak Lakes – Saguache County

a. Open for public access from August 15 through the end of February.

94. Mogotas Arroyo – Saguache County

a. Open for watchable wildlife year-round.
b. Open for hunting from August 15 through the end of February.

95. Monument Butte – Moffat County

a. Motorized vehicles are prohibited off of county road.

96. Moody Creek – Routt County

a. Hunting is prohibited north of Moody Creek.

97. Moonhill – Routt County

a. Hunting is prohibited with centerfire rifles.
b. Motorized vehicles are prohibited.
c. Snowmobiles are prohibited.
d. Bicycles are prohibited.
e. Firewood cutting is prohibited.

98. Morapos Creek – Moffat County

a. Access from parking lot on BLM land off County Road on south side of the property only. No access from other sides of the property.

99. Morrison Creek – Routt County

a. Motorized vehicles are prohibited off of county road.

100. Mud Springs – Park County

a. Open for public access from September 1 through the end of February.
b. Hunting is restricted to big game and small game hunting only.

101. Nee Noshe Reservoir – Kiowa County

a. Open for public access from November 1 through March 31.
b. Hunting is restricted to waterfowl hunting only.
c. Hunters must check in at the DOW check station prior to hunting.

102. Neesopah– Kiowa County

a. Use of buildings, equipment, and safety zones surrounding such areas is prohibited.
b. From November 1 until the last day of the waterfowl season, hunters must check in and out at the Queens check station.

103. Newlin Creek – Fremont County

a. Open for public access from September 1 through May 31.
b. Hunting is prohibited with centerfire rifles.
c. Hunting is prohibited within a buffer zone bounded on the east by the property boundary, on the north and south by the property boundary and extending 1/4 mile west of the east property line.

104. North Canyon – Baca County

a. Public access is prohibited from March 1 through August 14.
b. Access is by foot only.

105. North Platte – Jackson County

a. Open for fishing year-round.
b. Open for hunting from August 15 through the end of February.

106. North Rabbit Creek – Larimer County

a. Open year-round for fishing.
b. Open year-round for small game hunting.
c. Open August 15 to January 31 for big game hunting.
d. Access is by foot and horseback only, except during big game seasons when vehicle access is allowed to Rabbit Creek SWA.
e. Parking is not permitted on the property.
f. All activities not listed above are prohibited from September 1 to May 1.

107. Overland Trail – Logan County

a. Public Access is prohibited from June 1 through August 31.
b. Public Access is allowed from the Overland Trail SWA parking lot only.
c. Camping is prohibited.
d. Fires are prohibited.
e. Target practice is prohibited, except as posted.
f. Discharge of firearms or bows is prohibited, except when hunting.
g. Discharge of bows is allowed for bow fishing.
h. All recreational activities, except deer hunting, are prohibited on the opening weekend of the regular plains rifle deer season and on the opening day and first weekend of the late plains rifle deer season.
i. Horse use is prohibited, except when used in direct association with training of hunting dogs, and then only permitted in February, March, April (through the Wednesday immediately preceding the opening of the spring turkey season) and August.
j. Beginning with the first day of the regular duck season through the last day of the regular duck season, all waterfowl and small game hunters must check out at the designated check station before leaving the property. k. All access must be from designated parking areas only.
l. The launching or takeout of vessels is prohibited from the first day of the September teal season until the last day of the dark goose season.

108. Owl Creek – Jackson County

a. Open for fishing year-round.
b. Open for hunting from August 15 through the end of February.

109. Owl Mountain – Jackson County

a. Open for public access from August 15 through the end of February.

110. Oxbow – Moffat County

a. Open for public access from August 15 through the end of February.
b. Watchable wildlife activities from March 1 to August 15 will remain above the natural bluff that occurs approximately 75 yards from the water on the northern edge of the property.
c. Open for youth mentor hunting seasonally, as posted. Contact Colorado Parks and Wildlife Craig office for information.

111. Parkdale – Fremont County

a. Open for public access for fishing year-round. For all other wildlife recreation, open for public access from September 1 through the end of February.

112. Pass Creek – Larimer County

a. Access is by foot only.
b. Access is permitted from south side of the property where it joins USFS land.

113. Pat Canyon/Whitby – Baca County

a. Access is by foot only.
b. Motorized vehicles are prohibited.

114. Peck Mesa – Moffat County

a. Open for public access from August 1 through the end of February.
b. Only portable hunting blinds are allowed.
c. Motorized vehicle use is restricted to Moffat County Road 10 only.

115. Pfister Draw – Larimer County

a. Motorized vehicles are prohibited.

116. Pine Tree Gulch – Moffat County

a. Access to the property is from parking lot on County Road 57 only.

117. Pinkham Mountain – Jackson County

a. Open for public access from August 15 through the end of February.

118. Pinnacle Rock – Fremont County

a. Public access is prohibited from June 1 through August 31.

119. Pinon Hills – Conejos County

a. Open for watchable wildlife year-round.
b. Open for hunting from September 1 through the end of February.

120. Pole Gulch – Moffat County

a. Public access is prohibited from March 1 through July 31
b. Only portable hunting blinds are allowed.

121. Poudre River – Larimer County

a. Open for fishing year-round, as posted.
b. Open for hunting from September 1 through May 15.
c. All public access is prohibited east of US Hwy 287.
d. Access is allowed from Colorado Highway 14 and U.S. Forest Service lands.

122. Prospect – Weld County

a. Access to the property is from the designated parking area only.

123. Ptarmigan – Grand County

a. Open for watchable wildlife year-round.
b. Open for hunting from September 1 through the end of February.
c. Motorized vehicles are prohibited, except snowmobiles on one foot of snow.

124. Quakey Mountain – Gunnison County

a. Open for public access from August 15 through the end of February.

125. Rabbit Ears – Jackson County

a. Open for fishing year-round.
b. Open for hunting from August 15 through the end of February.
c. As posted, there is a closure area on west side from August 15 to September 1.

126. Rajadero Canyon – Conejos County

a. Motorized vehicles are prohibited off of existing trails.

127. Rattlesnake Hill – Moffat County formerly Temple Gulch

a. Hunting is prohibited within a one quarter mile safety zone along the east boundary of the property, as posted.

128. Red Canyon – Jackson County

a. Open for public access from August 15 through the end of February.
c. Access to the property is only from parking area on USFS road.
d. Trailer access is prohibited past parking area.

129. Red Lion Ranch – Logan County

a. Public access is prohibited from June 1 through August 31.
b. Access is permitted only as posted.
c. All recreational activities, except deer hunting, are prohibited on the opening weekend of the regular plains rifle deer season and on the opening day and first weekend of the late plains rifle deer season.
d. Horse use is prohibited, except when used in direct association with training of hunting dogs, and then only permitted in February, March and April (through the Wednesday immediately preceding the opening of the spring turkey season).
e. The launching or takeout of vessels is prohibited from the first day of the September teal season until the last day of the dark goose season.

130. Ridge Road – Jackson County

a. Open for public access from August 15 through the end of February.

131. Rosita – Custer County

a. Open for public access from the first day of archery deer and elk season through May 31.
b. Hunting and discharge of weapons is restricted to bows, muzzle-loaders, and shotguns.

132. Sage Creek – Routt County

a. Open for public access from the first day of archery deer and elk season through May 31.

133. Sagebrush Draw – Moffat County

a. Open for public access from August 15 through the end of February.

134. Saguache Creek - Saguache County

a. Open for public access from August 15 through the end of February.

135. Saint Charles – Pueblo County

a. Discharge of firearms is prohibited within a quarter mile of any building.
b. Hunting is prohibited, except from August 15 through the end of February.
c. Access to the property is from parking areas only.

136. Sakariason – Las Animas County

a. Access is restricted as posted on the west side of the property.
b. Hunting is prohibited, except from September 1 through May 31.

137. Sand Creek – Jackson County

a. Open for public access from August 15 through the end of February.
b. Camping is permitted only as posted.

138. Sand Gulch #1 – Fremont County

a. Open for public access from September 1 through May 31.
b. Motorized vehicles are prohibited off of the BLM access road.

139. Sand Gulch #2 – Fremont County

a. Open for public access from September 1 through May 31.

140. Sand Gulch #3 – Fremont County

a. Open for public access from September 1 through May 31.

141. Sand Gulch #4 – Fremont County

a. Open for public access from September 1 through May 31.

142. Sanderson Gulch – Saguache County

a. Open for public access from August 15 through May 31.

143. Sandy Bluffs – Yuma County

a. Access is restricted as posted on the east side of US 385.
b. Public access is prohibited from June 15 through August 31.

144. San Luis Hills – Conejos County

a. Open for public access from August 15 through the end of February.

145. Schultz Canyon – Huerfano County

a. Public access is prohibited from June 1 through August 31.

146. Shaw Creek – Rio Grande County

a. Open for public access from September 1 through the end of February, and through March 31 for mountain lion hunting only.
b. Access is by foot and horseback only.

147. Short Creek Baldy - Fremont County

a. Open for public access from September 1 through May 31.

148. Sikes Ranch - Baca County

a. Camping is prohibited.
b. Fires are prohibited.
c. Off-highway vehicle (OHV) use is prohibited.
d. Wood cutting or gathering is prohibited.

e. Public access is allowed one hour before sunrise until one hour after sunset, except that when an animal is harvested the successful hunter is allowed to remain as long as is necessary to remove the animal, and except when authorized by a night hunting permit.
f. Trapping is allowed by permit only. Permit holders shall have their permit on their person at all times while trapping. Permits may be obtained by calling the Lamar Service Center at 719-336-6600 or the local District Wildlife Manager at 719-980-0025.
g. Public access is prohibited in the building envelope and designated safety zones, as posted.
h. Parking is allowed in designated parking lots only.
i. All motorized travel is restricted to the primary access route (CR O).

149. 63 Ranch – Park County

a. Open for hunting from August 15 through the end of February.
b. Open for fishing year-round.

150. South Middle Creek – Huerfano County

a. Public access is prohibited from June 1 through August 31.

151. South Nipple Rim – Moffat County

a. Open for hunting from August 15 through the end of February.
b. Open year-round for watchable wildlife.
c. Discharge of firearms is prohibited with 100' of buildings/corrals as posted.

152. State Line – Baca County

a. Access is by foot only.

153. Steel Canyon – Saguache County

a. Open for watchable wildlife year-round.
b. Open for hunting from August 15 through the end of February.

154. Steinhoff Hill – Larimer County

a. Big game hunting is prohibited, except by means of archery.
b. Small game hunting is prohibited, except by means of archery or shotguns not firing single slugs.

155. Stokes Gulch – Routt County

a. Open for public access from the first day of archery deer and elk season through May 31.

156. Stonehouse Gulch – Saguache County

a. Open for public access from August 15 through the end of February.

157. Stoney Face Mountain – Fremont County

a. Open for public access from September 1 through May 31.

158. Sweetwater – Kiowa County

a. Open for fishing from the last day of Waterfowl Season (or as posted) through October 31.
b. Open for hunting Sept. 1 through the last day of Waterfowl Season (or as posted) to March 30.

159. Table Mountain – Fremont County

a. Camping is prohibited, except during big game season in designated areas only.
b. Horseback riding is prohibited, except during big game season.

c. Public access is prohibited from June 1 through August 31.

160. Tallahassee Road – Fremont County

a. Open for public access from September 1 through May 31.

161. Taylor Draw – Jackson County

a. Open for public access from August 15 through the end of February.

162. Ted's Canyon – Moffat County

a. Open for public access from August 15 through the end of February.
b. Hunting is restricted to big game and small game hunting only.

163. Texas Creek #1 – Fremont County

a. Open for public access from September 1 through May 31.
b. Access is by foot and horseback only, except on 217 A Road.

164. Three Sisters – Jackson County

a. Open for public access from August 15 through the end of February.
b. Access to the property is from parking area at the end of County Road 12E only.

165. Tiger Lily Creek – Chaffee County

a. Open for fishing and watchable wildlife year-round.
b. Hunting is prohibited from March 1 through August 31.

166. Tomichi Dome – Gunnison County

a. Open for hunting from September through the end of February.
b. Open for fishing year-round.
c. Camping is permitted only as posted.

167. Turkey Gulch – Fremont County

a. Open for hunting from September 1 through May 31.

168. Turkey Track Ranch – El Paso County

a. Access to the property is from designated parking area only.

169. Twenty Mile/Grassy Creek – Routt County

a. Open for fishing year-round.
b. Open for hunting from August 15 through the end of February.
c. Small game hunting on weekends and Labor Day is by permit only. A maximum of eight hunters will be allowed daily. A maximum of four hunters is allowed per permit. Permits are free and may be applied for by contacting the Steamboat Springs Service Center at PO Box 775777, Steamboat Springs, CO 80477 or by calling 970-871-2855. Permit application deadline is July 1 annually. Permits will be issued by drawing, and successful applicants will be notified by mail.

170. Vincente Canyon – Conejos County

a. Open for hunting from August 15 through May 31
b. Open for fishing year-round.
c. Camping is allowed only as posted.

171. Warmer Gulch – Park County

a. Open for public access from September 1 through May 31.

172. Waugh Mountain – Fremont/Park County

a. Open for public access from the first day of archery pronghorn season through May 31.

173. Werner Arroyo – Saguache County

a. Open for public access from August 15 through the end of February.

174. West Bear Gulch – Fremont County

a. Public access is prohibited from June 1 through August 31.

175. West Carter Mountain – Grand County

a. Motorized vehicles are restricted to Chimney Rock Road unless posted otherwise.
b. Camping and campfires are allowed within 300 feet of Chimney Rock road (CR 27/FS 103) as posted, 14 day limit on all camps.

176. Willow Creek – Moffat County

a. Open for public access from September 1 through May 31.

177. Windy Ridge – Grand County

a. Motorized vehicle access is restricted to County Road 184.
b. Motorized vehicle access through gate in Section 11 is restricted to use on designated track when road is dry.
c. Parking is restricted in Section 14 as posted.

178. Yampa River – Routt County

a. Open for public access from the first day of archery deer and elk season through May 31.
b. Access to the property is from parking area provided in SWA only.

ARTICLE IV – BOATING RESTRICTIONS APPLICABLE TO ALL DIVISION CONTROLLED PROPERTIES, INCLUDING STATE TRUST LANDS LEASED BY COLORADO PARKS AND WILDLIFE

904 - AQUATIC NUISANCE SPECIES (ANS)

A. All vessels and other floating devices of any kind, including their contents, motors, trailers and other associated equipment, are subject to inspection in accordance with inspection procedures established by the Division prior to launch onto, operation on or departure from any Division-controlled waters or vessel staging areas.

B. Any aquatic nuisance species found during an inspection shall be removed and properly disposed of in accordance with removal and disposal procedures established by the Division before said vessel or other floating device will be allowed to launch onto, operate on or depart from any Division-controlled waters or vessel staging areas.

C. Compliance with the above aquatic nuisance species inspection and removal and disposal requirements is an express condition of operation of any vessel or other floating device on Division-controlled waters. Any person who refuses to permit inspection of their vessel or other

floating device, including their contents, motor, trailer, and other associated equipment or to complete any required removal and disposal of aquatic nuisance species shall be prohibited from launching onto or operating the vessel or other floating device on any Division-controlled water. Further, the vessel or other floating device of any person that refuses to allow inspection or to complete any required removal and disposal of aquatic nuisance species prior to departure from any Division-controlled water or vessel staging area is subject to quarantine until compliance with said aquatic nuisance species inspection and removal and disposal requirements is completed.

D. Any person operating a vessel or other floating device may be ordered to remove the vessel or device from any Division-controlled water by any authorized agent of the Division if the agent reasonably believes the vessel or other floating device was not properly inspected prior to launch or may otherwise contain aquatic nuisance species. Once removed from the water, the vessel or other floating device, including its contents, motor, trailer and associated equipment shall be subject to inspection for, and the removal and disposal of aquatic nuisance species.

E. It is unlawful for any person to, or to attempt to, launch onto, operate on or remove from any Division-controlled water or vessel staging area any vessel or other floating device without first submitting the same, including their contents, motors, trailers and other associated equipment, to an inspection for aquatic nuisance species, and completing said inspection, if such an inspection is requested by any authorized agent of the Division or required by any sign posted by the Division. Further, it is unlawful for any person to fail to complete the removal and disposal of aquatic nuisance species if such removal and disposal is requested by an authorized agent of the Division or required by any sign posted by the Division.

F. It is unlawful for any person to, or to attempt to, launch onto, operate on or remove from any Division-controlled water or vessel staging area any vessel or other floating device if they know the vessel or other floating device, including their contents, motors, trailers, or other associated equipment, contain any aquatic nuisance species.

APPENDIX B

1. State Wildlife Areas governed by regulation #900

Wildlife properties governed by general provisions contained in regulation #900 include those listed in the following table and any new properties acquired during the year for which property specific regulations have not been adopted:

Property Name	County
Alberta Park Reservoir SWA	Mineral
Alma SWA	Park
Andrews Lake SWA	San Juan
Apishapa SWA	Las Animas
Arkansas River/Big Bend SWA	Chaffee
Arkansas River SWA	Prowers
Beaver Creek SWA	Fremont
Big Meadows Reservoir SWA	Mineral
Bob Terrell SWA	Garfield
Brackenbury SWA	Larimer
Brush Creek SWA	Eagle
Buena Vista SWA (Fishing Easement)	Chaffee
Burchfield SWA	Baca
Chesmore SWA (Fishing Easement)	Chaffee
Coke Oven SWA	Pitkin
Creede SWA	Mineral
Deadman SWA	Prowers
Droney Gulch SWA	Chaffee
Georgetown SWA	Clear Creek
Huerfano SWA	Huerfano
Johnson Village SWA (Fishing Easement)	Chaffee
La Jara Reservoir SWA	Conejos
Lake Fork Gunnison SWA (Fishing Easement)	Hinsdale
Marquard SWA (Fishing Easement)	Chaffee
Mason Family SWA	Hinsdale
Middle Taylor Creek SWA	Custer
Mt. Werner SWA (Fishing Easement)	Routt
Purgatoire River SWA	Bent
Oxbow SWA	Otero
Owl Mountain SWA	Jackson
Piceance SWA	Garfield/Rio Blanco
Pioneer Park SWA	Grand
Red Dog SWA	Prowers
Rock Creek SWA	Grand
San Miguel SWA	San Miguel
Seaman Reservoir SWA	Larimer
Spring Creek Reservoir SWA	Gunnison

Steamboat Springs SWA (Fishing Easement)	Routt
Terrace Reservoir SWA	Conejos
Twin Sisters SWA	Larimer
Wheeler SWA	Garfield
Williams Hill SWA	Pitkin
Wright's Lake SWA (Fishing Easement)	Chaffee

2. State Trust Lands governed by regulation #902

Properties leased from the State Land Board (state trust lands) governed by general provisions contained in regulation #902 include those listed in the following table and any new properties acquired during the year for which property specific regulations have not been adopted:

Property Name	**County**
Agate Mountain	Park
Alamosa Canyon	Conejos
Arrowhead	Larimer
Aspen Ridge	Chaffee
Badger Flats	Park
Ben Morgan Canyon	Moffat
Box Elder	Moffat
Boxelder North	Moffat
Carnero	Saguache
Citadel	Moffat
Copper Mountain	Grand
Cross Mountain	Moffat
Disappointment Creek	Dolores
Dry Creek Basin	San Miguel
Dry Creek North	Larimer
Duck Creek	Logan
Eagle Canyon	Larimer
Eleven Mile	Park
Elk Springs #1	Moffat
Flattop Butte	Las Animas
Gerrard	Rio Grande
Guillermo Ranch	Huerfano
Hartsel	Park
Higbee Canyon	Otero
Horse Ranch Pass	Larimer
Iles Grove	Moffat
Jeffway Gulch	Moffat
Jimmy Creek	Larimer
Jubb Creek	Moffat
Keller Lease	Bent
Little Snake	Moffat
Middle Creek	Saguache
Moosehead Mountain	Moffat
Morgan Gulch	Moffat
Old Woman Creek	Saguache
Pinon Ridge	Moffat
Poison Spyder	San Miguel
Poncha Pass	Chaffee
Saddle Mountain	Park

Property Name	County
San Juan Creek	Saguache
Sand Creek Central	Chaffee
Sand Creek South	Baca
Simsberry Draw	Moffat
Sleeping Giant	Routt
Slide Mountain	Grand
South Duffy Mountain	Moffat
Steven’s Gulch	Larimer
Temple Canyon	Moffat
Texas Creek #2	Fremont
Thornburg Draw	Moffat
Three Mile Mountain	Park
Triangle	Moffat
Troublesome Valley Ranch	Grand
Villa Grove	Saguache
Weber Canyon	Montezuma
Weldon Valley	Morgan
Whiskey Creek	Eagle

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Office of the Attorney General

Tracking number: 2015-00091

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

Colorado Parks and Wildlife (406 Series, Wildlife)

on 03/04/2015

2 CCR 406-9

CHAPTER W-9 - WILDLIFE PROPERTIES

The above-referenced rules were submitted to this office on 03/11/2015 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

March 20, 2015 09:19:53

Frederick R. Yarger

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

Permanent Rules Adopted

Department

Department of Natural Resources

Agency

Colorado Parks and Wildlife (406 Series, Wildlife)

CCR number

2 CCR 406-11

Rule title

2 CCR 406-11 CHAPTER W-11 - WILDLIFE PARKS AND UNREGULATED WILDLIFE 1 - eff 05/01/2015

Effective date

05/01/2015

AS APPROVED - 03/04/2015

FINAL REGULATIONS - CHAPTER W-11 - WILDLIFE PARKS AND UNREGULATED WILDLIFE

#1103 - EXEMPTIONS FROM LICENSE REQUIREMENTS:

A. Domestic animals - The following animals are considered domestic and are exempted from the requirements of Parks and Wildlife Commission regulations:

Domestic dog (*Canis familiaris*) including hybrids with wild canids
Domestic cat (*Felis catus*) including hybrids with wild felines
Domestic horse (*Equus caballus*) including hybrids with *Equus assinus*
Domestic ass, burro, and donkey (*Equus assinus*)
Domestic cattle (*Bos taurus* and *Bos indicus*)
Domestic sheep (*Ovis aries*)
Domestic goat (*Capra hircus*)
Domestic swine (*Sus scrofa domestica*)
Domesticated races of hamsters (*Mesocricetus* spp.)
Domesticated races of mink (*Mustela vison*)
Domesticated races of guinea pigs (*Cavia porcellus*)
Domesticated races of gerbils (*Meriones unguiculatus*)
Domesticated races of chinchillas (*Chinchilla laniger*)
Domesticated races of rats (*Rattus norvegicus* and *Rattus*)
Domesticated races of mice (*Mus musculus*)
Domesticated races of European rabbit (*Oryctolagus cuniculus*)
Domesticated races of chickens (*Gallus*)
Domesticated races of turkey (*Meleagria gallopavo*) distinguished morphologically from wild birds
Domesticated races of ducks and geese (*Anatidae*) distinguishable morphologically from wild birds
Domesticated races of European ferret (*Mustela putorius*)
Domesticated races of pigeons ~~(*Columba domestica* and *Columba livia*)~~ and feral pigeons (*Columba domestica* and *Columba livia*)
Domesticated races of guinea fowl (*Numida meleagris*)
Domesticated races of peafowl (*Pavo cristatus*)
Bison (*Bison*) including hybrids with domestic cattle
Asian Water Buffalo (*Bubalus bubalis*)
Ostrich (*Struthio* spp.)
Llama (*Lama glama*)
Rhea (*Rhea* spp.)
Emu (*Dromiceius* spp.)
Alpaca (*Lama pacos*)
Reindeer (*Rangifer tarandus*)
Yak (*Bos grunniens*)
Camels (*Camelus bactrianus* and *Camelus dromedarius*)

C. Wildlife Sanctuary License

As provided in § 33-1-106, C.R.S., Wildlife Sanctuary licenses are issued to wildlife sanctuaries as defined in § 33-1-102, C.R.S.

1. Wildlife Sanctuary licenses may be issued only to nonprofit entities.

2. Wildlife sanctuaries must comply with all requirements of § 33-1-102(52) and § 33-4-102(14), C.R.S.

3. Except as provided herein, wildlife sanctuaries must be certified by the AZA as a "related facility" prior to and maintain such certification as a condition of the issuance of a wildlife sanctuary license. Facilities previously licensed by the Division as a commercial wildlife park prior to January 1, 2001, and incorporated as a 501(c)(3) non-profit which functioned as wildlife sanctuaries may continue to operate as wildlife sanctuaries under the wildlife parks facility requirements set forth in Regulation No. 1108. In addition, these existing facilities may expand operation onto contiguous property owned by them under those same facilities requirements and without AZA certification. Provided further that, when one of these existing facilities is impacted by an act of nature (e.g. fire or flood) that prevents it from reasonably continuing its operation at the present location, the facility may, with the approval of the Director, move to a new location and continue its operation without being subject to the generally applicable AZA certification requirement, provided the relocated facility complies with the wildlife parks facility requirements set forth in #1108 of these regulations, and all wildlife sanctuary operations at the present locations cease.

4. Wildlife possessed by a wildlife sanctuary shall be surgically sterilized within thirty days of arrival, except that pregnant animals shall be surgically sterilized immediately following weaning and animals eligible for participation in the AZA's Species Survival Plan ("SSP") need not be sterilized. However, documents supporting such SSP eligibility must be provided to the Division within 30 days of arrival at the wildlife sanctuary.

   Any nonprofit sanctuary facility previously licensed by the Division as a commercial wildlife park prior to January 1, 2001, shall submit a sterilization plan for wildlife possessed by such facility for approval by the Division. Such plan shall be submitted to the Division by January 1, 2006 and shall provide for surgical sterilization of all wildlife possessed at such facility as of November 1, 2005, in an expeditious manner, but in no event later than May 1, 2007. Wildlife brought onto such a facility after November 1, 2005, shall be surgically sterilized within thirty days of arrival, except that pregnant animals shall be surgically sterilized immediately following weaning.

   In lieu of surgical sterilization, wildlife sanctuaries may submit a birth control plan for animals located on the facility for approval by the Division. Such plans may be approved if they provide sufficient assurances against propagation of animals at the facility.

~~5. No wildlife taken from the wild shall be possessed by any wildlife sanctuary.~~

D. Except as provided herein, no wildlife taken from the wild shall be possessed by any commercial wildlife park, noncommercial wildlife park or wildlife sanctuary in Colorado. Wildlife taken from the wild outside of Colorado may be possessed by a wildlife sanctuary provided:

1. The wildlife has been determined by the wildlife management agency of the source state or country to be habituated and non-releasable and has otherwise authorized the export of the wildlife, and

2. The wildlife has been held in captivity in the source state or country for no less than 24 months. However, the Director may authorize the importation of wildlife that does not meet the captivity period requirement if he/she determines it is proper for management of the Division and otherwise beneficial to the management, preservation or conservation of wildlife resources. In making such determination, the Director shall consider:

   a. other placement or wildlife management options available to the exporting state or country,
   b. capacity and resources of the importing wildlife sanctuary,
   c. impact to state wildlife management programs, and
   d. any other wildlife management criteria.

Provided however, that no more than one such importation per calendar year (based on a three-year rolling average) may be approved for any wildlife sanctuary.

For the purposes of this regulation, wildlife born in captivity, even if born to wildlife taken from the wild, are not considered “taken from the wild.”

Basis and Purpose:

Addition of the Asian Water Buffalo to the Domestic Species List

The addition of the Asian Water Buffalo to the domestic species list was based off of a citizen petition request. The citizen claimed that Asian Water Buffalo have been domesticated for over 5,000 years and that they have a similar diet, potential for damage, behavior, and common diseases as domestic cattle. Based on the similarities between cattle and Asian Water Buffalo, the petitioner felt they should treated as livestock versus wildlife. CPW staff supported the petitioner's request as did the State Department of Agriculture.

Prohibiting Possession of Animals Taken from the Wild in Colorado by all Wildlife Parks and Sanctuaries. Exceptions for when Wildlife Sanctuaries may Possess Animals Taken from the Wild in other States

In September of 2012, Colorado Parks and Wildlife denied The Wild Animal Sanctuary's request to import and possess a nuisance bear named "Meatball" from California. This refusal was based on previous regulation #1104.C.5, which was adopted by the Wildlife Commission in 2005, and stated that "no wildlife taken from the wild shall be possessed by any wildlife sanctuary".

This denial spurred several citizen petitions to be filed in January of 2013 asking the Parks and Wildlife Commission to change the regulation. The Parks and Wildlife Commission voted to deny all four petitions, but requested CPW staff to continue dialogue with the sanctuaries to address their concerns.

Based on this dialogue, CPW has identified areas where it can allow wildlife sanctuaries additional opportunities to accept animals taken from the wild in other states, provinces and countries, while maintaining the existing prohibition on possession of animals taken from the wild in Colorado, and otherwise protecting the wildlife management programs CPW has in place to keep wild animals wild and in the wild in Colorado. The regulation change also extends the prohibition of possessing animals taken from the wild in Colorado to all wildlife parks, not just sanctuaries.

The primary statutory authority for these regulations can be found in § 24-4-103, C.R.S., and the state Wildlife Act, §§ 33-1-101 to 33-6-209, C.R.S., specifically including, but not limited to: §§ 33-1-106, C.R.S.

EFFECTIVE DATE - THESE REGULATIONS SHALL BECOME EFFECTIVE MAY 1, 2015 AND SHALL REMAIN IN FULL FORCE AND EFFECT UNTIL REPEALED, AMENDED OR SUPERSEDED.

APPROVED AND ADOPTED BY THE PARKS AND WILDLIFE COMMISSION OF THE STATE OF COLORADO THIS 4TH DAY OF MARCH, 2015.

APPROVED:
Robert W. Bray
Chairman

ATTEST:
Jeanne Horne
Secretary

CYNTHIA H. COFFMAN
Attorney General

DAVID C. BLAKE
Chief Deputy Attorney General

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Office of the Attorney General

Tracking number: 2015-00092

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Colorado Parks and Wildlife (406 Series, Wildlife)

on 03/04/2015

2 CCR 406-11

CHAPTER W-11 - WILDLIFE PARKS AND UNREGULATED WILDLIFE

The above-referenced rules were submitted to this office on 03/11/2015 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

March 20, 2015 09:20:11

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

Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Real Estate

CCR number

4 CCR 725-7

Rule title

4 CCR 725-7 COMMUNITY ASSOCIATION MANAGERS 1 - eff 05/06/2015

Effective date

05/06/2015

[THIS PAGE NOT FOR PUBLICATION IN THE CODE OF COLORADO REGULATIONS]

DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
COMMUNITY ASSOCIATION MANAGERS
4 CCR 725-7

NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
March 4, 2015

D RULES – RENEWAL, TRANSFER, INACTIVE LICENSE, REINSTATEMENT AND INSURANCE

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado and to all persons who have requested to be advised of the intention of the Director of the Division of Real Estate ("Director") to promulgate rules, or to amend, repeal or repeal and re-enact the present rules related to community association managers.

STATEMENT OF BASIS

The statutory basis for the rules titled Rules Regarding Community Association Managers is Part 10 of Title 12, Article 61, Colorado Revised Statutes, as amended.

STATEMENT OF PURPOSE

The purpose of this rule is to effectuate the legislative directive to promulgate necessary and appropriate rules in conformity with the state statutes of the Community Association Managers Practice Act.

SPECIFIC PURPOSE OF THIS RULEMAKING

The specific purpose of this rule is to promulgate rules with respect to the requirements for renewing, transferring, inactivating, reinstatement and insurance requirements of a licensee and ensures that community association managers are familiar with current regulations.

Proposed New, Amended and Repealed Rules

[Deleted material shown ~~struck through~~, new material shown ALL CAPS. Rules, or portions of rules, which are unaffected are reproduced. Readers are advised to obtain a copy of the complete rules of the Board at www.dora.state.co.us/real-estate/.

D Rules – Renewal, Transfer, Inactive License, Reinstatement and Insurance

D-1) Initial license renewal.

An initial license will be issued for a period commencing on the issuance date and expiring on June 30th following the date of issuance.

D-2) Annual renewal.

The license renewal period begins May 1st of each calendar year and ends June 30th of each calendar year. Licensees who renew their license may only do so if they are compliant with all provisions of the Act and the Director rules.

D-3) Inactive license request.

A licensee may request that the Division's records show their license inactive until proper request for reactivation has been made, or until their license has expired.

D-4) Inactive license must be renewed.

A CAM whose license is on inactive status must apply for renewal of such inactive license and pay the regular renewal fees.

D-5) Reinstatement.

A licensee with an expired license may choose to reinstate his or her license. The reinstatement period begins July 1st of each calendar year immediately following the expiration and ends on June 30th of each calendar year. Individuals who reinstate their expired license may only do so if they are compliant with all provisions of the Act and the Director rules. The fee to reinstate will be by payment of the reinstatement fee equal to one and one-half the regular renewal fee. Any person who fails to apply for reinstatement within one year after expiration of a license will be treated as a new applicant for licensure.

D-6) Renewal or reinstatement using method approved by Director.

A CAM may renew or reinstate their license online or by submitting a renewal or reinstatement application form provided by the Division or by other methods acceptable to the Director.

D-7) Renewal and reinstatement fees are non-refundable.

All fees paid for the renewal or reinstatement of a license are non-refundable.

D-8) Form and fees required to change license.

No change in license status will be made except in a manner acceptable to the Director to effect such change and upon payment of the statutory fees for such changes.

D-9) Errors and omissions (E&O) insurance requirements.

Every active licensed CAM company and licensed sole proprietorship must have in effect a group policy of errors and omissions insurance to cover all acts requiring a license.

1) CAM companies and licensed sole proprietorships must obtain errors and omissions group

coverage from an insurance carrier subject to the following terms and conditions:

a) The insurance carrier is licensed and authorized by the Colorado Division of Insurance to write policies of errors and omissions insurance in this state and is in conformance with all Colorado statutes.

b) The insurance carrier maintains an A.M. best rating of “A-” or better.

2) The group policy, at a minimum, must comply with all relevant conditions set forth in this Rule D-9 and the insurance carrier so certifies in an affidavit issued to the insured in a form specified by the Director and agrees to immediately notify the Director of any cancellation or lapse in coverage. Coverage must provide, at a minimum, the following:

a) The contract and policy are in conformance with this Rule D-9 and all relevant Colorado statutory requirements.

b) Coverage for all acts for which a Community Association Manager license is required, except those illegal, fraudulent or other acts which are normally excluded from such coverage.

c) Coverage is for not less than $1,000,000 per covered claim, with an annual aggregate limit of not less than $1,000,000. Costs of investigations and defense must be outside of these limits and are subject to their own per claim and aggregate limits.

d) Payment of claims by the provider will be on a first dollar basis and the provider will look to the insured for payment of any deductible.

e) Coverage contains a deductible no greater than $5,000. If however, a deductible of greater than $5,000 is requested by the CAM company or licensed sole proprietorship, any such deductible sum exceeding $5,000 may be satisfied by the CAM company or licensed sole proprietorship by depositing such sums in an insured savings account or a certificate of deposit issued by a state or national bank, credit union or savings and loan association doing business in this state. Any such savings account, deposit, or certificate of deposit must be in the amount specified by the Director and must be assigned to the Colorado Division of Real Estate, Department of Regulatory Agencies for the use of the people of the State of Colorado. The CAM company or sole proprietorship will provide proof of any such account or deposit in or certificate of deposit to the Director upon request.

f) That the provider of the policy has executed an affidavit in a form or manner specified by the Director attesting that the policy is in force and, at a minimum, complies with all relevant conditions set forth herein and that the provider will immediately notify the Director in writing of any cancellation or lapse in coverage of any policy.

3) Each CAM company and sole proprietorship applying for licensure, activation, renewal or reinstatement must certify compliance with this Rule D-9 and § 12-61-1004, C.R.S., on forms or in a manner prescribed by the Director. Any CAM company or sole proprietorship who so certifies and fails to obtain errors and omissions group coverage or who fails to provide proof of continuous coverage directly to the Director, will be placed on inactive status and all licensees operating under such policy will placed on inactive status:

a) Immediately, if certification of current insurance coverage is not provided to the Director; or

b) Immediately upon the expiration of any current insurance when certification of continued coverage is not provided.

D-10) Crime fidelity insurance requirements.

Every active licensed CAM company and licensed sole proprietorship must have in effect a crime fidelity insurance policy covering the dishonest acts of all employees in the CAM company or sole proprietorship.

1) CAM companies and licensed sole proprietorships must obtain crime fidelity coverage from an insurance carrier or be named as an additional insured on the common interest community's fidelity insurance policy, subject to the following terms and conditions:

   a) The insurance carrier is licensed and authorized by the Colorado Division of Insurance to write policies of crime fidelity insurance in this state and is in conformance with all Colorado statutes.

   b) The insurance carrier maintains an A.M. best rating of "A-"or better.

2) The policy, at a minimum, must comply with all relevant conditions set forth in this Rule D-10 and coverage must provide, at a minimum, the following:

   a) The contract and policy are in conformance with this Rule D-10 and all relevant Colorado statutory requirements.

   b) Coverage is exclusive to covering acts contemplated under the current Act and the Director rules.

   c) Coverage for each common interest community managed, must not be less in aggregate than two months of current assessments plus reserves, as calculated from the current budget of the common interest community, or such higher amount as the common interest community may require in its bylaws or management contract with the CAM company or licensed sole proprietorship. This coverage includes, but is not limited to, any CAM company, sole proprietorship, or designated manager that controls or disburses funds of the common interest community, or that is authorized to sign checks on behalf of the common interest community. Costs of investigations must be outside of these limits and are subject to their own per claim and aggregate limits.

   d) Payment of claims by the provider will be on a first dollar basis and the provider will look to the insured for payment of any deductible.

   e) Coverage contains a deductible no greater than one (1) percentage point of the total face amount of the policy.

   f) That the provider of the policy or its designated agent has executed an affidavit in a form or manner specified by the Director attesting that the policy is in force and, at a minimum, complies with all relevant conditions set forth in these Director rules.

3) Each CAM company and sole proprietorship applying for licensure, activation, renewal or reinstatement must certify compliance with this Rule D-10 and § 12-61-1004, C.R.S., on forms or in a manner prescribed by the Director. Any CAM company or sole proprietorship who so certifies

and fails to obtain fidelity coverage or to provide proof of continuous coverage directly to the Director, will be placed on inactive status and all licensees operating under such policy will be placed on inactive status:

a) Immediately, if certification of current insurance coverage is not provided to the Director; or

b) Immediately upon the expiration of any current insurance when certification of continued coverage is not provided.

CYNTHIA H. COFFMAN
Attorney General

DAVID C. BLAKE
Chief Deputy Attorney General

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Tracking number: 2015-00055

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

Division of Real Estate

on 03/09/2015

4 CCR 725-7

COMMUNITY ASSOCIATION MANAGERS

The above-referenced rules were submitted to this office on 03/23/2015 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

March 26, 2015 12:53:05

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

Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Real Estate

CCR number

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4 CCR 725-7 COMMUNITY ASSOCIATION MANAGERS 1 - eff 05/06/2015

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DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
COMMUNITY ASSOCIATION MANAGERS
4 CCR 725-7

NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
March 4, 2015

A RULES – LICENSE QUALIFICATIONS, APPLICATIONS AND EXAMINATIONS

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado and to all persons who have requested to be advised of the intention of the Director of the Division of Real Estate ("Director") to promulgate rules, or to amend, repeal or repeal and re-enact the present rules related to community association managers.

STATEMENT OF BASIS

The statutory basis for the rules titled Rules Regarding Community Association Managers is Part 10 of Title 12, Article 61, Colorado Revised Statutes, as amended.

STATEMENT OF PURPOSE

The purpose of this rule is to effectuate the legislative directive to promulgate necessary and appropriate rules in conformity with the state statutes of the Community Association Managers Practice Act.

SPECIFIC PURPOSE OF THIS RULEMAKING

The specific purpose of this rule is to promulgate rules with respect to the requirements for licensure and ensures that community association managers are familiar with current regulations.

Proposed New, Amended and Repealed Rules

[Deleted material shown ~~struck through~~, new material shown ALL CAPS. Rules, or portions of rules, which are unaffected are reproduced. Readers are advised to obtain a copy of the complete rules of the Board at www.dora.state.co.us/real-estate/.

A Rules – License Qualifications, Applications and Examinations

A-1) Definitions.

The following definitions are applicable to all rules in these Director rules:

1) The “Act” or the “Community Association Managers Practice Act” means §§ 12-61-1001, et seq., C.R.S.

2) “Community Association Manager” or “CAM” or “Manager” has the meaning set forth in § 12-61-1001(4), C.R.S.

3) “Licensee” means any person or entity licensed as a Community Association Manager pursuant to the Act.

4) “Community Association Management Company” or “CAM company” means any entity, including but not limited to a firm, partnership, limited liability company, association, or corporation, that meets the definition of a Community Association Manager in § 12-61-1001(4), C.R.S., or applies to the Division to become a Community Association Manager.

5) “Designated Manager” means an individual who is designated to be a qualified active manager for a Community Association Management Company, qualified to act as a community association manager, and who is responsible for management and supervision of the licensed actions of the company and all persons employed by, or acting at any time on behalf of, the company and who is personally responsible for the handling of any and all common interest community funds received or disbursed by the company pursuant to § 12-61-1003(6)(b) and (7), C.R.S.

6) “Applicant” means any person or entity applying for licensure as a Community Association Manager under the Act.

7) “License” means any license issued by the Director or the Division pursuant to the Act.

8) “Director rules” means any and all rules issued by the Director pursuant to the Act, including but not limited to Community Association Manager Rules A, B, C, D, E, F, G, and H.

A-2) Requirements that must precede examination and application.

An applicant must hold one or more of the credentials set forth in § 12-61-1003(5)(a)(I)(A), (B), (C), or (D), or § 12-61-1003(5)(d), C.R.S., and provide proof of completion in a manner prescribed by the Director prior to applying for a CAM license.

A-3) Qualifying education credential requirements.

An applicant must hold a credential pursuant to § 12-61-1003(5)(a)(I)(A), (B), (C), (D), or § 12-61-1003(5)(d), C.R.S. or complete 24 hours of classroom instruction, or equivalent distance learning hours, and must successfully complete the following courses of study approved by the Director:

1) A minimum of 8 hours of Colorado Common Interest Ownership Act, Colorado Revised Nonprofit Act and other applicable provisions of Colorado law;

2) A minimum of 7 hours of financial, risk and facilities management;

3) A minimum of 5 hours of governance and legal documents of an association; and

4) A minimum of 4 hours of ethics, bid requests and contract provisions.

A-4) Examinations only given to those qualified.

Only an applicant holding a qualified education credential as prescribed in Rule A-3 may sit for the CAM licensing examination. However, one instructor from each approved educational provider offering a recognized credential pursuant to § 12-61-1003(5)(a)(I)(A),(B),(C), or (D), C.R.S., may sit for the examination one time during any 12 month period.

A-5) Community Association Manager license examination expiration and application requirements.

The CAM license examination is made up of two parts, a general portion and a state portion. If an applicant fails one or both parts of the examination, the applicant may retake the failed portion(s). A passing score for either part of the examination is valid for one year only. An application received by the Division must be accompanied by the statutory fee, proof of completion of the required credential and proof of successful completion of both portions of the examination within the year prior to the application being received by the Division. No examination score for either portion of the examination will be considered valid after one year.

A-6) Examination results certified only if licensed.

The Director will not certify any information concerning the results of any examination as it pertains to any person who has taken the examination unless such person is or has been licensed as a Colorado CAM.

A-7) License processing time frames.

Provided that an applicant has submitted a complete and satisfactory application in compliance with §§ 12-61-1002, -1003, C.R.S., and the Director rules, the Director will issue a license within 10 business days after receipt by the Director of satisfactory results from the fingerprint-based criminal history record check. If the application or record check is not complete or satisfactory, the applicant will be notified that their license application has been deferred pending receipt of required compliance item(s). The application for a CAM license that has been approved by the Director subject to the receipt of certain compliance items will be issued on an inactive status until all compliance items have been received by the Director. No activities requiring a license may be performed while the license is on inactive status.

A-8) Applicants who have held a community association manager license in another jurisdiction.

In lieu of the qualifying education credential requirements found in Rule A-3, an applicant who has held a community association manager license in another jurisdiction, as set forth in § 12-61-1003(5)(d), C.R.S., may submit a “certification of licensing history” issued by each jurisdiction where the applicant is currently or was previously licensed as a community association manager. The license history must be submitted prior to sitting for the examination, along with a complete and satisfactory application in accordance with the Director rules. The Director will issue a license within 10 business days after receipt by the Director of satisfactory results from the fingerprint-based criminal history record check, and a determination by the Director that the applicant has established they possess the credentials and qualifications substantively

equivalent to the requirements for Colorado licensure. Within 30 calendar days after issuance of the CAM license, the applicant must complete successfully, and provide the Director proof of successful completion, of the state portion of the examination. Failure to provide the Director with proof of successful completion of the state portion of the examination in the prescribed timeframe will result in the license being placed on inactive status and no activities requiring a license may be performed.

A-9) Applicant with previous suspension or revocation of a community association manager license or certification.

Pursuant to § 12-61-1003(3)(b), C.R.S., an applicant who has held a community association manager license or certification that has been suspended or revoked in Colorado or in any other jurisdiction that regulates community association managers within the last 10 years, with at least 2 years having elapsed since the date of that suspension or revocation, must file prior to or with their application for licensing the following information and documents:

1) A written and signed personal explanation and detailed account of the facts and circumstances surrounding each suspension or revocation;

2) The completed Community Association Manager application addendum form found on the Division's website;

3) Results of any hearing(s), and copies of the official reports of the suspension and revocation from the jurisdiction where any such suspension or revocation took place;

4) If the applicant is to be employed under a designated manager licensee, then that designated manager must submit a letter stating that he or she is aware of the specific suspension(s) or revocation(s) and has agreed to employ the applicant; and

5) Any other documentation requested by the Director.

A-10) Applicant with prior legal involvement.

Pursuant to § 12-61-1003(3)(c), C.R.S., an applicant who has been convicted of or pled guilty or nolo contendere to a misdemeanor or a felony, has misdemeanor or felony charges pending against him or her, or has agreed to a deferred prosecution, deferred judgment, or deferred sentence that is not yet completed, excluding all misdemeanor traffic violations (collectively referred to as a "violation"), must file prior to or with his or her application for licensing the following information and documents:

1) A written and signed personal explanation and detailed account of the facts and circumstances surrounding each violation;

2) The completed Community Association Manager application addendum form found on the Division's website;

3) Results of all court hearing(s) related to each violation, in the form of copies of charges, disposition, pre-sentencing report and most recent probation or parole report;

4) If the applicant is to be employed under a designated manager licensee, then that designated manager must submit a letter stating that he or she is aware of each violation and has agreed to employ the applicant; and

5) Any other documentation requested by the Director.

A-11) Preliminary advisory opinion.

At any time prior to submission of a formal application for licensure, a person may request that the Director issue a preliminary advisory opinion regarding the potential effect that previous conduct, license and certification suspension(s) or revocation(s), criminal conviction(s), or violation(s) of community association law, may have on a formal application for licensure ("PAO"). A PAO may be issued by the Director in his or her sole discretion, in order to provide preliminary advisory guidance.

1) Potential applicants may request a PAO for any of the following reasons:

    a) If the individual has been convicted of, plead guilty or nolo contendere to any crime in a domestic, foreign or military court;

    b) If the individual has held a Community Association Manager license or certification that has been suspended or revoked within the last 10 years;

    c) If the individual has had other professional licenses, certifications or registrations issued by Colorado, the District of Columbia, any other states or foreign countries, revoked or suspended for fraud, theft, deceit, material misrepresentations or the breach of a fiduciary duty and such suspension or revocation denied authorization to practice as: a mortgage loan originator or similar license; real estate broker; real estate appraiser; an insurance producer; an attorney; a securities broker-dealer; a securities sales representative; an investment advisor; or an investment advisor representative; or

    d. Any other conduct that would impact the public trust.

2) Individuals requesting a PAO must complete the preliminary advisory opinion application located on the Division of Real Estate's website.

3) Individuals requesting a PAO must submit all relevant documents related to any conduct or actions as set forth herein. Incomplete requests will not be processed. The Director may, at any time, request additional information regarding the PAO request. Such relevant or related documents may include, but are not limited to:

    a) Police officer reports;

    b) Dispositions documents;

    c) Court documents;

    d) Original charges documents;

    e) Stipulated agreements; or

    f) Final agency orders.

4) Individuals requesting a PAO must submit a written and signed personal explanation and detailed

account of the facts and circumstances.

5) Any PAO will not be binding on the Director or limit the Director's authority to investigate a future formal application for licensure.

6) An individual seeking a PAO is not an applicant for licensure and the issuance of an unfavorable opinion will not prevent such individual from making application for licensure pursuant to the Act and the Director rules.

7) No PAO will be considered final agency action. PAO's are not subject to appeal or judicial review.

A-12) Criminal history check required prior to application.

An applicant for an initial license must submit a set of fingerprints to the Colorado Bureau of Investigation and the Federal Bureau of Investigation for the purpose of conducting a state and national criminal history record check prior to submitting an application for a license. Fingerprints must be submitted to the Colorado Bureau of Investigation for processing in a manner acceptable to the Colorado Bureau of Investigation. Fingerprints must be readable and all personal identification data completed in a manner satisfactory to the Colorado Bureau of Investigation. The Director may acquire a name-based criminal history record check for an applicant who has twice submitted to a fingerprint-based criminal history record check and whose fingerprints are unclassifiable.

A-13) Denied license notice required.

If an applicant for licensure is denied by the Director for any reason, the applicant will be informed in writing of the denial and the reason(s) therefore. As set forth in § 12-61-1011, C.R.S., an applicant whose license application was denied for any reason has a right to a proceeding on the denial to be conducted by an authorized representative of the Director or by an administrative law judge pursuant to §§ 24-4-104 and -105, C.R.S.

A-14) Director has course audit authority.

The Director or his or her designee may audit any course of study and may request from each educational provider of any course under § 12-61-1003(5)(a)(I) through (III), C.R.S., all instructional material related thereto and student attendance records as may be necessary for an investigation in the enforcement of the Act and the Director rules. The purpose of such audit is to ensure that educational providers and credential providing entities adhere to the approved course of study and credential designations, offer course material and instruction consistent with acceptable education standards and instruct in such a manner that the desired learning objectives are met. Failure to comply with the provisions of this Rule A-14 may result in the withdrawal of Director course and designated credential approval.

A-15) Invalid payment voids application.

If the fees accompanying any application or registration made to the Director (including fees for renewals, transfers, etc.) are paid for by check and the check is not immediately paid upon presentment to the bank upon which the check was drawn, or if payment is submitted in any other manner, and payment is denied, rescinded or returned as invalid, the application will be deemed incomplete. The application will only be deemed complete if the Director has received payment of all application or registration fees together with any fees incurred by the Division including the fee required by state fiscal rules for the clerical services

necessary for reinstatement within 60 days of the Division mailing notification of an incomplete application.

CYNTHIA H. COFFMAN
Attorney General

DAVID C. BLAKE
Chief Deputy Attorney General

MELANIE J. SNYDER
Chief of Staff

FREDERICK R. YARGER
Solicitor General

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Office of the Attorney General

Tracking number: 2015-00052

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

Division of Real Estate

on 03/09/2015

4 CCR 725-7

COMMUNITY ASSOCIATION MANAGERS

The above-referenced rules were submitted to this office on 03/23/2015 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

March 26, 2015 12:54:27

Frederick R. Yarger

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

Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Real Estate

CCR number

4 CCR 725-7

Rule title

4 CCR 725-7 COMMUNITY ASSOCIATION MANAGERS 1 - eff 05/06/2015

Effective date

05/06/2015

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DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
COMMUNITY ASSOCIATION MANAGERS
4 CCR 725-7

NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
March 4, 2015

B RULES – CONTINUING EDUCATION

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado and to all persons who have requested to be advised of the intention of the Director of the Division of Real Estate ("Director") to promulgate rules, or to amend, repeal or repeal and re-enact the present rules related to community association managers.

STATEMENT OF BASIS

The statutory basis for the rules titled Rules Regarding Community Association Managers is Part 10 of Title 12, Article 61, Colorado Revised Statutes, as amended.

STATEMENT OF PURPOSE

The purpose of this rule is to effectuate the legislative directive to promulgate necessary and appropriate rules in conformity with the state statutes of the Community Association Managers Practice Act.

SPECIFIC PURPOSE OF THIS RULEMAKING

The specific purpose of this rule is to promulgate rules with respect to the requirements for continuing education and ensures that community association managers are familiar with current regulations.

Proposed New, Amended and Repealed Rules

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B Rules – Continuing Education

B-1) When continuing education is required.

The continuing education requirements for a licensed CAM will begin after issuance of the initial license. Individuals must complete continuing education requirements prior to applying to renew an active license, to activate an inactive license or to reinstate an expired license to active status. As prescribed in Rule A-3, completion of the pre-licensing credentials in the same initial licensing period in which the license was approved will satisfy the continuing education requirements in that initial licensing period.

B-2) Methods of completing continuing education.

A licensed CAM may satisfy the entire continuing education requirement through one of the following options:

1) Complete 8 hours of continuing education courses in approved subjects as prescribed in Rule B-3; or

2) Successfully pass the Colorado state portion of the CAM examination.

B-3) Approved continuing education subjects.

All continuing education courses must contribute directly to the professional competence of a licensee. Credit for continuing education courses must be acquired through successful completion of instruction in one or more of the following subjects:

1) Legal documents of a common interest community;
2) Colorado Common Interest Ownership Act;
3) Colorado and Federal Fair Housing Law;
4) Colorado Non-Profit and Corporation Acts;
5) Roles and responsibilities of managers, owners, committees and the executive board of a common interest community;
6) Management ethics for professional community association managers;
7) Developing and enforcing common interest community rules;
8) Manager's role in organizing, assisting, and conducting board meetings;
9) Preparing budgets and funding reserves;
10) Assessment collection policies and procedures;
11) Remedies available for collecting delinquent payments from owners in a common interest community;
12) Overview of financial statements, reporting methods, and operations;
13) Effective risk management and insurance programs;
14) Implementing and evaluating maintenance programs;
15) How to prepare a bid request and key contract provisions;
16) Basic areas of employment addressed by federal, state, and local law; and
17) Any other subject matter as approved by the Director.

B-4) Distance learning permitted, defined.

All continuing education courses may be offered and completed by distance learning. Distance learning means courses offered outside the traditional classroom setting in which the instructor and learner are

separated by distance and/or time.

B-5) Courses excluded from continuing education credit.

The following types of continuing education courses will not qualify for continuing education credit:

1) Sales or marketing meetings conducted in the general course of a manager's practice.
2) Orientation, personal growth, self-improvement, self-promotion or marketing sessions.
3) Motivational meetings or seminars.
4) Examination preparation or exam technique courses.

B-6) Courses automatically accepted for continuing education credit.

The following continuing education courses may be accepted for continuing education credit without Director pre-approval so long as they comply with all provisions of this Rule B except Rule B-7.

1) Courses offered by accredited colleges, universities, community or junior colleges, public or parochial schools or government agencies.
2) Courses developed and offered by quasi-governmental agencies.
3) Courses approved by and taken in satisfaction of another occupational licensing authority's education requirements.
4) Courses in the subject matters listed in Rule B-3 offered by a provider approved by the Colorado Board of Continuing Legal and Judicial Education.

B-7) Courses requiring Director approval for continuing education credit.

The following continuing education courses must receive Director approval prior to offering:

1) Courses offered by proprietary real estate schools approved by the Colorado Division of Private Occupational Schools.
2) Currently approved courses that are changed in any substantive way.
3) Courses offered by any provider proposing to offer course(s) on subjects not listed in Rule B-3.
4) Courses offered by proprietary real estate schools approved as out of state providers by the Colorado Department of Private Occupational Schools, and are not approved pursuant to Rule B-6.
5) Courses offered by a designated manager to their employed managers.
6) Courses offered by providers exempt under the provisions of § 12-59-104, C.R.S.
7) Courses offered by local, state or national community manager, homeowner or business associations.

B-8) Administrative rules for continuing education courses.

The following course format and administrative requirements apply to all continuing education courses for a licensed CAM.

1) Courses must be at least 1 hour in length, containing at least 50 instructional minutes.
2) A maximum of 8 hours of credit may be earned per day.
3) No course may be repeated for credit in the same calendar year.
4) Instructors may receive credit for classroom teaching hours once per year, per course taught.
5) Hours in excess of 8 may not be carried forward to satisfy a subsequent year's education

requirement.

6) No provider may waive, excuse completion of, or award partial credit for the full number of course hours.
7) No examination or other equivalency may substitute for the completion of the entire continuing education course.
8) No credit may be earned for remedial education completed as part of a disciplinary action, or alternative to disciplinary action.
9) No course offering by a provider will be accepted unless the provider has either been granted a certificate of approval by the Colorado Department of Higher Education, Division of Private Occupational Schools, or is exempt from such requirement pursuant to § 12-59-104, C.R.S.
10) Continuing education courses must maintain and improve a CAM's skill, knowledge, and competency in community association management practice.

B-9) Term of course approval.

Course approval certification will be for a period of 3 years, except that an annual or one-time seminar or conference offering may be approved for a specific date or dates.

B-10) Proof of course completion.

Each Colorado licensed CAM is responsible for securing evidence of course completion in the form of an affidavit, certificate or official transcript of the course. Said documentation must be in sufficient detail to show the name of the licensee, course subject, content, duration, date(s) and contain the authentication of the provider. Licensees must retain proof of continuing education completion for 4 years, and provide said proof to the Director upon request.

B-11) Provider must retain records.

Each approved provider must retain copies of course outlines or syllabi, complete records of attendance for a period of 4 years, and provide the records to the Director upon request.

B-12) Course approval application process.

Continuing education providers required to have Director course approval must, in accordance with all of the provisions of the B Rules, submit an application form prescribed by the Director, along with the following information at least 30 days prior to the proposed class dates:

1) Detailed course outline or syllabus, including the intended learning outcomes, the course objectives and the approximate time allocated for each topic.
2) A copy of the course exam(s) and instructor answer sheet if applicable. In the absence of an exam, the criteria used in evaluating a person's successful completion of the course objectives.
3) A copy of instructor teaching credentials. If none, a résumé showing education and experience which evidence mastery of the material to be presented.
4) A copy of advertising or promotional material used to announce the offering.
5) Upon Director request, a copy of any textbook(s), manual(s), audio(s), videotapes, or other instructional material.
6) For courses offered through distance learning, evidence, in a form prescribed by the Director, that the method of delivery and course structure is consistent with acceptable education standards, and that the desired learning objectives will be met. The Director will approve methods of delivery certified by the Association of Real Estate License Law Officials (ARELLO), or by a substantially equivalent authority and method.

B-13) Providers subject to statute, rule and course audit.

By offering community association manager continuing education in Colorado, each provider agrees to comply with all relevant statutes and the Director rules, and to permit the Director or his or her designee to audit said courses at any time and at no cost.

B-14) Licensee attests to compliance by submitting application.

The act of submitting an application for renewal, activation or reinstatement of a CAM license will mean that the licensee attests to compliance with all continuing education requirements found in the Director rules.

CYNTHIA H. COFFMAN
Attorney General

DAVID C. BLAKE
Chief Deputy Attorney General

MELANIE J. SNYDER
Chief of Staff

FREDERICK R. YARGER
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Office of the Attorney General

Tracking number: 2015-00053

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Division of Real Estate

on 03/09/2015

4 CCR 725-7

COMMUNITY ASSOCIATION MANAGERS

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March 26, 2015 12:53:44

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

Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Real Estate

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DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
COMMUNITY ASSOCIATION MANAGERS
4 CCR 725-7

NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
March 4, 2015

C RULES – LICENSING - OFFICE

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado and to all persons who have requested to be advised of the intention of the Director of the Division of Real Estate ("Director") to promulgate rules, or to amend, repeal or repeal and re-enact the present rules related to community association managers.

STATEMENT OF BASIS

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Proposed New, Amended and Repealed Rules

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C Rules – Licensing - Office

C-1) Individual proprietor must be sole owner.

A CAM licensed as an individual doing business under a trade name must be the sole owner of that trade name.

C-2) Individual proprietor may not appear to be corporate.

A CAM licensed as a sole proprietorship may not adopt a trade name which includes the following words: corporation, partnership, limited liability company, limited, incorporated, or the abbreviations thereof**.**

C-3) Qualifications for community association management companies.

As set forth in § 12-61-1003(6), C.R.S., when a CAM company submits a license application to qualify as a CAM, it must comply with the following:

1) Designate, and thereafter maintain, a qualified active CAM for the CAM company who is responsible for management and supervision of the licensed actions of the CAM company and all persons employed by, or acting at any time on behalf of, the CAM company; who is personally responsible for the handling of any and all common interest community funds received or disbursed by the CAM company pursuant to § 12-61-1003(6)(b) and (7); who has passed the examination for licensees set forth in the Act and the Director rules; and who is qualified to act as a CAM under the Act and the Director rules.
2) If the CAM company is a corporation, it must certify that:
    a) The corporation has been properly incorporated with the Colorado Secretary of State or is authorized to do business in Colorado, and is in good standing, proof of which must be included with the application;
    b) If an assumed or trade name is to be used, it has been properly filed with and accepted by the Colorado Secretary of State, proof of which must be included with the application; and
    c) The applicant has designated a qualified active manager who has been appointed by the corporation's board of directors or the board's duly appointed designee to act as the designated manager for the corporation.
3) If the CAM company is a partnership, it must certify that:
        a) The partnership has been properly registered with the Colorado Secretary of State and is in good standing, proof of which must be included with the application;
        b) If an assumed or trade name is to be used, it has been properly filed with the Colorado Secretary of State, proof of which must be included with the application; and
        c) The applicant has designated a qualified active manager who has been appointed the designated manager for the partnership by all general partners or managers/officers of the partnership.
4) If the CAM company is a limited liability company, it must certify that:
        a) The limited liability company has been properly registered with the Colorado Secretary of State and is in good standing, proof of which must be included with the application;
        b) If an assumed or trade name is to be used, it has been properly filed with the Colorado Secretary of State, proof of which must be included with the application; and

c) The applicant has designated a qualified active manager who has been appointed the designated manager for the limited liability company by all managers, or if management has been reserved to the members in the articles of organization, by all members of the limited liability company.

C-4) Individuals employed by a community association management company, sole proprietorship, or a common interest community.

Any CAM company, licensed sole proprietorship, or common interest community that employs individuals who perform activities requiring a CAM license pursuant to § 12-61-1001(3), C.R.S., must designate and maintain a qualified active designated manager.

C-5) Resident community association managers required to have office; exceptions.

Every resident Colorado CAM must maintain and supervise a community association management practice with an office that is available to the consumer, except a CAM registered in the Division as in the employ of a designated manager or a CAM registered as inactive.

C-6) Manager availability.

Any CAM licensed as a sole proprietorship or as a designated manager for a CAM company must be reasonably available to manage and supervise each community association management practice.

C-7) Community association manager license non-transferable.

No agreement will be entered into by any licensee whereby the licensee transfers or lends their name or license to another to avoid or evade any provision of the Act or the Director rules.

C-8) Corporate license name may not duplicate suspended/revoked license.

The Director may refuse to issue a CAM license to a CAM company if the name of the CAM company is the same as that of any other CAM company whose license has been suspended or revoked, or is so similar as to be easily confused with that of the suspended or revoked CAM company by members of the general public.

C-9) No license name identical to one previously issued.

No CAM license will be issued to a CAM under a trade name, corporate, partnership or limited liability company name which is identical to another licensed CAM's trade name, corporate, partnership or limited liability company name.

C-10) Community association manager activity only in trade name or full licensed name.

A CAM may adopt a trade name according to Colorado law and such trade name will appear on the face of the license. However, pursuant to § 12-61-1003(8), C.R.S., such CAM must conduct business only under such trade name, or conduct business under the entire name appearing on the face of the license. A CAM who is licensed under a designated manager that is doing business under a trade name must be licensed under the entire name appearing on the face of the license.

C-11) Name rules.

Pursuant to § 12-61-1003(8), C.R.S., a person will not be licensed as a CAM under more than one name, or conduct or promote business as a CAM except under the name under which the person is licensed. However, the use of a trade name, with the permission of the owner of such trade, name may be used concurrently with the licensed name of the CAM company in the promotion or conduct of the licensed community association management business.

1) No licensee or CAM company will advertise or promote its business in such a manner as to mislead the public as to the identity of the licensed CAM or CAM company; nor may a portion of the licensed name of any CAM or CAM company be advertised or promoted in a manner which would mislead the public as to the identity of the licensed CAM or CAM company.

2) Any licensee or CAM company using a trade name, the use of which requires obtaining permission from another who has an existing and continuing right in that trade name by virtue of any state or federal law, will clearly and unmistakably include the licensee CAM company name as registered with the Director in addition to the trade name in a conspicuous and reasonable manner in any of the following:

    a) Advertising;
    b) Business cards;
    c) Letterhead;
    d) Contracts or all other documents relating to community association management business; and
    e) Signs displayed at a place of business.

C-12) Notice of termination; designated manager.

A CAM company and its designated manager both must immediately notify the Director in writing of the termination of the designated manager's status as designated manager for the CAM company, or upon the designated manager's failure to comply with the Act or the Director rules. Unless a temporary designated manager license is obtained in compliance with the provisions of Rule C-13, upon such notification the designated manager, entity and all employed licensees will be placed on inactive status.

C-13) Temporary designated manager license.

Pursuant to § 12-61-1003(6)(c), C.R.S., a temporary designated manager's license may be issued to a CAM company to prevent hardship for a period not to exceed 90 days to the person so designated. No designated manager license will be approved unless the individual designated holds a CAM license and meets all additional requirements pursuant to § 12-61-1003(6), C.R.S. and the Director rules.

C-14) Inactive license.

A CAM license may be issued while on inactive status. No activities requiring a license may be performed while a CAM license is on inactive status.

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: 2015-00054

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

Division of Real Estate

on 03/09/2015

4 CCR 725-7

COMMUNITY ASSOCIATION MANAGERS

The above-referenced rules were submitted to this office on 03/11/2015 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

March 26, 2015 12:53:26

Frederick R. Yarger

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

Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Real Estate

CCR number

4 CCR 725-7

Rule title

4 CCR 725-7 COMMUNITY ASSOCIATION MANAGERS 1 - eff 05/06/2015

Effective date

05/06/2015

[THIS PAGE NOT FOR PUBLICATION IN THE CODE OF COLORADO REGULATIONS]

DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
COMMUNITY ASSOCIATION MANAGERS
4 CCR 725-7

NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
March 4, 2015

H RULES – EXCEPTIONS AND DIRECTOR REIVEW OF INITIAL DECISIONS

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado and to all persons who have requested to be advised of the intention of the Director of the Division of Real Estate ("Director") to promulgate rules, or to amend, repeal or repeal and re-enact the present rules related to community association managers.

STATEMENT OF BASIS

The statutory basis for the rules titled Rules Regarding Community Association Managers is Part 10 of Title 12, Article 61, Colorado Revised Statutes, as amended.

STATEMENT OF PURPOSE

The purpose of this rule is to effectuate the legislative directive to promulgate necessary and appropriate rules in conformity with the state statutes of the Community Association Managers Practice Act.

SPECIFIC PURPOSE OF THIS RULEMAKING

The purpose of this rule is to set forth the procedure surrounding the filing of exceptions and review of initial decisions pursuant to 24-4-105 (14) and (15), C.R.S.

Proposed New, Amended and Repealed Rules

[Deleted material shown ~~struck through~~, new material shown ALL CAPS. Rules, or portions of rules, which are unaffected are reproduced. Readers are advised to obtain a copy of the complete rules of the Board at www.dora.state.co.us/real-estate/.

H Rules – Exceptions and Director Reivew of Initial Decisions

H-1) Written form, service and filing requirements.

1) All designations of record, requests, exceptions and responsive pleadings ("pleadings") must be in written form, mailed with a certificate of mailing to the Director.

2) All pleadings must be received by the Director by 5:00 p.m. on the date the filing is due. A pleading is considered filed upon receipt by the Director. These rules do not provide for any additional time for service by mail.

3) Any pleadings must be served on the opposing party by mail or by hand delivery on the date which the pleadings are filed with the Director.

4) All pleadings must be filed with the Director, and not with the office of administrative courts. Any pleadings filed in error with the office of administrative courts will not be considered. The Director's address is:

   Division of Real Estate
   1560 Broadway, Suite 925
   Denver, Colorado 80202

H-2) Authority to review.

1) The Director hereby preserves the Director's option to initiate a review of an initial decision on his or her own motion pursuant to § 24-4-105(14)(a)(ii) and (b)(iii), C.R.S. outside of the 30 day exceptions filing period after service of the initial decision upon the parties.

2) This option to review will apply regardless of whether a party files exceptions to the initial decision.

H-3) Designation of record and transcripts.

1) Any party seeking to reverse or modify an initial decision of an administrative law judge must file with the Director a designation of the relevant parts of the record for review ("designation of record"). Designations of record must be filed with the Director within 20 days of the date on which the Director mails the initial decision to the parties' address of record with the Director.
2) Within 10 days after a party's designation of record is due, any other party may file a supplemental designation of record requesting inclusion of additional parts of the record.
3) Even if no party files a designation of record, the record must include the following:

   a) All pleadings;

   b) All applications presented or considered during the hearing;

   c) All documentary or other exhibits admitted into evidence;

   d) All documentary or other exhibits presented or considered during the hearing;

   e) All matters officially noticed;

   f) Any findings of fact and conclusions of law proposed by any party; and

g) Any written brief filed.

4) Transcripts. Transcripts will not be part of a designation of record unless specifically identified and ordered. Should a party wish to designate a transcript or portion thereof, the following procedures will apply:

   a) The designation of record must identify with specificity the transcript or portion thereof to be transcribed. For example, a party may designate the entire transcript, or may identify witness(es) whose testimony is to be transcribed, the legal ruling or argument to be transcribed, or other information necessary to identify a portion of the transcript.

   b) Any party who includes a transcript or a portion thereof as part of the designation of record must order the transcript or relevant portions by the date on which the designation of record must be filed (within 20 days of the date on which the Director mails the initial decision to the parties).

   c) When ordering the transcript, the party must request a court reporter or transcribing service to prepare the transcript within 30 days. The party must timely pay the necessary fees to obtain and file with the Director an original transcript and one copy within 30 days.

   d) The party ordering the transcript will direct the court reporter or transcribing service to complete and file with the Director the transcript and one copy of the transcript within 30 days.

   e) If a party designates a portion of the transcript, the opposing party may also file a supplemental designation of record, in which the opposing party may designate additional portions of the transcript.

   f) An opposing party filing a supplemental designation of record designating additional portions of the transcript must order and pay for such transcripts or portions thereof within the deadlines set forth above. An opposing party must also cause the court reporter to complete and file with the Director the transcript and one copy of the transcript within 30 days.

   g) Transcripts that are ordered and not filed with the Director in a timely manner by the reporter or the transcription service due to non-payment, insufficient payment or failure to direct as set forth above will not be considered by the Director.

H-4) Filing of exceptions and responsive pleadings.

1) Any party wishing to file exceptions must adhere to the following timelines:

   a) If no transcripts are ordered, exceptions are due within 30 days from the date on which the Director mails the initial decision to the parties. Both parties' exceptions are due on the same date.

   b) If transcripts are ordered by either party, the following procedure will apply. Upon receipt of all transcripts identified in all designations of record and supplemental designations of record, the Director will mail notification to the parties stating that the transcripts have been received by the Director. Exceptions are due within 30 days from the date on which such notification is mailed. Both parties' exceptions are due on the same date.

2) Either party may file a responsive pleading to the other party's exceptions. All responsive pleadings must be filed within 10 days of the date on which the exceptions were filed with the Director. No other pleadings will be considered except for good cause shown.

3) The Director may in his or her sole discretion grant an extension of time to file exceptions or responsive pleadings, or may delegate the discretion to grant such an extension of time to the Director's designee.

H-5) Request for oral argument.

1) All requests for oral argument must be in writing and filed by the deadline for responsive pleadings.

2) It is within the sole discretion of the Director to grant or deny a request for oral argument. If oral argument is granted, both parties will have the opportunity to participate.

3) If a request for oral argument is granted, each side will be permitted 10 minutes of oral argument unless such time is extended by the Director.

CYNTHIA H. COFFMAN
Attorney General

DAVID C. BLAKE
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Office of the Attorney General

Tracking number: 2015-00059

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

Division of Real Estate

on 03/09/2015

4 CCR 725-7

COMMUNITY ASSOCIATION MANAGERS

The above-referenced rules were submitted to this office on 03/11/2015 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

March 26, 2015 12:51:07

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

Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Real Estate

CCR number

4 CCR 725-7

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05/06/2015

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DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
COMMUNITY ASSOCIATION MANAGERS
4 CCR 725-7

NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
March 4, 2015

E RULES – SEPARATE ACCOUNTS – RECORDS - ACCOUNTINGS

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado and to all persons who have requested to be advised of the intention of the Director of the Division of Real Estate ("Director") to promulgate rules, or to amend, repeal or repeal and re-enact the present rules related to community association managers.

STATEMENT OF BASIS

The statutory basis for the rules titled Rules Regarding Community Association Managers is Part 10 of Title 12, Article 61, Colorado Revised Statutes, as amended.

STATEMENT OF PURPOSE

The purpose of this rule is to effectuate the legislative directive to promulgate necessary and appropriate rules in conformity with the state statutes of the Community Association Managers Practice Act.

SPECIFIC PURPOSE OF THIS RULEMAKING

The specific purpose of this rule is to promulgate rules with respect to the requirements for handling and accounting money belonging to a common interest community and ensures that community association managers are familiar with current regulations.

Proposed New, Amended and Repealed Rules

[Deleted material shown ~~struck through~~, new material shown ALL CAPS. Rules, or portions of rules, which are unaffected are reproduced. Readers are advised to obtain a copy of the complete rules of the Board at www.dora.state.co.us/real-estate/.

E Rules – Separate Accounts – Records - Accountings

E-1) Establishment of internal accounting controls.

Every CAM and CAM company must establish written internal accounting control policies, which must include adequate checks and balances over the financial activities of the CAM, CAM company, and common interest community, as well as manage the risk and fraud of illegal acts. Policies and procedures must be designed to provide reasonable assurances in the reliability of financial reporting, including, without limitation, proper maintenance of accounting records, documentation of the authorization for receipts and disbursements, verification of the integrity of the data used in making business decisions, facilitation of fraud detection and prevention, and compliance with all applicable laws and regulations governing financial records.

E-2) Accounting methods.

In the absence of a written agreement to the contrary, the accrual basis of accounting will be used for maintaining all required accounts and records. If any other accounting method is requested by the common interest community to the CAM or CAM company, any such request must be in writing and available for inspection by an authorized representative of the Director.

E-3) Generally accepted accounting principles.

All accounting records must be in accordance with Generally Accepted Accounting Principles (GAAP), which are established by the American Institute of Certified Public Accountants (AICPA). Accounting records for the purposes of this rule means all books and records that identify, measure, record or communicate financial information.

E-4) Money belonging to others defined.

Money belonging to others which is collected by the CAM or CAM company includes, but is not limited to, any money collected in connection with: assessments, working capital, fines, reserves, miscellaneous deposits (e.g. amenity rentals), or money belonging to others collected for any other purpose.

E-5) Common interest community funds.

All money belonging to others collected by a CAM or CAM company on behalf of a common interest community doing business in this state, must be deposited in one or more accounts belonging to the common interest community. If the CAM or CAM company has access to common interest community funds, written authorization to collect or disperse money belonging to others must be obtained and an accounting of the funds must be maintained. The CAM or CAM company must retain a copy of each such authorization executed for inspection by an authorized representative of the Director.

E-6) Commingling prohibited.

All money belonging to others received by a CAM or CAM company must be segregated into each respective common interest community's bank account. All money belonging to others must be deposited within 5 business days upon receipt unless otherwise agreed to in writing by the common interest community's executive board. Money belonging to one common interest community must be used only for the benefit of that common interest community. It must not be used for the benefit of any other person or entity, including but not limited to another common interest community, CAM, or CAM company.

E-7) Recordkeeping requirements.

A CAM and CAM company must supervise and maintain, at their place of business, a record keeping

system consisting of at least the following elements for each common interest community account for which the CAM or CAM company has access to, or deposits, money belonging to others:

1) General ledger.

A general ledger must be maintained for each common interest community account, which includes sub-ledgers of individual accounting of assets, liabilities, fund balances, income and expenses. The general ledger must show the chronological sequence in which funds are received into and disbursed from each account.

2) Recording of transactions.

a) Funds received. A journal must be maintained for all funds received, which includes the date the funds were received, the name of the person or entity on whose behalf the funds were delivered, the check number, the general ledger accounts within which the transactions are to be recorded and the amount delivered.

b) Funds disbursed. A journal must be maintained for all funds disbursed, which includes the date the funds were disbursed, the payee, the check number, the general ledger accounts within which the transaction are to be recorded and the amount disbursed.

c) Assessments to members. A journal must be maintained for all assessments to members, which includes the date the assessment is billed, the name of the person or entity to which the assessment is responsible and the general ledger accounts within which the transactions are to be recorded.

d) General journal. A journal must be maintained of all invoices for services and/or products and other transaction of the common interest community, which includes the date the invoice is issued, the name of the person or entity to which the invoice is due, the general ledger accounts within which the transactions are to be recorded, the date of the transaction entry, the general ledger accounts within which the transactions are to be recorded, the amount of the transaction and an explanation of the purpose of the transaction.

3) Monthly reconciliation statements.

a) Bank accounts. Every CAM or CAM company must reconcile, in a timely manner after receipt of the monthly bank statement, each common interest community account, except when there has been no transactional activity during the previous month. A reconciliation must include a written work sheet comparing the balances as shown on the bank association statement and the general ledger, respectively, in order to ensure agreement between the common interest community account and the general ledger entries.

b) Member receivables. Every CAM or CAM company must reconcile, in a timely manner, the sub-ledger of member receivables to the general ledger.

c) Accounts payable. Every CAM or CAM company must reconcile, in a timely manner, the sub-ledger of outstanding invoices to the general ledger.

4) Supporting documentation.

a) Every CAM or CAM company must maintain supporting records, which accurately detail all money received and disbursed on behalf of the common interest community. Such summary totals must be reconcilable to the records supporting the summary.

b) All deposits of funds must be documented (for example, through bank deposits), and must include confirmation of electronic and telephonic transfers, or on detailed schedules attached to the deposit slips or confirmations. The documentation must identify each person tendering funds to the CAM or CAM company for deposit, the amount of funds tendered, types of funds received from each person, and the property address affected. All disbursements of funds must be supported by source documents such as bids, invoices, contracts, etc., that identify the payees, the common interest community affected and amount of funds transferred for each common interest community.

5)Financial reports.

Every CAM or CAM company must furnish, and have available for review by the Director, all financial reports of the common interest community in the manner and time prescribed in the management agreement or, in the absence of a provision in the written management agreement, within 30 calendar days after the end of each month, which includes at a minimum the following:

a) A balance sheet.

b) Income and expense statements.

c) All bank reconciliations and copies of bank statements that support the reconciliation. The reconciled balance must agree with the balance of the account in the balance sheet.

d) Aging of accounts receivable. The aging must agree with the balance reported on the balance sheet.

e) Aging of accounts payable. The aging must agree with the balance reported on the balance sheet.

f) Investment accounts. Copies of bank statements and investment advisor reports reconciled to the balance as reported on the balance sheet.

6) Master common interest community account log.

Every CAM or CAM company must maintain a master association account log (“master association account log”) identifying all common interest community account numbers and the name and address of the bank where the common interest community accounts are located. The master association account log must specifically include all bank account numbers opened for a common interest community even if account numbers fall under another umbrella account number.

E-8) Produce records for inspection.

Every CAM or CAM company must produce for inspection, by an authorized representative of the Director, any records necessary to complete audits or investigations.

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: 2015-00056

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

Division of Real Estate

on 03/09/2015

4 CCR 725-7

COMMUNITY ASSOCIATION MANAGERS

The above-referenced rules were submitted to this office on 03/11/2015 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

March 26, 2015 12:52:43

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

Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Real Estate

CCR number

4 CCR 725-7

Rule title

4 CCR 725-7 COMMUNITY ASSOCIATION MANAGERS 1 - eff 05/06/2015

Effective date

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DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
COMMUNITY ASSOCIATION MANAGERS
4 CCR 725-7

NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
March 4, 2015

F RULES – PROFESSIONAL STANDARDS - INVESTIGATIONS

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado and to all persons who have requested to be advised of the intention of the Director of the Division of Real Estate ("Director") to promulgate rules, or to amend, repeal or repeal and re-enact the present rules related to community association managers.

STATEMENT OF BASIS

The statutory basis for the rules titled Rules Regarding Community Association Managers is Part 10 of Title 12, Article 61, Colorado Revised Statutes, as amended.

STATEMENT OF PURPOSE

The purpose of this rule is to effectuate the legislative directive to promulgate necessary and appropriate rules in conformity with the state statutes of the Community Association Managers Practice Act.

SPECIFIC PURPOSE OF THIS RULEMAKING

The specific purpose of this rule is to promulgate rules with respect to the requirements of professional standards and ensures that community association managers are familiar with current regulations.

Proposed New, Amended and Repealed Rules

[Deleted material shown ~~struck through~~, new material shown ALL CAPS. Rules, or portions of rules, which are unaffected are reproduced. Readers are advised to obtain a copy of the complete rules of the Board at www.dora.state.co.us/real-estate/.

F Rules – Professional Standards - Investigations

F-1) Maintenance and production of records.

1) If a CAM or CAM company agrees to hold and maintain a common interest community's documents and association records, the CAM or CAM company must maintain them in a safe and secure manner. Safe and secure manner means that reasonable measures must be taken to minimize the risk of loss, damage, or theft.
   a) All such documents and association records are the property of the common interest community. The CAM or CAM company must also maintain copies of such documents and association records for their own files as set forth in Subsection 2 of this Rule F-1.
   b) If the CAM or CAM company agrees to hold and maintain documents and association records for the common interest community, the terms and conditions of such maintenance and retention must be set forth in a written agreement between the CAM or CAM company and the common interest community.
   c) While a management agreement is in effect between a common interest community and a CAM or CAM company, the CAM or CAM company acting as a manager for the common interest community must make available to the common interest community, at no cost or expense, all documents and association records related to the management services for the common interest community that are necessary for the common interest community to perform its duties and functions pursuant to Colorado law.
   d) Within 30 calendar days of the termination of a management agreement with the common interest community, a CAM or CAM company who acted as a manager for the common interest community must produce all documents and association records related to the management services to the common interest community at no cost or expense, unless otherwise agreed to in writing by both the common interest community and the CAM or CAM company.
   e) Except as otherwise set forth in Subsections (1)(c) and (1)(d) of this Rule F-1, a CAM or CAM company may impose a reasonable charge, which may be collected in advance and may cover the costs of labor and material, for copies of the common interest community's documents and association records being maintained by the CAM or CAM company. The charge may not exceed the estimated cost of production and reproduction of the records.
2) For investigation and enforcement purposes, a CAM or CAM company must keep and retain a copy of the common interest community's documents and association records maintained and produced during the management of the common interest community for a minimum period of 3 years following termination of the management agreement. This must be done at no cost or expense to the common interest community, unless otherwise agreed to in writing by both the common interest community and CAM or CAM company. A CAM and CAM company must produce for inspection by an authorized representative of the Director any document or record as may be reasonably necessary for investigation or audit in the enforcement of §§ 12-61-1010 and 12-61-1002(3)(c), C.R.S., and the Director rules. Failure to submit any such documents or records within the time set by the Director in its notification will be grounds for disciplinary action unless the Director has granted an extension of time for such production.
3) All required records may be maintained in an electronic format as permitted by §§ 24-71.3-101, et seq., C.R.S. An electronic record means any record generated, communicated, received, or stored by electronic means. Such electronic records must be produced upon request by the Director and must be in a format that has the continued capability to be retrieved and legibly printed. Electronic records must be printed and produced upon request of the Director, or by the common interest community, or their designee.

F-2) Advertising.

A CAM that advertises community association management services for a common interest community must do so in the name of the licensed CAM and the CAM company under which the licensee is licensed.

F-3) Licensee must respond to complaint or audit notice in writing.

When a CAM licensee has received written notification from the Director, or a representative of the Director, that: (1) a complaint has been filed against the licensee, (2) the licensee has been selected for an audit, or (3) that an audit has identified record keeping or trust account deficiencies, such licensee must submit a written response to the Director. Failure to submit a written response within the time set by the Director in its notification will be grounds for disciplinary action unless the Director has granted an extension of time for the response in writing. This is true regardless of whether the underlying complaint warrants further investigation or subsequent action by the Director. The CAM's written response must contain the following:

1) A complete and specific response to the factual recitations, allegations or claims made in the complaint filed against the licensee, whether made by a member of the public, on the Director's own motion or by an authorized representative of the Director;
2) A complete and specific response to any additional questions, allegations or claims presented in the notification letter;
3) Any documents or records requested in the notification letter; and
4) Any further information relative to the complaint that the licensee believes to be relevant or material to the matters addressed in the notification letter.

F-4) Immediate notification of conviction, plea or violation required.

A CAM must notify the Director in writing pursuant to § 12-61-1010(1)(j), C.R.S., within 30 calendar days of any of the following:

1) A plea of guilty, a plea of nolo contendere or a conviction of any crime identified in § 12-61-1010(1)(i), C.R.S.
2) A violation or aiding and abetting in the violation of the Colorado or Federal Fair Housing Laws.
3) Any disciplinary action taken against the CAM in any other jurisdiction, if the CAM's action(s) would constitute a violation of the community association manager licensing law in Colorado.
4) Any practice restrictions as set forth in § 12-61-1010(1)(o) and (p), C.R.S.

F-5) Community association manager maintaining current contact information and all information required for licensing.

Each CAM must maintain all current contact information and all information required for licensing, in a manner acceptable to the Director, which will be included in the Division of Real Estate database.

1) CAM contact information must include, but is not limited to:
    a) E-mail address, if applicable;
    b) Legal first, middle and last names;
    c) Physical home address;
    d) Home phone number;
    e) Physical business address;
    f) Business phone number; and
    g) Business name.

2) Information required for licensing includes, but is not limited to:
    a) Errors and omissions insurance provider;
    b) Errors and omissions policy number;
    c) Errors and omissions effective and expiration dates;
    d) Crime fidelity insurance provider;
    e) Crime fidelity policy number; and
    f) Crime fidelity insurance effective and expiration dates.

3) Within 30 calendar days of any changes, individuals required to be licensed as a CAM must update the Director with any changes to the information defined in this rule in a manner prescribed by the Director.

F-6) Contracts, agreements, authorizations and disclosures must be in writing.

1) All contracts, agreements, authorizations and disclosures between a CAM or CAM company and a common interest community must be in writing and must contain the entire agreement of the parties.
2) The written agreement between the parties must be legible and clearly specify the terms and conditions of the management services to be performed by the CAM or CAM company. The agreement must include, but is not limited to, the following:
   a) Beginning and ending dates of the contract;
   b) Details of all compensation, fees and charges;
   c) Cancellation rights of the parties;
   d) Record retention and distribution policy;
   e) Errors and omissions insurance coverage;
   f) Crime fidelity insurance coverage;
   g) A general description of the records to be kept and the accounting or bookkeeping system to be used; and
   h) The designated manager's license number.
3) A CAM or CAM company must disclose in writing and at no charge, within 3 business days after a request by an owner in a common interest community, or by a buyer or seller who is under contract for the purchase of real property or a unit in a common interest community, or their respective agent, all fees and charges that the CAM or CAM company will charge in connection with the sale, transfer and closing of the real estate or unit in a common interest community.

F-7) Designated manager responsibilities.

Designated managers' responsibilities include, but are not limited to, the following:

1) Maintaining all bank accounts and accounting records for any managed common interest communities.
2) Providing reasonable supervision over the licensed activities of all employees.
3) Taking reasonable steps to ensure that violations of statutes and the Director rules do not occur or reoccur.
4) Taking reasonable steps to ensure a licensed CAM responds to any notices from the Director or its designee.
5) Providing supervision of licensed activities for all offices operated by the CAM company.

F-8) Reasonable supervision.

Pursuant to §§ 12-61-1010(1)(l), and 12-61-1003(2), C.R.S., and in addition to the requirements of Rule F-7, reasonable supervision of licensees includes, but is not limited to, compliance with the following:

1) Maintaining a written policy describing the duties and responsibilities of licensees employed by the CAM or CAM company. A copy of the written policy must:
   a) Be given to, read and signed by each licensee, and
   b) Be available for inspection, upon request, by any authorized representative of the Director.
2) Review of all common interest community contracts, agreements, and authorizations to ensure compliance with all applicable Director rules.
3) Ensure all licensed individuals comply with insurance requirements as set forth in Rule D-9 and Rule D-10.

4) Nothing in this rule prohibits a designated manager from delegating supervisory authority to other experienced licensees.
    a) Any CAM who accepts supervisory authority from a designated manager will bear responsibility with the designated manager for ensuring compliance with all statutes and the Director rules by all supervised licensees. A designated manager who delegates supervisory authority to another licensee remains responsible for ensuring compliance with all statutes and the Director rules by all supervised licensees.
    b) Any such delegation of authority must be in writing and signed by the licensed CAM to whom such authority is delegated. A copy of such delegation must be maintained by the designated manager for inspection, upon request, by any authorized representative of the Director.

F-9) Disclose any conflict of interest.

When acting in a licensed capacity, a licensee has a continuing duty to disclose to a common interest community any actual or potential conflicts of interest that may arise in the course of any activity with regard to the management duties and functions of the common interest community and its executive board. A CAM must avoid any perceived favoritism or impropriety in carrying out all the duties and obligations with regard to the management of the common interest community and its executive board. A licensee acting as a CAM has a duty to immediately disclose, in writing, any known conflict of interest that may arise in the selection or use of a business, third party or vendor that provides services pertaining to the management of a common interest community and its executive board. In addition, the CAM must not accept, directly or indirectly any commission, fee, rebate, discount, any other remuneration, benefit or any other thing of value that could be reasonably perceived as a conflict with the interests of the common interest community and its executive board, unless it is first disclosed to and consented to in writing by the common interest community and its executive board.

F-10) License revoked, expired, suspended or inactivated.

Upon suspension, revocation, expiration or inactivation of a CAM license, the licensee is responsible for immediate compliance with the following:

1) Cease any activities requiring a CAM license.
2) Return the license to the Director. If the individual is a designated manager, inform all employed licensees of the change in license status and the effect of such change on the license status of those licensees.
3) Cease all advertising, including, but not limited to, the use of signage, newspapers, magazines, internet, and direct mailings.
4) Inform all common interest communities they are managing that their CAM license has expired, or has been suspended, revoked or inactivated, pursuant to § 38-33.3-402, C.R.S., not later than 5 business days after any such expiration, suspension, revocation or inactivation.
5) Inform the common interest community and its executive board of the action taken and the impact that the change in license status will have on the common interest community, if any.
6) In the case of a designated manager who is being replaced by a new designated manager, the departing designated manager must properly account for and transfer all entrusted funds to the new designated manager, and provide all records and documents related to management services to the new designated manager.
7) In the case of a designated manager who will not be replaced and the licensed CAM company will be dissolved, the designated manager is responsible for an accounting of all funds and for making all final disbursements. The CAM is responsible for maintaining all records for 3 years.
8) Fees earned prior to the suspension, revocation, expiration or inactivation may be retained by the licensee.

9) Pursuant to § 38-33.3-402, C.R.S., any agreement by a common interest community to pay a fee for the services of a CAM or to hold harmless or indemnify the CAM for any act or omission in the course of providing those services is void and unenforceable for any period in which the CAM's license is expired, suspended, revoked or inactivated. This would not apply, however, if a CAM company had a licensed designated manager or additional licensed CAM within its company, whose license is in full force and effect, and who is providing the management services for the common interest community pursuant to a management agreement.

2) Return the license to the Director. If the individual is a designated manager, inform all employed licensees of the change in license status and the effect of such change on the license status of those licensees.

3) Cease all advertising, including, but not limited to, the use of signage, newspapers, magazines, internet, and direct mailings.

4) Inform all common interest communities they are managing that their CAM license has expired, or has been suspended, revoked or inactivated, pursuant to § 38-33.3-402, C.R.S., not later than 5 business days after any such expiration, suspension, revocation or inactivation.

5) Inform the common interest community and its executive board of the action taken and the impact that the change in license status will have on the common interest community, if any.

6) In the case of a designated manager who is being replaced by a new designated manager, the departing designated manager must properly account for and transfer all entrusted funds to the new designated manager, and provide all records and documents related to management services to the new designated manager.

7) In the case of a designated manager who will not be replaced and the licensed CAM company will be dissolved, the designated manager is responsible for an accounting of all funds and for making all final disbursements. The CAM is responsible for maintaining all records for 3 years.

8) Fees earned prior to the suspension, revocation, expiration or inactivation may be retained by the licensee.

9) Pursuant to § 38-33.3-402, C.R.S., any agreement by a common interest community to pay a fee for the services of a CAM or to hold harmless or indemnify the CAM for any act or omission in the course of providing those services is void and unenforceable for any period in which the CAM's license is expired, suspended, revoked or inactivated. This would not apply, however, if a CAM company had a licensed designated manager or additional licensed CAM within its company, whose license is in full force and effect, and who is providing the management services for the common interest community pursuant to a management agreement.

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Office of the Attorney General

Tracking number: 2015-00057

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

Division of Real Estate

on 03/09/2015

4 CCR 725-7

COMMUNITY ASSOCIATION MANAGERS

The above-referenced rules were submitted to this office on 03/23/2015 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

March 26, 2015 12:52:06

Frederick R. Yarger

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

Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Real Estate

CCR number

4 CCR 725-7

Rule title

4 CCR 725-7 COMMUNITY ASSOCIATION MANAGERS 1 - eff 05/06/2015

Effective date

05/06/2015

[THIS PAGE NOT FOR PUBLICATION IN THE CODE OF COLORADO REGULATIONS]

DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
COMMUNITY ASSOCIATION MANAGERS
4 CCR 725-7

NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
March 4, 2015

G RULES – DECLARATORY ORDERS

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado and to all persons who have requested to be advised of the intention of the Director of the Division of Real Estate ("Director") to promulgate rules, or to amend, repeal or repeal and re-enact the present rules related to community association managers.

STATEMENT OF BASIS

The statutory basis for the rules titled Rules Regarding Community Association Managers is Part 10 of Title 12, Article 61, Colorado Revised Statutes, as amended.

STATEMENT OF PURPOSE

The purpose of this rule is to effectuate the legislative directive to promulgate necessary and appropriate rules in conformity with the state statutes of the Community Association Managers Practice Act.

SPECIFIC PURPOSE OF THIS RULEMAKING

The specific purpose of this rule is to create a procedure in which individuals may seek declaratory orders from the Director for purposes of terminating controversies or remove uncertainties regarding the applicability of any statutory provision, rule or order of the Director. The rules ensure compliance with the requirements set forth in the Administrative Procedure Act.

Proposed New, Amended and Repealed Rules

[Deleted material shown ~~struck through~~, new material shown ALL CAPS. Rules, or portions of rules, which are unaffected are reproduced. Readers are advised to obtain a copy of the complete rules of the Board at www.dora.state.co.us/real-estate/.

G Rules – Declaratory Orders

G-1) Any person may petition for a declaratory order.

Any person may petition the Director for a declaratory order to terminate controversies or to remove uncertainties as to the applicability to the petitioner of any statutory provisions of the Act, the Director rules, or of any order of the Director.

G-2) Director determines whether to rule.

The Director will determine, in his or her discretion and without prior notice to the petitioner, whether to rule upon any such petition. If the Director determines he or she will not rule upon such a petition, the Director will issue a written order disposing of the same, stating therein his or her reasons for such action. A copy of such order will be provided to the petitioner.

G-3) Director considerations.

In determining whether to rule upon a petition filed pursuant to this rule, the Director will consider the following matters, among others:

1) Whether a ruling on the petition will terminate a controversy or remove uncertainties as to the applicability to petitioner of any statutory provision of the Act, the Director rules, or order of the Director;

2) Whether the petition involves any subject, question or issue which is the subject of a formal or informal matter or investigation currently pending before the Director or a court involving one or more of the petitioners which will terminate the controversy or remove the uncertainties as to the applicability to the petitioner of any statutory provision of the Act, the Director rules, or order of the Director, which matter or investigation will be specified by the Director;

3) Whether the petition involves any subject, question or issue which is the subject of a formal matter or investigation currently pending before the Director or a court but not involving any petitioner which will terminate the controversy or remove the uncertainties as to the applicability to the petitioner of any statutory provision of the Act, the Director rules, or order of the Director, which matter or investigation will be specified by the Director and in which petitioner may intervene;

4) Whether the petition seeks a ruling on a moot or hypothetical question and will result in merely an advisory ruling or opinion; and

5) Whether the petitioner has some other adequate legal remedy, other than an action for declaratory relief, which will terminate the controversy or remove any uncertainty as to the applicability to the petitioner of the statutory provision of the Act, the Director rules, or order of the Director in question.

G-4) Petition contents.

Any petition filed pursuant to this rule will set forth the following:

1) The name and address of the petitioner and whether the petitioner holds a license issued pursuant to §§ 12-61-1001, et seq., C.R.S.

2) The statute, rule or order to which the petition relates.

3) A concise statement of all the facts necessary to show the nature of the controversy or

uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the petitioner.

4) A concise statement of the legal authorities, if any, and such other reasons upon which the petitioner relies.

5) A concise statement of the declaratory order sought by the petitioner.

G-5) Procedures if the Director will rule.

If the Director determines that he or she will rule on the petition, the following procedures will apply:

1) The Director may, in his or her discretion, rule upon the petition based solely upon the facts presented in the petition. In such a case:

   a) Any ruling of the Director will apply only to the extent of the facts presented in the petition and any amendment to the petition;

   b) The Director may order the petitioner to file a written brief, memorandum or statement of position;

   c) The Director may set the petition, upon due notice to petitioner, for a non-evidentiary hearing;

   d) The Director may dispose of the petition on the sole basis of the matters set forth in the petition;

   e) The Director may request the petitioner to submit additional facts in writing. In such event, such additional facts will be considered as an amendment to the petition;

   f) The Director may take administrative notice of facts pursuant to the Administrative Procedure Act, § 24-4-105(8), C.R.S., and utilize his or her experience, technical competence and specialized knowledge in the disposition of the petition;

   g) If the Director rules upon the petition without a hearing, he or she will issue a written order, stating therein his or her basis for the order. A copy of such order will promptly be transmitted to the petitioner.

2) The Director may, in his or her discretion, set the petition for hearing upon due notice to the petitioner for the purpose of obtaining additional facts or information or to determine the truth of any fact set forth in the petition or to hear oral argument on the petition. Notice to the petitioner setting such hearing will set forth, to the extent known, the factual or other matters into which the Director intends to inquire. For the purpose of such a hearing the petitioner will have the burden of proving all of the facts stated in the petition, all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to petitioner and any other facts the petitioner desires the Director to consider.

G-6) Parties to proceedings.

The parties to any proceeding pursuant to this rule will be the Director and the petitioner. Any other person may seek leave of the Director to intervene in such a proceeding, and leave to intervene will be granted at the sole discretion of the Director. A petition to intervene will set forth the same matters as required by Rule G-4. In such a case, any reference to a “petitioner” in this rule also refers to any person who has been granted leave to intervene by the Director.

G-7) Orders subject to judicial review.

Any declaratory order or other order disposing of a petition pursuant to this Rule G will constitute agency action subject to judicial review pursuant to § 24-4-106, C.R.S.

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Office of the Attorney General

Tracking number: 2015-00058

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

Division of Real Estate

on 03/09/2015

4 CCR 725-7

COMMUNITY ASSOCIATION MANAGERS

The above-referenced rules were submitted to this office on 03/23/2015 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

March 26, 2015 12:51:41

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

Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - State Physical Therapy Board

CCR number

4 CCR 732-1

Rule title

4 CCR 732-1 PHYSICAL THERAPIST LICENSURE AND PHYSICAL THERAPIST ASSISTANT CERTIFICATION 1 - eff 05/15/2015

Effective date

05/15/2015

DEPARTMENT OF REGULATORY AGENCIES

STATE PHYSICAL THERAPY BOARD

PHYSICAL THERAPIST LICENSURE & PHYSICAL THERAPIST ASSISTANT CERTIFICATION

4 CCR 732-1

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

GENERAL RULE PROVISIONS

101. Licensure & Certification Requirements: Credit for Military Experience

The purpose of this rule is to outline the conditions and procedures governing the evaluation of an applicant's military training and experience under § 24-34-102(8.5), C.R.S.

A. Education, training, or service gained in military services outlined in § 24-34-102(8.5), C.R.S. that is to be accepted and applied towards receiving either a physical therapist license or a physical therapist assistant certification must be substantially equivalent, as determined by the Board, to the qualifications otherwise applicable at the time of the receipt of the application. It is the applicant's responsibility to provide timely and complete evidence of the education, training and/or service gained in the military for review and consideration. Satisfactory evidence of such education, training or service will be assessed on a case by case basis.

102. Recognized Accrediting Agency

The purpose of this rule is to designate a nationally recognized accrediting agency for accrediting physical therapy and physical therapist assistant programs pursuant to sections 12-41-103(1), 12-41-107, 12-41-109, 12-41-111, 12-41-114, 12-41-205, 12-41-206, and 12-41-207, C.R.S.

A. The Commission on Accreditation in Physical Therapy Education (CAPTE) is recognized as the accrediting agency for accrediting both physical therapy and physical therapist assistant programs.

103. Approved Examinations for Licensing

The purpose of this rule is to designate a nationally-recognized examination approved by the Board pursuant to sections 12-41-107, 12-41-109, 12-41-111, 12-41-205, 12-41-206, and 12-41-207, C.R.S.

A. The examination developed by the Federation of State Boards of Physical Therapy (FSBPT) entitled the National Physical Therapy Examination (NPTE) for physical therapists is approved as the required examination in the licensure process. An applicant must achieve a passing score as determined by FSBPT in order to be eligible for licensure as a physical therapist.

B. The examination developed by FSBPT entitled the National Physical Therapy Examination (NPTE) for physical therapist assistants is approved as the required examination in the licensure process. An applicant must achieve a passing score as determined by FSBPT in order to be eligible for certification as a physical therapist assistant.

PHYSICAL THERAPIST LICENSURE RULES

201. Supervision and/or Direction of Persons Not Licensed as a Physical Therapist

Pursuant to section 12-41-113(1), C.R.S., the purpose of this rule is to clarify supervision and/or direction provisions for persons not licensed as a physical therapist, which include a physical therapist assistant, certified nurse aide, provisional physical therapist, physical therapy aide, athletic trainer, massage therapist, student physical therapist, or student physical therapist assistant. A therapist of record must be established if physical therapy services are being provided by any of the persons not licensed as a physical therapist listed above. A physical therapist who performs an initial examination and evaluation, and develops an appropriate plan of care, shall be the therapist of record for that patient, unless that physical therapist transfers the responsibility to another licensed physical therapist through documentation in the patient records, including the transfer of the procedures and responsibilities provided in sections B, C, and D of this rule.

A. Definitions:

1. "General supervision" means the physical therapist is not required to be on site for direction and supervision, but must be available at least by telecommunications.

2. "Direct supervision" means the physical therapist is physically present on the premises and in the same building.

3. "Immediate supervision" means the physical therapist is physically present or immediately available to support the individual being supervised.

B. Delegation of duties is determined by the education and training of the individual being delegated responsibilities as allowed pursuant to Article 41 of Title 12, C.R.S., and these Board rules. If a task cannot be delegated, then a physical therapist must personally attend to the task in-person and not through a patient chart review.

1. A physical therapist shall determine if the individual not licensed as a physical therapist who is being delegated responsibility has the appropriate education, training, and/or experience to perform duties as allowed by statute and/or rule.

2. A physical therapist shall rely on his or her expertise and clinical reasoning when determining the most appropriate utilization of a person not licensed as a physical therapist to provide for the delivery of service that is safe, effective, and efficient.

3. A physical therapist must personally perform and cannot delegate to a person not licensed as a physical therapist the initial clinical contact, interpretation of referrals, initial examinations and evaluations, diagnosis and prognosis, development and modification of plans of care, determination of discharge criteria, and supervision of physical therapy services rendered to the patient/client.

4. A physical therapist shall not delegate wound debridement to a person not licensed as a physical therapist, but may delegate non-selective wound care to a physical therapist assistant.

C. A physical therapist is responsible for providing adequate or proper supervision and/or direction to a person not licensed as a physical therapist pursuant to section 12-41-115(1)(e), C.R.S.

1. A physical therapist may supervise up to four (4) individuals at one time who are not physical therapists to assist in the physical therapist's clinical practice. This limit does not include student physical therapists and student physical therapist assistants supervised by a physical therapist for educational purposes.

2. A physical therapist shall regularly evaluate and observe the performance of any person under his or her supervision and/or direction to ensure that all physical therapy services

rendered meet the standard of care for delegation to be continued.

D. A physical therapist shall provide:

1. General supervision to a physical therapist assistant. However, pursuant to section 12-41-113(2), C.R.S., direct supervision is required if the physical therapist assistant is administering topical and aerosol medications when they are consistent with the scope of physical therapy practice and when any such medication is prescribed by a licensed health care practitioner who is authorized to prescribe such medication. A prescription or order shall be required for each such administration within a plan of care.

2. General supervision to a certified nurse aide in a home health care setting, as part of a physical therapist plan of care.

3. Direct supervision to a provisional physical therapist. In addition, the supervising physical therapist must perform records review and co-signature of notes.

4. Direct supervision to a physical therapy aide.

5. Direct supervision to an athletic trainer providing athletic training within a physical therapist plan of care.

6. Direct supervision to a massage therapist providing massage therapy within a physical therapist plan of care.

7. Immediate supervision to a student physical therapist or a student physical therapist assistant.

202. Supervision of Physical Therapist Assistants and Physical Therapy Aides

The purpose of this rule is to specify supervisory provisions required by section 12-41-113(1), C.R.S. for physical therapist assistants certified in accordance with section 12-41-204, C.R.S., and physical therapy aides. This rule applies to all physical therapists who utilize physical therapist assistants and/or aides in their practice. The physical therapist shall establish a patient relationship with the client prior to any delegation that has been deemed as allowable and appropriate pursuant to Article 41, Title 12, C.R.S., and Board rules.

Physical Therapist Assistants

A. For the purposes of these rules, physical therapists may supervise physical therapist assistants performing physical therapy services as defined in section 12-41-103(6), C.R.S., and pursuant to Rule 201 as determined by the physical therapist of record, except for interventions or services that are otherwise prohibited by law.

1. Physical therapist assistants may perform non-selective wound care, but may not perform wound debridement.

2. Physical therapist assistants may not perform dry needling.

3. Physical therapist assistants may not perform joint mobilization, unless the supervising physical therapist has determined that the physical therapist assistant has the necessary degree of education, training and skill for safe patient care. Entry-level education is inadequate; additional formal continuing education (psychomotor and didactic) is required to perform joint mobilization. Thrust, high-velocity techniques are not within the scope of the physical therapist assistants' practice.

4. Physical therapist assistants may not perform or assist a physical therapist in providing physical therapy of animals.

B. The following condition must be met before a physical therapist can utilize a physical therapist assistant: a physical therapist must be designated and recorded in the patient/client records as responsible for supervising the care and interventions provided by the physical therapist assistant. The designated physical therapist must consistently provide for the planning, evaluating, and supervising of all care rendered to the patient/client.

C. The physical therapist is responsible for the performance of all services performed by the physical therapist assistant. This responsibility requires the physical therapist to assure those services are performed with a degree of care and skill appropriate to the physical therapist assistant's education and training.

D. The physical therapist assumes accountability for the acts delegated to or performed by a physical therapist assistant. Before delegating performance of physical therapy services to a physical therapist assistant working under general supervision, the supervising physical therapist shall ensure that the physical therapist assistant is qualified by education and training to perform the physical therapy services in a safe, effective, and efficient manner.

E. A physical therapist assistant may not supervise other personnel in the provision of physical therapy services to a patient.

F. A physical therapist assistant under the general supervision of a physical therapist may act as a clinical instructor for a physical therapist assistant student. However, immediate supervision of the student physical therapist assistant by the physical therapist is required if the physical therapist assistant student is providing physical therapy services.

Physical Therapy Aides

G. All individuals not licensed as a physical therapist, not licensed as a provisional physical therapist, not certified as a physical therapist assistant, not authorized to practice as a student physical therapist or physical therapist assistant, and not otherwise regulated as a health care professional, shall be considered an aide for the purposes of this rule.

H. A physical therapy aide may participate in limited designated tasks, as assigned by a physical therapist. The supervising physical therapist must participate in patient care on each date of service when a physical therapy aide is involved in care.

I. As to recordkeeping, a physical therapy aide may participate only in basic data recording in the medical record.

J. Wound care/debridement, dry needling, administration of medications, joint mobilization, and treatment on animals shall not be delegated to a physical therapy aide. The supervising physical therapist shall ensure that the physical therapy aide is qualified by education and training to participate in limited designated tasks as assigned by the physical therapist.

203. Authorized Practice of Physical Therapy by a Person Not Licensed In Colorado

The purpose of this rule is to clarify the following conditions under which a physical therapist not licensed in Colorado may practice for a temporary period of time pursuant to section 12-41-114(1)(f), C.R.S., which allows the practice of physical therapy in Colorado for no more than 4 consecutive weeks or more than once in any 12-month period by a physical therapist licensed, certified, or registered in another state or country when providing services in the absence of a physical therapist licensed in Colorado. This provision is not available for a person applying for a license in Colorado whose application is pending

review and potential approval. Additional requirements for eligibility including the following:

A. The entity wishing to employ or engage the services of a visiting, physical therapist who is not otherwise licensed in Colorado must notify the Board at least one week prior to the start date and must document the need for employing or engaging the services of a visiting physical therapist.

B. The visiting physical therapist must possess a current and active license, certification, or registration in good standing in another state or country and provide a copy of the license, certification, or registration to the Board at least one week prior to practicing in Colorado.

C. The visiting physical therapist must have been engaged in the active, clinical practice of physical therapy for 2 of the last 5 years in order to be eligible.

204. Licensure by Examination for Physical Therapists

The purpose of this rule is to delineate the requirements for licensure by examination for physical therapists pursuant to section 12-41-107, C.R.S.

A. An applicant is required to demonstrate that he/she has successfully completed a physical therapy program that is either:

1. Accredited by a nationally recognized accrediting agency pursuant to Rule 102, or

2. Substantially equivalent pursuant to Rule 205.

B. If applying to take the National Physical Therapy Examination (NPTE), an applicant:

1. Must have successfully completed a physical therapy program or be eligible to graduate within 90 days of a program pursuant to section A of this rule, and

2. Must meet the Federation of State Boards of Physical Therapy's (FSBPT) current eligibility requirements in effect at the time of registering for the NPTE, including any exam retake or low score limit policies.

C. An applicant must meet one of the following current practice competency requirements in order to be eligible for licensure by examination:

1. Graduate from a physical therapy program pursuant to section A of this rule above and pass the NPTE within the 2 years immediately preceding the date of the application, or

2. Complete the Federation of State Boards of Physical Therapy's (FSBPT) Practice Review Tool (PRT), or its equivalency as determined by the Board, and

a. Submit a Candidate Feedback Report, or its equivalency as determined by the Board, with an overall performance reporting of "sufficiently qualified" to be considered and accepted by the Board; or

b. Successfully complete a Board approved plan to overcome deficiencies in any area(s) rated "needs improvement" in the Candidate Feedback Report. This includes submitting an appropriate plan to address the deficiencies noted in the attached report for Board consideration and approval before proceeding, and the plan must include only Category I activities.

D. An applicant who is unable to demonstrate current practice competency under section C of this rule may request to demonstrate competency by any other means. The Board shall consider such a

request on a case-by-case basis. The decision to approve such a request shall be at the sole discretion of the Board. In considering whether to approve such a request, the Board shall consider public safety, the particular circumstances and hardships faced by the applicant, and such other factors as the Board deems appropriate. If the Board grants a license under this section D, the Board may subject said license to such lawful conditions as the Board finds are necessary to protect the public.

205. Licensing of Foreign-Trained Physical Therapist Graduates of Non-Accredited Programs

The purpose of this rule is to establish procedures for determining whether a foreign-trained physical therapist applicant who has graduated from a non-accredited program has substantially equivalent education and training as required pursuant to section 12-41-111(1)(a), C.R.S.

A. A foreign-trained applicant who has graduated from a non-accredited program must have education and training in physical therapy substantially equivalent to the entry-level education and training required at accredited physical therapy programs in the United States in effect at the time of the applicant's graduation. This includes an assessment of the applicant's general and professional education, as well as training in wound care and debridement.

B. Applicants who wish to have their general and professional education considered "substantially equivalent" in order to take the National Physical Therapy Examination (NPTE) through Colorado and qualify for licensure shall submit their credentials to the Foreign Credentialing Commission of Physical Therapy (FCCPT). The applicant must submit a credentials evaluation utilizing the version of the Coursework Evaluation Tool for Foreign-Educated Physical Therapists developed by the Federation of State Boards of Physical Therapy (FSBPT) that applies to the applicant's year of graduation in order to evaluate the applicant's credentials against the requirements at accredited physical therapy programs in place at the time of the applicant's graduation. The Board will not accept a credentials evaluation from an organization not listed in this rule.

C. A foreign-trained applicant who has graduated from a non-accredited program and already passed the NPTE may submit a credentials evaluation from a credentialing agency other than FCCPT provided that:

1. The credentialing agency utilized the version of the Coursework Evaluation Tool for Foreign-Educated Physical Therapists developed by FSBPT that applies to the applicant's year of graduation in order to evaluate the applicant's credentials against the requirements at accredited physical therapy programs in place at the time of the applicant's graduation, and

2. The applicant has been licensed in good standing and actively engaged in clinical practice as a licensed physical therapist in the United States for 2 out of the 5 years immediately preceding his or her application for licensure.

D. All expenses associated with the credential evaluation are the responsibility of the applicant.

E. Failure to have a credentials evaluation pursuant to the terms of this rule will result in the Board denying the application.

F. In the event a foreign-trained applicant's general education is found to be deficient, the applicant may take and pass subject examinations from the College-Level Examination Program (CLEP) to overcome the deficiency in general education.

G. In the event a foreign-trained applicant's professional education is found to be deficient, the applicant shall either:

1. Successfully complete a Board-approved plan to overcome deficiencies, or

2. Overcome the deficiency by obtaining a master or doctorate degree at an accredited physical therapy program.

H. Degrees obtained in a transitional program are not equivalent to a professional entry-level physical therapy degree and will not be accepted for initial licensure.

206. Licensure by Endorsement for Physical Therapists

The purpose of this rule is to delineate the requirements for licensure by endorsement for physical therapists pursuant to section 12-41-109, C.R.S. In order to be qualified for licensure by endorsement, an applicant is required to demonstrate that he or she does not currently have a revoked, suspended, restricted, or conditional license to practice as a physical therapist, or is currently pending disciplinary action against such license in another state or territory of the United States. An applicant must meet one of the following requirements:

A. Graduated from an accredited physical therapy program within the past 2 years and passed the National Physical Therapy Examination (NPTE).

B. Practiced in the United States as a licensed physical therapist for at least 2 of the 5 years immediately preceding the date of the application.

C. If an applicant has not practiced as a licensed physical therapist for at least 2 of the 5 years immediately preceding the date of the application, then he or she is required to have passed the NPTE, or its equivalent, and may demonstrate competency through successful completion of one of the following:

1. Complete 60 points of Professional Development Activities (PDA) pursuant to Rule 213.C.2.a-c during the 2 years immediately preceding the application. All 60 points must be Category I, and directly related to the physical therapist's clinical practice.

2. Complete the Federation of State Boards of Physical Therapy's (FSBPT) Practice Review Tool (PRT), or its equivalency as determined by the Board, and

a. Submit a Candidate Feedback Report, or its equivalency as determined by the Board, with an overall performance reporting of "sufficiently qualified" to be considered and accepted by the Board; or

b. Successfully complete a Board approved plan to overcome deficiencies in any area(s) rated "needs improvement" in the Candidate Feedback Report. This includes submitting an appropriate plan to address the deficiencies noted in the attached report for Board consideration and approval before proceeding, and the plan must include only Category I activities.

3. Successfully complete a Board authorized internship.

a. An applicant seeking to demonstrate competency through an internship shall:

i. Arrange for a Colorado-licensed, practicing physical therapist (the "supervising physical therapist") to supervise the internship; and

ii. Ensure that the supervising physical therapist immediately notifies the Board in writing of the establishment of the internship and submits for the Board's approval a plan for supervision using the Clinical Performance

Instrument (CPI).

b. The internship shall not commence without the Board's written approval of the supervising physical therapist's plan for supervision specified in subparagraph (3) (c) of this rule.

c. The internship shall consist of:

i. The applicant's actual practice of physical therapy as defined in section 12-41-103(6), C.R.S.;

ii. Supervision of the applicant at all times by any Colorado-licensed, practicing physical therapist on the premises where physical therapy services are being rendered; and

iii. A minimum of 240 hours clinical practice within a consecutive 6-month period commencing from the Board's written approval of the plan for supervision.

d. The applicant shall ensure that the supervising physical therapist files a written report at the completion of the internship. This report must indicate whether the applicant demonstrates entry-level performance in all skills assessed by the CPI. Hard copy or electronic copies of the CPI are acceptable.

D. An applicant who is unable to demonstrate competency under sections A, B, or C of this rule may request to demonstrate competency by any other means. The Board shall consider such a request on a case-by-case basis. The decision to approve such a request shall be at the sole discretion of the Board. In considering whether to approve such a request, the Board shall consider public safety, the particular circumstances and hardships faced by the applicant, and such other factors as the Board deems appropriate. If the Board grants a license under this section D, the Board may subject said license to such lawful conditions as the Board finds are necessary to protect the public.

207. Reinstatement or Reactivation of an Expired or Inactive Physical Therapist License

The purpose of this rule is to establish the qualifications and procedures for applicants seeking reinstatement of an expired physical therapist license or reactivation of an inactive physical therapist license pursuant to sections 12-41-112 and 12-41-112.5, C.R.S.

A. An applicant seeking reinstatement or reactivation of a physical therapist license shall complete a reinstatement or reactivation application and pay a fee as established by the Director.

B. If the license has been expired or inactive for two years or less:

1. Effective November 1, 2016, and if:

a. The licensee was practicing in Colorado until his/her license expired on October 31, 2016, the applicant shall demonstrate continuing professional competency pursuant to section 12-41-114.6, C.R.S. and Rule 213, or

b. The licensee was practicing outside of Colorado until his/her license expired on October 31, 2016, the applicant may demonstrate continuing professional competency through an option listed in section C below.

2. Effective November 1, 2018, all applicants must demonstrate continuing professional

competency pursuant to section 12-41-114.6, C.R.S. and Rule 213 for the two years immediately preceding the date the application is received.

C. If the license has been expired or inactive for more than two years, but less than five years, an applicant must establish "competency to practice" pursuant to section 24-34-102(8)(d)(II), C.R.S., by submitting one of the following:

1. Verification of an active, valid physical therapist license in good standing from another state, along with proof of clinical physical therapy practice in that state which includes a minimum of an average of 400 hours per year for the two years immediately preceding the date of application. The work experience must be attested as to the number of hours.

2. Evidence of completing an average of 15 points of Professional Development Activities (PDA) pursuant to Rule 213.C.2.a-c for each year the license has been expired or inactive.

a. The Board may accept 1.25 points for each month the license is expired or inactive, and

b. All points must be Category I, and directly related to the physical therapist's clinical practice.

3. Completion of the Federation of State Boards of Physical Therapy's (FSBPT) Practice Review Tool (PRT), or its equivalency as determined by the Board, and

a. Submitting a Candidate Feedback Report, or its equivalency as determined by the Board, with an overall performance reporting of "sufficiently qualified" to be considered and accepted by the Board; or

b. Successfully completing a Board approved plan to overcome deficiencies in any area(s) rated "needs improvement" in the Candidate Feedback Report. This includes submitting an appropriate plan to address the deficiencies noted in the attached report for Board consideration and approval before proceeding, and the plan must include only Category I activities.

4. Any other means as approved by the Board.

D. An applicant seeking to reinstate or reactivate a license that has been expired or inactive for more than five years must demonstrate "competency to practice" as required in section 24-34-102(8)(d)(II), C.R.S., by submitting one of the following:

1. Verification of an active, valid physical therapist license in good standing from another state, along with proof of clinical physical therapy practice in that state which includes a minimum of an average of 400 hours per year for the two years immediately preceding the date of application. The work experience must be attested as to the number of hours.

2. Evidence of completing an average of 15 points of Professional Development Activities (PDA) pursuant to Rule 213.C.2.a-c for each year the license has been expired or inactive.

a. The Board may accept 1.25 points for each month the license is expired or inactive, and

b. All points must be Category I, and directly related to physical therapy clinical practice.

3. Completion of the Federation of State Boards of Physical Therapy's (FSBPT) Practice Review Tool (PRT), or its equivalency as determined by the Board, and

a. Submitting a Candidate Feedback Report, or its equivalency as determined by the Board, with an overall performance reporting of “sufficiently qualified” to be considered and accepted by the Board; or

b. Successfully completing a Board approved plan to overcome deficiencies in any area(s) rated “needs improvement” in the Candidate Feedback Report. This includes submitting an appropriate plan to address the deficiencies noted in the attached report for Board consideration and approval before proceeding, and the plan must include only Category I activities.

4. Practice for six months on probationary status with a practice monitor subject to the terms established by the Board.

5. Completion of a 240-hour internship within 6 consecutive months using the Physical Therapist Clinical Performance Instrument (“CPI) as the professional standard and measure of continued competency. Satisfactory completion of the internship shall require both 240 hours of internship practice and successful demonstration of entry-level performance on all skills on the CPI on electronic or paper form.

6. Any other means as approved by the Board.

E. An applicant for reinstatement or reactivation who has actively practiced in Colorado on an expired or inactive license in violation of section 12-41-106, C.R.S., is subject to denial of application, disciplinary action, and/or other penalties as authorized in the Physical Therapy Practice Act at section 12-41-101 et seq., C.R.S., and in accordance with section 24-34-102 et seq., C.R.S.

208. Use of Titles Restricted

The purpose of this rule is to clarify the use of titles and educational degrees pursuant to section 12-41-104, C.R.S.

A. Obtaining a physical therapy license does not automatically entitle or confer upon the licensee the right to use the title “Dr.” or “Doctor”.

B. A licensed physical therapist can use the title “Doctor” or “Dr.” only when such licensee has, in fact, been awarded a physical therapy doctorate degree (D.P.T.), or another academic or clinical doctorate degree (e.g., Ph.D., Sc.D.) from an accredited program by a nationally recognized accrediting agency as required pursuant to section 6-1-707, C.R.S., pertaining to the use of titles and degrees.

C. A physical therapist holding a doctorate degree may include the title “Doctor” or “Dr.” only when accompanied by the words of the conferred degree following his/her legal name and after the title “P.T.”, for example: “Dr. Jane/John Doe, P.T., D.P.T.” or “Dr. Jane/John Doe, P.T., Ph.D.”

D. A physical therapist not holding a physical therapy doctorate or transitional doctorate degree may not use the title D.P.T.

209. Declaratory Orders

The purpose of this rule is to establish procedures for the handling of requests for declaratory orders filed pursuant to the Colorado Administrative Procedures Act at § 24-4-105(11), C.R.S.

A. Any person or entity may petition the Board for a declaratory order to terminate controversies or remove uncertainties as to the applicability of any statutory provision or of any rule or order of the Board.

B. The Board will determine, at its discretion and without notice to petitioner, whether to rule upon such petition. If the Board determines that it will not rule upon such a petition, the Board shall promptly notify the petitioner of its action and state the reasons for such decision.

C. In determining whether to rule upon a petition filed pursuant to this rule, the Board will consider the following matters, among others:

1. Whether a ruling on the petition will terminate a controversy or remove uncertainties as to the applicability to petitioner of any statutory provisions or rule or order of the Board;

2. Whether the petition involves any subject, question or issue that is the subject of a formal or informal matter or investigation currently pending before the Board or a court involving one or more petitioners;

3. Whether the petition involves any subject, question or issue that is the subject of a formal or informal matter or investigation currently pending before the Board or a court but not involving any petitioner;

4. Whether the petition seeks a ruling on a moot or hypothetical question or will result in an advisory ruling or opinion; and

5. Whether the petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to CRCP 57, which will terminate the controversy or remove any uncertainty as to the applicability to the petitioner of the statute, rule, or order in question.

D. Any petition filed pursuant to this rule shall set forth the following:

1. The name and address of the petitioner and whether the petitioner is licensed pursuant to Title 12, Article 41.

2. The statute, rule, or order to which the petition relates.

3. A concise statement of all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule, or order in question applies or potentially applies to the petitioner.

E. If the Board determines that it will rule on the petition, the following procedures shall apply:

1. The Board may rule upon the petition based solely upon the facts presented in the petition. In such a case:

a. Any ruling of the Board will apply only to the extent of the facts presented in the petition and any amendment to the petition.

b. The Board may order the petitioner to file a written brief, memorandum, or statement of position.

c. The Board may set the petition, upon due notice to petitioner, for a non-evidentiary hearing.

d. The Board may dispose of the petition on the sole basis of the matters set forth in the petition.

e. The Board may request the petitioner to submit additional facts in writing. In such

event, such additional facts will be considered as an amendment to the petition.

f. The Board may take administrative notice of facts pursuant to the Colorado Administrative Procedures Act at § 24-4-105(8), C.R.S., and may utilize its experience, technical competence, and specialized knowledge in the disposition of the petition.

2. If the Board rules upon the petition without a hearing, it shall promptly notify the petitioner of its decision.

3. The Board may, at its discretion, set the petition for hearing, upon due notice to petitioner, for the purpose of obtaining additional facts or information or to determine the truth of any facts set forth in the petition or to hear oral argument on the petition. The hearing notice to the petitioner shall set forth, to the extent known, the factual or other matters that the Board intends to inquire.

4. For the purpose of such a hearing, to the extent necessary, the petitioner shall have the burden of proving all the facts stated in the petition; all of the facts necessary to show the nature of the controversy or uncertainty; and the manner in which the statute, rule, or order in question applies or potentially applies to the petitioner and any other facts the petitioner desires the Board to consider.

F. The parties to any proceeding pursuant to this rule shall be the Board and the petitioner. Any other person may seek leave of the Board to intervene in such a proceeding, and leave to intervene will be granted at the sole discretion of the Board. A petition to intervene shall set forth the same matters as are required by Section D of this Rule. Any reference to a "petitioner" in this rule also refers to any person who has been granted leave to intervene by the Board.

G. Any declaratory order or other order disposing of a petition pursuant to this rule shall constitute agency action subject to judicial review pursuant to the Colorado Administrative Procedures Act at § 24-4-106, C.R.S.

210. Requirements for Physical Therapists to Perform Physical Therapy on Animals

The purpose of this rule is to implement the requirements of § 12-41-103.6(2)(b)(II), C.R.S., regarding the authority of Physical Therapists to treat animals.

A. A Physical Therapist must have the knowledge, skill, ability and documented competency to perform an act that is within the scope of practice for Physical Therapists.

B. The Director shall maintain a data base of all Physical Therapists that are qualified pursuant to this rule to practice physical therapy on animals in this state.

C. All Physical Therapists that choose to practice physical therapy on animals shall provide the Board with such therapist's name, current address, education and qualifications to perform physical therapy on animals for inclusion in the data base referenced in part B of this rule. Information in the data base shall be open to public inspection at all times. Forms for Physical Therapists to provide such information shall be provided by the Board.

D. A Physical Therapist that desires to perform physical therapy on animals must comply with the following educational requirements:

1. Minimum of 80 contact hours over and above entry-level human physical therapy program course work for non-human animals, to include:

a. FOUNDATION/CLINICAL SCIENCES

i. Gross and applied non-human animal anatomy/physiology

ii. Wound healing and response of tissues to disuse and remobilization in the non-human animal

iii. Animal behavior

iv. Animal restraint

v. Zoonotic and infectious diseases

b. EXAMINATION/EVALUATION/PROGNOSIS/PT DIAGNOSIS

i. Medical and surgical management of orthopedic, neurological, critically injured, geriatric, arthritic and obese non-human animals

ii. Gait and other movement analyses

c. INTERVENTION/PLAN OF CARE/OUTCOME

i. Therapeutic exercise applied to non-human animals

ii. Therapeutic modalities

iii. Outcome assessment and documentation

d. CLINICAL EXPERIENCE

i. Documented successful completion of a minimum of 120 hours under the supervision of a licensed physical therapist listed in the data base maintained by DORA to perform physical therapy of animals or a licensed veterinarian.

E. Prior to performing physical therapy on an animal, the Physical Therapist shall obtain veterinary medical clearance of the animal by a Colorado-licensed Veterinarian and must document such clearance in the animal patient's record.

F. Veterinary medical clearance means:

1. The Veterinarian has previously examined the animal patient and has provided a differential diagnosis if appropriate.

2. The Veterinarian has cleared the animal for physical therapy.

G. It is expected that the Physical Therapist and the Veterinarian will continue professional collaboration as necessary for the well-being of the animal patient.

H. Once veterinary medical clearance has been received, the Physical Therapist is responsible for developing the plan of care for the animal patient's physical therapy.

I. The animal patient's record must include the verbal or written veterinary medical clearance. If verbal clearance is received, the Physical Therapist must document the verbal clearance in the animal patient's record, including the name of the veterinarian, date and time clearance was received.

J. Complaints against Physical Therapists alleging a violation related to animal physical therapy will be forwarded to the Colorado State Board of Veterinary Medicine for its review and advisory recommendation to the State Physical Therapy Board. The State Physical Therapy Board retains the final authority by statute for decisions related to discipline of any physical therapist.

211. Requirements for Physical Therapists to Perform Dry Needling

A. Dry needling (also known as Trigger Point Dry Needling) is a physical intervention that uses a filiform needle to stimulate trigger points, diagnose and treat neuromuscular pain and functional movement deficits; is based upon Western medical concepts; requires an examination and diagnosis, and treats specific anatomic entities selected according to physical signs. Dry needling does not include the stimulation of auricular or distal points.

B. Dry needling as defined pursuant to this rule is within the scope of practice of physical therapy.

C. A Physical Therapist must have the knowledge, skill, ability, and documented competency to perform an act that is within the Physical Therapist's scope of practice. Except as part of a course of study on dry needling pursuant to paragraph D.2 of this Rule, a Physical Therapist shall not perform dry needling unless competent to do so.

D. To be deemed competent to perform dry needling, a Physical Therapist must:

1. have practiced for at least two years as a licensed Physical Therapist; and

2. have successfully completed a dry needling course of study that consists of a minimum of 46 hours of in-person (i.e. not online) dry needling training.

E. A provider of a dry needling course of study must meet the educational and clinical prerequisites as defined in this rule, paragraph D above and demonstrate a minimum of two years of dry needling practice techniques. The provider is not required to be a Physical Therapist.

F. Physical Therapists performing dry needling in their practice must have written informed consent for each patient where this technique is used. The patient must sign and receive a copy of the informed consent form. The consent form must, at a minimum, clearly state the following information:

1. Risks and benefits of dry needling; and

2. Physical Therapist's level of education and training in dry needling; and

3. The Physical Therapist will not stimulate any distal or auricular points during dry needling.

G. When dry needling is performed, it must be clearly documented in the procedure notes and must indicate how the patient tolerated the technique, as well as the outcome after the procedure.

H. Dry needling shall not be delegated and must be directly performed by a qualified, licensed Physical Therapist.

I. Dry needling must be performed in a manner consistent with generally accepted standards of practice, including clean needle techniques, and the guidelines and recommendations of the Centers for Disease Control and Prevention ("CDC").

J. The Physical Therapist shall supply written documentation, upon request by the Board, which substantiates appropriate training as required by this Rule. Failure to provide written documentation, upon request, is a violation of this Rule, and is prima facie evidence that the

Physical Therapist is not competent and not permitted to perform dry needling

212. Inactive License Status for Physical Therapists

The purpose of this rule is to outline the conditions and procedures governing inactive licensure status pursuant to section 12-41-112.5, C.R.S.

A. A physical therapist with an inactive license must not engage in any act or conduct that constitutes the practice of physical therapy while the physical therapist's license is inactive.

B. A physical therapist with an inactive license is exempt from the professional liability insurance requirements of section 12-41-114.5, C.R.S.

C. A physical therapist may apply for reactivation of an inactive license by successfully meeting the requirements of Rule 207.

213. Continuing Professional Competency

The purpose of this rule is to establish a continuing professional competency program pursuant to section 12-41-114.6, C.R.S., wherein a physical therapist shall maintain and demonstrate continuing professional competency in order to renew, reinstate, or reactivate a license to practice physical therapy in the state of Colorado.

Furthermore, pursuant to section 12-41-114.6(2), C.R.S., records of assessment or other documentation developed or submitted in connection with the continuing professional competency program are confidential and not subject to inspection by the public or discovery in connection with a civil action against a physical therapist. A person or the Board shall not use the records or documents unless used by the Board to determine whether a physical therapist is maintaining continuing professional competency to engage in the profession.

A. Definitions

1. Assessment of Knowledge and Skills (AKS): an objective third-party assessment that compares a licensee's knowledge, skills, and abilities to the standards for entry-level practice.

2. Continuing Professional Competency: the ongoing ability of a physical therapist to learn, integrate, and apply the knowledge, skills, and judgment to practice as a physical therapist according to generally accepted standards and professional ethical standards.

3. Continuing Professional Development (CPD): the Board program through which a licensee can satisfy the continuing professional competency requirements in order to renew, reinstate, or reactivate a license.

4. Learning Plan: a Board approved form through which a licensee documents his/her goals and plans of learning that were developed from his/her Reflective Self-Assessment (RSAT), which is defined below, and AKS (when appropriately applied).

5. Professional Development Activities (PDA): learning activities undertaken to increase the licensee's knowledge and skill or hone existing knowledge and skill for the purpose of continuing professional development.

6. Reflective Self-Assessment Tool (RSAT): a reflective practice tool in which a licensee can reflect upon his/her knowledge and skills pertaining to the foundational areas of physical therapy practice taking into account the licensee's current level and area of

practice.

B. Continuing Professional Competency Requirements

1. Effective after the 2014 license renewal, or upon the completion of the first renewal of a license thereafter, the licensee shall demonstrate continuing professional competency in order to renew a license by:

   a. Participation in the Continuing Professional Development (CPD) program;

   b. Participation in a program of continuing professional competency through a Colorado state agency or department, including continuing competency requirements imposed through a contractual arrangement with a provider as set forth in section 12-41-114.6(1)(c), C.R.S. This status is hereafter known as "Deemed Status" as described in section D of this rule; or

   c. Receiving an exemption for military service as defined in section 12-70-102, C.R.S. Military exemptions must be approved by the Division of Professions and Occupations. Licensees seeking a military exemption shall submit a request in writing with evidence that the licensee's military service meets the criteria established in section 12-70-102, C.R.S., and section E of this rule.

2. A licensee shall attest at the time of the renewal of a license to his/her compliance with continuing professional competency requirements.

C. Continuing Professional Development Program

1. The Continuing Professional Development (CPD) program entails the following:

   a. The licensee shall complete the Reflective Self-Assessment Tool (RSAT) once per 2-year renewal period. A licensee shall use the Board approved form.

      i. The execution of a Learning Plan once per 2-year renewal period that is based upon the licensee's Reflective Self-Assessment Tool (RSAT) or Assessment of Knowledge and Skills (AKS). A licensee shall use the Board approved form.

      ii. Accrual of 30 points of Professional Development Activities (PDA) per 2-year renewal period.

   b. The completion of an Assessment of Knowledge and Skills (AKS) once every 10 years.

2. Professional Development Activities (PDA)

   a. Professional Development Activities must be relevant to the licensee's practice as a physical therapist and pertinent to his/her Learning Plan. The Board will not pre-approve specific courses or providers. The licensee shall determine which activities and topics will meet his/her Learning Plan, and select an appropriate provider.

   b. Professional Development Activities are separated into Category I, Category II, and Category III activities and each category has a corresponding point value. Points are used in lieu of continuing education units (CEU) or contact hours to allow credit for non-continuing education type activities.

c. Points will be accepted if the activity is included in the Board's *Professional Development Activities List*. The Board may accept or reject activities submitted for consideration that are not identified on its list.

d. A minimum of 15 of the required 30 points must be Category I activities.

e. Professional Development Activities will only apply for one 2-year renewal period.

3. The completion of an Assessment of Knowledge and Skills (AKS) which meets Board criteria once every ten years.

a. The ten year cycle will commence upon the renewal of a license in 2014 or upon the first renewal of a license thereafter.

b. The ten year cycle will not be changed by the expiration or inactivation of a license that is expired or inactive for less than five years. Physical therapists with licenses expired or inactive for more than five years shall commence a new ten year cycle upon the first renewal of a license in active status.

c. An AKS must meet the following criteria:

i. Be drafted and validated by qualified physical therapists and psychometricians;

ii. Be comprised of evidence based practice;

iii. Be maintained for relevancy and advancements in and affecting the profession; and

iv. Provide feedback to the participant/licensee regarding his/her performance and suggested learning opportunities to enhance his/her knowledge and skills.

d. Administrative Approval. The Board finds the following AKSs to have met the criteria established in section C.3.c of this rule, and are administratively approved by the Board:

i. Any Practice Review Tool (PRT) administered by the Federation of State Boards of Physical Therapy (FSBPT).

ii. If the AKS is not listed as administratively approved by the Board in this rule, then additional documentation demonstrating the AKS satisfies the Board criteria will be required prior to registering and completing the AKS.

e. The licensee may count the completion of an AKS as a Category I activity toward a mandatory 30 PDA points for the corresponding 2-year renewal period in compliance with the State Physical Therapy Board's *Professional Development Activities List* for assigned point values.

f. Credit for a maximum of two AKSs may be applied to the requisite PDA points during a single ten-year cycle.

4. Audit of Compliance. The following documentation is required for an audit of compliance of a licensee's Continuing Professional Development:

a. The Learning Plan that is signed and executed which contains the licensee's goals in

the form and manner as approved by the Board.

b. A certificate of completion or other report issued by the AKS provider indicating the name of the licensee, AKS title, content, and the licensee's date of completion.

c. Documentation of 30 points of Professional Development Activities in compliance with the State Physical Therapy Board's *Professional Development Activities List* for documentation requirements for PDAs.

d. The Board may accept or reject Professional Development Activities (PDA) that do not meet the criteria established by the Board for PDA or standards of quality as defined in the State Physical Therapy Board's *Professional Development Activities List*, *Standards of Quality for Category I Continuing Education Activities*, and this rule.

D. Deemed Status. A licensee who satisfies the continuing professional competency requirements of a Colorado state agency or department pursuant to section 12-41-114.6(1)(c), C.R.S., shall meet the following criteria:

1. In order to renew a license, a licensee shall attest to his/her Deemed Status;

2. To qualify, the program continuing professional competency must be substantially equivalent to the CPD program administered by the Board and must include, at a minimum, every two years the following components:

   a. An assessment of knowledge and skills;

   b. Thirty (30) contact hours of learning activities; and

   c. Demonstration of completion of continuing competency activities.

3. Licensees claiming Deemed Status are subject to an audit of compliance. To satisfy an audit of compliance, the licensee shall submit appropriate evidence of participation in a qualifying program through submission of:

   a. A letter from the Colorado state agency or department or contractual entity specifying that the licensee has completed the continuing professional competency program, or

   b. Other documentation approved by the Board which reflects the licensee's completion of a program of continuing professional competency.

E. Military Exemption. Pursuant to section 12-70-102, C.R.S., licensees who have been called to federally funded active duty for more than 120 days for the purpose of serving in a war, emergency or contingency may request an exemption from the continuing professional competency requirements for the renewal, reinstatement, or reactivation of his/her license for the 2-year renewal period that falls within the period of service or within six months following the completion of service.

1. Military exemptions must be approved by the Division of Professions and Occupations. Licensees seeking a military exemption shall submit a request in writing with evidence that the licensee's military service meets the criteria established in section 12-70-102, C.R.S.

2. After being granted a military exemption, in order to complete the renewal process, a licensee

shall attest to his/her military exemption.

F. Records Retention. A licensee shall retain documentation demonstrating his/her compliance for two complete 2-year renewal periods.

G. Non-Compliance. Falsifying an attestation or other documentation regarding the licensee's compliance with continuing professional competency requirements constitutes the falsification of information in an application and may be grounds for discipline pursuant to sections 12-41-115(1)(k) and (r), C.R.S.

H. Reinstatement and Reactivation. A licensee seeking to reinstate or reactivate a license which has been expired or inactivated for two years or less shall meet the competency requirements outlined in Rule 207.B.

214. Reporting Criminal Convictions, Judgments, and Administrative Proceedings

The purpose of this rule is to delineate the procedures a licensee must adhere to when an act enumerated in §12-41-115, C.R.S. has occurred.

A. A licensee must inform the Board, in a manner prescribed by the Board, within 90 days of any of the following events:

1. The conviction of a felony under the laws of any state or of the United States, or of any level of crime related to the practice of physical therapy. A guilty verdict, a plea of guilty, a plea of nolo contendere, or the imposition of a deferred sentence accepted by the court is considered a conviction.

2. A disciplinary action imposed by another jurisdiction that licenses physical therapists including, but not limited to, a citation, sanction, probation, civil penalty, or a denial, suspension, revocation, or modification of a license, whether it is imposed by consent decree, order, or in some other manner, for any cause other than failure to pay a license fee by the due date.

3. Revocation or suspension by another state board, municipality, federal or state agency of any health services related license, other than a license as a Physical Therapist.

B. Any award, judgment, or settlement of a civil action or arbitration in which there was a final judgment or settlement for malpractice of physical therapy.

C. The notice to the Board must include the following information:

1. If the event is an action by a governmental agency:

a. the name of the agency,

b. its jurisdiction,

c. the case name,

d. the docket, proceeding, or case number by which the event is designated, and

e. a copy of the consent decree, order, or decision.

2. If the event is a conviction of a crime described above:

a. the court,

b. its jurisdiction,

c. the case name,

d. the case number,

e. a description of the matter or a copy of the indictment or charges,

f. any plea or verdict accepted or entered by the court, and

g. a copy of the imposition of sentence related to the conviction and the completion of all terms of the sentence;

3. If the event concerns a civil action or arbitration proceeding:

a. the court or arbitrator,

b. the jurisdiction,

c. the case name,

d. the case number,

e. a description of the matter or a copy of the complaint or demand for arbitration, and

f. a copy of the verdict, the court decision or arbitration award, or, if settled, the settlement agreement and court's order of dismissal.

4. The licensee notifying the Board may submit a written statement with the notice to be included with the licensee's records.

215. Provisional Physical Therapist License

The purpose of this rule is to establish the qualifications and procedures for applicants seeking a provisional license to practice as a physical therapist pursuant to section 12-41-107.5, C.R.S.

A. A provisional license may be issued only one time and cannot be renewed or reinstated.

B. An applicant is not eligible to be issued a provisional physical therapist license if he or she has failed the National Physical Therapy Exam (NPTE).

C. Pursuant to section 12-41-107.5, C.R.S., a provisional physical therapist license expires no later than 120 days after it is issued. However, if the individual issued a provisional license fails the NPTE after the license was issued, then the license expires within three (3) business days of his/her failing results being sent to the candidate.

D. A provisional physical therapist shall purchase and maintain professional liability insurance, or be insured under a supervising physical therapist, for the amounts specified in section 12-41-114.5(1), C.R.S., unless the provisional physical therapist is exempted pursuant to section 12-41-114.5(3), C.R.S.

PHYSICAL THERAPIST ASSISTANT RULES

301. Supervision Required for Physical Therapist Assistant Practice

The purpose of this rule is to clarify supervision parameters pursuant to § 12-41-203(2), C.R.S.

Physical Therapist Assistants ("P.T.A.") shall not provide physical therapy services unless the Physical Therapist Assistant works under the general supervision of a licensed Physical Therapist.

302. Supervision of Others by Physical Therapist Assistants Prohibited

The purpose of this rule is to clarify supervisory parameters pursuant to section 12-41-103.6(2)(b), C.R.S.

A. A physical therapist assistant may not supervise other personnel in the provision of physical therapy services to a patient.

B. A physical therapist assistant under the general supervision of a physical therapist may act as a clinical instructor for a physical therapist assistant student. However, immediate supervision of the student physical therapist assistant remains with the physical therapist if the physical therapist assistant student is providing physical therapy services.

303. Certification by Examination for Physical Therapist Assistants

The purpose of this rule is to delineate the requirements for certification by examination for physical therapist assistants pursuant to section 12-41-205, C.R.S.

A. An applicant is required to demonstrate that he/she has successfully completed a physical therapy program pursuant to Rule 204 or a physical therapist assistant program that is either:

1. Accredited by a nationally recognized accrediting agency pursuant to Rule 102, or

2. Substantially equivalent pursuant to Rule 304.

B. If applying to take the National Physical Therapy Examination (NPTE), an applicant:

1. Must have successfully completed a physical therapy or physical therapist assistant program, or be eligible to graduate within 90 days of a program pursuant to section A of this rule, and

2. Must meet the Federation of State Boards of Physical Therapy's (FSBPT) current eligibility requirements in effect at the time of registering for the NPTE, including any exam retake or low score limit policies.

C. An applicant must meet the following current practice competency requirements in order to be eligible for certification by examination:

1. Graduate from a program pursuant to section A of this rule above and pass the NPTE within the 2 years immediately preceding the date of the application.

D. An applicant who is unable to demonstrate current practice competency under section C of this rule may request to demonstrate competency by any other means. The Board shall consider such a request on a case-by-case basis. The decision to approve such a request shall be at the sole discretion of the Board. In considering whether to approve such a request, the Board shall consider public safety, the particular circumstances and hardships faced by the applicant, and such other factors as the Board deems appropriate. If the Board grants a certification under this section D, the Board may subject said certification to such lawful conditions as the Board finds are necessary to protect the public.

304. Certification of Foreign-Trained Physical Therapist Assistant Graduates of Non-Accredited Programs

The purpose of this rule is to establish procedures for determining whether a foreign-trained physical therapist assistant applicant who has graduated from a non-accredited program has substantially equivalent education and training as required pursuant to section 12-41-207(1)(a), C.R.S.

A. A foreign-trained applicant who has graduated from a non-accredited program must have education and training as a physical therapist assistant substantially equivalent to the entry-level education and training required at accredited physical therapist assistant programs in the United States in effect at the time of the applicant's graduation. This includes but is not limited to an assessment of the applicant's foundational studies and applied and technical education, as well as training in non-selective wound care.

B. Applicants who wish to have their foundational studies, and applied/technical education considered "substantially equivalent" in order to take the National Physical Therapy Examination (NPTE) through Colorado and qualify for certification shall submit their credentials to the Foreign Credentialing Commission of Physical Therapy (FCCPT). The applicant must submit a credentials evaluation utilizing the version of the Coursework Tool for Foreign Educated Physical Therapist Assistants developed by the Federation of State Boards of Physical Therapy (FSBPT) that applies to the applicant's year of graduation in order to evaluate the applicant's credentials against the requirements at accredited physical therapist assistant programs in place at the time of the applicant's graduation. The Board will not accept a credentials evaluation from an organization not listed in this rule.

C. A foreign-trained applicant who has graduated from a non-accredited program and already passed the NPTE may submit a credentials evaluation from a credentialing agency other than FCCPT provided that:

1. The credentialing agency utilized the version of the Coursework Evaluation Tool for Foreign-Educated Physical Therapists developed by FSBPT that applies to the applicant's year of graduation in order to evaluate the applicant's credentials against the requirements at accredited physical therapist assistant programs in place at the time of the applicant's graduation, and

2. The applicant has been licensed, certified, or registered in good standing and actively engaged in clinical practice as a physical therapist assistant in the United States for 2 out of the 5 years immediately preceding his or her application for certification.

D. All expenses associated with the credentials evaluation are the responsibility of the applicant.

E. Failure to have a credentials evaluation pursuant to the terms of this rule will result in the Board denying the application.

F. In the event a foreign-trained applicant's foundational studies are found to be deficient, the applicant may take and pass subject examinations from the College-Level Examination Program (CLEP) to overcome the deficiency in general education.

G. In the event a foreign-trained applicant's applied and technical education is found to be deficient, the applicant shall either:

1. Successfully complete a Board-approved plan to overcome deficiencies, or

2. Overcome the deficiency by obtaining an associate degree from an accredited physical therapist assistant program.

305. Certification by Endorsement for Physical Therapist Assistants

The purpose of this rule is to delineate the requirements for certification by endorsement pursuant to section 12-41-206, C.R.S. In order to be qualified for certification by endorsement, an applicant is required to demonstrate that he or she does not currently have a revoked, suspended, restricted, or conditional license, certification, or registration to practice as a physical therapist assistant, or is currently pending disciplinary action against such license, certification, or registration in another state or territory of the United States. An applicant must meet one of the following requirements:

A. Graduated from a physical therapist assistant program within the past 2 years and passed the National Physical Therapy Examination (NPTE).

B. Practiced in the United States as a licensed, certified, or registered physical therapist assistant for at least 2 of the 5 years immediately preceding the date of the application.

C. If an applicant has not practiced as a licensed, certified, or registered physical therapist assistant for at least 2 of the 5 years immediately preceding the date of the application, then he or she is required to have passed the NPTE, or its equivalent, and may demonstrate competency through successful completion of one of the following:

1. Completion of 60 hours of continuing education related to the practice of physical therapy during the 2 years immediately preceding the application, provided that the continuing education meets the approval of the Board as Category I.

2. Successful completion of a Board authorized internship.

a. An applicant seeking to demonstrate competency through an internship shall:

i. Arrange for a Colorado-licensed, practicing physical therapist (the “supervising physical therapist”) to supervise the internship; and

ii. Ensure that the supervising physical therapist immediately notifies the Board in writing of the establishment of the internship and submits for the Board’s approval a plan for supervision using the physical therapist assistant Clinical Performance Instrument (CPI).

b. The internship shall not commence without the Board’s written approval of the supervising physical therapist’s plan for supervision specified in subparagraph (3) (c) of this rule.

c. The internship shall consist of:

i. The applicant’s actual practice of physical therapy as defined in section 12-41-103(6), C.R.S.;

ii. Direct supervision of the applicant at all times by the Board approved Colorado-licensed, practicing physical therapist; and

iii. A minimum of 240 hours clinical practice within a consecutive 6-month period commencing from the Board’s written approval of the plan for supervision.

d. The applicant shall ensure that the supervising physical therapist files a written report at the completion of the internship. This report must indicate whether the applicant demonstrates entry-level performance in all skills assessed by the CPI.

Hard copy or electronic copies of the CPI are acceptable.

D. An applicant who is unable to demonstrate competency under sections A, B, or C of this rule may request to demonstrate competency by any other means. The Board shall consider such a request on a case-by-case basis. The decision to approve such a request shall be at the sole discretion of the Board. In considering whether to approve such a request, the Board shall consider public safety, the particular circumstances and hardships faced by the applicant, and such other factors as the Board deems appropriate. If the Board grants a certification under this section D, the Board may subject said license to such lawful conditions as the Board finds are necessary to protect the public.

306. Reinstatement of an Expired Certification for Physical Therapist Assistants

The purpose of this rule is to establish the qualifications and procedures for applicants seeking reinstatement of an expired physical therapist assistant certification pursuant to section 12-41-208, C.R.S.

A. An applicant seeking reinstatement of an expired physical therapist assistant certification shall complete a reinstatement application and pay a reinstatement fee as established by the Director.

B. If the certification has been expired for more than 2 years, but less than 5 years, an applicant must establish "competency to practice" pursuant to 24-34-102(8)(d)(II)(A) & (D), C.R.S., by submitting one of the following:

1. Verification of an active, valid physical therapist assistant license, certification or registration in good standing from another state, along with proof of clinical physical therapy practice in that state which includes a minimum of an average of 400 hours per year for the 2 years immediately preceding the date of application. The work experience must be attested as to the number of hours.

2. Evidence of completing an average of 30 hours per year in physical therapy continuing education courses since the date the certification expired, provided that the continuing education meets the approval of the Board as Category I.

3. Any other means as approved by the Board.

C. An applicant seeking to reinstate a certification that has been expired for more than 5 years must demonstrate "competency to practice" as required in section 24-34-102(8)(d)(II)(B) & (F), C.R.S., by submitting one of the following:

1. Verification of an active, valid physical therapist assistant license, certification or registration in good standing from another state, along with proof of clinical physical therapy practice in that state which includes a minimum an average of 400 hours per year for the 2 years immediately preceding the date of application. The work experience shall be attested as to the number of hours.

2. Evidence of completing an average of 30 hours per year in physical therapy continuing education courses since the date the certification expired, provided that the continuing education meets the approval of the Board as Category I.

3. Practice for six months on probationary status with a practice monitor subject to the terms established by the Board.

4. Completion of a 240-hour internship within 6 months using the physical therapist assistant Clinical Performance Instrument (CPI) as the professional standard and measure of continued competency. Satisfactory completion of the internship shall require both 240

hours of internship practice and successful demonstration of entry-level performance on all skills on the CPI on electronic or paper form.

5. Any other means as approved by the Board.

D. An applicant for reinstatement who has actively practiced in Colorado on an expired certification in violation of section 12-41-204, C.R.S., is subject to denial of application, disciplinary action, and/or other penalties as authorized in the Physical Therapy Practice Act at section 12-41-201 et seq., C.R.S., and in accordance with section 24-34-102 et seq., C.R.S.

Editor's Notes

History

Rules 7, 10, 11 eff. 11/30/2007.

Rule 6 eff. 03/30/2011.

Rules 1 - 11 emer. rule repealed eff. 03/09/2012.

Rules 1 - 11 emer. rule eff. 03/09/2012.

Rules 1 - 11, 303, 304 emer. rule eff. 04/02/2012.

Rules 301, 302, 305, 306 emer. rule eff. 06/01/2012.

Rules 1 - 11 repealed eff. 06/30/2012.

Rules 201 - 211, 301 - 305 eff. 06/30/2012.

Rules 101 – 102, 212, 214 eff. 01/30/2013.

Rules 207 and 213, eff. 11/01/2014.

Rule 215 emer. rule eff. 06/02/2014.

Rules 202, 203, 205, 215, 303 eff. 09/14/2014.

Rules 207 and 213, eff. 11/01/2014.

Rules 102, 103, 201, 202, 203, 204, 205, 206, 208, 212, 302, 303, 304, 305, and 306 eff. 05/15/2015.

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Tracking number: 2015-00102

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

Division of Professions and Occupations - State Physical Therapy Board

on 03/13/2015

4 CCR 732-1

PHYSICAL THERAPIST LICENSURE AND PHYSICAL THERAPIST ASSISTANT CERTIFICATION

The above-referenced rules were submitted to this office on 03/24/2015 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

March 31, 2015 16:15:25

Frederick R. Yarger

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

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Water Quality Control Commission (1002 Series)

CCR number

5 CCR 1002-11

Rule title

5 CCR 1002-11 REGULATION NO. 11 - COLORADO PRIMARY DRINKING WATER REGULATIONS 1 - eff 04/30/2015

Effective date

04/30/2015

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

WATER QUALITY CONTROL COMMISSION

REGULATION NO. 11

COLORADO PRIMARY DRINKING WATER REGULATIONS (5 CCR 1002-11)

….

11.3 DEFINITIONS, ACRONYMS AND ABBREVIATIONS

Definitions of general applicability to the *Colorado Primary Drinking Water Regulations* are as specified here and shall be liberally construed to protect public health and the quality of drinking water supplied to the public. Additional definitions are specified throughout the *Colorado Primary Drinking Water Regulations* and are applicable to the rule in which they are defined. As used in the *Colorado Primary Drinking Water Regulations:*

(1) "4-LOG TREATMENT OF VIRUSES" means 99.99 percent inactivation and/or removal of viruses.

(2) "ACT" means the federal Public Health Service Act, as amended by the Safe Drinking Water Act, Public Law 93-523.

(3) "AVERAGE RESIDENCE TIME" means a point in the distribution system where treated water has been in the system for approximately half of its longest or maximum time in the system, as measured by water transport time. Sample locations between 25 and 75 percent of the maximum are considered to be representative of average residence time, provided that in total, the average of the selected locations approximate 50 percent of the maximum residence time and take into account population densities and their locations.

(4) "BACKFLOW CONTAMINATION EVENT" means backflow into a public water system from an uncontrolled cross connection such that the water quality no longer meets the *Colorado Primary Drinking Water Regulations* or presents an immediate health and/or safety risk to the public.

(5) "BAG FILTERS" means pressure–driven separation devices that remove particulate matter larger than 1 micrometer using an engineered porous filtration media. They are typically constructed of a non-rigid, fabric filtration media housed in a pressure vessel in which the direction of flow is from the inside of the bag to the outside.

(6) "BEST AVAILABLE TECHNOLOGY" or "BAT" means the best technology, treatment techniques, or other means that the EPA Administrator finds available, considering cost and after examination for efficacy under field conditions and not solely under laboratory conditions.

(7) "CARTRIDGE FILTERS" means pressure-driven separation devices that remove particulate matter larger than 1 micrometer using an engineered porous filtration media. They are typically constructed as rigid or semi-rigid, self-supporting filter elements housed in pressure vessels in which flow is from the outside of the cartridge to the inside.

(8) "CERTIFIED LABORATORY" means a laboratory certified by the State of Colorado for analysis of drinking water.

(9) "COAGULATION" means a process using coagulant chemicals and mixing by which colloidal and suspended materials are destabilized and agglomerated into flocs.

(10) "COMBINED DISTRIBUTION SYSTEM" means an interconnected distribution system consisting of the distribution systems of wholesale systems and of the consecutive systems that receive finished water.

(11) "COMMUNITY WATER SYSTEM" means a public water system that supplies at least 15 service connections used by year-round residents or that regularly supplies at least 25 year-round residents.

(12) "COMPLIANCE CYCLE" means the nine-year calendar year cycle during which the supplier must monitor. Each compliance cycle consists of three three-year compliance periods.

(13) "COMPLIANCE PERIOD" means a three-year calendar year period within a compliance cycle.

(14) "CONSECUTIVE SYSTEM" means a public water system that receives some or all of its finished water from one or more wholesale systems. Delivery may be through a direct connection or through the distribution system of one or more consecutive systems.

(15) "CONSTRUCTION" means the erection, building, modification, reconstruction, improvement or expansion of waterworks.

(16) "CONTAMINANT" means any physical, chemical, biological, or radiological substance or matter in water.

(17) "CONSUMER" means any person that has the opportunity to consume finished water from a public water system.

(18) "CONVENTIONAL FILTRATION TREATMENT" means a series of processes including coagulation, flocculation, sedimentation (or equivalent form of clarification), and granular media filtration resulting in substantial particulate removal.

(19) "CROSS CONNECTION" means any connection that could allow any water, fluid, or gas such that the water quality could present an unacceptable health and/or safety risk to the public, to flow from any pipe, plumbing fixture, or a customer's water system into a public water system's distribution system or any other part of the public water system through backflow.

(20) "CT" or "CT_{calc}" means the product of residual disinfectant concentration (C) in mg/L determined before or at the first customer, and the corresponding disinfectant contact time (T) in minutes (i.e., C x T).

(21) "CUSTOMER" means billing units or service connections that receive finished water.

(22) "DEPARTMENT" means the Colorado Department of Public Health and Environment as created by section 25-1-102(1), Colorado Revised Statutes.

(23) "DIATOMACEOUS EARTH FILTRATION" means a process resulting in substantial particulate removal in which (1) a precoat cake of diatomaceous earth filter media is deposited on a support membrane (septum), and (2) while the water is filtered by passing through the cake on the septum, additional filter media known as body feed is continuously added to the feed water to maintain the permeability of the filter cake.

(24) “DIRECT FILTRATION” means a series of processes including coagulation and filtration but excluding sedimentation resulting in substantial particulate removal.

(25) “DISINFECTANT” means any oxidant, including but not limited to chlorine, chlorine dioxide, chloramines, ozone, and ultraviolet light, added to water in any part of the treatment or distribution process that is intended to kill or inactivate pathogenic microorganisms.

(26) “DISINFECTANT CONTACT TIME” means the time in minutes that it takes for water to move from the point of disinfectant application, or the previous point of disinfectant residual measurement, to a point before or at the point where residual disinfectant concentration (C) is measured.

(27) “DISINFECTION” means a process that inactivates pathogenic microorganisms in water by chemical oxidants, ultraviolet light, or equivalent agents.

(28) “EMERGENCY SOURCE/CONNECTION” means a water facility that is only used as the result of extreme circumstances, and is otherwise kept offline. These facilities may be either connected or disconnected from a treatment plant/distribution system.

(29) “ENFORCEMENT ORDER” means an order issued for the purpose of notifying the supplier of a public water system that it is in violation of the *Colorado Primary Drinking Water Regulations* or for the purpose of requiring the supplier of a public water system to cease such violations. Enforcement orders may prescribe corrective measures necessary to achieve compliance with the *Colorado Primary Drinking Water Regulations*.

(30) “ENTRY POINT” means a location before or at the first customer which is representative of finished water. The entry point may represent finished water from multiple treatment plants and/or multiple sources.

(31) “FILTRATION” means a process for removing particulate matter from water by passage through porous media.

(32) “FINISHED WATER” means water that is supplied to the distribution system of a public water system and intended for distribution and human consumption without further treatment, including disinfection contact time, except treatment as necessary to maintain water quality in the distribution system (e.g., booster disinfection, addition of corrosion control chemicals).

(33) “FIRST CUSTOMER” means the first potable water service connection that serves finished water. Typically, the first customer is the water treatment plant’s domestic water system.

(34) “FLOCCULATION” means a process to enhance agglomeration or collection of smaller floc particles into larger, more easily settled particles through gentle stirring by hydraulic or mechanical means.

(35) “GROUNDWATER” means any water under the surface of the ground that is not surface water or groundwater under the direct influence of surface water.

(36) “GROUNDWATER SYSTEM” means a public water system that uses groundwater not under the direct influence of surface water as its sole source of water and does not include public water systems that combine all of their groundwater with surface water or groundwater under the direct influence of surface water before to treatment.

(37) “GROUNDWATER UNDER THE DIRECT INFLUENCE OF SURFACE WATER” or “GWUDI” means any water beneath the surface of the ground with:

(a) Significant occurrence of insects or other macro-organisms, algae, or large-diameter pathogens such as *Giardia lamblia* or *Cryptosporidium*; or

(b) Significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH, which closely correlate to climatological or surface water conditions.

(38) "INACTIVATION" means the use of a disinfectant (e.g., chorine, chloramines, ozone) to interrupt the ability of a pathogen to replicate therefore leaving it unable to infect.

(39) "LEAD FREE" means:

(a) Less than or equal to (≤) 0.2 percent lead when used with respect to solders and flux.

(b) A weighted average of less than or equal to (≤) 0.25 percent lead when used with respect to the wetted surfaces of pipes, pipe fittings, plumbing fittings, and fixtures.

(40) "LEVEL 1 ASSESSMENT" means, beginning April 1, 2016, an evaluation conducted by the supplier to identify sanitary defects, inadequate or inappropriate distribution system coliform sampling practices, and the possible cause(s) that triggered the assessment. Level 1 assessments must meet the requirements specified in 11.16(10).

(41) "LEVEL 2 ASSESSMENT" means, beginning April 1, 2016, an evaluation conducted by the Department or Department-approved party to identify sanitary defects, inadequate or inappropriate distribution system coliform sampling practices, and the possible cause(s) that triggered the assessment. Level 2 assessments must meet the requirements specified in 11.16(10). A Level 2 assessment is a more detailed examination of the system than a Level 1 assessment. A Level 2 assessment involves a comprehensive investigation and review of available information, additional internal and external resources, and other relevant practices.

(42) "LOCATIONAL RUNNING ANNUAL AVERAGE" or "LRAA" means the average of sample results for samples collected at a particular monitoring location during the most recent four calendar quarters. If the supplier fails to complete four consecutive quarters of sampling, the LRAA is based on the available sample results from the most recent four calendar quarters.

(43) "MAXIMUM CONTAMINANT LEVEL" or "MCL" means the maximum level of a contaminant allowed in drinking water, which is delivered to any consumer.

(44) "MAXIMUM CONTAMINANT LEVEL GOAL" or "MCLG" means the maximum level of a contaminant in drinking water at which no known or anticipated adverse effects on human health would occur, and which allows an adequate margin of safety. Maximum contaminant level goals are non-enforceable health goals.

(45) "MAXIMUM RESIDENCE TIME" means a point in the distribution system where the treated water has been in the system for the longest or maximum time, as measured by water transport time. Sample locations between 90 and 100 percent of the maximum are considered to be representative of maximum residence time.

(46) "MAXIMUM RESIDUAL DISINFECTANT LEVEL" or "MRDL" means the level of a disinfectant added for water treatment that may not be exceeded at the consumer's tap without an unacceptable possibility of adverse effects on human health.

(47) "MAXIMUM RESIDUAL DISINFECTANT LEVEL GOAL" or "MRDLG" means the maximum level of a disinfectant added for water treatment at which no known or anticipated adverse effect on the

human health would occur, and which allows an adequate margin of safety. MRDLGs are non-enforceable health goals and do not reflect the benefit of the addition of the chemical for control of waterborne microbial contaminants.

(48) “MEMBRANE FILTRATION” means a pressure or vacuum driven separation process in which particulate matter larger than 1 micrometer is rejected by an engineered barrier, primarily through a size-exclusion mechanism, and which has a measurable removal efficiency of a target organism that can be verified through the application of a direct integrity test. This definition includes the common membrane technologies of microfiltration, ultrafiltration, nanofiltration, and reverse osmosis.

(49) “NEW SOURCE” means a source not previously used by the public water system or a source not previously approved by the Department.

(50) “NON-COMMUNITY WATER SYSTEM” means a public water system that is not a community water system. A non-community water system is either a "transient, non-community water system" or a "non-transient, non-community water system."

(51) “NON-TRANSIENT, NON-COMMUNITY WATER SYSTEM” means a public water system that regularly serves a population of at least 25 of the same people for at least six months per year and is not a community water system.

(52) “NON-TRANSIENT POPULATION” means the average number of people served per day during the year or normal operating period(s), who do not reside at the place supplied by the system, but have a regular opportunity to consume water produced by the system. Regular opportunity is defined as four or more hours per day, for four or more days per week, for six or more months per year.

(53) “NOTIFY” means to inform by written, verbal, or other means, unless otherwise stated.

(54) “PERSON” means an individual, corporation, company, association, partnership, municipality, or State, Federal, or tribal agency.

(55) “PLANS AND SPECIFICATIONS” means the technical design drawings and specifications for waterworks. For new waterworks, this also includes technical, financial, and managerial plans.

(56) “PLANT INTAKE” or “INTAKE” means the works or structures at the head of a conduit through which water is diverted from a source (e.g., river or lake) into the treatment plant.

(57) “POINT-OF-ENTRY TREATMENT DEVICE” or “POE” means a treatment device applied to the drinking water entering a house or building for the purpose of reducing contaminants in the drinking water distributed throughout the house or building.

(58) “POPULATION SUPPLIED” means the average daily population that occurs during the busiest month of the year or normal operating period(s). Population supplied is further defined as the sum of resident, non-transient, and transient populations.

(59) “PRESEDIMENTATION” means a preliminary treatment process used to remove gravel, sand and other particulate material from the source water through settling before the water enters the primary clarification and filtration processes in a treatment plant.

(60) “PUBLIC WATER SYSTEM” or “PWS” means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves an average of at least 25 individuals daily at least

60 days per year. A public water system is either a community water system or a non-community water system. Such term does not include any special irrigation district. Such term includes:

(a) Any collection, treatment, storage, and distribution facilities under control of the supplier of such system and used primarily in connection with such system.

(b) Any collection or pretreatment storage facilities not under such control, which are used primarily in connection with such system.

(61) "PUBLIC WATER SYSTEM THAT HAULS WATER" means a public water system that delivers, by vehicle, finished water through a non-piped conveyance such as a vehicle mounted tank or container.

(62) "RECYCLE" means the act of returning recycle flows to a plant's primary treatment process.

(63) "RECYCLE FLOWS" means any water, solid or semi-solid, generated by a plant's treatment processes, operational processes, and residual treatment processes, that is returned to the plant's primary treatment process.

(64) "RESIDENT POPULATION" means the average number of people whose primary residence is supplied by the system. The resident does not have to live at the residence for 365 days per year for it to be considered his/her primary residence.

(65) "RESIDUAL DISINFECTANT CONCENTRATION" means the concentration of disinfectant measured in mg/L in a representative sample of water.

(66) "RUNNING ANNUAL AVERAGE or "RAA" means the average of sample results for samples collected during the most recent four calendar quarters. If the supplier fails to complete four consecutive quarters of sampling, the RAA is based on the available sample results from the most recent four calendar quarters.

(67) "SANITARY DEFECT" means, beginning April 1, 2016, a defect:

(i) That could provide a pathway of entry for microbial contamination into the distribution system; or

(ii) That is indicative of a failure or imminent failure in a barrier that is already in place.

(68) "SECONDARY MAXIMUM CONTAMINANT LEVELS or "SMCLs" means the maximum level of a contaminant allowed in water which is delivered to the consumer of a public water system. The SMCLs apply to public water systems and which, in the judgment of the EPA Administrator, are requisite to protect the public health. Contaminants added to the water under circumstances controlled by the consumer, except those resulting from corrosion of piping and plumbing caused by water quality, are excluded from this definition. The SMCLs are not enforceable, but are intended as guidelines. The SMCLs are defined in 40 CFR 143.3 as amended July 1, 2014.

(69) "SEDIMENTATION" means a process for removal of solids before filtration by gravity or separation.

(70) "SERVICE CONNECTION" means a connection to a system that delivers water by constructed conveyance. The definition does not include connections that deliver water by a constructed conveyance other than a pipe if:

(i) The water is used exclusively for purposes other than residential uses (consisting of drinking, bathing, and cooking, or other similar uses);

(ii) The Department determines that an alternative water source to achieve the equivalent level of public health protection provided by the applicable *Colorado Primary Drinking Water Regulations* is provided for residential or similar uses for drinking and cooking; or

(iii) The Department determines that the water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the applicable *Colorado Primary Drinking Water Regulations*.

(71) "SIGNIFICANT DEFICIENCY" means any situation, practice, or condition in a public water system with respect to design, operation, maintenance, or administration, that the state determines may result in or have the potential to result in production of finished drinking water that poses an unacceptable risk to health and welfare of the public served by the water system. Significant deficiencies include, but are not limited to, defects in design, operation, or maintenance, or a failure or malfunction of the sources, treatment, storage, or distribution system that the Department determines to be causing, or have potential for causing, the introduction of contamination into the water delivered to consumers.

(72) "SMALL SYSTEM COMPLIANCE TECHNOLOGY" or "SSCT" means a treatment technology that is affordable (according to the affordability criteria set forth by the EPA) by small systems and allows systems to achieve compliance with the MCL or treatment technique.

(73) "SLOW SAND FILTRATION" means a process involving passage of raw water through a bed of sand at low velocity (generally less than 0.4 meters per hour (m/h)) resulting in substantial particulate removal by physical and biological mechanisms.

(74) "SOURCE" means the point at which a public water system diverts water from its natural or man-made origin.

(75) "SOURCE WATER SAMPLE" means a sample collected before any treatment that represents influent raw source water quality.

(76) "SPECIAL IRRIGATION DISTRICT" means an irrigation district in existence before May 18, 1994 that provides primarily agricultural service through a piped water system with only incidental residential or similar use where the system or the residential or similar users of the system comply with the exclusion provisions outlined in the definition of service connections.

(77) "SPECIAL PURPOSE SAMPLE" means, beginning April 1, 2016, a total coliform sample that is not collected in accordance with the sampling plan. Special purpose samples will not be used to determine compliance with sampling requirements, the *E. coli* MCL, or in determining if a treatment technique is triggered.

(78) "SPENT FILTER BACKWASH WATER" means a stream containing particles that are dislodged from filter media when water is forced back through a filter (backwashed) to clean the filter. Spent filter backwash water contains particles including coagulants, metals, and microbes such as *Cryptosporidium*.

(79) "STATE" means the State of Colorado.

(80) "SUPPLIER OF WATER" or "SUPPLIER" means any person who owns or operates a public water system.

(81) "SURFACE WATER" means any water source that is open to the atmosphere and subject to surface runoff. Groundwater found to be under the direct influence of surface water is classified as surface water.

(82) "SURFACE WATER SYSTEM" means a public water system that uses, in whole or in part, surface water or groundwater under the direct influence of surface water as a source of water.

(83) "TRANSIENT, NON-COMMUNITY WATER SYSTEM" means a non-community water system that serves a population of at least 25 people per day for at least 60 days per year and is not a non-transient, non-community water system or a community water system.

(84) "TRANSIENT POPULATION" means the average number of individuals served per day during the year or annual operating period(s), who have an opportunity to consume water from the system, but who do not meet the definition of either resident population or non-transient population.

(85) "TREATMENT TECHNIQUE REQUIREMENT" means a requirement that specifies a treatment technique(s) for a contaminant which leads to a sufficient reduction in the level of the contaminant to comply with the requirements of the *Colorado Primary Drinking Water Regulations*. A treatment technique may also be a requirement that is intended to prevent situations that have the potential to have serious adverse effects on human health.

(86) "VIOLATION" means failure to comply with any requirement of the *Colorado Primary Drinking Water Regulations*.

(87) "VIRUS" means a virus of fecal origin, which is infectious to humans by waterborne transmission.

(88) "WATERBORNE DISEASE OUTBREAK" means the significant occurrence of acute infectious illness, epidemiologically associated with the ingestion of water from a public water system which is deficient in treatment, as determined by the appropriate local or State agency.

(89) "WATERWORKS" means the facilities that are directly involved in the production, treatment, or distribution of water for public water systems.

(90) "WATER QUALITY CONTROL COMMISSION" means the commission that has been created within the Colorado Department of Public Health and Environment pursuant to section 25-8-201, Colorado Revised Statutes.

(91) "WATER VENDING AND DISPENSING MACHINES" means any device which, upon payment dispenses water into a container.

(92) "WHOLESALER" means any person who owns or operates and is legally responsible for a wholesale system.

(93) "WHOLESALE SYSTEM" means a public water system that treats source water as necessary to produce finished water and then delivers some or all of that finished water to another public water system. Delivery may be through a direct connection or through the distribution system of one or more consecutive systems.

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11.4 PLANS APPROVAL FOR THE LOCATION AND CONSTRUCTION OF WATERWORKS

11.4(1) Prior Approval Requirements

(a) For new community or non-transient, non-community water systems, the supplier must not begin construction of the new water system until the supplier completes and receives Department approval of a capacity (technical, managerial and financial) assessment using the criteria found in the *New Public Water System Capacity Planning Manual*.

(b) For all public water systems, the supplier must not begin construction of any new waterworks, make improvements to or modify existing waterworks, or begin using a new source until the supplier submits and receives Department approval of plans and specifications for such construction, improvements, modifications, or use.

(i) "BEGIN CONSTRUCTION" means initiation of the physical effort to construct a project, excluding engineering, architectural, legal, fiscal and economic investigations, studies, and completion of plans and specifications, and surveys. Physical effort includes, but is not limited to, site clearance, excavation, construction, or the establishment of an office or construction building on site.

(ii) "NEW WATERWORKS" means:

(A) Any newly constructed public water system; or

(B) An existing system that becomes, by definition, a public water system by extending its infrastructure through physical expansion by virtue of increasing the number of connections, the number of individuals served, or by extending the number of days of service.

(iii) For community water systems, a Professional Engineer registered in the State of Colorado must design all treatment systems.

(iv) Decisions regarding the review and approval of plans and specifications for new waterworks or improvements or modifications to existing waterworks shall be based on conformance to the design criteria developed by the Department specified in Policy DW-005, *State of Colorado Design Criteria for Potable Water Systems*.

(v) The Department shall grant approval upon finding that the proposed facilities conform to the design criteria specified in Policy DW-005, *State of Colorado Design Criteria for Potable Water Systems*, and are capable of continuously complying with all applicable laws, standards, rules and regulations.

11.4(2) Siting Requirements

Waterworks must avoid being located at a site which:

(a) Is subject to a significant risk from earthquakes, floods, fires or other disasters which could cause a breakdown of the public water system or a portion of the public water system; or

(b) Is within the floodplain of a 100-year flood, except for intake structures.[1]

(i) The Department shall not seek to override land use decisions affecting public water systems siting which are made at the local government level.

1 Records of the 100-year projections are available at the office of the Colorado Water Conservation Board, 1313 Sherman Street, Denver, Colorado 80203.

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11.5 MONITORING PLAN RULE

11.5(1) Applicability

For all public water systems, the supplier must comply with the monitoring plan requirements specified in this rule.

11.5(2) General Requirements

(a) The supplier must develop and implement a monitoring plan which must ensure that the water quality monitoring performed by the supplier is representative of the water supplied to consumers and is consistent with regulatory requirements of the *Colorado Primary Drinking Water Regulations*.

(b) The supplier must maintain the monitoring plan and make it available for inspection by the Department.

11.5(3) Monitoring Plan Required Elements

(a) The supplier must include all of the following information in the monitoring plan:

(i) Part 1 - System Summary:

(A) The Colorado public water system identification number (PWSID).

(B) The full name of the supplier (e.g., the name of a corporation, LLC, partnership, sole proprietor, HOA, etc.).

(C) The system's mailing address.

(D) The name of the supplier's authorized contact person(s) responsible for the development and implementation of the monitoring plan, if other than the supplier.

(E) The telephone number of the supplier or the supplier's authorized monitoring plan contact person.

(F) The system's classification (i.e., community, non-transient, non-community, or transient, non-community).

(G) The total population supplied by the system, by population type (i.e., the number of resident, non-transient, and transient consumers).

(H) The physical addresses of all system facilities, including master meters, and the latitude and longitude of all facilities.

(I) The physical location of all records required under 11.36.

(ii) Part 2 - Water Sources Details:

(A) Identification of all water sources capable of being used by the system, (i.e., those connected by conveyances, whether currently producing or not).

(B) A schematic, diagram or sketch showing how the flow from each source is connected to the treatment processes and the distribution system.

(iii) Part 3 - Water Treatment Details:

(A) A summary of the system's operating characteristics.

(B) A schematic of the water treatment plant(s) identifying:

(I) All treatment processes, including all chemical feed points, and the associated periods of operation that were assumed in the design of the monitoring plan (e.g., use of peaking facilities, alternative water sources, maintenance schedules that take facilities offline, etc.).

(II) All treatment plant monitoring locations.

(iv) Part 4 - Distribution System Details:

(A) A schematic of the distribution system identifying all of the following:

(I) All entry points.

(II) All treatment facilities located after the entry point(s) (e.g., booster chlorination).

(III) All storage facilities and finished water reservoirs.

(IV) All distribution system sampling locations.

(V) All master meters to other public water systems.

(VI) All pump stations.

(v) Part 5 - Individual Rule Sampling Plans:

(A) For each applicable monitoring or sampling requirement:

(I) The frequency and approximate time of collection.

(II) The monitoring and sampling location identification and associated identification number.

(III) The justification for distribution system monitoring location selections and, if appropriate, the justification for all other monitoring and sampling location selections.

(IV) The sample preservation, quality assurance, and quality control procedures, including procedures for equipment calibration.

(V) The analysis procedure (i.e., certified laboratory or on-site by a Department-approved party).

(VI) The monitoring and sampling results presentation format.

(VII) Procedures to assess and report compliance status for MCLs, MRDLs, action levels, treatment techniques and, if applicable, disinfection byproduct precursor removal efficiency.

(VIII) A process to review and update the selected distribution system monitoring and sampling locations to account for changes due to growth or other significant changes to the distribution system.

(b) The supplier may use one schematic if it includes all elements specified in 11.5(3)(a)(ii-iv).

11.5(4) Monitoring Plan Reporting Requirements

(a) For new systems, the supplier must submit the information specified in 11.5(3)(a)(i-iv) to the Department no later than the 10th of the month following the end of the first quarter in which monitoring is required.

(i) For surface water systems supplying greater than (>) 3,300 people, the supplier must also submit a copy of the Individual Rule Sampling Plan for the following no later than the date the supplier collects the first sample: 11.23: Maximum Residual Disinfectant Levels Rule, 11.24: Disinfection Byproduct Precursors Rule, 11.25(2): Chlorite, and 11.25(3): Bromate.

(A) The Department may review and require the supplier to revise the sampling plan.

(b) The supplier must submit the Individual Rule Sampling Plan information specified in 11.5(3)(a)(v) to the Department as specified in the following rules: for integrated systems in 11.42(4) and for the Disinfection Byproducts Rule in 11.25(1)(d), for the Groundwater Rule: Disinfection Waivers in 11.13(2), and beginning April 1, 2016 for the Revised Total Coliform Rule in 11.16(4).

11.5(5) Monitoring Plan Revisions

The supplier must submit any changes to the monitoring plan no later than 30 days after the effective date of the change.

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11.8 SURFACE WATER TREATMENT RULE

11.8(1) General Requirements

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(b) Treatment Technique Requirements

(i) The supplier must provide filtration and disinfection of surface water sources that meets the treatment technique requirements for all of the following: *Cryptosporidium, Giardia lamblia*, viruses, Heterotrophic Plate Count bacteria, *Legionella*, and turbidity. These treatment techniques are as follows:

(A) At a point between where the source water is not subject to recontamination and the entry point, the supplier must install and properly operate water treatment processes that reliably achieve at least the following levels of treatment:

(I) 99 percent (2-log) removal of *Cryptosporidium*.

(II) 99.9 percent (3-log) treatment, including filtration and disinfection, of *Giardia lamblia*.

(III) 99.99 percent (4-log) treatment, including filtration and disinfection, of viruses.

(ii) The supplier is considered to be in compliance with the requirements specified in 11.8(1)(b)(i), if the supplier meets all of the following:

(A) The filtration requirements specified in 11.8(2)(b).

(B) The disinfection requirements specified in 11.8(3)(b).

(iii) Until March 31, 2016, the supplier must not use uncovered finished water storage facilities.

(A) "UNCOVERED FINISHED WATER STORAGE FACILITY" means, until March 31, 2016, a tank, reservoir, or other facility used to store water that will undergo no further treatment except residual disinfection and that is open to the atmosphere without properly screened vents, screened overflow pipe, or cover.

(iv) When the Department determines that a groundwater source is under the direct influence of surface water, and therefore the system is reclassified as a surface water system, the supplier must comply with the requirements specified in this section, 11.8(1)(b), no later than 18 months after receiving written notification from the Department of the source's reclassification.

(c) Additional Requirements

(i) The supplier must have the system operated by qualified personnel who meet the requirements of Regulation 100, the *Water and Wastewater Facility Operators Certification Requirements*.

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11.8(3) Disinfection Treatment Technique Requirements

(a) Applicability for Disinfection Treatment Technique Requirements

(i) For all surface water systems, the supplier must comply with the disinfection treatment technique requirements specified in this section, 11.8(3).

(ii) When the Department determines that a groundwater source is under the direct influence of surface water, and therefore the system is reclassified as a surface water system, the supplier must comply with all of the following:

(A) Either Department-determined interim disinfection requirements or disinfection treatment technique requirements specified in 11.8(3)(b), no later than 60 days after written notification from the Department of the decision to change the source's classification; and

(B) All requirements specified in this section, 11.8(3), no later 18 months after written notification from the Department of the decision to change the source's classification or no later than when the filtration is installed, whichever is sooner.

(b) Treatment Technique Requirements for Disinfection

(i) The disinfection treatment technique requirements are as follows:

(A) The supplier must maintain disinfection treatment sufficient to ensure that the total treatment processes, including filtration and disinfection, achieve 99.9 percent (3-log) treatment of *Giardia lamblia* cysts and 99.99 percent (4-log) treatment of viruses, as determined by the Department.

(B) The supplier must maintain a residual disinfectant concentration at each entry point and throughout the distribution system.

(I) At each entry point, the residual disinfectant concentration cannot be less than (<) 0.2 mg/L for more than four hours.

(II) In the distribution system, until March 31, 2016, the residual disinfectant concentration cannot be undetectable in more than 5 percent of the samples collected in each month, for two consecutive months during which the system supplies water to the public.

(III) In the distribution system, beginning April 1, 2016, the residual disinfectant concentration must be greater than or equal to (≥) 0.2 mg/L.

(ii) No later than December 31, 2015, the supplier may apply to the Department for an extension for complying with the treatment technique requirements specified in 11.8(3)(b)(i)(B)(III).

(A) In the application, the supplier must include all of the following information:

(I) An explanation of why the supplier is unable to comply with the treatment technique requirements specified in 11.8(3)(b)(i)(B)(III).

(II) A distribution system disinfectant residual data analysis demonstrating the inability to comply with the treatment technique requirements specified in 11.8(3)(b)(i)(B)(III).

(III) An engineering report prepared by a professional engineer registered in the state of Colorado demonstrating that capital improvements are necessary to comply with the treatment technique requirements specified in 11.8(3)(b)(i)(B)(III).

(IV) A proposed schedule for completing the system modifications.

(B) The Department shall consider the following criteria when determining if an extension will be granted:

(I) The supplier submitted a complete application that included the information specified above;

(II) The supplier has complied with the monitoring requirements specified in 11.17 in the last 36 months; and

(III) The supplier has not incurred an MCL violation specified in 11.17(9) in the last 36 months.

(iii) The Department will only grant an extension for up to four years.

(iv) If the supplier receives written Department-approval for an extension, the supplier must:

(A) Continue to comply with the treatment technique requirements specified in 11.8(3)(b)(i)(B)(II) and is subject to the violation specified in 11.8(3)(d)(i)(B) until the capital improvements are completed or the extension expires, whichever comes first; and

(B) Comply with any Department-specified requirements.

(c) Monitoring Requirements for Disinfection Treatment Technique Requirements

(i) To determine compliance with the disinfection treatment technique requirements, the supplier must monitor the residual disinfectant concentration.

(A) At each entry point, the supplier must continuously monitor the residual disinfectant concentration.

(I) The supplier must record the lowest monitoring result each day.

(II) If there is a failure of the continuous monitoring equipment, the supplier must monitor the residual disinfectant concentration by collecting a grab sample no later than four hours after the equipment failure and continue collecting grab samples every four hours until the continuous monitoring equipment is returned to service.

(a) The supplier must resume continuous residual disinfectant concentration monitoring no later than five working days after the equipment failure.

(III) For systems supplying less than or equal to (≤) 3,300 people, the supplier is not required to monitor continuously if the supplier collects grab samples at the frequency specified in Table 11.8-II.

(a) If more than one sample per day is required, the supplier must collect the samples throughout the day. The sampling intervals are subject to Department approval.

(b) If any grab sample result is less than (<) 0.2 mg/L, the supplier must increase the monitoring frequency of the residual disinfectant concentration at that entry point to at least every four hours until the residual disinfectant concentration is greater than or equal to (≥) 0.2 mg/L.

TABLE 11.8-II MINIMUM GRAB SAMPLES	
Population supplied by the system	Samples per day
≤ 500	1
501 – 1,000	2

1,001 – 2,500	3
2,501 – 3,300	4

(B) In the distribution system, the supplier must monitor the residual disinfectant concentration at the same time and at the same sampling locations that total coliform samples are collected under 11.17(3) until March 31, 2016, and collected under 11.16(6-7) beginning April 1, 2016.

(I) The supplier must measure the residual disinfectant concentration as free chlorine unless the supplier uses a disinfection process that results in a monochloramine residual disinfectant, then the supplier must measure the residual disinfectant concentration as total chlorine. If the supplier uses a different type of chemical disinfectant (e.g., ozone or chlorine dioxide), the supplier must measure the appropriate residual disinfectant concentration.

(II) For systems using both surface water and groundwater sources, the Department may allow the supplier to collect residual disinfectant concentration samples at locations other than the total coliform sampling locations if the Department determines that other locations are more representative of finished water quality in the distribution system.

(d) Treatment Technique Violations for Disinfection

(i) The following constitute disinfection treatment technique violations:

(A) At any entry point, the residual disinfectant concentration is less than (<) 0.2 mg/L for more than four hours.

(B) In the distribution system, until March 31, 2016, the residual disinfectant concentration is not detectable in more than 5 percent of the samples collected in each month, for two consecutive months that the system supplies water to the public.

(I) If the Department grants an extension under 11.8(3)(b)(ii), the supplier is subject to this violation after March 31, 2016 and until capital improvements are completed or the extension expires, whichever comes first.

(C) In the distribution system, beginning April 1, 2016:

(I) If the supplier collects greater than or equal to (≥) 40 residual disinfectant concentration samples per month, the residual disinfectant concentration is less than (<) 0.2 mg/L in more than 5 percent of the samples collected.

(II) If the supplier collects greater than (>) one but less than (<) 40 residual disinfectant concentration samples per month, the residual disinfectant concentration is less than (<) 0.2 mg/L in more than one sample collected.

(III) If the supplier collects greater than (>) one but less than (<) 40 residual disinfectant concentration samples per month, the residual disinfectant concentration is less than (<) 0.2 mg/L in more than 5 percent of the

samples collected in each month for two consecutive months that the system supplies water to the public.

(IV) If the supplier collects only one residual disinfectant concentration sample per monitoring period, the residual disinfectant concentration is less than (<) 0.2 mg/L.

(D) Any time the supplier fails to comply with the treatment technique requirements specified in 11.8(3)(b)(i)(A).

(e) Response to Disinfection Treatment Technique Violations

(i) In the event of an entry point disinfection treatment technique violation as specified in 11.8(3)(d)(i)(A), the supplier must:

(A) Notify the Department no later than the end of the next business day.

(B) Distribute Tier 2 public notice as specified in 11.33.

(ii) In the event of a disinfection treatment technique violation as specified in 11.8(3)(d)(i)(B-D), the supplier must:

(A) Notify the Department no later than 48 hours after the violation occurs.

(B) Distribute Tier 2 public notice as specified in 11.33.

(f) Reporting Requirements for Disinfection Monitoring

(i) If at any time the entry point residual disinfectant concentration is less than (<) 0.2 mg/L, the supplier must notify the Department as soon as possible but no later than the end of the next business day.

(A) The supplier must also report, no later than the end of the next business day, whether the entry point residual disinfectant concentration was restored to at least 0.2 mg/L within four hours.

(ii) For residual disinfectant concentration samples collected under 11.8(3)(c), the supplier must submit all of the following information no later than the 10th of the following month:

(A) For each entry point, the lowest daily residual disinfectant concentration result in mg/L.

(B) The date and duration of each period when the entry point residual disinfectant concentration fell below 0.2 mg/L and when the Department was notified of the occurrence.

(C) For distribution system residual disinfectant concentration samples until March 31, 2016:

(I) The number of sample results that were undetectable.

(II) The percentage of sample results that were undetectable for each of the last two months.

(D) For distribution system residual disinfectant concentration samples beginning April 1, 2016:

(I) The number of sample results that were less than (<) 0.2 mg/L.

(II) The percentage of sample results that were less than (<) 0.2 mg/L for each of the last two months.

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11.11 GROUNDWATER RULE

11.11(1) General Applicability and Definitions

(a) For all groundwater systems, the supplier must comply with the requirements specified in this rule.

(i) For the purposes of this rule, a "GROUNDWATER SYSTEM" means any public water system that meets one or more of the following criteria:

(A) The system only uses groundwater sources.

(B) The system uses both surface water and groundwater sources and does not combine the groundwater sources and surface water sources before treatment.

(I) This rule only applies to the groundwater sources.

(II) Systems that combine groundwater sources with surface water sources before treatment are not considered groundwater systems.

(C) The system is a consecutive system that receives finished water from a groundwater system.

(b) "DETECTABLE" means, until March 31, 2015, at or above the detection limit of the approved methods specified in 11.46(8)(b).

11.11(2) Minimum Disinfection Treatment Requirements

(a) Applicability for Minimum Disinfection Treatment Requirements

(i) The supplier must comply with the requirements specified in this section, 11.11(2), unless one or more of the following conditions apply:

(A) The groundwater system is operating under a disinfection waiver and the supplier is required to comply with 11.13.

(B) The groundwater system has only hand-pumped wells and the supplier is required to comply with 11.12.

(C) The groundwater system has hand-pumped wells and other sources and the supplier is required to comply with this section, 11.11(2), for the groundwater sources that are not hand-pumped wells and with 11.12 for the groundwater sources that are hand-pumped wells.

(D) The groundwater system is a consecutive system that only supplies finished groundwater received from a wholesale system and therefore supplier is required to comply with 11.11(2)(b)(i)(B)(II-III), 11.11(2)(c)(i)(B), 11.11(2)(c)(i)(C), 11.11(2)(d)(i)(B-C), and 11.11(2)(e)(ii).

(b) Treatment Technique Requirements for Minimum Disinfection Treatment

(i) The minimum disinfection treatment technique requirements are as follows:

(A) When a groundwater source is used to supply water to the public, the supplier must disinfect the water using a chemical treatment method.

(B) When a groundwater source is used to supply water to the public, the supplier must maintain a residual disinfectant concentration at each entry point and throughout the distribution system.

(I) At each entry point, the residual disinfectant concentration must be greater than or equal to (≥) 0.2 mg/L.

(II) In the distribution system, until March 31, 2016, the residual disinfectant concentration must be detectable throughout the distribution system.

(III) In the distribution system, beginning April 1, 2016, the residual disinfectant concentration must be greater than or equal to (≥) 0.2 mg/L.

(ii) No later than December 31, 2015, the supplier may apply to the Department for an extension for complying with the treatment technique requirements specified in 11.11(2)(b)(i)(B)(III).

(A) In the application, the supplier must include all of the following information:

(I) An explanation of why the supplier is unable to comply with the treatment technique requirements specified in 11.11(2)(b)(i)(B)(III).

(II) A distribution system disinfectant residual data analysis demonstrating the inability to comply with the treatment technique requirements specified in 11.11(2)(b)(i)(B)(III).

(III) An engineering report prepared by a professional engineer registered in the state of Colorado demonstrating that capital improvements are necessary to comply with the treatment technique requirements specified in 11.11(2)(b)(i)(B)(III).

(IV) A proposed schedule for completing the system modifications.

(B) The Department shall consider the following criteria when determining if an extension will be granted:

(I) The supplier submitted a complete application that included the information specified above;

(II) The supplier has complied with the monitoring requirements specified in 11.17 in the last 36 months; and

(III) The supplier has not incurred an MCL violation specified in 11.17(9) in the last 36 months.

(iii) The Department will only grant an extension for up to four years.

(iv) If the supplier receives written Department-approval for an extension, the supplier must:

(A) Continue to comply with the treatment technique requirements specified in 11.11(2)(b)(i)(B)(II) and is subject to the violation specified in 11.11(2)(d)(i)(B) until the capital improvements are completed or the extension expires, whichever comes first; and

(B) Comply with any Department-specified requirements.

(c) Monitoring Requirements for Minimum Disinfection Treatment Technique Requirements

(i) To determine compliance with the minimum disinfection treatment technique requirements, the supplier must monitor the residual disinfectant concentration.

(A) At each entry point, the supplier must monitor the residual disinfectant concentration at least once each week that water is supplied to the public from that entry point.

(I) If any entry point residual disinfectant concentration result is less than (<) 0.2 mg/L, the supplier must increase the residual disinfectant concentration monitoring frequency at that entry point to at least once every 24 hours from the time of discovery until the residual disinfectant concentration is greater than or equal to (≥) 0.2 mg/L.

(B) In the distribution system, the supplier must, at a minimum, monitor the residual disinfectant concentration at the same time and at the same sampling locations as the total coliform samples collected under 11.17(3) until March 31, 2016, and collected under 11.16(6-7) beginning April 1, 2016.

(C) The supplier must measure the residual disinfectant concentration as free chlorine unless the supplier uses a disinfection process that results in a monochloramine residual disinfectant, then the supplier must measure the residual disinfectant concentration as total chlorine. If the supplier uses a different type of chemical disinfectant (e.g., ozone or chlorine dioxide), the supplier must measure the appropriate residual disinfectant concentration.

(d) Treatment Technique Violations for the Minimum Disinfection Treatment Requirements

(i) The following constitute disinfection treatment technique violations:

(A) At any entry point, the residual disinfectant concentration is less than (<) 0.2 mg/L for more than 72 hours after the time of discovery.

(B) In the distribution system, until March 31, 2016, the residual disinfectant concentration is not detectable in more than 5 percent of the samples collected each monitoring period (i.e., month or quarter), for two consecutive monitoring periods during which the system supplies water to the public.

(I) If the Department grants an extension under 11.11(2)(b)(ii), the supplier is subject to this violation after March 31, 2016 and until capital improvements are completed or the extension expires, whichever comes first.

(C) In the distribution system, beginning April 1, 2016:

(I) If the supplier collects greater than or equal to (≥) 40 residual disinfectant concentration samples per month, the residual disinfectant concentration is less than (<) 0.2 mg/L in more than 5 percent of the samples collected.

(II) If the supplier collects greater than (>) one but less than (<) 40 residual disinfectant concentration samples per month, the residual disinfectant concentration is less than (<) 0.2 mg/L in more than one sample collected.

(III) If the supplier collects greater than (>) one but less than (<) 40 residual disinfectant concentration samples per month, the residual disinfectant concentration is less than (<) 0.2 mg/L in more than 5 percent of the samples collected in each month for two consecutive months that the system supplies water to the public.

(IV) If the supplier collects only one residual disinfectant concentration sample per monitoring period, the residual disinfectant concentration is less than (<) 0.2 mg/L.

(e) Response to Treatment Technique Violations for the Minimum Disinfection Treatment Requirements

(i) In the event of an entry point treatment technique violation as specified in 11.11(2)(d)(i)(A), the supplier must:

(A) Notify the Department as soon as possible but no later than the end of the next business day.

(B) Determine and resolve the failure that resulted in the treatment technique violation.

(C) No later than 48 hours after the resolution of the failure, document all of the following:

(I) The date, time and duration of the failure.

(II) The cause of the failure.

(III) The steps taken to correct the failure.

(IV) What steps will be taken to prevent future failures.

(D) Submit the documentation specified above in 11.11(2)(e)(i)(C) if required by the Department.

(E) Distribute Tier 2 public notice as specified in 11.33.

(ii) In the event of a distribution system treatment technique violation as specified in 11.11(2)(d)(i)(B-C), the supplier must:

(A) Notify the Department no later than 48 hours after the violation occurs.

(B) Distribute Tier 2 public notice as specified in 33.

11.11(3) Requirements for 4-Log Treatment of Viruses

(a) Applicability for 4-Log Treatment of Viruses

(i) For any new or existing groundwater source that is treated to at least 4-log treatment of viruses at the entry point, either by choice or because the supplier is required to as specified in 11.38(3)(a)(i)(D) or 11.11(6), the supplier must comply with the requirements specified in this section, 11.11(3).

(A) If the supplier is subject to the requirements specified in this section, 11.11(3), the supplier is not required to meet the source water monitoring requirements specified in 11.11(4) and 11.11(5).

(b) Notification of 4-Log Treatment of Viruses

(i) The supplier must submit notification that the system is providing at least 4-log treatment of viruses at the entry point(s).

(A) The submission must include engineering, operational, or other information that the Department requests to evaluate the submission.

(c) Treatment Technique Requirements for 4-Log Treatment of Viruses

(i) The supplier may use one of the following to comply with the 4-log treatment of viruses treatment technique requirements, as approved by the Department:

(A) Chemical disinfection.

(B) Alternative treatment methods.

(ii) If the supplier uses chemical disinfection to comply with the 4-log treatment of viruses treatment technique requirements, the supplier must maintain the Department-approved residual disinfectant concentration at the Department-approved location(s) that represent treated water at the entry point.

(iii) If the supplier uses a Department-approved alternative treatment method to comply with the 4-log treatment of viruses treatment technique requirements, the supplier must operate the alternative treatment according to Department-specified requirements.

(d) Monitoring Requirements for 4-Log Treatment of Viruses

(i) To determine compliance with the 4-log treatment of viruses treatment technique requirements, the supplier must:

(A) Begin monitoring no later than 30 days after placing the source in service.

(B) Monitor at the Department-approved location and/or according to the Department-specified requirements.

(ii) If the supplier uses chemical disinfection to comply with the 4-log treatment of viruses treatment technique requirements, the supplier must also:

(A) For a system that supplies greater than (>) 3,300 people, continuously monitor the residual disinfectant concentration at the Department-approved location(s).

(I) If there is a failure in the continuous monitoring equipment, the supplier must monitor the residual disinfectant concentration by collecting grab samples every four hours until the continuous monitoring equipment is returned to service.

(a) The supplier must resume continuous residual disinfectant concentration monitoring no later than 14 days after the equipment failure.

(B) For a system that supplies less than or equal to (≤) 3,300 people, monitor the residual disinfectant concentration daily by collecting grab samples at the Department-approved location(s).

(I) The supplier must collect a daily grab sample during the hour of peak flow or at another time specified by the Department.

(II) If any daily grab sample result is less than (<) the Department-approved residual disinfectant concentration, the supplier must monitor the residual disinfectant concentration every four hours until it is greater than or equal to (≥) the Department-approved residual disinfectant concentration.

(III) Alternatively, the supplier may monitor continuously as specified in 11.11(3)(d)(ii)(A).

(C) When a groundwater source is used to supply water to the public, record the lowest residual disinfectant concentration monitored each day.

(iii) If the supplier uses a Department-approved alternative treatment method to comply with the 4-log treatment of viruses treatment technique requirements, the supplier must monitor according to Department-specified requirements.

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11.11(4) Triggered Source Water Monitoring

(a) Applicability for Triggered Source Water Monitoring

(i) The supplier must conduct triggered source water monitoring if:

(A) The supplier does not provide at least 4-log treatment of viruses at the entry point for each groundwater source as specified in 11.11(3); and either

(B) Until March 31, 2016, the supplier is notified that a sample collected under 11.17(3)(b) is total coliform-positive and the sample was not invalidated under 11.17(5); or

(C) Beginning April 1, 2016, the supplier is notified that a sample collected under 11.16(6)(b-d) is total coliform-positive and the sample was not invalidated under 11.16(8).

(ii) The supplier is not required to conduct triggered source water monitoring if either of the following conditions are met:

(A) The Department determines and documents in writing that the routine total coliform-positive sample was caused by a distribution system deficiency and not by the source water.

(B) The supplier collected the routine total coliform-positive sample at a location that meets Department criteria for distribution system conditions that will cause total coliform-positive sample results and therefore the total coliform-positive sample result was not caused by the source water.

(I) No later than 30 days after receiving the total coliform-positive sample result, the supplier must submit documentation that demonstrates the sample location met Department criteria.

(b) Monitoring Requirements for Triggered Source Water Monitoring

(i) The supplier must collect triggered source water monitoring samples no later than 24 hours after being notified of a total coliform-positive sample collected under 11.17(3)(b) until March 31, 2016, or collected under 11.16(6)(b-d) beginning April 1, 2016.

(A) If the supplier experiences circumstances beyond their control that prevent the supplier from collecting the source water samples, the Department may extend the 24-hour limit on a case-by-case basis.

(I) If the Department approves the extension, the Department shall specify how much time the supplier has to collect the source water samples.

(ii) The supplier must collect at least one triggered source water monitoring sample from each groundwater source that was in use at the time the total coliform-positive sample was collected. These samples must be collected at the well, before any treatment is applied.

(A) If the system's configuration does not allow for the supplier to sample at the well itself, the Department may:

(I) Approve the collection of triggered source water monitoring samples at a location that represents the water quality of that well or a location after treatment; and/or

(II) Require that sampling equipment be installed at the well itself.

(B) For systems with more than one groundwater source, the Department may approve collection of the triggered source water monitoring samples from a representative groundwater source(s).

(I) The representative source(s) must supply water to the section of the distribution system where the total coliform-positive sample was collected.

(II) If required by the Department, the supplier must submit, for approval, a triggered source water monitoring plan to use a representative source(s).

(a) The triggered source water monitoring plan must identify which source(s) the supplier intends to use for representative sampling of groundwater sources. For each representative source identified, the supplier must identify each total coliform sampling location that the source represents in the system's sampling plan specified in 11.17(3)(a)(ii) until March 31, 2016, or 11.16(4) beginning April 1, 2016.

(C) For a groundwater system supplying less than or equal to (≤) 1,000 people that uses *E. coli* as a fecal indicator for triggered source water monitoring, the supplier may use a triggered source water monitoring sample to meet both the repeat sampling requirements specified in 11.17(3)(c) until March 31, 2016, or 11.16(7) beginning April 1, 2016, and the triggered source water monitoring requirements.

(iii) The supplier must have all groundwater source samples analyzed for the presence of one of the following fecal indicators: *E. coli*, enterococci, or coliphage.

(c) Additional Triggered Source Water Monitoring Requirements for Consecutive and Wholesale Systems

(i) For consecutive systems, no later than 24 hours after being notified of the sample result, the supplier responsible for the consecutive system must notify all of their wholesalers of a total coliform-positive sample result collected under 11.17(3)(b) until March 31, 2016, or collected under 11.16(6)(b-d) beginning April 1, 2016.

(ii) For wholesale systems, the wholesaler must sample the groundwater source(s) as specified above in 11.11(4)(b) no later than 24 hours after being notified by the supplier responsible for the consecutive system of their total coliform-positive sample result collected under 11.17(3)(b) until March 31, 2016, or collected under 11.16(6)(b-d) beginning April 1, 2016.

(d) Response to Triggered Source Water Monitoring Fecal Indicator-Positive Sample Results

(i) If the supplier has a fecal indicator-positive triggered source water monitoring sample result, that is not invalidated under 11.11(4)(e)(i), the supplier must:

(A) Notify the Department and initiate consultation no later than 24 hours after being notified of the fecal indicator-positive initial triggered source water monitoring sample result.

(B) Distribute Tier 1 public notice as specified in 11.33.

(I) For all consecutive systems supplied by the groundwater source that tested positive for a fecal indicator, the supplier responsible for the consecutive system must also distribute Tier 1 public notice as specified in 11.33.

(C) No later than 24 hours after being notified of the fecal indicator-positive triggered source water monitoring sample result, collect five confirmation samples from the

same source unless the Department requires the supplier to implement corrective action as specified in 11.11(6).

(I) Beginning April 1, 2016, if the supplier collects more than one triggered source water monitoring sample at the location required to meet the total coliform repeat sampling requirements specified in 11.16(7)(g)(i), the supplier may use any of those triggered source water monitoring samples that were *E.* coli-negative toward complying with the five required confirmation samples.

(II) If one or more of the confirmation samples is fecal indicator-positive, the supplier must implement corrective action as specified in 11.11(6).

(D) For a wholesale system, notify all consecutive systems that are supplied by that source of the original fecal indicator-positive sample result no later than 24 hours after being notified of the sample result.

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11.13 GROUNDWATER RULE: DISINFECTION WAIVERS

11.13(1) Applicability for Disinfection Waivers

(a) The Department shall not approve new disinfection waivers.

(b) If the system has an existing disinfection waiver, the supplier must comply with the requirements specified in this rule.

(i) The supplier is not required to comply with the minimum residual disinfectant concentration requirements specified in 11.11(2).

11.13(2) Requirements for Maintaining a Disinfection Waiver

To maintain a disinfection waiver, the supplier must:

(a) Only supply water from groundwater sources.

(b) Distribute a special public notice regarding the disinfection waiver.

(i) For community water systems, the supplier must distribute the special public notice annually to inform consumers of the disinfection waiver.

(A) The supplier may use the consumer confidence report required under 11.34 to satisfy this requirement.

(ii) For non-community water systems, the supplier must continuously post the special public notice in conspicuous locations.

(iii) The special public notice must include the following language and provide the specific information for the text in brackets:

(A) [Name of groundwater system] has a waiver from disinfection requirements and serves well water that has not been chlorinated.

(iv) The supplier must comply with the public notice requirements specified in 11.33(5)(e-f).

(v) The Department may require the supplier to distribute the special public notice to new billing units or new customers as specified in 11.33(6)(b).

(c) Have the ability to provide a residual disinfectant concentration for the groundwater system in an emergency.

(i) The supplier must have Department-approved emergency disinfection equipment or be operating in accordance with the Department-approved emergency operating plan.

(d) Have a Department-approved monitoring plan that meets the requirements specified in 11.5.

(i) The supplier must operate in accordance with the Department-approved monitoring plan.

(e) Have a Department-approved distribution system protection plan.

(i) The supplier must operate in accordance with the Department-approved distribution system protection plan.

(ii) At a minimum, the distribution system protection plan must include all of the following:

(A) A description of protection measures designed to reduce public health risks for water provided through storage and the distribution system.

(B) A description of distribution system operation and maintenance practices (e.g., flushing schedules, scheduled upgrades, disinfection schedules);

(C) Until December 31, 2015, a description of a cross-connection control program that meets the requirements specified in 11.37.

(D) Beginning January 1, 2016, the backflow prevention and cross-connection control program that meets the requirements specified in 11.39.

(E) Identification of each potential point of entry for hazards and/or contaminants into the storage and distribution system and a description of the hazard and/or contaminant control measures to be used to mitigate the potential public health risks.

(F) A description of monitoring locations and parameters that will be used to verify and document that the hazard and/or contaminant control measures are effective.

(G) A description of incident response procedures to be followed in the case of a distribution system breach, hazard condition and/or contamination event. The procedure must at least include confirmation and repeat sampling protocols and flushing procedures.

(f) Have a Department-approved source water protection plan.

(i) The supplier must operate in accordance with the Department-approved source water protection plan.

(ii) At a minimum, the source water protection plan must include all of the following:

(A) A description of protection measures designed to reduce public health risks for water provided from groundwater sources.

(B) Delineation of source water protection areas.

(C) An inventory of potential sources of contamination.

(D) A plan for management of potential sources of contamination.

(E) Well failure emergency and contingency plans.

(F) Capacity development plan for new wells.

(G) A description of the methods to be used to involve and educate the public during the source water protection planning and implementation process.

(g) Keep records of chlorination activities as specified in 11.36(4)(c)(i)(C).

11.13(3) Disinfection Waiver Health-based Evaluations

(a) The Department may evaluate a groundwater system's wells and storage systems to determine if there are potential health risks from these sources. The Department shall conduct the evaluation based on criteria found in:

(i) Well construction and location criteria outlined in the rules, regulations, and Colorado statutes governing water well construction as enforced by the State Board of Examiners of Water Well and Pump Installation Contractors.

(ii) The *State of Colorado Design Criteria for Potable Water Systems* or other criteria developed by the Department.

(b) For new or existing sources, the Department may require assessment source water monitoring as specified in 11.11(5), additional testing, and additional information to establish that the water being supplied to the public is from a groundwater source determined to be free from microbial contamination.

(i) For new sources, the Department may require that all testing and evaluation be completed before the source may be used to supply water to the public.

(c) The Department may, at any time, conduct a full or partial sanitary survey to establish that the groundwater system is at low risk for contamination.

11.13(4) Disinfection Waiver Withdrawal

(a) A disinfection waiver may be withdrawn immediately if:

(i) The supplier fails to correct significant deficiencies as specified in 11.38(3).

(ii) Until March 31, 2016, the supplier fails to comply with 11.17 Total Coliform Rule, or beginning April 1, 2016, the supplier fails to comply with 11.16 Revised Total Coliform Rule or a treatment technique for a Level 1 or Level 2 assessment is triggered under 11.16(3).

(iii) The supplier fails to comply with the triggered source water monitoring and reporting requirements specified in 11.11(4).

(iv) Until December 31, 2015, the supplier fails to comply with 11.37 Cross-Connection Control Rule, or beginning January 1, 2016 the supplier fails to comply with 11.39 Backflow Prevention and Cross-Connection Control Rule.

(v) There is an incidence of microbial disease, the source of which is reasonably identified by the Department as originating from consumption of drinking water from the groundwater system.

(vi) There is an occurrence of unforeseeable situations or conditions which are reasonably identified by the Department as having the potential to contribute to a microbial disease incident.

(vii) The supplier fails to have the system operated by qualified personnel who meet the requirements of Regulation 100, *Water and Wastewater Facility Operators Certification Requirements*, and are included in a State register of qualified operators.

(viii) The groundwater system is in violation of the *Colorado Primary Drinking Water Regulations*.

(ix) The groundwater system is not in compliance with all disinfection waiver requirements specified in 11.13(2), or if based on other information obtained, it appears that the water being supplied to the public presents a potential risk to public health.

(b) If the groundwater system has a source that has been determined by the Department to be fecally contaminated or is required to comply with the 4-log treatment of viruses requirements specified in 11.11(3), the waiver shall be withdrawn immediately.

11.13(5) Response to a Disinfection Waiver Withdrawal

(a) If the Department withdraws the disinfection waiver, the supplier must disinfect the groundwater and comply with the minimum disinfectant residual concentration requirements as specified in 11.11(2).

(b) The supplier may request a hearing to contest the withdrawal of the waiver. The request for such a hearing must be filed in writing no later than 60 days after service of the Department's withdrawal. The hearing must be conducted under the procedures established by Article 4 of Title 24, Colorado Revised Statutes.

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11.16 REVISED TOTAL COLIFORM RULE

11.16(1) Applicability and Definitions

(a) For all public water systems, the supplier must comply with the requirements specified in this rule beginning April 1, 2016 unless otherwise specified.

(b) "CLEAN COMPLIANCE HISTORY" means a record of no MCL violations, no sampling violations, and no treatment technique triggers or treatment technique violations under this rule.

(c) "SEASONAL SYSTEM" means a non-community water system that is not operated as a public water system on a year-round basis.

11.16(2) MCL for *Escherichia coli* (*E. coli*)

(a) The system exceeds the *E. coli* MCL if:

(i) A repeat sample is *E. coli*-positive following a total coliform-positive routine sample.

(ii) A repeat sample is total coliform-positive following an *E. coli*-positive routine sample.

(iii) The supplier fails to collect the required repeat samples following an *E. coli*-positive routine sample.

(iv) The supplier fails to analyze a total coliform-positive repeat sample for *E. coli*.

(b) The BATs for achieving compliance with the MCLs for *E. coli* are specified in 40 CFR 141.63(e-f) as amended July 1, 2014.

11.16(3) Total Coliform Treatment Technique Triggers

(a) The treatment technique triggers for a Level 1 assessment are as follows:

(i) If the supplier collects greater than or equal to (≥) 40 samples per month, more than 5.0 percent of the samples collected for the month are total coliform-positive.

(ii) If the supplier collects less than (<) 40 samples per month, more than one sample collected for the monitoring period is total coliform-positive.

(iii) The supplier fails to collect all required repeat samples after any single total coliform-positive sample.

(b) The treatment technique triggers for a Level 2 assessment are as follows:

(i) An *E. coli* MCL violation occurs as specified in 11.16(12)(a).

(ii) A second treatment technique trigger for a Level 1 assessment, as specified in 11.16(3)(a), occurred within 12 consecutive months, except:

(A) If the Department has determined the possible cause(s) for the total coliform-positive sample(s) that caused the first Level 1 assessment to be triggered and the Department has established that the supplier has corrected the problem(s), a second Level 1 assessment that is triggered will not result in a Level 2 assessment.

11.16(4) Individual Rule Sampling Plan for the Revised Total Coliform Rule

(a) No later than March 31, 2016, as part of the monitoring plan specified in 11.5, the supplier must develop a written sampling plan that identifies all of the following:

(i) A sample collection schedule that meets the requirements specified in 11.16(6)(a)(iii).

(ii) Routine total coliform sample sites that are representative of water throughout the distribution system.

(iii) Any sample sites necessary to meet the triggered source water monitoring requirements specified in 11.11(4)(b).

(iv) Repeat sample sites.

(A) The supplier must identify repeat sampling sites in one of the following ways:

(I) Identify sampling sites based on the following requirements:

(a) One total coliform sample at the site where the original total coliform-positive sample was collected.

(b) One total coliform sample at a site within five service connections upstream from the site where the original total-coliform positive sample was collected.

(c) One total coliform sample at a site within five service connections downstream from the site where the original total-coliform positive sample was collected.

(d) If the supplier collected the original total coliform-positive sample from the end of the distribution system or one site away from the end of the distribution system, the Department may allow an alternative sampling site for collecting repeat samples at the upstream or downstream sites.

(II) Identify alternative fixed repeat sampling sites that the supplier believes to be representative of a pathway for contamination of the distribution system.

(III) Develop criteria for selecting repeat sampling sites on a situational basis that the supplier believes to best verify and determine the extent of potential contamination and a potential pathway for contamination of the distribution system in a standard operating procedure (SOP) that is included in the sampling plan.

(a) The Department may modify the SOP or require alternative repeat sampling sites.

(b) Sample sites may include a customer's premises, dedicated sampling station, or other designated compliance sampling site.

(c) The Department may review, revise, and approve the written sampling plan.

11.16(5) <u>Start-up Requirements for Seasonal Systems</u>

(a) The supplier must complete Department-approved start-up procedures and certify that the start-up procedures were completed before supplying water to the public each season.

(i) No later than the 10th of the month following the month that the system began supplying water to the public, the supplier must submit the certification that start-up procedures were completed.

(b) The supplier must either submit start-up procedures for Department approval or use the pre-approved procedures in the Department's *Revised Total Coliform Rule Start-up Procedures for Seasonal Systems Handbook*.

(c) As part of the start-up procedures, the supplier must collect a total coliform sample in the distribution system before supplying water to the public.

11.16(6) Sampling Requirements for Total Coliform

(a) General Sampling Requirements for Total Coliform

(i) To determine compliance with the MCL for *E. coli* or to determine if a treatment technique is triggered, the supplier must collect total coliform samples as specified in 11.16(6) and 11.16(7).

(A) If an *E. coli* MCL violation occurs or if a treatment technique is triggered, the supplier must still collect at least the minimum number of required routine samples.

(ii) The supplier must collect total coliform samples according to the written sampling plan as specified in 11.16(4).

(iii) The supplier must collect total coliform samples at regular time intervals throughout the month, except:

(A) For groundwater systems that supply less than or equal to (≤) 4,900 people, the supplier may collect all required samples on a single day if the samples are collected from different sites.

(iv) The supplier may collect more samples than the minimum number of routine total coliform samples required as specified in Table 11.16-I as a tool to investigate potential problems in the distribution system.

(A) The supplier must use these sample results to determine if a treatment technique has been triggered if:

(I) The supplier collects these samples in accordance with the sampling plan; and

(II) The supplier collects these samples from sites that are representative of water throughout the distribution system.

(B) If any of the sample results are total coliform-positive, the supplier must collect repeat samples as specified in 11.16(7).

(v) If the supplier collects special purpose samples, these samples are not routine or repeat samples and these sample results will not be used to determine compliance with the *E. coli* MCL or to determine if a treatment technique is triggered.

(A) The supplier is not required to submit special purpose samples unless the sample result is *E. coli*-positive and is representative of water in the distribution system.

(I) The supplier must submit *E. coli*-positive special purpose sample results as specified in 11.35(2)(a).

(b) Routine Sampling Requirements for Total Coliform

(i) For all public water systems, the supplier must collect the number of routine total coliform samples specified in Table 11.16-I each month except:

(A) For non-community groundwater systems that supply less than or equal to (≤) 1,000 people, the supplier must collect one total coliform sample during each quarter that water is supplied to the public, unless the supplier is required to increase the routine sampling frequency as specified in 11.16(6)(c).

(I) In any month where the system supplies greater than (>) 1,000 people, the supplier must collect the number of routine total coliform samples specified in Table 11.16-I each month.

(a) The supplier must have written Department-approval to alternate between quarterly and monthly sampling frequencies based on when the population supplied is less than or equal to (≤) 1,000 people or when the population supplied is greater than (>) 1,000 people.

(ii) For public water systems that haul water, the water hauler must collect at least one total coliform sample from the outlet port of each tank or container each month that the tank or container is used to supply water to the public.

(iii) For hand-pumped wells, the supplier must collect at least one total coliform sample from each hand-pumped well each month that it supplies water to the public.

(iv) For the following public water systems, the supplier is not eligible for a quarterly sampling frequency as specified in 11.16(6)(b)(i)(A):

(A) Seasonal systems.

(B) Public water systems that do not provide chemical disinfection.

(C) Public water systems that haul water.

(D) Groundwater systems with hand-pumped wells.

(v) The Department shall perform a sampling evaluation during each sanitary survey to determine whether the supplier is collecting total coliform samples on an appropriate frequency.

(A) Based on the sampling evaluation, the Department may modify the sampling frequency.

TABLE 11.16-I NUMBER OF ROUTINE TOTAL COLIFORM SAMPLES REQUIRED PER MONITORING PERIOD

Population supplied	Minimum number of samples required	Population supplied	Minimum number of samples required

25 to 1,000[1]	1	59,001 to 70,000	70
1,001 to 2,500	2	70,001 to 83,000	80
2,501 to 3,300	3	83,001 to 96,000	90
3,301 to 4,100	4	96,001 to 130,000	100
4,101 to 4,900	5	130,001 to 220,000	120
4,901 to 5,800	6	220,001 to 320,000	150
5,801 to 6,700	7	320,001 to 450,000	180
6,701 to 7,600	8	450,001 to 600,000	210
7,601 to 8,500	9	600,001 to 780,000	240
8,501 to 12,900	10	780,001 to 970,000	270
12,901 to 17,200	15	970,001 to 1,230,000	300
17,201 to 21,500	20	1,230,001 to 1,520,000	330
21,501 to 25,000	25	1,520,001 to 1,850,000	360
25,001 to 33,000	30	1,850,001 to 2,270,000	390
33,001 to 41,000	40	2,270,001 to 3,020,000	420
41,001 to 50,000	50	3,020,001 to 3,960,000	450
50,001 to 59,000	60	3,960,001 or more	480

1 Includes systems that have greater than or equal to (≥) 15 service connections, but supply less than (<) 25 people.

(c) <u>For Non-community Groundwater Systems Supplying Less Than or Equal to (≤) 1,000 People – Increased Routine Sampling Requirements for Total Coliform</u>

(i) If the supplier is sampling quarterly, the supplier must increase the routine sampling frequency to monthly if any of the following events occur:

(A) A Level 2 assessment is triggered under 11.16(3)(b).

(B) A treatment technique violation occurs under 11.16(12)(b).

(C) Two sampling violations occur within 12 consecutive months.

(D) A Level 1 assessment is triggered and a sampling violation occurs within 12 consecutive months.

(ii) The supplier must begin the monthly sampling frequency in the month following the month that the event occurred under 11.16(6)(c)(i).

(iii) If the supplier is sampling monthly, the Department may allow the supplier to return to a routine quarterly sampling frequency if all of the following criteria are met:

(A) Within the last 12 months, the Department or a Department-approved party has completed a sanitary survey or a Level 2 assessment.

(B) The system is free of sanitary defects and all significant deficiencies have been corrected.

(C) The system's water source(s) is protected from the direct influence of surface water or any other source of contamination.

(D) The system has a clean compliance history for at least 12 consecutive months.

(d) For Non-community Groundwater Systems Supplying Less Than or Equal to (≤) 1,000 People – Additional Routine Sampling Requirements in the Month Following a Total Coliform-positive Sample Result

(i) If the supplier is collecting total coliform samples on a quarterly frequency and one or more of the samples collected is total coliform-positive, the supplier must collect at least three routine samples during the following month.

(A) The supplier may either collect the samples at regular time intervals throughout the month or collect all required additional routine samples on a single day if the samples are collected from different sites.

(ii) If any of the additional routine sample results are total coliform-positive, the supplier must collect repeat samples as specified in 11.16(7).

(iii) The supplier must use the results of additional routine samples to determine whether an *E. coli* MCL violation has occurred or if a treatment technique is triggered.

(iv) If all three additional routine samples are total coliform-negative, the supplier may return to collecting one total coliform sample on a quarterly sampling frequency. The supplier must begin collecting the quarterly sampling frequency in the calendar quarter following the month that the three additional routine samples were required.

11.16(7) Repeat Sampling Requirements for Total Coliform

(a) For each routine sample result that is total coliform-positive, the supplier must collect a sample set of at least three repeat total coliform samples no later than 24 hours after being notified of the positive sample result.

(i) If the supplier has a logistical problem beyond their control that prevents the supplier from collecting the repeat samples within the 24-hour limit, the Department may extend the 24-hour limit on a case-by-case basis.

(A) If the Department grants the extension, the Department shall specify how much time the supplier has to collect the repeat samples.

(b) The supplier must collect repeat samples in accordance with the written sampling plan required under 11.16(4)(a)(iv).

(c) The supplier must collect all repeat samples on the same day.

(i) If the system has only one service connection, the Department may allow the supplier to collect a larger volume repeat sample(s) in one or more sample containers of any size, as long as the total volume collected is at least 300 ml.

(d) If a treatment technique is triggered based only on routine sample results, the supplier is required to collect only one repeat sample set for each total coliform-positive routine sample and is not required to comply with the requirements specified in 11.16(7)(e).

(e) If one or more of the repeat sample results is total coliform-positive, the supplier must:

(i) Collect an additional repeat sample set as specified in 11.16(7)(a-d) for each site that had a total coliform-positive sample result.

(A) The additional repeat sample set(s) must be collected no later than 24 hours after being notified of the total coliform-positive sample result(s), unless the Department extends the 24-hour limit as specified in 11.16(7)(a)(i).

(ii) Continue to collect additional repeat sample sets as specified in 11.16(7)(e)(i) until either:

(A) Total coliforms are not detected in one complete repeat sample set; or

(B) A treatment technique is triggered as specified in 11.16(3) based on total coliform-positive repeat sample results and the supplier has notified the Department.

(f) If the supplier collects a routine sample, which after analysis is found to be total coliform-positive, but before receiving that sample result the supplier collects another routine sample within five service connections of the original sample, the supplier may use the subsequent routine sample as a repeat sample instead of as a routine sample.

(g) For groundwater systems, the supplier must collect triggered source water monitoring samples as specified in 11.11(4) in addition to repeat samples required in this section, 11.16(7).

(i) For a groundwater system with a single well supplying less than or equal to (≤) 1,000 people, if the supplier is required to collect a triggered source water monitoring sample, the supplier, with written Department approval, may collect one of the repeat total coliform samples at the sample site required for triggered source water monitoring under 11.11(4).

(A) If approved by the Department, the supplier may use the repeat total coliform sample to meet both the triggered source water monitoring requirements specified in 11.11(4) and the total coliform repeat sampling requirements specified in this section, 11.16(7).

(h) The Department shall not waive the requirement to collect repeat samples.

(i) Repeat samples are not considered special purpose samples and must be used to determine if a treatment technique is triggered.

11.16(8) <u>Invalidation of Total Coliform Samples</u>

(a) The Department may invalidate a total coliform-positive sample result only if one or more of the following conditions are met:

(i) The laboratory establishes that improper sample analysis caused the total coliform-positive sample result.

(ii) Based on repeat sample results, the Department determines that the total coliform-positive sample resulted from a domestic or other non-distribution system plumbing problem.

(A) "DOMESTIC OR OTHER NON-DISTRIBUTION SYSTEM PLUMBING PROBLEM" means coliform contamination that is limited to the specific service connection from which the total coliform-positive sample was collected in a public water system with more than one service connection.

(B) The Department shall not invalidate a total coliform-positive sample result on the basis of repeat sample results unless all repeat sample(s) collected at the same site as the original total coliform-positive sample are also total coliform-positive, and all repeat samples collected at a site other than the original site are total coliform-negative.

(I) The Department shall not invalidate a total coliform-positive sample result solely on the basis that all repeat sample results are total coliform-negative.

(iii) The Department has substantial grounds to believe that a total coliform-positive sample result was due to a circumstance or condition that does not reflect water quality in the distribution system.

(A) The Department shall document the decision and supporting rationale for invalidating a total coliform-positive sample result in writing, have it approved and signed by a supervisor of the Department official who recommended the decision, and make this document available to the EPA and the public.

(I) The written documentation must state the specific cause of the total coliform-positive sample result and what action the supplier has taken, or will take, to correct the problem.

(II) The Department shall not invalidate a total coliform-positive sample result solely on the basis that all repeat sample results are total coliform-negative.

(B) If the Department makes this determination, the supplier must still collect the required number of repeat samples and use them to determine if a treatment technique is triggered as specified in 11.16(3).

(b) The Department shall not invalidate total coliform-positive samples if the system has only one service connection.

(c) If a total coliform-positive sample result is invalidated, the sample result will not count towards determining any of the following:

(i) Compliance with the sampling requirements specified in this rule.

(ii) Compliance with the *E. coli* MCL.

(iii) Whether a treatment technique has been triggered.

(d) The laboratory shall invalidate a total coliform-negative sample result if one or more of the following conditions are met:

(i) The sample produces a turbid culture in the absence of gas production using an analytical method where gas formation is examined (e.g., the Multiple-Tube Fermentation Technique).

(ii) The sample produces a turbid culture in the absence of an acid reaction in the Presence-Absence (P-A) Coliform Test.

(iii) The sample exhibits confluent growth or produces colonies too numerous to count with an analytical method using a membrane filter (e.g., Membrane Filter Technique).

(A) "CONFLUENT GROWTH" means, in the context of bacterial testing, a continuous bacterial growth covering the entire filtration area of a membrane filter, or a portion thereof, in which bacterial colonies are not discrete.

(B) "TOO NUMEROUS TO COUNT" means that the total number of bacterial colonies exceeds 200 on a 47-millimeter (mm) diameter membrane filter used for coliform detection.

(e) The laboratory shall not invalidate a total coliform-positive sample result.

(f) If the laboratory invalidates a total coliform-negative sample result, the supplier must collect a replacement total coliform sample from the same site as the invalidated sample no later than 24 hours after being notified of the invalidation, and have it analyzed for the presence of total coliforms.

(i) The Department may extend the 24-hour limit on a case-by-case basis.

(ii) The supplier must continue to collect replacement total coliform samples until a valid sample result is obtained.

11.16(9) Sampling Requirements for *E. coli*

(a) If any routine or repeat sample result is total coliform-positive, the supplier must have a laboratory analyze the total coliform-positive culture medium to determine if *E. coli* are present.

(b) If any routine, repeat, or special purpose sample result is *E. coli*-positive, the supplier must notify the Department no later than the end of the day that the supplier is notified of the sample result.

(i) If the supplier is notified of the sample result after the Department is closed, the supplier must contact the Department's after-hours phone line.

(ii) The supplier must only notify the Department of *E. coli*-positive special purpose sample results if the result is representative of water throughout the distribution system.

11.16(10) Treatment Technique Requirements: Level 1 and Level 2 Assessment Requirements

If at the end of the monitoring period a treatment technique has been triggered as specified in 11.16(3), the supplier must comply with the treatment technique requirements specified in this section 11.16(10).

(a) General Requirements for Assessments

(i) To identify and correct sanitary defects and identify inadequate or inappropriate distribution system coliform sampling practices, the supplier must ensure that a Level 1 or Level 2 assessment is conducted.

(ii) The supplier must ensure that the assessor evaluates at least all of the following elements:

(A) Inadequacies in sample sites.

(B) Inadequacies in sampling protocol.

(C) Inadequacies in sample processing.

(D) Atypical events that could affect distributed water quality or indicate that distributed water quality was impaired.

(E) Changes in distribution system maintenance and operation, including water storage, that could affect distributed water quality.

(F) Source and treatment considerations that affect distributed water quality.

(G) Existing water quality monitoring data.

(iii) The supplier or the Department may request a consultation with the other party at any time during the assessment or corrective action phase. The consultation may be used to determine appropriate actions to be taken or to discuss relevant information that may impact the supplier's ability to comply with the requirements specified in 11.16(10).

(iv) If required by the Department, the supplier must ensure that the assessment is conducted consistent with any Department-specified modifications to assessment elements based on the size and type of the system and the size, type, and characteristics of the distribution system.

(v) If required by the Department, the supplier must comply with any expedited schedules or additional actions that may include requiring the supplier to collect additional total coliform samples and chlorine residual disinfectant concentration samples.

(vi) The supplier must complete corrective action by correcting sanitary defects identified during Level 1 or Level 2 assessments.

(A) If the supplier has not completed corrective action for any sanitary defect before the submission of the assessment form, the supplier must complete the corrective action(s) on a Department-approved schedule.

(I) The supplier must notify the Department when each scheduled corrective action is completed.

(b) Level 1 Assessments

(i) If any treatment technique for a Level 1 assessment is triggered, the supplier must complete a Level 1 assessment as soon as practical.

(ii) No later than 30 days after learning of a treatment technique trigger for a Level 1 assessment, the supplier must submit for review a completed Level 1 assessment form.

(A) In the completed form, the supplier must state whether sanitary defects were identified and if so, describe all of the following:

(I) Sanitary defects identified.

(II) The possible cause(s) for the treatment technique trigger.

(III) If sanitary defects are identified, corrective actions completed.

(IV) If sanitary defects are identified, a proposed schedule for any corrective actions not already completed.

(iii) If the Department reviews the Level 1 assessment form and determines that the assessment was not sufficient or the assessment form is not complete, the Department shall consult with the supplier.

(A) If the Department requires revisions after consultation, the supplier must submit a revised assessment form to the Department on an agreed-upon date no later than 30 days from the date of the consultation.

(iv) Upon completion and submission of the assessment form by the supplier, the Department shall determine if the supplier identified the possible cause(s) for the treatment technique trigger.

(A) If the supplier identified the possible cause(s) for the treatment technique trigger, the Department shall determine if the supplier corrected the problem or included a Department-approved schedule for correcting the problem.

(v) For systems operating under a disinfection waiver, the supplier must distribute Tier 2 public notice as specified in 11.33 if a treatment technique for a Level 1 assessment is triggered.

(c) Level 2 Assessments

(i) If any treatment technique for a Level 2 assessment is triggered, the supplier must ensure that a Level 2 assessment is conducted as soon as practical.

(A) The supplier must ensure that the Level 2 assessment is completed by the Department or Department-approved party.

(ii) No later than 30 days after learning of a Level 2 treatment technique trigger exceedance, the supplier must submit for review a completed Level 2 assessment form.

(A) The supplier must state whether sanitary defects were identified and if so, describe all of the following:

(I) Sanitary defects identified.

(II) The possible cause(s) for the Level 2 treatment technique trigger.

(III) If sanitary defects are identified, corrective actions completed.

(IV) If sanitary defects are identified, a proposed schedule for any corrective actions not already completed.

(iii) If the Department reviews the Level 2 assessment form and determines that the assessment was not sufficient or the assessment form is not complete, the Department shall consult with the supplier.

(A) If the Department requires revisions after consultation, the supplier must submit a revised assessment form to the Department on an agreed-upon schedule no later than 30 days from the date of the consultation.

(iv) Upon completion and submission of the assessment form by the supplier, the Department shall determine if the supplier identified the possible cause(s) for the treatment technique trigger.

(A) If the supplier identified the possible cause(s) for the treatment technique trigger, the Department shall determine if the supplier corrected the problem or included a Department-approved schedule for correcting the problem.

11.16(11) Compliance Determination for the *E. coli* MCL

To determine if an *E. coli* MCL violation has occurred, the supplier must include the results of all routine and repeat samples collected in the monitoring period under 11.16(6) and 11.16(7).

11.16(12) Violations for the Revised Total Coliform Rule

(a) The following constitute *E. coli* MCL violations:

(i) A repeat sample is E. coli-positive following a total coliform-positive routine sample.

(ii) A repeat sample is total coliform-positive following an E. coli-positive routine sample.

(iii) The supplier fails to collect all required repeat samples following an E. coli-positive routine sample.

(iv) The supplier fails to analyze a total coliform-positive repeat sample for E. coli.

(b) The following constitute treatment technique violations:

(i) A treatment technique was triggered and the supplier failed to conduct the required assessment or corrective action(s) as specified in 11.16(10).

(ii) For seasonal systems, the supplier fails to complete Department-approved start-up procedures before supplying water to the public.

11.16(13) Response to Violations of the Revised Total Coliform Rule

(a) In the event of an *E. coli* MCL violation, the supplier must:

(i) Notify the Department no later than the end of the day that the supplier learns of the violation.

(A) If the supplier learns of the violation after the Department is closed, the supplier must contact the Department's after-hours phone line.

(ii) Distribute Tier 1 public notice as specified in 11.33.

(b) In the event of a treatment technique violation, the supplier must:

(i) Notify the Department no later than the end of the next business day after the supplier learns of the violation.

(ii) Distribute Tier 2 public notice as specified in 11.33.

11.17 TOTAL COLIFORM RULE

11.17(1) Applicability and Definitions

(a) For all public water systems, the supplier must comply with the requirements specified in this rule until March 31, 2016.

(i) The supplier must complete all requirements specified in this rule that are initiated by a total coliform-positive sample collected before April 1, 2016.

(b) "CONFLUENT GROWTH" means, in the context of bacterial testing, a continuous bacterial growth covering the entire filtration area of a membrane filter, or a portion thereof, in which bacterial colonies are not discrete.

(c) "TOO NUMEROUS TO COUNT" means that the total number of bacterial colonies exceeds 200 on a 47-millimeter (mm) diameter membrane filter used for coliform detection.

11.17(2) MCLs for Microbial Contaminants

(a) The microbial contaminant MCLs are as follows:

TABLE 11.17-I MCLs FOR MICROBIAL CONTAMINANTS

Contaminant	Total number of samples collected	MCL
Total coliforms	The supplier collects less than (<) 40 samples per month	No more than one sample collected during a month is total coliform-positive
	The supplier collects greater than or equal to (≥) 40 samples per month	No more than 5.0 percent of all the samples collected during a month are total coliform-positive
Fecal coliform or *E. coli* repeat sample	.	Absent
Total coliform-positive repeat sample following a fecal coliform-positive or *E. coli*-positive routine sample	.	Absent

(b) The BATs for achieving compliance with the MCLs for microbial contaminants are specified in 40 CFR 141.63(e) as amended July 1, 2014.

11.17(3) Sampling Requirements for Total Coliform

(a) General Sampling Requirements for Total Coliform

(i) To determine compliance with the MCL for microbial contaminants, the supplier must collect total coliform samples at locations that are representative of water throughout the distribution system and at regular time intervals throughout the month.

(A) For groundwater systems that supply less than or equal to (≤) 4,900 people, the supplier may collect all required samples on a single day if the samples are collected from different locations.

(ii) The supplier must maintain a written individual rule sampling plan identifying the total coliform sample locations as part of the monitoring plan as specified in 11.5.

(A) The Department may review the individual rule sampling plan and revise it as necessary.

(b) Routine Sampling Requirements for Total Coliform

(i) The supplier must collect the number of routine total coliform samples specified in Table 11.17-II each month, except:

(A) For non-community water systems using only groundwater sources that supply less than or equal to (≤) 1,000 people, the supplier must collect one total coliform sample during each quarter that water is supplied to the public.

(I) If the system is reclassified as a surface water system, the supplier must collect the number of total coliform samples specified in Table 11.17-II each month beginning with the month following written Department-determination of the reclassification.

TABLE 11.17-II NUMBER OF ROUTINE TOTAL COLIFORM SAMPLES REQUIRED PER MONITORING PERIOD

Population supplied	Minimum number of samples required	Population supplied	Minimum number of samples required
25 to 1,000[1]	1	59,001 to 70,000	70
1,001 to 2,500	2	70,001 to 83,000	80
2,501 to 3,300	3	83,001 to 96,000	90
3,301 to 4,100	4	96,001 to 130,000	100
4,101 to 4,900	5	130,001 to 220,000	120
4,901 to 5,800	6	220,001 to 320,000	150
5,801 to 6,700	7	320,001 to 450,000	180
6,701 to 7,600	8	450,001 to 600,000	210
7,601 to 8,500	9	600,001 to 780,000	240
8,501 to 12,900	10	780,001 to 970,000	270
12,901 to 17,200	15	970,001 to 1,230,000	300
17,201 to 21,500	20	1,230,001 to 1,520,000	330

21,501 to 25,000	25	1,520,001 to 1,850,000	360
25,001 to 33,000	30	1,850,001 to 2,270,000	390
33,001 to 41,000	40	2,270,001 to 3,020,000	420
41,001 to 50,000	50	3,020,001 to 3,960,000	450
50,001 to 59,000	60	3,960,001 or more	480

1 Includes systems that have greater than or equal to (≥) 15 service connections, but supply less than (<) 25 people.

(ii) For a non-community water system that is not open year round, the supplier must collect a total coliform sample at least 10 days before opening for the season.

(iii) For hand-pumped wells, the supplier must collect a total coliform sample from the hand-pumped well each month that it supplies water to the public.

(iv) For public water systems that haul water, the water hauler must collect at least one total coliform sample from the outlet port of each tank or container each month that the tank or container is used to supply water to the public.

(v) If the supplier collects special purpose samples (e.g., samples collected to determine whether disinfection practices are sufficient following pipe placement, replacement, or repair), the Department will not consider these as routine samples and will not use the sample results to determine compliance with the MCLs.

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11.18 NITRATE AND NITRITE RULE

11.18(1) Applicability

For all public water systems, the supplier must comply with the requirements specified in this rule.

11.18(2) MCL Requirements for Nitrate and Nitrite

(a) The nitrate and nitrite MCLs are as follows:

TABLE 11.18-I NITRATE AND NITRITE CHEMICALS MCLs	
Chemical	MCL (mg/L)
Nitrate	10 (as Nitrogen)
Nitrite	1 (as Nitrogen)
Total Nitrate and Nitrite	10 (as Nitrogen)

(b) The cited detection limits for nitrate and nitrite are specified in 40 CFR 141.23(a)(4)(i) as amended July 1, 2014.

(c) The BATs for achieving compliance with the MCLs for nitrate and nitrite are specified in 40 CFR 141.62(c) as amended July 1, 2014.

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11.19 INORGANIC CHEMICALS RULE

11.19(1) Applicability and Definitions

(a) For all community and non-transient, non-community water systems, the supplier must comply with the requirements specified in this rule.

(i) For non-transient, non-community water systems, the supplier is required to comply with the sampling requirements for fluoride but is not required to comply with the fluoride MCL unless the Department determines that complying with the MCL is necessary to protect public health.

(ii) For transient, non-community water systems, the supplier may be required to comply with the fluoride MCL if the Department determines that complying with the MCL is necessary to protect public health.

(b) For the purpose of this rule, “INORGANIC CHEMICALS” means all the chemicals listed in Table 11.19-I.

11.19(2) MCL Requirements for Inorganic Chemicals

(a) The inorganic chemical MCLs are as follows:

TABLE 11.19-I INORGANIC CHEMICAL MCLs

Chemical	MCL (mg/L)
Antimony	0.006
Arsenic	0.010
Asbestos	7 Million Fibers/liter (Longer than 10 µm)
Barium	2
Beryllium	0.004
Cadmium	0.005
Chromium	0.1
Cyanide (as free Cyanide)	0.2
Fluoride	4.0[1]
Mercury	0.002
Nickel	N/A[2]
Selenium	0.05
Thallium	0.002

1 This is the primary MCL for fluoride. Fluoride also has a secondary MCL of 2.0 mg/L.

2 Nickel has no MCL. The supplier must sample for nickel as specified in 11.19(3)(b).

(b) The cited detection limits for inorganic chemical analysis are specified in 40 CFR 141.23(a)(4)(i) as amended July 1, 2014.

(c) The BATs for achieving compliance with the MCLs for inorganic chemicals, with the exception of fluoride, are specified in 40 CFR 141.62(c) as amended July 1, 2014.

(d) For systems supplying less than or equal to (≤) 10,000 people, the SSCTs for achieving compliance with the MCL for arsenic are specified in 40 CFR 141.62(d) as amended July 1, 2014.

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11.21 ORGANIC CHEMICALS RULE

11.21(1) Applicability and Definitions

(a) For all community and non-transient, non-community water systems, the supplier must comply with the requirements specified in this rule.

(b) "SYNTHETIC ORGANIC CHEMICALS" or "SOCs" mean all of the chemicals specified in Table 11.21-II.

(c) "VOLATILE ORGANIC CHEMICALS" or "VOCs" mean all of the chemicals specified in Table 11.21-I.

11.21(2) MCL Requirements for Organic Chemicals

(a) MCL Requirements for VOCs

(i) The VOC MCLs and cited detection limits are as follows:

TABLE 11.21-I VOC MCLs AND DETECTION LIMITS

CAS No.	Chemical	MCL (mg/L)	Cited detection limit (mg/L)
75-01-4	Vinyl chloride	0.002	0.0005
71-43-2	Benzene	0.005	0.0005
56-23-5	Carbon tetrachloride	0.005	0.0005
107-06-2	1,2-Dichloroethane	0.005	0.0005
79-01-6	Trichloroethylene	0.005	0.0005
106-46-7	Para-Dichlorobenzene	0.075	0.0005
75-35-4	1,1-Dichloroethylene	0.007	0.0005
71-55-6	1,1,1-Trichloroethane	0.2	0.0005
156-59-2	cis-1,2 Dichloroethylene	0.07	0.0005
78-87-5	1,2-Dichloropropane	0.005	0.0005
100-41-4	Ethylbenzene	0.7	0.0005
108-90-7	Monochlorobenzene	0.1	0.0005
95-50-1	o-Dichlorobenzene	0.6	0.0005
100-42-5	Styrene	0.1	0.0005

127-18-4	Tetrachloroethylene	0.005	0.0005
108-88-3	Toluene	1	0.0005
156-60-5	Trans-1,2 Dichloroethylene	0.1	0.0005
1330-20-7	Xylenes (total)	10	0.0005
75-09-2	Dichloromethane (methylene chloride)	0.005	0.0005
120-82-1	1,2,4-Trichlorobenzene	0.07	0.0005
79-00-5	1,1,2-Trichloroethane	0.005	0.0005

(ii) The BATs for achieving compliance with the MCLs for VOCs are specified in 40 CFR 141.61(b) as amended July 1, 2014.

(b) MCL Requirements for SOCs

(i) The SOC MCLs and cited detection limits are as follows:

TABLE 11.21-II SOC MCLs AND DETECTION LIMITS			
CAS No.	Chemical	MCL (mg/L)	Cited detection limit (mg/L)
15972-60-8	Alachlor	0.002	0.0002
116-06-3	Aldicarb[1]	0.003	0.0005
1646-87-3	Aldicarb sulfoxide[1]	0.004	0.0005
1646-88-4	Aldicarb sulfone[1]	0.002	0.0008
1912-24-9	Atrazine	0.003	0.0001
1563-66-2	Carbofuran	0.04	0.0009
57-74-9	Chlordane	0.002	0.0002
96-12-8	Dibromochloropropane	0.0002	0.00002
94-75-7	2,4-D	0.07	0.0001
106-93-4	Ethylene dibromide	0.00005	0.00001
76-44-8	Heptachlor	0.0004	0.00004
1024-57-3	Heptachlor epoxide	0.0002	0.00002
58-89-9	Lindane	0.0002	0.00002
72-43-5	Methoxychlor	0.04	0.0001
1336-36-3	Polychlorinated biphenyls	0.0005	0.0001
87-86-5	Pentachlorophenol	0.001	0.00004
8001-35-2	Toxaphene	0.003	0.001
93-72-1	2,4,5-TP (Silvex)	0.05	0.0002
50-32-8	Benzopyrene	0.0002	0.00002

75-99-0	Dalapon	0.2	0.001
103-23-1	Di(2-ethylhexyl)adipate	0.4	0.0006
117-81-7	Di(2-ethylhexyl)phthalate	0.006	0.0006
88-85-7	Dinoseb	0.007	0.0002
85-00-7	Diquat	0.02	0.0004
145-73-3	Endothall	0.1	0.009
72-20-8	Endrin	0.002	0.00001
1071-53-6	Glyphosate	0.7	0.006
118-74-1	Hexachlorobenzene	0.001	0.0001
77-47-4	Hexachlorocyclopentadiene	0.05	0.0001
23135-22-0	Oxamyl (Vydate)	0.2	0.002
1918-02-1	Picloram	0.5	0.0001
122-34-9	Simazine	0.004	0.00007
1746-01-6	2,3,7,8-TCDD (Dioxin)	3×10^{-8}	0.000000005

1 Aldicarb, aldicarb sulfoxide, and aldicarb sulfone are currently under "administrative stay" as a result of litigation. They are therefore treated as unregulated contaminants. The supplier is not required to sample for them or comply with their MCLs.

(ii) The BATs for achieving compliance with the MCLs for SOCs are specified in 40 CFR 141.61(b) as amended July 1, 2014.

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11.22 RADIONUCLIDES RULE

11.22(1) Applicability and Definitions

(a) For all community water systems, the supplier must comply with the requirements specified in this rule.

(i) The supplier is not required to comply with the beta particle and photon radioactivity requirements, unless the Department determines the system is vulnerable to beta particle and photon radioactivity contamination or the system is using sources contaminated by effluents from nuclear facilities.

(b) "BETA PARTICLE AND PHOTON RADIOACTIVITY" means the radiation from a group of 179 man-made radionuclides, including tritium, strontium-90, and iodine-131, that emit beta and photon radiation. These man-made beta particle and photon emitters are listed in the *Maximum Permissible Body Burdens and Maximum Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure*, NBS Handbook 69, except the daughter products of thorium-232, uranium-235 and uranium-238.

(c) "GROSS ALPHA PARTICLE ACTIVITY" means the radiation from all radionuclides emitting alpha radiation, including radium-226, excluding radon and uranium.

(d) "GROSS BETA PARTICLE ACTIVITY" means the radiation from all radionuclides that emit beta radiation. This measurement is used as part of the calculation to determine the beta particle and photon radioactivity.

(e) "PICOCURIE" or "pCi" means the quantity of radioactive material producing 2.22 nuclear transformations per minute.

(f) "REM" means the unit of dose equivalent from ionizing radiation to the total body or any internal organ or organ system. A "millirem (mrem)" is 1/1000 of a rem.

11.22(2) MCL Requirements for Radionuclides

(a) The radionuclide MCLs are as follows:

TABLE 11.22-I RADIONUCLIDE MCLs	
Contaminant	MCL
Gross alpha particle activity (including radium-226, excluding radon[1] and uranium)	15 pCi/L
Combined radium-226 and radium-228[2]	5 pCi/L
Uranium[3]	30 µg/L
Beta particle and photon radioactivity[4]	4 mrem/yr

1 Radon is not currently regulated in drinking water.

2 Radium-228 is an individual alpha particle activity emitter, however it is not included in the gross alpha particle activity and is measured separately. Radium-228 sample results are combined with radium-226 sample results for the purposes of determining compliance.

3 Uranium is an individual alpha particle activity emitter, however it is not included in the gross alpha particle activity and is measured separately. If uranium is determined by mass, a 0.67 pCi/µg of uranium conversion factor must be used. This conversion factor is based on the 1:1 activity ratio of U-234 and U-238 that is characteristic of naturally occurring uranium.

4 The average annual concentration of beta particle and photon radioactivity from man-made radionuclides in drinking water must not produce an annual dose equivalent to the total body or any internal organ greater than (>) 4 mrem/yr.

(b) The cited detection limits for radionuclides are specified in 40 CFR 141.25(c) as amended July 1, 2014.

(c) The BATs for achieving compliance with the MCLs for radionuclides are specified in 40 CFR 141.66(g) as amended July 1, 2014.

(d) The SSCTs for systems supplying less than or equal to (≤) 10,000 people for achieving compliance with the MCL for radionuclides are specified in 40 CFR 141.66(h) as amended July 1, 2014.

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11.23 MAXIMUM RESIDUAL DISINFECTANT LEVELS RULE

11.23(1) Chlorine and Chloramines MRDL

(a) Applicability for Chlorine and Chloramines MRDL

For all community and non-transient, non-community water systems that supply water treated with chlorine or chloramines, the supplier must comply with the requirements specified in this section, 11.23(1).

(b) MRDL Requirements for Chlorine and Chloramines

(i) The chlorine and chloramines MRDLs are as follows:

TABLE 11.23-I MRDLs FOR CHLORINE AND CHLORAMINES	
Disinfectant	MRDL (mg/L as Cl_2)
Chlorine	4.0
Chloramines	4.0

(ii) The BATs for achieving compliance with the MRDLs for chlorine and chloramines are specified in 40 CFR 141.65(c) as amended July 1, 2014.

(iii) To protect public health, the supplier may increase residual disinfectant concentration in the distribution system to a level greater than (>) the MRDL for a time necessary to address specific microbiological contamination problems caused by circumstances including but not limited to:

(A) Distribution system line breaks.

(B) Storm run-off events.

(C) Source water contamination events.

(D) Backflow contamination events.

(c) Monitoring Requirements for Chlorine and Chloramines

(i) To determine compliance with the MRDLs for chlorine and/or chloramines, the supplier must monitor the residual disinfectant concentration in the distribution system at the same time and at the same sampling locations that total coliform samples are collected under 11.17(3) as identified in the monitoring plan developed under 11.5(3)(a)(v) until March 31, 2016, and under 11.16(6-7) beginning April 1, 2016.

(A) The supplier may use the results of samples collected under 11.8(3)(c)(i)(B) or 11.11(2)(c)(i)(B) to satisfy both the requirements specified in this section, 11.23(1), and 11.8(3)(c)(i)(B) or 11.11(2)(c)(i)(B).

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11.23(2) Chlorine Dioxide MRDL

(a) Applicability for Chlorine Dioxide MRDL

For all systems that use chlorine dioxide for disinfection or oxidation, the supplier must comply with the requirements specified in this section, 11.23(2), when using chlorine dioxide.

(b) MRDL Requirements for Chlorine Dioxide

(i) The chlorine dioxide MRDL is as follows:

TABLE 11.23-II MRDL FOR CHLORINE DIOXIDE	
Disinfectant	MRDL (mg/L as ClO_2)
Chlorine dioxide	0.8

(ii) The BATs for achieving compliance with the MRDLs for chlorine dioxide are specified in 40 CFR 141.65(c) as amended July 1, 2014.

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11.25 DISINFECTION BYPRODUCTS RULE

11.25(1) Total Trihalomethanes (TTHM) and Haloacetic Acids (HAA5)

(a) Applicability and Definitions for TTHM and HAA5

(i) For all community water systems and non-transient, non-community water systems that supply water treated with a primary or residual disinfectant other than ultraviolet light, the supplier must comply with the requirements specified in this section, 11.25(1).

(ii) "DUAL SAMPLE SET" means a set of two samples collected at the same time and same location for the purposes of determining compliance with the TTHM and HAA5 MCLs. One sample is analyzed for TTHM and the other is analyzed for HAA5.

(iii) "INITIAL DISTRIBUTION SYSTEM EVALUATION REPORT" or "IDSE REPORT" means a report resulting from a historical requirement where the supplier identified sampling locations that represent high TTHM and HAA5 concentrations in the distribution system.

(A) IDSE Reports include:

(I) Historical TTHM and HAA5 individual sampling results and LRAAs;

(II) A schematic of the distribution system;

(III) The population supplied;

(IV) System type; and

(V) A recommendation and explanation of sampling timing and locations that will represent the highest TTHM and HAA5 concentrations.

(a) The supplier must include the peak historical month for TTHM and HAA5 concentrations in the recommendation, unless the Department approved another month to collect samples.

(B) For new systems or reclassified systems that now meet the applicability of this rule, the supplier is not required to complete an IDSE Report.

(iv) "HALOACETIC ACIDS" or "HAA5" means the sum of the concentrations in mg/L of the five regulated haloacetic acid compounds (monochloroacetic acid, dichloroacetic acid,

trichloroacetic acid, monobromoacetic acid, and dibromoacetic acid), rounded to two significant figures after addition.

(v) "TOTAL TRIHALOMETHANES" or "TTHM" means the sum of the concentrations in mg/L of the four regulated trihalomethane compounds (trichloromethane [chloroform], dibromochloromethane, bromodichloromethane and tribromomethane [bromoform]), rounded to two significant figures after addition.

(b) MCL Requirements for TTHM and HAA5

(i) The TTHM and HAA5 MCLs are as follows:

TABLE 11.25-I MCLs FOR TTHM AND HAA5	
Disinfection byproduct	MCL (mg/L)
Total trihalomethanes (TTHM)	0.080
Haloacetic acids (five) (HAA5)	0.060

(ii) The BATs for achieving compliance with the MCLs for TTHM and HAA5 are specified in 40 CFR 141.64(b)(2)(ii) as amended July 1, 2014.

(iii) The BATs for achieving compliance with the MCLs for TTHM and HAA5 for consecutive systems which only apply to the disinfected water that the consecutive system buys or receives are specified in 40 CFR 141.64(b)(2)(iii) as amended July 1, 2014.

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11.25(2) Chlorite

(a) Applicability and Definitions for Chlorite

(i) For all community and non-transient, non-community water systems that use chlorine dioxide for disinfection or oxidation, the supplier must comply with the requirements specified in this section, 11.25(2), when using chlorine dioxide.

(ii) "THREE-SAMPLE SET" means that one chlorite sample is collected at each of the following locations:

(A) As close to the first customer as possible;

(B) At a location representative of average residence time; and

(C) At a location representative of maximum residence time.

(b) MCL Requirement for Chlorite

(i) The chlorite MCL is as follows:

TABLE 11.25-IV MCL FOR CHLORITE	
Disinfection byproduct	MCL (mg/L)

Chlorite	1.0

(ii) The BATs for achieving compliance with the MCL for chlorite are specified in 40 CFR 141.64(b)(1)(ii) as amended July 1, 2014.

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11.25(3) Bromate

(a) Applicability for Bromate

For all community and non-transient, non-community water systems that use ozone for disinfection or oxidation, the supplier must comply with the requirements specified in this section, 11.25(3), when using ozone.

(b) MCL Requirement for Bromate

(i) The bromate MCL is as follows:

TABLE 11.25-V MCL FOR BROMATE	
Disinfection byproduct	MCL (mg/L)
Bromate	0.010

(ii) The BATs for achieving compliance with the MCL for bromate are specified in 40 CFR 141.64(b)(1)(ii) as amended July 1, 2014.

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11.26(4) Monitoring Requirements for Water Quality Parameters

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(l) Response to a Treatment Technique Violation for Water Quality Parameters

(i) In the event of a treatment technique violation, the supplier must:

(A) Notify the Department no later than 48 hours after the violation occurs.

(B) Distribute Tier 2 public notice as specified in 11.33.

(C) Begin lead and copper tap sampling every six months at the number of sites specified in Table 11.26-IV no later than the six-month compliance period beginning January 1 of the calendar year following the violation.

(D) Monitor water quality parameters as specified in 11.26(4)(f) or 11.26(4)(g).

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11.28 STORAGE TANK RULE

11.28(1) Applicability and Definitions

(a) For all public water systems that use finished water storage tanks, the supplier must comply with the requirements specified in this rule beginning April 1, 2016.

(b) “COMPREHENSIVE INSPECTION” means an internal and external storage tank inspection to identify sanitary defects that covers all aspects of the condition of the storage tank including but not limited to sanitary, structural, and coating systems conditions, as well as security and safety concerns.

(c) “FINISHED WATER STORAGE TANK” means a tank or vessel owned by the supplier that is located downstream of the entry point and is not pressurized at the air water interface. Pressurized storage tanks are not included in the definition of finished water storage tanks.

(d) “PERIODIC INSPECTION” means a visual external storage tank inspection that is typically performed by the supplier to identify evident sanitary defects (e.g., lack of screens on vents).

11.28(2) Written Plan for Finished Water Storage Tank Inspections Requirements

(a) The supplier must develop and maintain a written plan for finished water storage tank inspections which must include all of the following:

(i) An inventory of finished water storage tank(s) including all of the following information for each finished water storage tank:

(A) Tank type and construction materials (e.g., elevated, buried, etc.).

(B) Volume in gallons.

(C) Approximate dimensions.

(D) Location.

(E) Number of inlets, outlets, overflows, hatches, and vents.

(F) Coating systems.

(G) Date put in service.

(H) Rehabilitation and major maintenance history.

(ii) The methods for performing and documenting periodic and comprehensive inspections for each finished water storage tank including identification of qualified personnel to perform periodic and comprehensive inspections.

(iii) The schedule for performing periodic and comprehensive inspections for each finished water storage tank.

(A) Periodic inspections of each finished water storage tank must be scheduled at least quarterly or on an alternative schedule.

(B) Comprehensive inspections of each finished water storage tank must be scheduled at least every five years or on an alternative schedule.

(C) If the supplier schedules periodic or comprehensive inspections on an alternative schedule, the supplier must provide justification for the alternative schedule in the written plan for finished water storage tank inspections.

(iv) The timelines for correcting typical storage tank sanitary defects that the supplier will use to develop corrective action schedules. The supplier must at least address timelines for the following typical sanitary defects: improper screening or protection on vents and overflows, inadequate hatches, and unprotected openings.

(b) The written plan for finished water storage tank inspections is subject to Department review and revision.

11.28(3) Treatment Technique Requirements for Storage Tanks

(a) The supplier is prohibited from using uncovered finished water storage tanks.

(i) "UNCOVERED FINISHED WATER STORAGE TANK" means a tank, reservoir, or other facility used to store water that will undergo no further treatment except residual disinfection and that is open to the atmosphere.

(b) The supplier must operate and maintain finished water storage tanks so that they are free of sanitary defects.

(c) The supplier must perform periodic and comprehensive inspections of each finished water storage tank.

(d) The supplier must implement the written plan for finished water storage tank inspections.

(e) If any sanitary defects are identified during a periodic or comprehensive inspection, the supplier must develop and implement a corrective action schedule for correcting each sanitary defect.

(f) The supplier must develop an inspection summary no later than 60 days after each completed inspection that includes all of the following information:

(i) The date and type of inspection performed.

(ii) Inspection findings and tank conditions.

(iii) Any sanitary defects identified during the inspection.

(iv) If sanitary defects are identified, the corrective action schedule for correcting sanitary defects.

(v) If sanitary defects are identified, the corrective actions completed and the associated completion dates.

11.28(4) Violations of the Storage Tank Rule

(a) If the supplier fails to develop or maintain an acceptable written plan for finished water storage tank inspections, a storage tank rule violation occurs.

(b) The following constitute treatment technique violations:

(i) The supplier uses an uncovered finished water storage tank.

(ii) The supplier fails to perform or document a periodic or comprehensive inspection.

(iii) The supplier fails to implement the written plan for finished water storage tank inspections.

(iv) The supplier fails to complete or document corrective action or follow a corrective action schedule for any sanitary defects identified during a periodic or comprehensive inspection.

11.28(5) Response to Violations of the Storage Tank Rule

(a) In the event of a storage tank rule violation, the supplier must:

(i) Notify the department no later than 48 hours after the violation occurs.

(ii) Distribute Tier 3 public notice as specified in 11.33.

(b) In the event of a treatment technique violation, the supplier must:

(i) Notify the Department no later than 48 hours after the violation occurs.

(ii) Distribute Tier 2 public notice as specified in 11.33.

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11.33 PUBLIC NOTIFICATION RULE

11.33(1) Applicability and Definitions

(a) For all public water systems, the supplier must comply with the public notice requirements specified in this rule for the violations or situations specified in Table 11.33-I.

TABLE 11.33-I VIOLATION CATEGORIES AND OTHER SITUATIONS REQUIRING A PUBLIC NOTICE	
CPDWR violations	Failure to comply with an MCL or MRDL
	Failure to comply with a treatment technique requirement
	Failure to perform required water quality monitoring
	Failure to comply with required testing procedures
Variance or exemption under 11.43	Operation under a variance or an exemption
	Failure to comply with the terms and schedule of any variance or exemption
Other situations requiring public notice	Occurrence of a waterborne disease outbreak or other waterborne emergency
	Exceedance of the elevated nitrate MCL by non-community water systems, when granted Department approval as specified in 11.18(2)(d)
	Exceedance of the secondary maximum contaminant level for fluoride
	Availability of unregulated contaminant monitoring data
	Repeated failure to sample the source water for *Cryptosporidium*

	Failure to determine bin classification
	Groundwater systems with a waiver from disinfection requirements under 11.13
	Significant deficiencies identified at non-community groundwater systems
	Other violations and situations determined by the Department to require a public notice

(b) Public notice requirements are divided into three tiers based on the seriousness of the violation or situation and any potential public health effects. Each tier has different requirements. The tiers are as follows:

(i) "TIER 1 PUBLIC NOTICE" means the public notice required for violations and situations with significant potential to have serious adverse effects on public health as a result of short-term exposure.

(ii) "TIER 2 PUBLIC NOTICE" means the public notice required for violations and situations with potential to have serious adverse effects on public health.

(iii) "TIER 3 PUBLIC NOTICE" means the public notice required for all other violations and situations not included in Tier 1 or Tier 2.

11.33(2) Tier 1 Public Notice Form, Manner, and Frequency of Notice

(a) The supplier must distribute Tier 1 public notice for the following violations or situations specified in Table 11.33-II:

TABLE 11.33-II VIOLATION CATEGORIES AND OTHER SITUATIONS REQUIRING TIER 1 PUBLIC NOTICE	
Violation or Situation Description	As specified in
Violation of the total coliform MCL where fecal coliforms or *E. coli* are present in the distribution system[1]	11.17(9)(a)
Failure to test for fecal coliforms or *E. coli* following a total coliform-positive repeat sample[1]	11.17(10)(a)
Violation of the *E. coli* MCL[2]	11.16(12)(a)
Violation of the nitrate, nitrite, or total nitrate and nitrite MCL	11.18(5)(a)
Failure to collect a confirmation sample no later than 24 hours after a nitrate or nitrite sample result greater than (>) the MCL	11.18(3)(b)(vii) and 11.18(3)(c)(v)
Exceedance of the elevated nitrate MCL by non-community water systems, permitted to exceed the MCL by the Department	11.18(2)(d)
Acute violation of the chlorine dioxide MRDL	11.23(2)(e)(i)(A)
Failure to collect the required chlorine dioxide samples in the distribution system	11.23(2)(e)(i)(B)
Violation of the maximum turbidity limit treatment technique requirement, as required by the Department after consultation	11.8(2)(d)(i)(B)
Occurrence of a waterborne disease outbreak or other waterborne emergency (e.g. failure or significant interruption in key water treatment processes, a natural disaster that disrupts the water supply or distribution system, or a chemical spill or	.

unexpected loading of possible pathogens into the source water that significantly increases the potential for drinking water contamination)	
For groundwater systems, presence of *E. coli*, enterococci, or coliphage in a source water sample	11.11(4)(d)(i) and 11.11(5)(c)(i)
Other violations or situations with significant potential to have serious adverse effects on public health as a result of short-term exposure, as determined by the Department either in *Colorado Primary Drinking Water Regulations* or on a case-by-case basis	.

1 Effective until March 31, 2016.

2 Effective beginning April 1, 2016.

(b) For Tier 1 public notice the supplier must:

(i) Distribute public notice as soon as possible, but no later than 24 hours after learning of the violation or situation.

(ii) Begin consultation with the Department as soon as possible, but no later than 24 hours after learning of the violation or situation, to determine additional public notice requirements.

(A) The supplier must comply with any additional public notification requirements set up as a result of the consultation with the Department (e.g., the timing, form, manner, frequency, and content of repeat notices, if any, and other actions to reach all consumers).

(iii) Distribute the public notice in a form and manner that fits the specific situation and is designed to reach residential, transient, and non-transient consumers. The supplier must use one or more of the following delivery methods:

(A) Appropriate broadcast media, including radio, television and a phone call to each consumer using a reverse 911 system, where available.

(B) Hand delivery of the notice to consumers.

(C) Another direct delivery method approved, in writing, by the Department.

(c) The Department may also require posting of the public notice in conspicuous locations throughout the area supplied by the system.

11.33(3) Tier 2 Public Notice Form, Manner, and Frequency of Notice

(a) The supplier must distribute Tier 2 public notice for the following violations or situations specified in Table 11.33-III:

TABLE 11.33-III VIOLATION CATEGORIES AND OTHER SITUATIONS REQUIRING TIER 2 PUBLIC NOTICE	
Violation or Situation Description	As specified in

Violations of the MCL, MRDL, or treatment technique requirements, except where Tier 1 public notice is required or where the Department determines that Tier 1 public notice is required	.
Violations of the monitoring and testing procedure requirements, if the Department determines that Tier 2 public notice is required instead of Tier 3 public notice, considering potential public health impacts and the persistence of the violation	.
Failure to comply with the terms and schedule of any variance or exemption	11.43
For groundwater systems, failure to maintain at least 4-log treatment of viruses at the entry point	11.11(3)(e)(i)
Failure to complete corrective action	11.38(4)(a), 11.11(6)(c)(i)

(b) For Tier 2 public notice the supplier must:

(i) Distribute public notice as soon as possible, but no later than 30 days after learning of the violation or situation.

(A) If the supplier posts the public notice, the notice must remain in place for as long as the violation or situation persists or for seven days, whichever is longer.

(B) The Department may grant a written extension for the initial public notice of up to three months from the time the supplier learns of the violation.

(I) The Department shall not grant an extension to the 30-day deadline for any unresolved violation(s) or allow across-the-board extensions for violations or situations requiring Tier 2 public notice.

(ii) Repeat the distribution of the public notice every three months as long as the violation or situation persists.

(A) Based on the circumstances, the Department may require a different repeat notice frequency.

(I) In no case will the repeat public notice frequency be less than annual.

(II) The Department shall not allow a less frequent repeat public notice for any of the following situations:

(a) Until March 31, 2016, an MCL violation under 11.17.

(b) Beginning April 1, 2016, an MCL or treatment technique violation under 11.16.

(c) A treatment technique violation under 11.8.

(d) Across-the-board reductions for other ongoing violations requiring a Tier 2 repeat public notice.

(III) If the Department allows repeat public notices to be distributed less frequently than once every three months, the decision must be documented in writing.

(iii) Distribute the public notice and any repeat public notices in a form and manner that fits the specific situation and is designed to reach residential, transient, and non-transient consumers. The supplier must meet all of the following distribution requirements:

(A) For community water systems, unless otherwise directed in writing by the Department, the supplier must distribute public notice by:

(I) Mail or other direct delivery method to each customer and to other service connections; and

(II) Any other method designed to reach all other consumers regularly supplied by the system. Such consumers may include those who do not pay water bills or do not have service connection addresses (e.g., house renters, apartment dwellers, university students, nursing home patients, prison inmates, etc.). Other methods may include publication in a local newspaper, delivery of multiple copies for distribution by customers that provide their drinking water to others (e.g., apartment building owners or large private employers), posting in public places supplied by the system or on the Internet, or delivery to community organizations.

(B) For non-community water systems, unless otherwise directed in writing by the Department, the supplier must distribute public notice by:

(I) Posting the notice in conspicuous locations throughout the distribution system frequented by consumers or by mail or direct delivery to each customer and service connection; and

(II) Any other method designed to reach all other consumers. Such consumers may include those supplied who may not see a posted notice because the posted notice is not in a location they routinely pass by. Other methods may include publication in a local newspaper or newsletter distributed to customers, use of E-mail to notify employees or students, or delivery of multiple copies in central locations (e.g., community centers).

11.33(4) Tier 3 Public Notice Form, Manner, and Frequency of Notice

(a) The supplier must distribute Tier 3 public notice for the following violations or situations specified in Table 11.33-IV:

TABLE 11.33-IV VIOLATION CATEGORIES AND OTHER SITUATIONS REQUIRING TIER 3 PUBLIC NOTICE	
Violation or Situation Description	As specified in
Monitoring and reporting violations, except where a Tier 1 or Tier 2 public notice is required	.
Failure to comply with a testing procedure, except where a Tier 1 or Tier 2 public notice is required	.
Operation under a variance or an exemption	11.43
Availability of unregulated contaminant monitoring results	11.47
Exceedance of the fluoride secondary maximum contaminant level	11.19(7)

Revised Total Coliform Rule recordkeeping violations[1]	11.36(4)(d)

1 Beginning April 1, 2016.

(b) For Tier 3 public notice the supplier must:

(i) Distribute public notice as soon as possible, but no later than one year after learning of the violation or situation or beginning operation under a variance or an exemption.

(A) If the supplier is required to distribute more than one Tier 3 public notice, the supplier may use an annual report detailing all violations and situations that occurred during the previous 12 months instead of individual Tier 3 public notices, as long as the timing requirements specified in 11.33(4)(b)(i) are met.

(B) For community water systems, the supplier may use the consumer confidence report (CCR) specified in 11.34 to comply with the Tier 3 public notice requirements if the CCR meets all of the following criteria:

(I) The CCR is distributed to customers no later than 12 months after the supplier learns of the violation or situation.

(II) The Tier 3 public notice in the CCR complies with the content requirements specified in 11.33(5).

(III) The CCR is distributed as specified in 11.33(3)(b)(iii).

(C) If the supplier posts the public notice, the notice must remain in place for as long as the violation or situation persists or for seven days, whichever is longer.

(ii) Repeat the distribution of the public notice annually as long as the violation, variance, exemption, or other situation persists.

(A) For community water systems, the supplier may use the CCR specified in 11.34 to comply with the repeat Tier 3 public notice requirement if the requirements specified in 11.33(4)(b)(i)(B)(I-III) are met.

(iii) Distribute the public notice and any repeat public notices as specified in 11.33(3)(b)(iii).

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TABLE 11.33-V TABLE OF CPDWR VIOLATIONS AND OTHER SITUATIONS REQUIRING PUBLIC NOTICE [1]				
Contaminant	MCL/MRDL/TT violations		Monitoring & testing procedure violations	
	Tier of public notice required	Citation	Tier of public notice required	Citation
Violations of *Colorado Primary Drinking Water Regulations*[2]				
Microbiological Contaminants				
Total coliform[3]	2	11.17(9)(b)	3	11.17(3)
Fecal coliform/*E. coli*[3]	1	11.17(9)(a)	1[4], 3	11.17(6)
Total coliform (TT violations resulting from failure to conduct assessments or corrective actions, and violations resulting from failure to monitor or report)[5]	2	11.16(12)(b)(i)	3	11.16(6)
Seasonal system failure to follow Department-approved start-up procedures before supplying water to the public or failure to submit certification of completed start-up procedures[5]	2	11.16(12)(b)(ii)	3	11.16(5)(a)
E. coli (MCL violation, monitoring violations, and reporting violations)[5]	1	11.16(12)(a)	3	11.16(9)(a-b) 11.16(10)(b)(ii) 11.16(10)(c)(ii)
E. coli (TT violations resulting from failure to conduct Level 2 assessments or corrective action)[5]	2	11.16(12)(b)(i)	N/A	N/A
Turbidity MCL	2	11.8(2)(d)	3	11.8(2)(c)
Turbidity (for TT violations resulting from a single exceedance of maximum allowable turbidity level)	2, 1[6]	11.8(2)(d)	3	11.8(2)(c), 11.8(2)(g), 11.46(7)

Surface Water Treatment Rule violations, other than violations resulting from single exceedance of maximum allowable turbidity level (TT)	2	11.8(2)(b)	3	11.8(2)(c), 11.46(7)
Surface Water Treatment Rule: Filter Backwash Recycle Rule	2	11.9(2)	3	11.9(3)
Surface Water Treatment Rule: Enhanced Treatment for *Cryptosporidium* Rule	2	11.10(3)(c), 11.10(4)(b)	2, 3[7]	11.10(2)
Groundwater Rule	2	11.11(2)(d), 11.11(6)(c), 11.11(3)(e)(i), 11.38(4)	3	11.11(2)(c), 11.11(3), 11.11(4), 11.11(5), 11.11(6), 11.38(4)
Disinfectant residual (TT in the distribution system)[5]	2	11.8(3)(d)(i), 11.11(2)(d)(i)	3	11.8(3)(c)(i), 11.11(2)(c)(i)
Disinfectant residual for public water systems that haul water[5]	N/A	N/A	3	11.8(3)(c)(i)(B), 11.11(2)(c)(i)(B), 11.41(2)(b)
Inorganic Chemicals				
Antimony	2	11.19(5)	3	11.19(3)
Arsenic	2	11.19(5)	3	11.19(3)
Asbestos (fibers >10 µm)	2	11.19(5)	3	11.19(3)
Barium	2	11.19(5)	3	11.19(3)
Beryllium	2	11.19(5)	3	11.19(3)
Cadmium	2	11.19(5)	3	11.19(3)
Chromium (total)	2	11.19(5)	3	11.19(3)
Cyanide	2	11.19(5)	3	11.19(3)
Fluoride	2	11.19(5)	3	11.19(3)
Mercury (inorganic)	2	11.19(5)	3	11.19(3)
Nitrate	1	11.18(5)	1[8], 3	11.18(3)

Nitrite	1	11.18(5)	1[8], 3	11.18(3)
Total Nitrate and Nitrite	1	11.18(5)	3	11.18(3)
Selenium	2	11.19(5)	3	11.19(3)
Thallium	2	11.19(5)	3	11.19(3)
Lead and Copper Rule				
Lead and Copper Rule (TT)	2	11.26(3)(e), 11.26(4)(k), 11.26(5)(i), 11.26(6)(d), 11.26(7)(f)	3	11.26(2)(d), 11.26(4), 11.26(5)
Synthetic Organic Chemicals (SOCs)				
2,4–D	2	11.21(6)	3	11.21(3)(d)
2,4,5–TP (Silvex)	2	11.21(6)	3	11.21(3)(d)
Alachlor	2	11.21(6)	3	11.21(3)(d)
Atrazine	2	11.21(6)	3	11.21(3)(d)
Benzo(a)pyrene (PAHs)	2	11.21(6)	3	11.21(3)(d)
Carbofuran	2	11.21(6)	3	11.21(3)(d)
Chlordane	2	11.21(6)	3	11.21(3)(d)
Dalapon	2	11.21(6)	3	11.21(3)(d)
Di (2-ethylhexyl) adipate	2	11.21(6)	3	11.21(3)(d)
Di (2-ethylhexyl) phthalate	2	11.21(6)	3	11.21(3)(d)
Dibromochloropropane	2	11.21(6)	3	11.21(3)(d)
Dinoseb	2	11.21(6)	3	11.21(3)(d)
Dioxin (2,3,7,8-TCDD)	2	11.21(6)	3	11.21(3)(d)
Diquat	2	11.21(6)	3	11.21(3)(d)
Endothall	2	11.21(6)	3	11.21(3)(d)
Endrin	2	11.21(6)	3	11.21(3)(d)
Ethylene dibromide	2	11.21(6)	3	11.21(3)(d)

Glyphosate	2	11.21(6)	3	11.21(3)(d)
Heptachlor	2	11.21(6)	3	11.21(3)(d)
Heptachlor epoxide	2	11.21(6)	3	11.21(3)(d)
Hexachlorobenzene	2	11.21(6)	3	11.21(3)(d)
Hexachlorocyclo-pentadiene	2	11.21(6)	3	11.21(3)(d)
Lindane	2	11.21(6)	3	11.21(3)(d)
Methoxychlor	2	11.21(6)	3	11.21(3)(d)
Oxamyl (Vydate)	2	11.21(6)	3	11.21(3)(d)
Pentachlorophenol	2	11.21(6)	3	11.21(3)(d)
Picloram	2	11.21(6)	3	11.21(3)(d)
Polychlorinated biphenyls (PCBs)	2	11.21(6)	3	11.21(3)(d)
Simazine	2	11.21(6)	3	11.21(3)(d)
Toxaphene	2	11.21(6)	3	11.21(3)(d)
Volatile Organic Chemicals (VOCs)				
Benzene	2	11.21(6)	3	11.21(3)(b)
Carbon tetrachloride	2	11.21(6)	3	11.21(3)(b)
Chlorobenzene (monochlorobenzene)	2	11.21(6)	3	11.21(3)(b)
o-Dichlorobenzene	2	11.21(6)	3	11.21(3)(b)
p-Dichlorobenzene	2	11.21(6)	3	11.21(3)(b)
1,2-Dichloroethane	2	11.21(6)	3	11.21(3)(b)
1,1-Dichloroethylene	2	11.21(6)	3	11.21(3)(b)
cis-1,2-Dichloroethylene	2	11.21(6)	3	11.21(3)(b)
trans-1,2-Dichloroethylene	2	11.21(6)	3	11.21(3)(b)
Dichloromethane	2	11.21(6)	3	11.21(3)(b)
1,2-Dichloropropane	2	11.21(6)	3	11.21(3)(b)

Ethylbenzene	2	11.21(6)	3	11.21(3)(b)
Styrene	2	11.21(6)	3	11.21(3)(b)
Tetrachloroethylene	2	11.21(6)	3	11.21(3)(b)
Toluene	2	11.21(6)	3	11.21(3)(b)
1,2,4-Trichlorobenzene	2	11.21(6)	3	11.21(3)(b)
1,1,1-Trichloroethane	2	11.21(6)	3	11.21(3)(b)
1,1,2-Trichloroethane	2	11.21(6)	3	11.21(3)(b)
Trichloroethylene	2	11.21(6)	3	11.21(3)(b)
Vinyl chloride	2	11.21(6)	3	11.21(3)(b)
Xylenes (total)	2	11.21(6)	3	11.21(3)(b)
Radionuclides				
Beta/photon emitters	2	11.22(5)	3	11.22(3)(c)
Alpha emitters	2	11.22(5)	3	11.22(3)(b)
Combined radium (226 & 228)	2	11.22(5)	3	11.22(3)(b)
Uranium	2	11.22(5)	3	11.22(3)(b)
Disinfection Byproducts (DBPs), Disinfection Byproduct Precursors, Disinfectant Residuals Where disinfection is used in the treatment of drinking water, disinfectants combine with organic and inorganic matter present in water to form chemicals called disinfection byproducts (DBPs). The Department sets standards for controlling the levels of disinfectants and DBPs in drinking water, including trihalomethanes (THMs) and haloacetic acids (HAAs).				
Total trihalomethanes (TTHMs)	2	11.25(1)(g)	3	11.25(1)(c)
Haloacetic Acids (HAA5)	2	11.25(1)(g)	3	11.25(1)(c)
Bromate	2	11.25(3)(c)	3	11.25(3)(e)
Chlorite	2	11.25(2)(c)	3	11.25(2)(e)
Chlorine (MRDL)	2	11.23(1)(e)	3	11.23(1)(c)
Chloramine (MRDL)	2	11.23(1)(e)	3	11.23(1)(c)

Chlorine dioxide (MRDL), where any 2 consecutive daily samples at entrance to distribution system only are above MRDL	2	11.23(2)(e)(ii)	2 [9], 3	11.23(2)(c)
Chlorine dioxide (MRDL), where sample(s) in distribution system the next day are also above MRDL	1[10]	11.23(2)(e)(i)	1	11.23(2)(c)
Control of DBP precursors—TOC (TT)	2	11.24(9)	3	11.24(3)
Disinfection profiling and benchmarking	2	11.8(4)(d), 11.8(5)(d)	3	11.8(4), 11.8(5)
Development of monitoring plan	N/A	N/A	3	11.25(1)(d)
Other Treatment Techniques				
Acrylamide (TT)	2	11.21(6)(b)	N/A	N/A
Epichlorohydrin (TT)	2	11.21(6)(b)	N/A	N/A
Water hauler failure to operate in accordance with Department-approved operational plan	2	11.41(3)(a)	N/A	N/A
Storage Tanks (TT)[5]	2	11.28(4)(b)	N/A	N/A
Unregulated Contaminant Monitoring[11]				
Unregulated contaminants	N/A	N/A	3	11.47
Nickel	N/A	N/A	3	11.19(3)(b)
Public Notification for Variances and Exemptions				
Operation under a variance or exemption	3	11.43(10)(f) [12]	N/A	N/A
Violation of conditions of a variance or exemption	2	11.43(10)(f) [13]	N/A	N/A
Other Situations Requiring Public Notification				
Fluoride secondary maximum contaminant level (SMCL) exceedance	3	11.19(7)	N/A	N/A

Exceedance of nitrate MCL for non-community water systems, as allowed by the Department	1	11.18(2)(d)	N/A	N/A
Availability of unregulated contaminant monitoring data	3	11.47	N/A	N/A
Waterborne disease outbreak	1	11.3(81)	N/A	N/A
Other waterborne emergency [14]	1	N/A	N/A	N/A
Source Water Sample Positive for GWR Fecal indicators: *E. coli*, enterococci, or coliphage	1	11.11(4)(d)(i), 11.11(5)(c)(i)	N/A	N/A
Waiver of Disinfection	N/A	N/A	N/A	11.13(2)
Backflow Prevention and Cross Connection Control Rule violations[15]	2	11.39(6)(a)	3	11.39(6)(b)
Other situations as determined by the Department	1, 2, 3[16]	N/A	N/A	N/A

1 Violations and other situations not listed in this table (e.g., failure to prepare Consumer Confidence Reports) do not require notice, unless otherwise determined by the Department. The Department may, at its discretion, also require a more stringent public notice tier (e.g., Tier 1 instead of Tier 2 or Tier 2 instead of Tier 3) for specific violations and situations specified in Table 11.33-V, as authorized under 11.33(2)(a) and 11.33(3)(a).

2 The term "Violations of *Colorado Primary Drinking Water Regulations*" is used here to include violations of MCL, MRDL, treatment technique, monitoring, and testing procedure requirements.

3 Effective until March 31, 2016.

4 Failure to test for fecal coliform or *E. coli* requires Tier 1 public notice if testing is not done after any repeat sample is positive for coliform. All other total coliform monitoring and testing procedure violations require Tier 3 public notice.

5 Effective beginning April 1, 2016.

6 Systems with treatment technique violations involving a single exceedance of a maximum turbidity limit under 11.8(2)(b) are required to consult with the Department no later than 24 hours after learning of the violation. Based on this consultation, the Department may elevate the violation to Tier 1. If the supplier is unable to make contact with the Department in the 24-hour period, the violation is automatically elevated to Tier 1.

7 Failure to collect three or more samples for *Cryptosporidium* analysis requires a special Tier 2 public notice as specified in 11.10(2)(e). All other monitoring and testing procedure violations require Tier 3 public notice.

8 Failure to collect a confirmation sample no later than 24 hours for nitrate or nitrite after an initial sample exceeds the MCL requires Tier 1 public notice. Other monitoring violations for nitrate require Tier 3 public notice.

9 Failure to monitor for chlorine dioxide at the entry point the day after exceeding the MRDL at the entrance to the distribution system requires Tier 2 public notice.

10 If any daily sample collected at the entry point exceeds the MRDL for chlorine dioxide and one or more samples collected in the distribution system the next day exceed the MRDL, Tier 1 public notice is required. Failure to collect the required samples in the distribution system after the MRDL is exceeded at the entry point also triggers Tier 1 public notice.

11 Some water systems must monitor for certain unregulated contaminants under 11.47.

12 This citation refers to §§1415 and 1416 of the Safe Drinking Water Act. §§1415 and 1416 require that "a schedule prescribed . . . for a public water system granted a variance shall require compliance by the system . . ."

13 In addition to §§1415 and 1416 of the Safe Drinking Water Act, 11.43(3) of the *Colorado Primary Drinking Water Regulations* specifies the items and schedule milestones that must be included in a variance for small systems.

14 Other waterborne emergencies require a Tier 1 public notice under 33.2(a) for situations that do not meet the definition of a waterborne disease outbreak specified in 11.3, but that still have the potential to have serious adverse effects on health as a result of short-term exposure. These could include outbreaks not related to treatment deficiencies, as well as situations that have the potential to cause outbreaks, such as failures or significant interruption in water treatment processes, natural disasters that disrupt the water supply or distribution system, chemical spills, or unexpected loading of possible pathogens into the source water.

15 Effective beginning January 1, 2016.

16 The Department may place other situations in any tier believed appropriate, based on threat to public health.

TABLE 11.33-VI TABLE OF STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION

Contaminant	MCLG- mg/L	MCL mg/L	Standard health effects language for public notification
Colorado Primary Drinking Water Regulations			
Microbiological Contaminants			
Total coliform[1]	Zero	See footnote 2	Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially-harmful, bacteria may be present. Coliforms were found in more samples than allowed and this was a warning of potential problems.
Fecal coliform/*E. coli*[1]	Zero	Zero	Fecal coliforms and *E. coli* are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.
Fecal indicators (GWR)	Zero	TT	Fecal indicators are microbes whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term health effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.

E. coli (GWR)	None	TT	Fecal indicators are microbes whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term health effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.
Enterococci (GWR)	None	TT	Fecal indicators are microbes whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term health effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.
Coliphage (GWR)	.	.	Fecal indicators are microbes whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term health effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.
Groundwater Rule (GWR) TT violations	None	TT	Inadequately treated or inadequately protected water may contain disease-causing organisms. These organisms can cause symptoms such as diarrhea, nausea, cramps, and associated headaches.
A violation that occurred for failure to conduct an assessment not triggered by the presence of *E. coli* and/or violations for corrective action[3]	.	TT	Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially harmful, waterborne pathogens may be present or that a potential pathway exists through which contamination may enter the drinking water distribution system. We found coliforms indicating the need to look for potential problems in water treatment or distribution. When this occurs, we are required to conduct assessments to identify problems and to correct any problems that are found. [THE SUPPLIER MUST ALSO INCLUDE THE FOLLOWING APPLICABLE SENTENCES.] We failed to conduct the required assessment. We failed to correct all identified sanitary defects that were found during the assessment(s).

A violation that occurred for failure to conduct an assessment triggered by the presence of *E. coli* and/or violations for corrective action[3]	.	TT	*E. coli* are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Human pathogens in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a greater health risk for infants, young children, the elderly, and people with severely compromised immune systems. We violated the standard for *E. coli,* indicating the need to look for potential problems in water treatment or distribution. When this occurs, we are required to conduct a detailed assessment to identify problems and to correct any problems that are found. [THE SUPPLIER MUST ALSO INCLUDE THE FOLLOWING APPLICABLE SENTENCES.] We failed to conduct the required assessment. We failed to correct all identified sanitary defects that were found during the assessment that we conducted.
E. coli MCL violations[3]	Zero	See footnote 4	*E. coli* are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Human pathogens in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a greater health risk for infants, young children, the elderly, and people with severely compromised immune systems.
Turbidity	None	TT	Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea and associated headaches.
Disinfectant residual[3]	N/A	TT (in the distribution system)	Disinfectant residual serves as one of the final barriers to protect public health. Lack of an adequate disinfectant residual may increase the likelihood that disease-causing organisms are present.
Surface Water Treatment Rule, Surface Water Treatment Rule: Filter Backwash Recycle Rule, and Surface Water Treatment Rule: Enhanced Treatment for Cryptosporidium Rule violations			
Giardia lamblia	Zero	TT[5]	Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites, which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.
Viruses	.	.	.
Heterotrophic plate count (HPC) bacteria[6]	.	.	.
Legionella	.	.	.

Cryptosporidium	.	.	.
Inorganic Chemicals			
Antimony	0.006	0.006	Some people who drink water containing antimony well in excess of the MCL over many years could experience increases in blood cholesterol and decreases in blood sugar.
Arsenic	0	0.010	Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer.
Asbestos (10 µm)	7 MFL	7 MFL	Some people who drink water containing asbestos in excess of the MCL over many years may have an increased risk of developing benign intestinal polyps.
Barium	2	2	Some people who drink water containing barium in excess of the MCL over many years could experience an increase in their blood pressure.
Beryllium	0.004	0.004	Some people who drink water containing beryllium well in excess of the MCL over many years could develop intestinal lesions.
Cadmium	0.005	0.005	Some people who drink water containing cadmium in excess of the MCL over many years could experience kidney damage.
Chromium (total)	0.1	0.1	Some people who use water containing chromium well in excess of the MCL over many years could experience allergic dermatitis.
Cyanide	0.2	0.2	Some people who drink water containing cyanide well in excess of the MCL over many years could experience nerve damage or problems with their thyroid.
Fluoride	4.0	4.0	Some people who drink water containing fluoride in excess of the MCL over many years could get bone disease, including pain and tenderness of the bones. Fluoride in drinking water at half the MCL or more may cause mottling of children’s teeth, usually in children less than nine years old. Mottling, also known as dental fluorosis, may include brown staining and/or pitting of the teeth, and occurs only in developing teeth before they erupt from the gums.
Mercury (inorganic)	0.002	0.002	Some people who drink water containing inorganic mercury well in excess of the MCL over many years could experience kidney damage.
Nitrate	10	10	Infants below the age of six months who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.

Nitrite	1	1	Infants below the age of six months who drink water containing nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.
Total Nitrate and Nitrite	10	10	Infants below the age of six months who drink water containing nitrate and nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.
Selenium	0.05	0.05	Selenium is an essential nutrient. However, some people who drink water containing selenium in excess of the MCL over many years could experience hair or fingernail losses, numbness in fingers or toes, or problems with their circulation.
Thallium	0.0005	0.002	Some people who drink water containing thallium in excess of the MCL over many years could experience hair loss, changes in their blood, or problems with their kidneys, intestines, or liver.
Lead and Copper			
Lead	Zero	TT[7]	Infants and children who drink water containing lead in excess of the action level could experience delays in their physical or mental development. Children could show slight deficits in attention span and learning abilities. Adults who drink this water over many years could develop kidney problems or high blood pressure.
Copper	1.3	TT[8]	Copper is an essential nutrient, but some people who drink water containing copper in excess of the action level over a relatively short amount of time could experience gastrointestinal distress. Some people who drink water containing copper in excess of the action level over many years could suffer liver or kidney damage. People with Wilson's Disease should consult their personal doctor.
Synthetic Organic Chemicals (SOCs)			
2,4–D	0.07	0.07	Some people who drink water containing the weed killer 2,4–D well in excess of the MCL over many years could experience problems with their kidneys, liver, or adrenal glands.
2,4,5–TP (Silvex)	0.05	0.05	Some people who drink water containing silvex in excess of the MCL over many years could experience liver problems.
Alachlor	Zero	0.002	Some people who drink water containing alachlor in excess of the MCL over many years could have problems with their eyes, liver, kidneys, or spleen, or experience anemia, and may have an increased risk of getting cancer.

Atrazine	0.003	0.003	Some people who drink water containing atrazine well in excess of the MCL over many years could experience problems with their cardiovascular system or reproductive difficulties.
Benzo(a)pyrene (PAHs)	Zero	0.0002	Some people who drink water containing benzo(a)pyrene in excess of the MCL over many years may experience reproductive difficulties and may have an increased risk of getting cancer.
Carbofuran	0.04	0.04	Some people who drink water containing carbofuran in excess of the MCL over many years could experience problems with their blood, or nervous or reproductive systems.
Chlordane	Zero	0.002	Some people who drink water containing chlordane in excess of the MCL over many years could experience problems with their liver or nervous system, and may have an increased risk of getting cancer.
Dalapon	0.2	0.2	Some people who drink water containing dalapon well in excess of the MCL over many years could experience minor kidney changes.
Di (2-ethylhexyl) adipate	0.4	0.4	Some people who drink water containing di (2-ethylhexyl) adipate well in excess of the MCL over many years could experience general toxic effects such as weight loss, liver enlargement or possible reproductive difficulties.
Di (2-ethylhexyl) phthalate	Zero	0.006	Some people who drink water containing di (2-ethylhexyl) phthalate well in excess of the MCL over many years may have problems with their liver, or experience reproductive difficulties, and may have an increased risk of getting cancer.
Dibromochloro-propane (DBCP)	Zero	0.0002	Some people who drink water containing DBCP in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.
Dinoseb	0.007	0.007	Some people who drink water containing dinoseb well in excess of the MCL over many years could experience reproductive difficulties.
Dioxin (2,3,7,8-TCDD)	Zero	$3x10^{-8}$	Some people who drink water containing dioxin in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.
Diquat	0.02	0.02	Some people who drink water containing diquat in excess of the MCL over many years could get cataracts.
Endothall	0.1	0.1	Some people who drink water containing endothall in excess of the MCL over many years could experience problems with their stomach or intestines.

Endrin	0.002	0.002	Some people who drink water containing endrin in excess of the MCL over many years could experience liver problems.
Ethylene dibromide	Zero	0.00005	Some people who drink water containing ethylene dibromide in excess of the MCL over many years could experience problems with their liver, stomach, reproductive system, or kidneys, and may have an increased risk of getting cancer.
Glyphosate	0.7	0.7	Some people who drink water containing glyphosate in excess of the MCL over many years could experience problems with their kidneys or reproductive difficulties.
Heptachlor	Zero	0.0004	Some people who drink water containing heptachlor in excess of the MCL over many years could experience liver damage and may have an increased risk of getting cancer.
Heptachlor epoxide	Zero	0.0002	Some people who drink water containing heptachlor epoxide in excess of the MCL over many years could experience liver damage, and may have an increased risk of getting cancer.
Hexachlorobenzene	Zero	0.001	Some people who drink water containing hexachlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys, or adverse reproductive effects, and may have an increased risk of getting cancer.
Hexachlorocyclo-pentadiene	0.05	0.05	Some people who drink water containing hexachlorocyclopentadiene well in excess of the MCL over many years could experience problems with their kidneys or stomach.
Lindane	0.0002	0.0002	Some people who drink water containing lindane in excess of the MCL over many years could experience problems with their kidneys or liver.
Methoxychlor	0.04	0.04	Some people who drink water containing methoxychlor in excess of the MCL over many years could experience reproductive difficulties.
Oxamyl (Vydate)	0.2	0.2	Some people who drink water containing oxamyl in excess of the MCL over many years could experience slight nervous system effects.
Pentachlorophenol	Zero	0.001	Some people who drink water containing pentachlorophenol in excess of the MCL over many years could experience problems with their liver or kidneys, and may have an increased risk of getting cancer.
Picloram	0.5	0.5	Some people who drink water containing picloram in excess of the MCL over many years could experience problems with their liver.

Polychlorinated biphenyls (PCBs)	Zero	0.0005	Some people who drink water containing PCBs in excess of the MCL over many years could experience changes in their skin, problems with their thymus gland, immune deficiencies, or reproductive or nervous system difficulties, and may have an increased risk of getting cancer.
Simazine	0.004	0.004	Some people who drink water containing simazine in excess of the MCL over many years could experience problems with their blood.
Toxaphene	Zero	0.003	Some people who drink water containing toxaphene in excess of the MCL over many years could have problems with their kidneys, liver, or thyroid, and may have an increased risk of getting cancer.
Volatile Organic Chemicals (VOCs)			
Benzene	Zero	0.005	Some people who drink water containing benzene in excess of the MCL over many years could experience anemia or a decrease in blood platelets, and may have an increased risk of getting cancer.
Carbon tetrachloride	Zero	0.005	Some people who drink water containing carbon tetrachloride in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.
Chlorobenzene (monochloro- benzene)	0.1	0.1	Some people who drink water containing chlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys.
o-Dichlorobenzene	0.6	0.6	Some people who drink water containing o-dichlorobenzene well in excess of the MCL over many years could experience problems with their liver, kidneys, or circulatory systems.
p-Dichlorobenzene	0.075	0.075	Some people who drink water containing p-dichlorobenzene in excess of the MCL over many years could experience anemia, damage to their liver, kidneys, or spleen, or changes in their blood.
1,2-Dichloroethane	Zero	0.005	Some people who drink water containing 1,2-dichloroethane in excess of the MCL over many years may have an increased risk of getting cancer.
1,1-Dichloroethylene	0.007	0.007	Some people who drink water containing 1,1-dichloroethylene in excess of the MCL over many years could experience problems with their liver.
cis-1,2-Dichloroethylene	0.07	0.07	Some people who drink water containing cis-1,2-dichloroethylene in excess of the MCL over many years could experience problems with their liver.

trans-1,2-Dichloroethylene	0.1	0.1	Some people who drink water containing trans-1,2-dichloroethylene well in excess of the MCL over many years could experience problems with their liver.
Dichloromethane	Zero	0.005	Some people who drink water containing dichloromethane in excess of the MCL over many years could have liver problems and may have an increased risk of getting cancer.
1,2-Dichloropropane	Zero	0.005	Some people who drink water containing 1,2-dichloropropane in excess of the MCL over many years may have an increased risk of getting cancer.
Ethylbenzene	0.7	0.7	Some people who drink water containing ethylbenzene well in excess of the MCL over many years could experience problems with their liver or kidneys.
Styrene	0.1	0.1	Some people who drink water containing styrene well in excess of the MCL over many years could have problems with their liver, kidneys, or circulatory system.
Tetrachloroethylene	Zero	0.005	Some people who drink water containing tetrachloroethylene in excess of the MCL over many years could have problems with their liver, and may have an increased risk of getting cancer.
Toluene	1	1	Some people who drink water containing toluene well in excess of the MCL over many years could have problems with their nervous system, kidneys, or liver.
1,2,4-Trichlorobenzene	0.07	0.07	Some people who drink water containing 1,2,4-trichlorobenzene well in excess of the MCL over many years could experience changes in their adrenal glands.
1,1,1-Trichloroethane	0.2	0.2	Some people who drink water containing 1,1,1-trichloroethane in excess of the MCL over many years could experience problems with their liver, nervous system, or circulatory system.
1,1,2-Trichloroethane	0.003	0.005	Some people who drink water containing 1,1,2-trichloroethane well in excess of the MCL over many years could have problems with their liver, kidneys, or immune systems.
Trichloroethylene	Zero	0.005	Some people who drink water containing trichloroethylene in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.
Vinyl chloride	Zero	0.002	Some people who drink water containing vinyl chloride in excess of the MCL over many years may have an increased risk of getting cancer.
Xylenes (total)	10	10	Some people who drink water containing xylenes in excess of the MCL over many years could experience damage to their nervous system.
Radionuclides			

Beta/photon emitters	Zero	4 mrem/yr	Certain minerals are radioactive and may emit forms of radiation known as photons and beta radiation. Some people who drink water containing beta and photon emitters in excess of the MCL over many years may have an increased risk of getting cancer.
Alpha emitters	Zero	15 pCi/L	Certain minerals are radioactive and may emit a form of radiation known as alpha radiation. Some people who drink water containing alpha emitters in excess of the MCL over many years may have an increased risk of getting cancer.
Combined radium (226 & 228)	Zero	5 pCi/L	Some people who drink water containing radium 226 or 228 in excess of the MCL over many years may have an increased risk of getting cancer.
Uranium	Zero	30µg/L	Some people who drink water containing uranium in excess of the MCL over many years may have an increased risk of getting cancer and kidney toxicity.
Disinfection Byproducts (DBPs), Disinfection Byproduct Precursors, Disinfectant Residuals Where disinfection is used in the treatment of drinking water, disinfectants combine with organic and inorganic matter present in water to form chemicals called disinfection byproducts (DBPs). The Department sets standards for controlling the levels of disinfectants and DBPs in drinking water, including trihalomethanes (THMs) and haloacetic acids (HAAs).[18]			
Total trihalomethanes (TTHMs)	N/A	0.080[9]	Some people who drink water containing trihalomethanes in excess of the MCL over many years may experience problems with their liver, kidneys, or central nervous system, and may have an increased risk of getting cancer.
Haloacetic Acids (HAA)	N/A	0.060[10]	Some people who drink water containing haloacetic acids in excess of the MCL over many years may have an increased risk of getting cancer.
Bromate	Zero	0.010	Some people who drink water containing bromate in excess of the MCL over many years may have an increased risk of getting cancer.
Chlorite	0.08	1.0	Some infants and young children who drink water containing chlorite in excess of the MCL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorite in excess of the MCL. Some people may experience anemia.
Chlorine	4 (MRDLG)	4.0 (MRDL)	Some people who use water containing chlorine well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chlorine well in excess of the MRDL could experience stomach discomfort.
Chloramines	4 (MRDLG)	4.0 (MRDL)	Some people who use water containing chloramines well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chloramines well in excess of the MRDL could experience stomach discomfort or anemia.

Chlorine dioxide, where any 2 consecutive daily samples collected at the entrance to the distribution system are above the MRDL.	0.8 (MRDLG)	0.8 (MRDL)	Some infants and young children who drink water containing chlorine dioxide in excess of the MRDL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia. Add for public notification only: The chlorine dioxide violations reported today are the result of exceedances at the treatment facility only, not within the distribution system, which delivers water to consumers. Continued compliance with chlorine dioxide levels within the distribution system minimizes the potential risk of these violations to consumers.
Chlorine dioxide, where one or more distribution system samples are above the MRDL.	0.8 (MRDLG)	0.8 (MRDL)	Some infants and young children who drink water containing chlorine dioxide in excess of the MRDL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia. Add for public notification only: The chlorine dioxide violations reported today include exceedances of the State standard within the distribution system, which delivers water to consumers. Violations of the chlorine dioxide standard within the distribution system may harm human health based on short-term exposures. Certain groups, including fetuses, infants, and young children, may be especially susceptible to nervous system effects from excessive chlorine dioxide exposure.
Control of DBP precursors (TOC)	None	TT	Total organic carbon (TOC) has no health effects. However, total organic carbon provides a medium for the formation of disinfection byproducts. These byproducts include trihalomethanes (THMs) and haloacetic acids (HAAs). Drinking water containing these by-products in excess of the MCL may lead to adverse health effects, liver or kidney problems, or nervous system effects, and may lead to an increased risk of getting cancer.
Other Treatment Techniques			
Acrylamide	Zero	TT	Some people who drink water containing high levels of acrylamide over a long period of time could have problems with their nervous system or blood, and may have an increased risk of getting cancer.
Epichlorohydrin	Zero	TT	Some people who drink water containing high levels of epichlorohydrin over a long period of time could experience stomach problems, and may have an increased risk of getting cancer.

Backflow Prevention and Cross-Connection Control Rule[11]	None	TT	Uncontrolled cross connections can lead to inadvertent contamination of the drinking water. [THE SUPPLIER MUST ALSO INCLUDE THE FOLLOWING APPLICABLE SENTENCES.] We have installed or permitted an uncontrolled cross connection. We failed to notify the Department of a backflow contamination event. We failed to complete the testing requirements for backflow prevention devices. We failed to comply with the requirements for surveying our system for cross connections.

1 Effective until March 31, 2016.

2 If the supplier is collecting at least 40 samples per month, no more than 5.0 percent of the monthly samples may be positive for total coliforms. If the supplier is collecting fewer than 40 samples per month, no more than one sample per month may be positive for total coliforms.

3 Effective beginning April 1, 2016.

4 *E. coli*-positive repeat sample following a total coliform-positive routine sample, total coliform-positive repeat sample following an *E. coli*-positive routine sample, failure to collect all required repeat samples following an *E. coli*-positive routine sample, or failure to analyze a total-coliform positive repeat sample for *E. coli*.

5 11.8 treatment technique violations that involve turbidity exceedances may use the health effects language for turbidity instead.

6 The bacteria detected by heterotrophic plate count (HPC) are not necessarily harmful. HPC is simply an alternative method of determining disinfectant residual levels. The number of such bacteria is an indicator of whether there is enough disinfection in the distribution system.

7 Action Level = 0.015 mg/L

8 Action Level = 1.3 mg/L

9 The MCL for total trihalomethanes is the sum of the concentrations of the individual trihalomethanes.

10 The MCL for haloacetic acids is the sum of the concentrations of the individual haloacetic acids.

11 Effective beginning January 1, 2016.

11.34 CONSUMER CONFIDENCE REPORT (CCR) RULE

11.34(1) Applicability and Definitions

(a) For community water systems, the supplier must distribute an annual consumer confidence report that complies with the requirements specified in this rule.

(i) For a wholesale system that supplies water to a consecutive community water system(s), the wholesaler must provide the applicable information to the supplier(s) responsible for the consecutive system(s) necessary to complete the CCR.

(b) "CONSUMER CONFIDENCE REPORT" or "CCR" means an annual report that includes information on the quality of the water supplied by a public water system and characterizes the risks, if any, from exposure to contaminants detected in the drinking water in an accurate and understandable manner.

(c) "DETECTED" means a sample result was greater than or equal to (≥) the detection limits specified in 11.46 for disinfection byproducts and individual rules for inorganic chemical contaminants, volatile organic chemical contaminants, synthetic organic chemical contaminants, disinfection byproducts, and radioactive contaminants.

(d) "REGULATED CONTAMINANT" means a contaminant subject to a MCL, action level, MRDL, or treatment technique under the *Colorado Primary Drinking Water Regulations*.

11.34(2) Content Requirements for the CCR

(a) General Content Requirements for the CCR

(i) The supplier must include data collected for compliance purposes during the previous calendar year in the CCR.

(A) If the supplier sampled for a contaminant less frequently than annually, the supplier must include the date and result(s) of the most recent sampling for that contaminant.

(I) The supplier must include a brief statement that explains that the data presented are from the most recent sampling conducted.

(II) The supplier is not required to include data older than five years.

(ii) The supplier must include all of the following definitions in the CCR:

(A) *Maximum Contaminant Level Goal* (MCLG) means the level of a contaminant in drinking water below which there is no known or expected risk to health. MCLGs allow for a margin of safety.

(B) *Maximum Contaminant Level* (MCL) means the highest level of a contaminant that is allowed in drinking water. MCLs are set as close to the MCLGs as feasible using the best available treatment technology.

(iii) If the CCR includes any of the following terms, the supplier must include the applicable definition(s) in the CCR:

(A) *Treatment Technique* means a required process intended to reduce the level of a contaminant in drinking water.

(B) *Action Level* means the concentration of a contaminant, which if exceeded, triggers treatment or other requirements that a water system must comply with.

(C) *Maximum residual disinfectant level goal* (MRDLG) means the level of a drinking water disinfectant below which, there is no known or expected risk to health. MRDLGs do not reflect the benefits of the use of disinfectants to control microbial contaminants.

(D) *Maximum residual disinfectant level* (MRDL) means the highest level of a disinfectant allowed in drinking water. There is convincing evidence that addition of a disinfectant is necessary for control of microbial contaminants.

(E) *Variances and Exemptions* mean that the supplier has Department permission to not meet an MCL or a treatment technique requirement under certain conditions.

(F) *Level 1 assessment* means a study of the water system to identify possible problems and determine, if possible, why total coliform bacteria have been found in our water system.

(G) *Level 2 assessment* means a very detailed study of the water system to identify possible problems and determine, if possible, why an *E. coli* MCL violation has occurred and/or why total coliform bacteria have been found in our water system on multiple occasions.

(iv) The supplier must include in the CCR the telephone number for the system that the consumer may call for additional information about the CCR.

(v) The supplier must include in the CCR information about opportunities for public participation in decisions that may affect the quality of the water (e.g., time and place of regularly scheduled board meetings).

(vi) For systems supplying a large proportion of non-English speaking consumers, as determined by the Department, the supplier must include either of the following in the CCR:

(A) Information in the appropriate language(s) regarding the importance of the CCR.

(B) A telephone number or address where the consumer may contact the supplier to obtain a translated copy of the CCR or request assistance in the appropriate language.

(vii) For each violation that occurs during the year covered by the CCR specified in 11.34(2)(d)(vi), the supplier must include a clear and readily understandable explanation of each violation, any potential adverse health effects, and the steps the supplier has taken to correct the violation.

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(d) Detected Contaminant Content Requirements for the CCR

(i) The supplier must include in the CCR information on all of the following detected contaminants, except Cryptosporidium:

(A) Regulated contaminants.

(B) Unregulated contaminants that the supplier must sample for under 11.47.

(ii) The information for detected contaminants must be displayed in a table or several adjacent tables.

(A) If the supplier chooses to include information related to any additional sample results not required by 11.34(2)(d)(i), the supplier must display this information separately from the table(s) of detected contaminants.

(iii) For each regulated contaminant, the table(s) of detected contaminants must include all of the following:

(A) The MCL expressed as a whole number as specified in Table 11.34-I.

(I) If there is no MCL for a detected contaminant, the supplier must show in the table(s) that there is a treatment technique, or specify the action level, applicable to that contaminant.

(B) The MCLG expressed in the same units as the MCL.

(C) For contaminants subject to an MCL, except total coliforms and *E. coli*, the highest contaminant level used to determine compliance and the range of detected levels as follows:

(I) If compliance with the MCL is determined annually or less frequently, the highest detected level and the range of all detected levels expressed in the same units as the MCL.

(II) If compliance with the MCL is determined based on a RAA, the RAA and range of all detected sample results expressed in the same units as the MCL.

(III) If compliance with the MCL is determined based on an LRAA, the highest LRAA and the range of all LRAAs expressed in the same units as the MCL.

(a) For the TTHM and HAA5 MCLs, the supplier must also include the range of all individual sample results expressed in the same units as the MCL.

(b) For the TTHM and HAA5 MCLs, if more than one LRAA exceeds the MCL, the supplier must include the LRAAs for all sampling locations that exceeded the MCL.

(D) For turbidity reported under 11.8, the highest single turbidity measurement and the lowest monthly percentage of samples meeting the turbidity limit specified in 11.8 for the filtration technology being used.

(I) The supplier should include an explanation of the reasons for measuring turbidity.

(E) For lead and copper, the 90th percentile value(s) and the number of sampling sites that exceeded the action levels.

(F) For total coliform until March 31, 2016:

(I) If the supplier collects less than (<) 40 total coliform samples per month, the highest number of total coliform-positive samples in a month.

(II) If the supplier collects greater than or equal to (≥) 40 samples per month, the highest monthly percentage of total coliform-positive samples.

(G) For fecal coliform until March 31, 2016, the total number of fecal coliform-positive samples.

(H) For *E. coli*, the total number of *E. coli*-positive samples that are not special purpose samples.

(iv) For each unregulated contaminant for which the supplier must monitor, the table(s) of detected contaminants must include the average of the sample results and the range of all detected levels.

(A) The supplier may include a brief explanation of the reasons for monitoring for unregulated contaminants.

(v) The table(s) of detected contaminants must also include the likely source(s) of the contaminants to the best of the supplier's knowledge.

(A) If the supplier lacks specific information on the likely source, the supplier must include one or more of the typical sources for that contaminant listed in Table 11.34-I that is most applicable to the system.

(vi) The table(s) of detected contaminants must clearly identify any data that show a violation of any of the requirements listed below that occurred during the year covered by the CCR:

(A) MCLs.

(B) MRDLs.

(C) Treatment techniques.

(D) Monitoring and reporting of compliance data.

(E) Filtration and disinfection as specified in 11.8.

(F) Recordkeeping of compliance data.

(G) Special monitoring requirements as specified in 11.47 and 11.20.

(H) If applicable, the terms of a variance, an exemption, or an administrative or judicial order.

(vii) If a system supplies water through multiple hydraulically independent distribution systems that use different sources, the supplier should identify each separate distribution system in the CCR and should include a separate column for each independent distribution system in the table(s) of detected contaminants.

(A) Alternatively, the supplier may produce separate CCRs that only include data for each independent distribution system.

(e) Additional Content Requirements for the CCR

(i) If the supplier is required to comply with 11.11:

(A) The supplier must include all of the following information in the CCR about any significant deficiency that has not been corrected at the time of delivery of the CCR:

(I) The nature of the significant deficiency(s).

(II) The date(s) the significant deficiency(s) was identified by the Department.

(III) For each significant deficiency that was required to be addressed under 11.38(3) that has not been addressed, the Department-approved plan and schedule for correction, including interim measures, progress to date, and any interim measures completed.

(B) The supplier must continue to include the information under 11.34(2)(e)(i)(A) each year until the Department determines that the significant deficiency was corrected under 11.38(3).

(C) If directed by the Department, the supplier must include all of the following information for any significant deficiency that was corrected before the CCR is issued:

(I) Inform the customers of the significant deficiency.

(II) How the deficiency was corrected.

(III) The date of correction.

(D) The supplier must include all of the following information in the CCR about any fecal indicator-positive groundwater source sample:

(I) The source of the fecal contamination, if the source is known.

(II) The date(s) of the fecal indicator-positive groundwater source sample(s).

(III) For each fecal indicator-positive contamination event in the groundwater source that was required to be addressed under 11.11(6)(b) that has not been addressed, the Department-approved plan and schedule for correction, including interim measures, progress to date, and any interim measures completed.

(IV) If the fecal contamination in the groundwater source was addressed under 11.11(6), the date of such action.

(V) The applicable potential health effects language specified in Table 11.34-I for a fecal indicator-positive groundwater source sample(s) that was not invalidated by the Department.

(E) The supplier must continue to include the information specified in 11.34(2)(e)(i)(D) each year until the Department determines that the fecal contamination in the groundwater source was addressed under 11.11(6)(b).

(ii) If the supplier has nitrate sample result(s) greater than (>) 5 mg/L but less than (<) the MCL, the supplier must include a short informational statement about nitrate's effect on children.

(A) The supplier may use the following language or other Department-approved language written by the supplier:

(I) "Nitrate in drinking water at levels above 10 ppm is a health risk for infants of less than six months of age. High nitrate levels in drinking water can cause blue baby syndrome. Nitrate levels may rise quickly for short periods of time because of rainfall or agricultural activity. If you are caring for an infant you should ask advice from your health care provider."

(iii) If the supplier has arsenic sample result(s) greater than (>) 0.005 mg/L but less than or equal to (≤) 0.010 mg/L, the supplier must include a short informational statement about arsenic.

(A) The supplier may use the following language or other Department-approved language written by the supplier:

(I) "While your drinking water meets the EPA's standard for arsenic, it does contain low levels of arsenic. The EPA's standard balances the current understanding of arsenic's possible health effects against the costs of removing arsenic from drinking water. The EPA continues to research the health effects of low levels of arsenic, which is a mineral known to cause cancer in humans at high concentrations and is linked to other health effects such as skin damage and circulatory problems."

(iv) If the supplier sampled for *Cryptosporidium* and the sample results show that *Cryptosporidium* may be present in the source water or the finished water, the supplier must include all of the following:

(A) A summary of the sample results.

(B) An explanation of the significance of the sample results.

(v) If the supplier sampled for radon and the sample results show that radon may be present in the finished water, the supplier must include all of the following:

(A) The sample results.

(B) An explanation of the significance of the sample results.

(vi) If a supplier is operating under a variance or an exemption as specified in 11.43, the supplier must include all of the following:

(A) An explanation of the reasons for the variance or exemption.

(B) The date on which the variance or exemption was issued.

(C) A brief status report on the steps the supplier is taking to install treatment, find alternative sources of water, or otherwise comply with the terms and schedules of the variance or exemption.

(D) A notice of any opportunity for public input in the review or renewal, of the variance or exemption.

(vii) For surface water systems, if the supplier failed to install adequate filtration or disinfection equipment or processes, or has had a failure of such equipment or processes which are a violation as specified in 11.8, the supplier must include the following language exactly as written as part of the explanation of potential adverse health effects:

(A) “Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites, which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.”

(viii) If the supplier failed to take one or more actions for lead and copper control as specified in 11.26, the supplier must include the applicable language from Table 11.34-I.

(ix) If the supplier failed to comply with the acrylamide and epichlorohydrin certification requirements as specified in 11.21(5), the supplier must include the applicable language from Table 11.34-I.

(x) The supplier must include a clear and readily understandable explanation of any violation specified in 11.34(2)(d)(vi), including the length of the violation, any potential adverse health effects, and the actions the supplier has taken to correct the violation.

(A) To describe the potential adverse health effects, the supplier must include the applicable language from Table 11.34-I.

(xi) If the supplier has collected additional voluntary samples and the sample results show the presence of other contaminants in the finished water, the Department strongly encourages the supplier to report any sample results which may show a health concern.

(A) To determine if results may show a health concern, the Department recommends that the supplier find out if EPA has proposed a National Primary Drinking Water Regulation or has issued a health advisory for that contaminant by calling the Safe Drinking Water Hotline (800-426-4791).

(B) Detects above a proposed MCL or health advisory level show possible health concerns. For such contaminants, the Department recommends that the supplier include all of the following:

(I) The sample results.

(II) An explanation of the significance of the sample results noting the existence of a health advisory or a proposed regulation.

(xii) Beginning January 1, 2016, if a backflow prevention and cross-connection control violation occurs under 11.39(6), the supplier must include the following:

(A) The following language exactly as written:

(I) "We have an inadequate backflow prevention and cross-connection control program. Uncontrolled cross connections can lead to inadvertent contamination of the drinking water."

(B) If applicable, one or both of the following statements:

(I) We have installed or permitted an uncontrolled cross connection.

(II) We experienced a backflow contamination event.

(xiii) Beginning April 1, 2016, if the supplier is required to conduct a Level 1 assessment and/or a Level 2 assessment that is not triggered by an *E. coli* MCL violation, the supplier must include the following:

(A) The following language exactly as written:

(I) "Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially harmful, waterborne pathogens may be present or that a potential pathway exists through which contamination may enter the drinking water distribution system. We found coliforms indicating the need to look for potential problems in water treatment or distribution. When this occurs, we are required to conduct assessment(s) to identify problems and to correct any problems that were found during these assessments."

(B) The following applicable language for a Level 1 assessment and/or a Level 2 assessment exactly as written, providing the specific information for the text in brackets:

(I) During the past year we were required to conduct [INSERT NUMBER OF LEVEL 1 ASSESSMENTS] Level 1 assessment(s). [INSERT NUMBER OF LEVEL 1 ASSESSMENTS] Level 1 assessment(s) were completed. In addition, we were required to take [INSERT NUMBER OF CORRECTIVE ACTIONS] corrective actions and we completed [INSERT NUMBER OF CORRECTIVE ACTIONS] of these actions.

(II) During the past year [INSERT NUMBER OF LEVEL 2 ASSESSMENTS] Level 2 assessments were required to be completed for our water system. [INSERT NUMBER OF LEVEL 2 ASSESSMENTS] Level 2 assessments were completed. In addition, we were required to take [INSERT NUMBER OF CORRECTIVE ACTIONS] corrective actions and we completed [INSERT NUMBER OF CORRECTIVE ACTIONS] of these actions.

(xiv) Beginning April 1, 2016, if the supplier is required to conduct a Level 2 assessment that is triggered by an *E. coli* MCL violation, the supplier must include the following language exactly as written, providing the specific information for the text in brackets:

(A) "*E. coli* are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Human pathogens in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a greater health risk for infants, young children, the elderly, and people with severely compromised immune systems. We found *E. coli* bacteria, indicating the need to look for potential problems in water treatment or distribution. When this occurs, we are required to conduct assessment(s) to identify problems and to correct any problems that were found during these assessments."

(B) We were required to complete a Level 2 assessment because we found *E. coli* in our water system. In addition, we were required to take [INSERT NUMBER OF CORRECTIVE ACTIONS] corrective actions and we completed [INSERT NUMBER OF CORRECTIVE ACTIONS] of these actions.

(xv) Beginning April 1, 2016, if a treatment technique violation occurs under 11.16(12)(b)(i), the supplier must include one or both of the following statements, as applicable:

(A) During the past year we failed to conduct the required assessment.

(B) During the past year we failed to correct all identified sanitary defects that were found during the assessment.

(xvi) Beginning April 1, 2016, if an *E. coli*-positive sample has not violated the *E. coli* MCL, the supplier must include a statement that explains that although they have detected *E. coli*, they are not in violation of the *E. coli* MCL.

(xvii) Beginning April 1, 2016, if an *E. coli* MCL violation occurs, the supplier must include one or more of the following statements, as applicable:

(A) We had an *E. coli*-positive repeat sample following a total coliform-positive routine sample.

(B) We had a total coliform-positive repeat sample following an *E. coli*-positive routine sample.

(C) We failed to take all required repeat samples following an *E. coli*-positive routine sample.

(D) We failed to test for *E. coli* when any repeat sample tests positive for total coliform.

(xviii) The supplier may include additional information necessary for public education consistent with, and not detracting from, the purpose of the CCR.

11.34(3) <u>Distribution of the CCR</u>

(a) For a wholesale system that supplies water to a consecutive community water system(s), the wholesaler must:

(i) Distribute all the applicable information specified in 11.34(2)(a), 11.34(2)(b)(i)(A), 11.34(2)(b)(ii), 11.34(2)(c), 11.34(2)(d), 11.34(2)(e)(i), and 11.34(2)(e)(iv-xii) to the supplier responsible for the consecutive system(s) no later than either:

(A) April 1 each year.

(B) A date mutually agreed on that is included in the written contract between the suppliers.

(b) The supplier must distribute the CCR to customers no later than July 1 each year.

(i) For new systems or reclassified systems that now meet the applicability of this rule, the supplier must distribute the first CCR no later than July 1 of the year after the first full calendar year in operation.

(c) The supplier must mail or otherwise directly deliver one copy of the CCR to each customer.

(i) For systems supplying less than (<) 10,000 people, this requirement may be waived if the supplier complies with all of the following:

(A) Publishes the CCR in one or more local newspapers serving the area in which the system is located.

(B) Informs the customers that the CCR will not be mailed, either in the newspapers in which the reports are published or by other Department-approved means.

(C) The supplier makes the CCR available to the public upon request.

(ii) For systems supplying less than or equal to (≤) 500 people, the requirements specified in 11.34(3)(c)(i)(A) and 11.34(3)(c)(i)(B) may be waived if the supplier provides notice to customers at least annually that the CCR is available upon request. This notice may be distributed either by mail, door-to-door delivery, or by posting in an appropriate location.

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TABLE 11.34-I TABLE OF REGULATED CONTAMINANTS						
Contaminant (units)	MCL (in mg/L unless otherwise noted)	To convert for CCR, multiply by	MCL in CCR units	MCLG	Major sources in drinking water	Health effects language
Microbiological Contaminants						
Total coliform bacteria[1]	(Systems that collect greater than or equal to (>) 40 samples/ month) 5% of monthly samples are positive	N/A	(Systems that collect greater than or equal to (>) 40 samples/ month) 5% of monthly samples are positive	0	Naturally present in the environment.	Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially harmful, bacteria may be present. Coliforms were found in more samples than allowed and this was a warning of potential problems.
	(Systems that collect less than (<) 40 samples/ month) 1 positive monthly sample.		(Systems that collect less than (<) 40 samples/ month) 1 positive monthly sample.			
Total coliform bacteria[2]	TT	N/A	TT	N/A	Naturally present in the environment	Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially harmful, waterborne pathogens may be present or that a potential pathway exists through which contamination may enter the drinking water distribution system. We found coliforms indicating the need to look for potential problems in water treatment or distribution.

Fecal Indicators including *E. coli*, enterococci or coliphage	TT	N/A	TT	N/A	Human and animal fecal waste	Fecal indicators are microbes whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short- term health effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.
Fecal coliform and *E. coli*[1]	0	N/A	0	0	Human and animal fecal waste.	Fecal coliforms and *E. coli* are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short- term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.

E. coli[2]	*E. coli*-positive repeat sample following a total coliform-positive routine sample, total coliform-positive repeat sample following an *E. coli*-positive routine sample, failure to collect all required repeat samples following an *E. coli*-positive routine sample, or failure to analyze a total-coliform positive repeat sample for *E. coli*.	N/A	*E. coli*-positive repeat sample following a total coliform-positive routine sample, total coliform-positive repeat sample following an *E. coli*-positive routine sample, failure to collect all required repeat samples following an *E. coli*-positive routine sample, or failure to analyze a total-coliform positive repeat sample for *E. coli*.	0	Human and animal fecal waste	*E. coli* are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Human pathogens in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a greater health risk for infants, young children, the elderly, and people with severely-compromised immune systems.
Total organic carbon (ppm)	TT	N/A	TT	N/A	Naturally present in the environment.	Total organic carbon (TOC) has no health effects. However, total organic carbon provides a medium for the formation of disinfection by products. These byproducts include trihalomethanes (TTHMs) and haloacetic acids (HAA5s). Drinking water containing these byproducts in excess of the MCL may lead to adverse health effects, liver or kidney problems, or nervous system effects, and may lead to an increased risk of getting cancer.

Turbidity (NTU)	TT	N/A	TT	N/A	Soil runoff.	Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.
Disinfectant residual[2]	TT (in the distribution system)	N/A	TT (in the distribution system)	N/A	Water additive used to control microbes.	Disinfectant residual serves as one of the final barriers to protect public health. Lack of an adequate disinfectant residual may increase the likelihood that disease-causing organisms are present.
Radionuclides						
Beta/photon emitters (mrem/yr)	4 mrem/yr	N/A	4	0	Decay of natural and man-made deposits.	Certain minerals are radioactive and may emit forms of radiation known as photons and beta radiation. Some people who drink water containing beta particle and photon radioactivity in excess of the MCL over many years may have an increased risk of getting cancer.
Alpha emitters (pCi/L)	15 pCi/L	N/A	15	0	Erosion of natural deposits.	Certain minerals are radioactive and may emit a form of radiation known as alpha radiation. Some people who drink water containing alpha emitters in excess of the MCL over many years may have an increased risk of getting cancer.

Combined radium (pCi/L)	5 pCi/L	N/A	5	0	Erosion of natural deposits.	Some people who drink water containing radium -226 or -228 in excess of the MCL over many years may have an increased risk of getting cancer.
Uranium (µg/L)	30 µg/L	N/A	30	0	Erosion of natural deposits.	Some people who drink water containing uranium in excess of the MCL over many years may have an increased risk of getting cancer and kidney toxicity.
Inorganic Chemicals						
Antimony (ppb)	0.006	1000	6	6	Discharge from petroleum refineries; fire retardants; ceramics; electronics; solder.	Some people who drink water containing antimony well in excess of the MCL over many years could experience increases in blood cholesterol and decreases in blood sugar.
Arsenic (ppb)	0.010	1000	10[4]	0[4]	Erosion of natural deposits; Runoff from orchards; Runoff from glass and electronics production wastes.	Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer.
Asbestos (MFL)	7 MFL	N/A	7	7	Decay of asbestos cement water mains; Erosion of natural deposits.	Some people who drink water containing asbestos in excess of the MCL over many years may have an increased risk of developing benign intestinal polyps.
Barium (ppm)	2	N/A	2	2	Discharge of drilling wastes; Discharge from metal refineries; Erosion of natural deposits.	Some people who drink water containing barium in excess of the MCL over many years could experience an increase in their blood pressure.

Beryllium (ppb)	0.004	1000	4	4	Discharge from metal refineries and coal burning factories; Discharge from electrical, aerospace, and defense industries.	Some people who drink water containing beryllium well in excess of the MCL over many years could develop intestinal lesions.
Bromate (ppb)	0.010	1000	10	0	By-product of drinking water disinfection.	Some people who drink water containing bromate in excess of the MCL over many years may have an increased risk of getting cancer.
Cadmium (ppb)	0.005	1000	5	5	Corrosion of galvanized pipes; Erosion of natural deposits; Discharge from metal refineries; Runoff from waste batteries and paints.	Some people who drink water containing cadmium in excess of the MCL over many years could experience kidney damage.
Chloramines (ppm)	MRDL = 4	N/A	MRDL = 4	MRDLG = 4	Water additive used to control microbes.	Some people who use water containing chloramines well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chloramines well in excess of the MRDL could experience stomach discomfort or anemia.
Chlorine (ppm)	MRDL = 4	N/A	MRDL = 4	MRDLG = 4	Water additive used to control microbes.	Some people who use water containing chlorine well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chlorine well in excess of the MRDL could experience stomach discomfort.

Chlorine dioxide (ppb)	MRDL = 0.8	1000	MRDL = 800	MRDLG = 800	Water additive used to control microbes.	Some infants and young children who drink water containing chlorine dioxide in excess of the MRDL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia.
Chlorite (ppm)	1	N/A	1	0.8	By-product of drinking water disinfection.	Some infants and young children who drink water containing chlorite in excess of the MCL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorite in excess of the MCL. Some people may experience anemia.
Chromium (ppb)	0.1	1000	100	100	Discharge from steel and pulp mills; Erosion of natural deposits.	Some people who use water containing chromium well in excess of the MCL over many years could experience allergic dermatitis.
Copper (ppm)	AL=1.3	N/A	AL=1.3	1.3	Corrosion of household plumbing systems; Erosion of natural deposits.	Copper is an essential nutrient, but some people who drink water containing copper in excess of the action level over a relatively short amount of time could experience gastrointestinal distress. Some people who drink water containing copper in excess of the action level over many years could suffer liver or kidney damage. People with Wilson’s Disease should consult their personal doctor.

Cyanide (ppb)	0.2	1000	200	200	Discharge from steel/metal factories; Discharge from plastic and fertilizer factories.	Some people who drink water containing cyanide well in excess of the MCL over many years could experience nerve damage or problems with their thyroid.
Fluoride (ppm)	4.0	N/A	4.0	4.0	Erosion of natural deposits; Water additive that promotes strong teeth; Discharge from fertilizer and aluminum factories.	Some people who drink water containing fluoride in excess of the MCL over many years could get bone disease, including pain and tenderness of the bones. Fluoride in drinking water at half the MCL or more may cause mottling of children's teeth, usually in children less than nine years old. Mottling, also known as dental fluorosis, may include brown staining and/or pitting of the teeth, and occurs only in developing teeth before they erupt from the gums.
Lead (ppb)	AL=0.015	1000	AL=15	0	Corrosion of household plumbing systems; Erosion of natural deposits.	Infants and children who drink water containing lead in excess of the action level could experience delays in their physical or mental development. Children could show slight deficits in attention span and learning abilities. Adults who drink this water over many years could develop kidney problems or high blood pressure.
Mercury (inorganic) (ppb)	0.002	1000	2	2	Erosion of natural deposits; Discharge from refineries and factories; Runoff from landfills; Runoff from cropland.	Some people who drink water containing inorganic mercury well in excess of the MCL over many years could experience kidney damage.

Nitrate (ppm)	10	N/A	10	10	Runoff from fertilizer use; Leaching from septic tanks, sewage; Erosion of natural deposits.	Infants below the age of six months who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.
Nitrite (ppm)	1	N/A	1	1	Runoff from fertilizer use; Leaching from septic tanks, sewage; Erosion of natural deposits.	Infants below the age of six months who drink water containing nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.
Selenium (ppb)	0.05	1000	50	50	Discharge from petroleum and metal refineries; Erosion of natural deposits; Discharge from mines.	Selenium is an essential nutrient. However, some people who drink water containing selenium in excess of the MCL over many years could experience hair or fingernail losses, numbness in fingers or toes, or problems with their circulation.
Thallium (ppb)	0.002	1000	2	0.5	Leaching from ore-processing sites; Discharge from electronics, glass, and drug factories.	Some people who drink water containing thallium in excess of the MCL over many years could experience hair loss, changes in their blood, or problems with their kidneys, intestines, or liver.
Synthetic Organic Chemicals (SOCs)						
2,4-D (ppb)	0.07	1000	70	70	Runoff from herbicide used on row crops.	Some people who drink water containing the weed killer 2,4-D well in excess of the MCL over many years could experience problems with their kidneys, liver, or adrenal glands.
2,4,5-TP (Silvex)(ppb)	0.05	1000	50	50	Residue of banned herbicide.	Some people who drink water containing silvex in excess of the MCL over many years could experience liver problems.

Acrylamide	N/A	N/A	TT	0	Added to water during sewage/wastewater treatment.	Some people who drink water containing high levels of acrylamide over a long period of time could have problems with their nervous system or blood, and may have an increased risk of getting cancer.
Alachlor (ppb)	0.002	1000	2	0	Runoff from herbicide used on row crops.	Some people who drink water containing alachlor in excess of the MCL over many years could have problems with their eyes, liver, kidneys, or spleen, or experience anemia, and may have an increased risk of getting cancer.
Atrazine (ppb)	0.003	1000	3	3	Runoff from herbicide used on row crops.	Some people who drink water containing atrazine well in excess of the MCL over many years could experience problems with their cardiovascular system or reproductive difficulties.
Benzo(a)pyrene (PAH) (nanograms/L)	0.0002	1,000,000	200	0	Leaching from linings of water storage tanks and distribution lines.	Some people who drink water containing benzo(a)pyrene in excess of the MCL over many years may experience reproductive difficulties and may have an increased risk of getting cancer.
Carbofuran (ppb)	0.04	1000	40	40	Leaching of soil fumigant used on rice and alfalfa.	Some people who drink water containing carbofuran in excess of the MCL over many years could experience problems with their blood, or nervous or reproductive systems.
Chlordane (ppb)	0.002	1000	2	0	Residue of banned termiticide.	Some people who drink water containing chlordane in excess of the MCL over many years could experience problems with their liver or nervous system, and may have an increased risk of getting cancer.

Dalapon (ppb)	0.2	1000	200	200	Runoff from herbicide used on rights of way.	Some people who drink water containing dalapon well in excess of the MCL over many years could experience minor kidney changes.
Di(2-ethylhexyl) adipate (ppb)	0.4	1000	400	400	Discharge from chemical factories.	Some people who drink water containing di(2-ethylhexyl) adipate well in excess of the MCL over many years could experience toxic effects, such as weight loss, liver enlargement or possible reproductive difficulties.
Di(2-ethylhexyl) phthalate (ppb)	0.006	1000	6	0	Discharge from rubber and chemical factories.	Some people who drink water containing di(2-ethylhexyl) phthalate well in excess of the MCL over many years may have problems with their liver, or experience reproductive difficulties, and may have an increased risk of getting cancer.
Dibromochloro-propane (ppt)	0.0002	1,000,000	200	0	Runoff/leaching from soil fumigant used on soybeans, cotton, pineapples, and orchards.	Some people who drink water containing DBCP in excess of the MCL over many years could experience reproductive problems and may have an increased risk of getting cancer.
Dinoseb (ppb)	0.007	1000	7	7	Runoff from herbicide used on soybeans and vegetables.	Some people who drink water containing dinoseb well in excess of the MCL over many years could experience reproductive difficulties.
Diquat (ppb)	0.02	1000	20	20	Runoff from herbicide use.	Some people who drink water containing diquat in excess of the MCL over many years could get cataracts.

Dioxin (2,3,7,8-TCDD) (ppq)	0.00000003	1,000,000,000	30	0	Emissions from waste incineration and other combustion; discharge from chemical factories.	Some people who drink water containing dioxin in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.
Endothall (ppb)	0.1	1000	100	100	Runoff from herbicide use	Some people who drink water containing endothall in excess of the MCL over many years could experience problems with their stomach or intestines.
Endrin (ppb)	0.002	1000	2	2	Residue of banned insecticide	Some people who drink water containing endrin in excess of the MCL over many years could experience liver problems.
Epichlorohydrin	TT	N/A	TT	0	Discharge from industrial chemical factories; an impurity of some water treatment chemicals.	Some people who drink water containing high levels of epichlorohydrin over a long period of time could experience stomach problems, and may have an increased risk of getting cancer.
Ethylene dibromide (ppt)	0.00005	1,000,000	50	0	Discharge from petroleum refineries.	Some people who drink water containing ethylene dibromide in excess of the MCL over many years could experience problems with their liver, stomach, reproductive system, or kidneys, and may have an increased risk of getting cancer.
Glyphosate (ppb)	0.7	1000	700	700	Runoff from herbicide use.	Some people who drink water containing glyphosate in excess of the MCL over many years could experience problems with their kidneys or reproductive difficulties.

Heptachlor (ppt)	0.0004	1,000,000	400	0	Residue of banned pesticide.	Some people who drink water containing heptachlor in excess of the MCL over many years could experience liver damage and may have an increased risk of getting cancer.
Heptachlor epoxide (ppt)	0.0002	1,000,000	200	0	Breakdown of heptachlor.	Some people who drink water containing heptachlor epoxide in excess of the MCL over many years could experience liver damage, and may have an increased risk of getting cancer.
Hexachlorobenzene (ppb)	0.001	1000	1	0	Discharge from metal refineries and agricultural chemical factories.	Some people who drink water containing hexachlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys, or adverse reproductive effects, and may have an increased risk of getting cancer.
Hexachloro-cyclopentadiene (ppb)	0.05	1000	50	50	Discharge from chemical factories.	Some people who drink water containing hexachlorocyclopentadiene well in excess of the MCL over many years could experience problems with their kidneys or stomach.
Lindane (ppt)	0.0002	1,000,000	200	200	Runoff/leaching from insecticide used on cattle, lumber, gardens.	Some people who drink water containing lindane in excess of the MCL over many years could experience problems with their kidneys or liver.
Methoxychlor (ppb)	0.04	1000	40	40	Runoff/leaching from insecticide used on fruits, vegetables, alfalfa, livestock.	Some people who drink water containing methoxychlor in excess of the MCL over many years could experience reproductive difficulties.

Oxamyl (Vydate) (ppb)	0.2	1000	200	200	Runoff/leaching from insecticide used on apples, potatoes and tomatoes.	Some people who drink water containing oxamyl in excess of the MCL over many years could experience slight nervous system effects.
PCBs (Polychlorinated biphenyls) (ppt)	0.0005	1,000,000	500	0	Runoff from landfills; discharge of waste chemicals.	Some people who drink water containing PCBs in excess of the MCL over many years could experience changes in their skin, problems with their thymus gland, immune deficiencies, or reproductive or nervous system difficulties, and may have an increased risk of getting cancer.
Pentachloro-phenol (ppb)	0.001	1000	1	0	Discharge from wood preserving factories.	Some people who drink water containing pentachlorophenol in excess of the MCL over many years could experience problems with their liver or kidneys, and may have an increased risk of getting cancer.
Picloram (ppb)	0.5	1000	500	500	Herbicide runoff.	Some people who drink water containing picloram in excess of the MCL over many years could experience problems with their liver.
Simazine (ppb)	0.004	1000	4	4	Herbicide runoff.	Some people who drink water containing simazine in excess of the MCL over many years could experience problems with their blood.
Toxaphene (ppb)	0.003	1000	3	0	Runoff/leaching from insecticide used on cotton and cattle.	Some people who drink water containing toxaphene in excess of the MCL over many years could have problems with their kidneys, liver, or thyroid, and may have an increased risk of getting cancer.
Volatile Organic Chemicals (VOCs)						

Benzene (ppb)	0.005	1000	5	0	Discharge from factories; leaching from gas storage tanks and landfills.	Some people who drink water containing benzene in excess of the MCL over many years could experience anemia or a decrease in blood platelets, and may have an increased risk of getting cancer.
Carbon tetrachloride (ppb)	0.005	1000	5	0	Discharge from chemical plants and other industrial activities.	Some people who drink water containing carbon tetrachloride in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.
Chlorobenzene (ppb)	0.1	1000	100	100	Discharge from chemical and agricultural chemical factories.	Some people who drink water containing chlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys.
o-Dichlorobenzene (ppb)	0.6	1000	600	600	Discharge from industrial chemical factories.	Some people who drink water containing o-dichlorobenzene well in excess of the MCL over many years could experience problems with their liver, kidneys, or circulatory systems.
p-Dichlorobenzene (ppb)	0.075	1000	75	75	Discharge from industrial chemical factories.	Some people who drink water containing p-dichlorobenzene in excess of the MCL over many years could experience anemia, damage to their liver, kidneys, or spleen, or changes in their blood.
1,2-Dichloroethane (ppb)	0.005	1000	5	0	Discharge from Industrial chemical factories.	Some people who drink water containing 1,2-dichloroethane in excess of the MCL over many years may have an increased risk of getting cancer.

1,1-Dichloroethylene (ppb)	0.007	1000	7	7	Discharge from industrial chemical factories.	Some people who drink water containing 1,1-dichloroethylene in excess of the MCL over many years could experience problems with their liver.
cis-1,2-Dichloroethylene (ppb)	0.07	1000	70	70	Discharge from industrial chemical factories.	Some people who drink water containing cis-1,2- dichloroethylene in excess of the MCL over many years could experience problems with their liver.
trans-1,2-Dichloroethylene (ppb)	0.1	1000	100	100	Discharge from industrial chemical factories.	Some people who drink water containing trans-1,2-dichloroethylene well in excess of the MCL over many years could experience problems with their liver.
Dichloromethane (ppb)	0.005	1000	5	0	Discharge from pharmaceutical and chemical factories.	Some people who drink water containing dichloromethane in excess of the MCL over many years could have liver problems and may have an increased risk of getting cancer.
1,2-Dichloropropane (ppb)	0.005	1000	5	0	Discharge from industrial chemical factories.	Some people who drink water containing 1,2-dichloropropane in excess of the MCL over many years may have an increased risk of getting cancer.
Ethylbenzene (ppb)	0.7	1000	700	700	Discharge from petroleum refineries.	Some people who drink water containing ethylbenzene well in excess of the MCL over many years could experience problems with their liver or kidneys.
Haloacetic Acids (HAA) (ppb)	0.060	1000	60	N/A	By-product of drinking water disinfection.	Some people who drink water containing haloacetic acids in excess of the MCL over many years may have an increased risk of getting cancer.

Styrene (ppb)	0.1	1000	100	100	Discharge from rubber and plastic factories; leaching from landfills.	Some people who drink water containing styrene well in excess of the MCL over many years could have problems with their liver, kidneys, or circulatory system.
Tetrachloro-ethylene (ppb)	0.005	1000	5	0	Discharge from factories and dry cleaners.	Some people who drink water containing tetrachloroethylene in excess of the MCL over many years could have problems with their liver, and may have an increased risk of getting cancer.
1,2,4-Trichloro-benzene (ppb)	0.07	1000	70	70	Discharge from textile-finishing factories.	Some people who drink water containing 1,2,4- trichlorobenzene well in excess of the MCL over many years could experience changes in their adrenal glands.
1,1,1-Trichloroethane (ppb)	0.2	1000	200	200	Discharge from metal degreasing sites and other factories.	Some people who drink water containing 1,1,1-trichloroethane in excess of the MCL over many years could experience problems with their liver, nervous system, or circulatory system.
1,1,2-Trichloroethane (ppb)	0.005	1000	5	3	Discharge from industrial chemical factories.	Some people who drink water containing 1,1,2-trichloroethane well in excess of the MCL over many years could have problems with their liver, kidneys, or immune systems.
Trichloro-ethylene (ppb)	0.005	1000	5	0	Discharge from metal degreasing sites and other factories.	Some people who drink water containing trichloroethylene in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.

TTHMs (Total trihalomethanes) (ppb)	0.080	1000	80	N/A	Byproduct of drinking water disinfection.	Some people who drink water containing trihalomethanes in excess of the MCL over many years may experience problems with their liver, kidneys, or central nervous systems, and may have an increased risk of getting cancer.
Toluene (ppm)	1	N/A	1	1	Discharge from petroleum factories.	Some people who drink water containing toluene well in excess of the MCL over many years could have problems with their nervous system, kidneys, or liver.
Vinyl Chloride (ppb)	0.002	1000	2	0	Leaching from PVC piping; discharge from plastics factories.	Some people who drink water containing vinyl chloride in excess of the MCL over many years may have an increased risk of getting cancer.
Xylenes (ppm)	10	N/A	10	10	Discharge from petroleum factories; discharge from chemical factories.	Some people who drink water containing xylenes in excess of the MCL over many years could experience damage to their nervous system.

1 Effective until March 31, 2016.

2 Effective beginning April 1, 2016.

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11.36 RECORDKEEPING REQUIREMENTS RULE

11.36(1) Applicability

For all public water systems, the supplier must comply with the recordkeeping requirements specified in this rule.

11.36(2) Records Availability

(a) All records pertaining to the operation and water quality of a public water system are public information and the Department shall make them available to the public upon request, during normal working hours.

(b) Upon request by the Department, the supplier must submit copies of any records required to be maintained or any documents in existence, which the Department is entitled to inspect pursuant to the *Colorado Primary Drinking Water Regulations*.

11.36(3) General Recordkeeping Requirements

(a) The supplier must maintain all records required to be maintained under the *Colorado Primary Drinking Water Regulations* on the system's premises or at a convenient location near the premises.

(b) For each sample result, the supplier must either maintain the actual laboratory reports or transfer the data to tabular summaries.

(i) If the supplier maintains tabular summaries, the supplier must include all of the following information in the summaries:

(A) The date, place, and time of sample collection, and the name of the person who collected the sample.

(B) Identification of the sample type (i.e., routine distribution system sample, routine entry point sample, confirmation sample, source water or finished water sample, or a special purpose sample).

(C) Date of laboratory analysis.

(D) The name of the laboratory and the person responsible for performing the analysis.

(E) The analytical method used.

(F) The results of the analyses.

(c) Unless otherwise specified, the supplier must maintain the records of the action(s) taken to correct each violation for at least three years from the date on which the last action was taken to correct the violation.

(d) The supplier must maintain records of microbiological sample results for at least five years.

(e) The supplier must maintain records of chemical sample results for at least ten years, unless otherwise specified.

11.36(4) Additional Recordkeeping Requirements by Rule

(a) Recordkeeping Requirements for Monitoring Plans

For each sample result, the supplier must maintain the monitoring plan specified in 11.5 under which the sample was collected for the same time period that the sample result is required to be maintained.

(b) Recordkeeping Requirements for the Surface Water Treatment Rules

(i) The supplier must maintain all of the following information for at least three years:

(A) The results of individual filter monitoring collected under 11.8(2)(g).

(B) Any notification to the Department that the supplier will not conduct source water monitoring due to meeting the criteria specified in 11.10(2)(a)(v).

(C) The results of treatment monitoring associated with microbial toolbox options collected under 11.10(5)(b) through 11.10(5)(o), as applicable.

(ii) The supplier must maintain all of the following information for at least three years after bin classification under 11.10(3)(b):

(A) The initial round of source water monitoring results collected under 11.10(2).

(B) The second round of source water monitoring results collected under 11.10(2).

(iii) The supplier must maintain the records of turbidity sample results collected under 11.8 for at least five years.

(iv) The supplier must maintain the following recycle flow information:

(A) A copy of the recycle notification and information submitted to the Department under 11.9(4).

(B) A list of all recycle flows and the frequency with which they are returned.

(C) The average and maximum backwash flow rate through the filters and the average and maximum duration of the filter backwash process in minutes.

(D) The typical filter run length and a written summary of how filter run length is determined.

(E) The type of treatment provided for the recycle flow.

(F) Data on the physical dimensions of the equalization and/or treatment units, typical and maximum hydraulic loading rates, type of treatment chemicals used and average dose and frequency of use, and frequency at which solids are removed, if applicable.

(v) The supplier must maintain all of the following information indefinitely:

(A) The results of the disinfection profile, including raw data and analysis, specified in 11.8(4).

(B) The results of the disinfection benchmark, including raw data and analysis, specified in 11.8(5).

(c) Recordkeeping Requirements for the Groundwater Rules

(i) The supplier must maintain all of the following information for at least five years:

(A) For each minimum residual disinfection concentration treatment technique requirement sample collected under 11.11(2)(c):

(I) The date, place, and time of sample collection, and the name of the person(s) who collected and analyzed the sample;

(II) The analytical technique/method used; and

(III) The results of the analyses.

(B) Documentation specified in 11.11(2)(e)(i)(C) relating to any entry point minimum disinfection treatment technique violation.

(C) For systems operating under a disinfection waiver under 11.13, all records of all chlorination activities including:

(I) The date, duration, locations and purpose of each chlorination event; and

(II) The maximum and minimum chlorine dose in mg/L the supplier applied during each chlorination event and the results of any and all residual disinfectant concentration results collected during each chlorination event.

(D) Records of decisions that a total coliform-positive sample result meets Department criteria for distribution system conditions that cause total coliform-positive sample results under 11.11(4)(a)(ii)(B).

(E) Records of invalidation of fecal indicator-positive groundwater source samples under 11.11(4)(e)(i).

(F) For consecutive systems, documentation of notification to wholesalers of total-coliform positive samples specified in 11.11(4)(c)(i) that are not invalidated under 11.17(5) until March 31, 2016, or under 11.16(8) beginning April 1, 2016.

(G) For systems that provide 4-log treatment of viruses using chemical disinfection and are required to comply with the requirements specified in 11.11(3):

(I) Records of the lowest daily residual disinfectant concentration; and

(II) Records of the date and duration of any failure to maintain the Department-specified minimum residual disinfectant concentration for a period of more than four hours.

(H) For systems that provide 4-log treatment of viruses using alternative treatment methods and are required to comply with 11.11(3):

(I) Records of Department-specified parameters for approved alternative treatment; and

(II) Records of the date and duration of any failure to meet the alternative treatment operating requirements for a period of more than four hours.

(ii) The supplier must maintain all of the following information for at least 10 years:

(A) For all systems that provide 4-log treatment of viruses that are required comply with 11.11(3), records of the Department-approved minimum residual disinfectant concentration.

(B) Documentation of corrective actions required in response to fecal indicator positive triggered source water monitoring sample results under 11.11(6).

(iii) For a system operating under a disinfection waiver, the supplier must maintain records of all correspondence and documentation relating to the requirements specified in 11.13 for as long as the system is operating under the disinfection waiver and for at least five years after waiver withdrawal.

(d) Recordkeeping Requirements for the Revised Total Coliform Rule

(i) Beginning April 1, 2016, the supplier must maintain all of the following information for at least five years after completion of the assessment or corrective action:

(A) Completed assessment forms, regardless of who conducts the assessment.

(B) Documentation of corrective actions completed as a result of those assessments.

(C) Available summary documentation of the sanitary defects and corrective actions as specified in 11.16(10).

(ii) Beginning April 1, 2016, if the supplier collects special purpose samples, the supplier must keep *E. coli*-positive sample results that are representative of water throughout the distribution system and a summary of any related follow-up activities on file for Department review for at least five years.

(e) Recordkeeping Requirements for the Disinfection Byproducts Rule

(i) If the supplier was required to complete an IDSE report, the supplier must maintain a complete copy of the IDSE report for at least 10 years after the date that the report was submitted.

(A) If the Department modified the supplier's sampling requirements that were in the system's IDSE report or if the Department approved alternative sampling locations, the supplier must keep a copy of the Department's notification on file for 10 years after the date of the Department's notification.

(B) The supplier must make the IDSE report and any Department notification available for review by the Department or the public.

(ii) If the supplier submitted a 40/30 certification, the supplier must maintain a complete copy of the 40/30 certification for at least 10 years after the date that the certification was submitted.

(A) "40/30 CERTIFICATION" means a historical requirement where the supplier certified to the Department that every individual sample result collected during eight consecutive quarters was less than or equal to (≤) 0.040 mg/L for TTHM and less than or equal to (≤) 0.030 mg/L for HAA5 and no TTHM or HAA5 violations occurred during that time.

(B) The supplier must make the 40/30 certification and any Department notification available for review by the Department or the public.

(f) Recordkeeping Requirements for the Lead and Copper Rule

The supplier must maintain the original records of all sample results and analyses, reports, surveys, letters, evaluations, schedules, Department determinations, and any other information required by 11.26 for at least 12 years.

(g) Recordkeeping Requirements for the Storage Tank Rule

For each completed inspection, the supplier must maintain the inspection summary required by 11.28(3)(f) for at least ten years.

(h) Recordkeeping Requirements for the Public Notification Rule

The supplier must maintain copies of each public notice and certification made to the Department under 11.33 for at least three years after issuance.

(i) Recordkeeping Requirements for the Consumer Confidence Report (CCR) Rule

The supplier must retain copies of each CCR required by 11.34 for at least three years after issuance.

(j) Recordkeeping Requirements for the Cross-Connection Control Rule

The supplier must maintain all control device maintenance records under 11.37 for at least three years.

(k) Recordkeeping Requirements for the Sanitary Survey Rule

(i) The supplier must maintain all of the following information regarding sanitary surveys conducted under 11.38 for at least 10 years:

(A) Copies of any written reports, summaries or communications relating to sanitary surveys of the system conducted by the system itself, a private consultant, or a local, state or federal agency.

(B) Documentation of corrective actions required in response to significant deficiencies and/or violations identified on a sanitary survey under 11.38(3).

(l) Recordkeeping Requirements for the Backflow Prevention and Cross-Connection Control Rule

(i) The supplier must maintain all backflow prevention assembly and backflow prevention method testing, inspection, and maintenance records:

(A) For community water systems, for at least three years.

(B) For non-community water systems, for at least five years.

(ii) The supplier must maintain each annual backflow prevention and cross-connection control program report developed:

(A) For community water systems, for at least three years.

(B) For non-community water systems, for at least five years.

(m) Recordkeeping Requirements for the Water Hauler Rule

(i) The supplier must maintain all of the following information for at least five years for each tank or container:

(A) The date, time, and location of each water loading station used.

(B) The date, time, and location of each water delivery.

(C) The date, time, and result of each residual disinfectant concentration sample collected under 11.41(2)(b).

(D) The date, time, type and quantity of any chemical added to the tank or container containing water intended for delivery.

(E) A maintenance record for all hose materials, hose containers, pumps, fittings and tank and/or container including the date, time and method of cleaning and/or disinfection.

(n) Recordkeeping Requirements for the Variances and Exemptions Rule

The supplier must maintain records concerning a variance or exemption granted under 11.43 for at least five years after the expiration of the variance or exemption.

11.37 CROSS-CONNECTION CONTROL RULE

11.37(1) Applicability and Definitions

(a) For all public water systems, the supplier must comply with the requirements specified in this rule until December 31, 2015.

(b) “CERTIFIED CROSS-CONNECTION CONTROL TECHNICIAN” means a person who has responsibility for the testing, operation and maintenance of cross-connection control devices and is certified as specified in 11.37(4).

(c) “CONTROL DEVICE” means any Department-approved cross connection control device or method installed on service connections to a premises or auxiliary system consistent with the degree of hazard posed by the uncontrolled cross-connection.

(d) “SERVICE CROSS CONNECTION” means a type of cross-connection which could allow any used water, industrial fluid, gas, or water of a quality below the drinking water standards of these regulations to flow from a consumer’s water system into a public water system’s distribution system.”

(e) "UNCONTROLLED" means not having an accepted cross-connection control device properly installed and maintained. The control device must continuously provide cross-connection protection consistent with the degree of hazard posed by the cross-connection.

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11.39 BACKFLOW PREVENTION AND CROSS-CONNECTION CONTROL RULE

11.39(1) Applicability and Definitions

(a) For all public water systems, the supplier must comply with the requirements specified in this rule beginning January 1, 2016.

(b) "ACTIVE DATE" means the first day that a backflow prevention assembly or backflow prevention method is used to control a cross connection in each calendar year.

(c) "BACKFLOW" means the reverse flow of water, fluid, or gas caused by back pressure or back siphonage.

(d) "BACKFLOW PREVENTION ASSEMBLY" means any mechanical assembly installed at a water service line or at a plumbing fixture to prevent a backflow contamination event, provided that the mechanical assembly is appropriate for the identified contaminant at the cross connection and is an in-line field-testable assembly.

(e) "BACKFLOW PREVENTION ASSEMBLY ANNUAL TESTING COMPLIANCE RATIO" means the number of backflow prevention assemblies tested during the calendar year divided by the number of backflow prevention assemblies installed at a cross connection that were used during the calendar year.

(f) "BACKFLOW PREVENTION METHOD" means any method and/or non-testable device installed at a water service line or at a plumbing fixture to prevent a backflow contamination event, provided that the method or non-testable device is appropriate for the identified contaminant at the cross connection.

(g) "BACKFLOW PREVENTION METHOD ANNUAL INSPECTION COMPLIANCE RATIO" means the number of backflow prevention methods inspected during the calendar year divided by the number of backflow prevention methods installed at a cross connection that were used during the calendar year.

(h) "CERTIFIED CROSS-CONNECTION CONTROL TECHNICIAN" means a person who possesses a valid Backflow Prevention Assembly Tester certification from one of the following approved organizations: American Society of Sanitary Engineering (ASSE) or the American Backflow Prevention Association (ABPA). If a certification has expired, the certification is invalid.

(i) "CONTROLLED" means having a properly installed, maintained, and tested or inspected backflow prevention assembly or backflow prevention method that prevents backflow through a cross connection.

(j) "SURVEY COMPLIANCE RATIO" means the total number of connections surveyed, including the number of all non-single-family-residential connections to the public water system with the most protective backflow prevention assembly or method that was not surveyed as specified in 11.39(3)(c), divided by the total number of non-single-family-residential connections to the public water system and connections within the supplier's waterworks.

(i) The supplier is not required to include any non-single-family-residential connections identified after October 31 of the calendar year in the total number of non-single-family-residential connections to the public water system until the following calendar year.

(k) "UNCONTROLLED" means not having a properly installed and maintained and tested or inspected backflow prevention assembly or backflow prevention method, or the backflow prevention assembly or backflow prevention method does not prevent backflow through a cross connection.

11.39(2) Backflow Prevention and Cross-Connection Control Program Requirements

(a) The supplier must develop a written backflow prevention and cross-connection control program. The written backflow prevention and cross-connection control program must include all of the following:

(i) The supplier's process for conducting surveys.

(ii) The supplier's legal authority to perform a survey of a customer's property to determine whether a cross connection is present unless the supplier controls all non-single-family-residential connections to the public water system with the most protective backflow prevention assembly or backflow prevention method.

(iii) The process the supplier will use to select a backflow prevention assembly or backflow prevention method to control a cross connection.

(iv) The supplier's legal authority to install, maintain, test, and inspect backflow prevention assemblies and/or backflow prevention methods and/or require customers to install, maintain, test, and inspect backflow prevention assemblies and/or backflow prevention methods.

(v) The process the supplier will use to track the installation, maintenance, testing, and inspection of all backflow prevention assemblies and backflow prevention methods used to control cross connections.

(vi) The process the supplier will use to ensure backflow prevention assemblies are tested by a Certified Cross-Connection Control Technician.

(b) The Department may review and revise the written backflow prevention and cross-connection control program.

11.39(3) Treatment Technique Requirements for the Control of Cross Connections

(a) If the supplier learns of a suspected or confirmed backflow contamination event, the supplier must notify and consult with the Department on any appropriate corrective measures no later than 24 hours after learning of the backflow contamination event.

(b) The supplier is prohibited from installing or permitting any uncontrolled cross connection to the distribution system or within the supplier's waterworks.

(c) The supplier must survey all non-single-family-residential connections to the public water system to determine if the connection is a cross connection unless the supplier controls that connection with the most protective backflow prevention assembly or backflow prevention method. The supplier must survey all connections within the supplier's waterworks to determine if the connection is a cross connection.

(i) If the supplier identifies a cross connection during a survey, the supplier must determine the type of backflow prevention assembly or backflow prevention method to control the cross connection.

(ii) If the supplier becomes aware of a single-family-residential connection to the public water system that is a cross connection, the supplier must determine the type of backflow prevention assembly or backflow prevention method to control the cross connection.

(iii) The supplier must achieve the survey compliance ratios as specified in Table 11.39-I.

TABLE 11.39-I Survey Compliance Ratio

Compliance Date	Compliance Ratio
By December 31, 2016	Greater than 0.60
By December 31, 2017	Greater than 0.70
By December 31, 2018	Greater than 0.80
By December 31, 2019	Greater than 0.90
By December 31, 2020 and each year after	1.0

(iv) The supplier may apply to the Department for alternative survey compliance ratios for the compliance dates from December 31, 2016 through December 31, 2019 specified in Table 11.39-I.

(A) In the application, the supplier must include all of the following information:

(I) An explanation of why the supplier is unable to comply with the survey compliance ratios specified in Table 11.39-I.

(II) The proposed alternative survey compliance ratios for the compliance dates from December 31, 2016 through December 31, 2019 specified in Table 11.39-I.

(a) The proposed alternative survey compliance ratios must meet the survey compliance ratio of 1.0 by December 31, 2020.

(III) A discussion of the supplier's strategy to achieve the proposed alternative survey compliance ratios and the survey compliance ratio of 1.0 by December 31, 2020.

(B) The Department will only grant alternative compliance ratios for the compliance dates from December 31, 2016 through December 31, 2019.

(C) If the supplier receives written Department-approval for alternative survey compliance ratios, the supplier must comply with any Department-specified requirements in the approval.

(d) If the supplier discovers an uncontrolled cross connection and a suspected or confirmed backflow contamination event has not occurred, the supplier must:

(i) No later than 120 days after its discovery, install and maintain or require the customer to install and maintain a backflow prevention assembly or backflow prevention method at the uncontrolled cross connection, suspend service to the customer, or remove the cross connection.

(A) If the supplier is unable to meet the 120-day deadline, the supplier must consult with the Department and the Department may approve an alternative schedule.

(B) The supplier can either control cross connections discovered within a customer's water system by containment or containment by isolation.

(I) "CONTAINMENT" means the installation of a backflow prevention assembly or a backflow prevention method at any connection to the public water system that supplies an auxiliary water system, location, facility, or area such that backflow from a cross connection into the public water system is prevented.

(II) "CONTAINMENT BY ISOLATION" means the installation of backflow prevention assemblies or backflow prevention methods at all cross connections identified within a customer's water system such that backflow from a cross connection into the public water system is prevented.

(C) The supplier must ensure that all installed backflow prevention assemblies used to control cross connections are tested by a Certified Cross-Connection Control Technician upon installation.

(D) The supplier must ensure that all installed backflow prevention methods used to control cross connections are inspected by the supplier or a Certified Cross-Connection Control Technician upon installation.

(e) The supplier must ensure that backflow prevention assemblies used to control cross connections are tested annually by a Certified Cross-Connection Control Technician and maintained. The supplier must achieve the backflow prevention assembly annual testing compliance ratios as specified in Table 11.39-II.

TABLE 11.39-II Backflow Prevention Assembly Annual Testing Compliance Ratio

Compliance Date	Annual Compliance Ratio
By December 31, 2016	Greater than 0.50
By December 31, 2017	Greater than 0.60
By December 31, 2018	Greater than 0.70
By December 31, 2019	Greater than 0.80
By December 31, 2020 and each year after	Greater than 0.90

(i) No later than 60 days after the supplier is notified of a failed test, the supplier must ensure that the backflow prevention assembly that produced the failed test is repaired or replaced and tested, service is suspended to the customer, or the cross connection is removed.

(A) If the supplier is unable to meet the 60-day deadline, the supplier must consult with the Department and the Department may approve an alternative schedule.

(ii) Beginning January 1, 2021, for each backflow prevention assembly not tested during the previous calendar year, the supplier must ensure the backflow prevention assembly is tested no later than 90 days after the active date of the backflow prevention assembly in the following calendar year.

(A) If the supplier is unable to meet the 90-day deadline, the supplier must consult with the Department and the Department may approve an alternative schedule.

(f) The supplier must ensure that backflow prevention methods used to control cross connections are inspected annually by the supplier or a Certified Cross-Connection Control Technician and maintained. The supplier must achieve a backflow prevention method annual inspection compliance ratio of greater than (>) 0.90.

(i) No later than 60 days after the supplier is notified of an inadequate backflow prevention method, the supplier must ensure that the inadequate backflow prevention method is repaired or replaced, service is suspended to the customer, or the cross connection is removed.

(A) If the supplier is unable to meet the 60-day deadline, the supplier must consult with the Department and the Department may approve an alternative schedule.

(ii) Beginning January 1, 2017, for each backflow prevention method not inspected during the previous calendar year, the supplier must ensure the backflow prevention method is inspected no later than 90 days after the active date of the backflow prevention method in the following calendar year.

(A) If the supplier is unable to meet the 90-day deadline, the supplier must consult with the Department and the Department may approve an alternative schedule.

(g) The supplier must control or remove any uncontrolled cross connection or ensure that any cross connection is controlled no later than 10 days after being ordered in writing by the Department.

11.39(4) Backflow Prevention and Cross-Connection Control Program Annual Written Report

(a) Beginning in 2017, the supplier must develop a written backflow prevention and cross-connection control program report for the previous calendar year that includes all of the following information:

(i) Total number of non-single-family-residential connections to the public water system and connections within the supplier's waterworks.

(A) The supplier is not required to include any non-single-family-residential connections identified after October 31 of the calendar year in the total number of non-single-family-residential connections to the public water system until the following calendar year.

(ii) Total number of connections surveyed to determine if cross connections are present.

(iii) Survey compliance ratio.

(iv) Total number of identified cross connections.

(v) Number of uncontrolled cross connections identified during the calendar year.

(A) Number of identified uncontrolled cross connections that were controlled within 120 days of discovery.

(B) Number of identified uncontrolled cross connections that were not controlled within 120 days of discovery.

(vi) Number of backflow prevention assemblies installed at cross connections that were used during the calendar year.

(vii) Number of backflow prevention methods installed at cross connections that were used during the calendar year.

(viii) Number of connections where service was suspended as specified in 11.39(3) during the calendar year.

(ix) Number of backflow prevention assemblies used to control cross connections that were tested by a Certified Cross Connection Control Technician during the calendar year.

(x) Backflow prevention assembly annual testing compliance ratio.

(xi) Beginning January 1, 2021, the number and location of backflow prevention assemblies not tested during the calendar year covered by the report.

(xii) Number of backflow prevention methods used to control cross connections that were inspected during the calendar year.

(xiii) Backflow prevention method annual inspection compliance ratio.

(xiv) Beginning January 1, 2017, the number and location of backflow prevention methods not inspected during the calendar year covered by the report.

(b) For each calendar year, the supplier must complete the annual backflow prevention and cross-connection control program report no later than May 1 of the following calendar year.

11.39(5) Compliance Determinations for Backflow Prevention and Cross-Connection Control

(a) Compliance with the survey treatment technique requirement is based on the survey compliance ratio.

(i) The supplier is not required to include any non-single-family-residential connections identified after October 31 of the calendar year in the total number of non-single-family-residential connections to the public water system until the following calendar year.

(b) Compliance with the backflow prevention assembly testing treatment technique requirement is based on the backflow prevention assembly annual testing compliance ratio.

(c) Compliance with the backflow prevention method inspection treatment technique requirement is based on the backflow prevention method annual inspection compliance ratio.

11.39(6) Violations for Backflow Prevention and Cross-Connection Control

(a) The following constitute backflow prevention and cross-connection control treatment technique violations:

(i) The supplier fails to notify the Department of any suspected or confirmed backflow contamination event as specified in 11.39(3)(a).

(ii) The supplier installs or permits an uncontrolled cross connection.

(iii) The supplier fails to achieve the survey compliance ratio specified in 11.39(3)(c) or the Department-approved alternative survey compliance ratios.

(iv) The supplier discovers an uncontrolled cross connection and fails to comply with the requirements specified in 11.39(3)(d).

(v) The supplier fails to achieve the annual backflow prevention assembly testing compliance ratio specified in 11.39(3)(e).

(vi) The supplier fails to comply with the backflow prevention assembly failed test requirements specified in 11.39(3)(e)(i).

(vii) The supplier fails to comply with the backflow prevention assembly testing requirements specified in 11.39(3)(e)(ii).

(viii) The supplier fails to achieve the backflow prevention method inspection compliance ratio specified in 11.39(3)(f).

(ix) The supplier fails to comply with the backflow prevention method inadequate method requirements specified in 11.39(3)(f)(i).

(x) The supplier fails to comply with the backflow prevention method inspection requirements specified in 11.39(3)(f)(ii).

(xi) The supplier fails to comply with a written order from the Department specified in 11.39(3)(g).

(b) The following constitute backflow prevention and cross-connection control violations:

(i) The supplier fails to develop or implement a written backflow prevention and cross-connection control program as specified in 11.39(2).

(ii) The supplier fails to complete an annual backflow prevention and cross-connection control program report as specified in 11.39(4).

11.39(7) <u>Response to Violations for Backflow Prevention and Cross-Connection Control</u>

(a) In the event of a backflow prevention and cross-connection control treatment technique violation, the supplier must:

(i) Notify the Department no later than 48 hours after the violation occurs.

(ii) Distribute Tier 2 public notice as specified in 11.33.

(b) In the event of a backflow prevention and cross-connection control violation, the supplier must:

(i) Notify the Department no later than 48 hours after the violation occurs.

(ii) Distribute Tier 3 public notice as specified in 11.33.

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11.41 WATER HAULER RULE

11.41(1) Applicability and Definitions

(a) For a public water system that hauls water, the water hauler must comply with the requirements specified in this rule in addition to other applicable requirements of the *Colorado Primary Drinking Water Regulations*.

(b) The water hauler is a supplier and means any person that owns or operates a public water system that hauls water.

11.41(2) Treatment Technique and Monitoring Requirements for Public Water Systems That Haul Water

(a) The water hauler must operate in accordance with a Department-approved operational plan.

(i) The water hauler must either submit an operational plan for Department approval or use the pre-approved operational plan in the Department's *Operational Handbook for a Colorado Public Water System That Hauls Water*.

(b) In addition to the applicable residual disinfectant concentration monitoring requirements specified in 11.8, 11.11 and 11.23, on each day a tank or container is used to deliver water, the water hauler must monitor the residual disinfectant concentration of the water dispensed from each tank or container at least once.

(i) If the water hauler uses more than one water loading station per day, the water hauler must also monitor the residual disinfectant concentration of the water dispensed from the tank or container at least once for each water loading station used.

11.41(3) Treatment Technique Violation and Response for the Water Hauler Rule

(a) If the water hauler fails to operate in accordance with a Department-approved operational plan, a treatment technique violation occurs.

(b) In the event of a treatment technique violation, the water hauler must:

(i) Notify the Department no later than 48 hours after the violation occurs.

(ii) Distribute Tier 2 public notice as specified in 11.33.

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11.43 VARIANCES AND EXEMPTIONS RULE

11.43(1) Applicability and Definitions

(a) For all public water systems, the supplier may apply for a variance or exemption as specified in this rule.

(b) "EXEMPTION" means the supplier is temporarily not required to comply with an MCL or treatment technique. The Department may grant an exemption if the supplier meets the requirements specified in 11.43(4).

(c) "SMALL SYSTEM VARIANCE" means a variance from an MCL or treatment technique for systems that supply less than (<) 10,000 people and meet the requirements specified in 11.43(3).

(d) "SMALL SYSTEM VARIANCE TECHNOLOGY" means a specific treatment or treatment technology that the EPA has identified for use by small systems that are otherwise unable to afford to comply with the *National Primary Drinking Water Regulations*.

(e) "VARIANCE" means the supplier is temporarily not required to comply with an MCL. The Department may grant a variance to a supplier if characteristics of the source(s) that are reasonably available to the system prevent compliance with the MCL, despite implementation of BATs or treatment techniques, and the system meets the requirements specified in 11.43(2).

11.43(2) Variance Qualifications

(a) The Department may grant a variance from an MCL if all of the following criteria are met:

(i) The supplier is unable to comply with the MCL.

(ii) The supplier has applied the BATs, treatment techniques, or other means identified by the EPA Administrator.

(iii) Based on a Department-approved evaluation, an alternative source is not reasonably available to the system after taking costs into consideration.

(iv) The variance will not result in an unreasonable risk to public health.

(b) If the supplier can demonstrate to the satisfaction of the Department that a specific treatment technique for a contaminant is not necessary to protect public health because of the nature of the system's source, the supplier may receive one or more variances from any requirement that requires the use of that treatment technique.

(i) If the supplier is granted a variance under 11.43(2)(b), the supplier must comply with any Department-specified monitoring or other requirements.

(c) The Department will not grant a variance from:

(i) The total coliform MCLs.

(A) The effective date relating to the total coliform MCL has been stayed for a supplier that demonstrates to the Department that the violation of the total coliform MCL is due to a persistent growth of total coliforms in the distribution system rather than fecal or pathogenic contamination, a treatment lapse or deficiency, or a problem in the operation or maintenance of the distribution system. This is stayed until March 31, 2016.

(ii) The *E. coli* MCLs.

(iii) Any treatment technique requirement of 11.8 or 11.9.

11.43(3) Small System Variance Qualifications

(a) The Department may grant a small system variance from an MCL or treatment technique if all of the following criteria apply:

(i) The system supplies:

(A) Less than or equal to (≤) 3,300 people; or

(B) With EPA Administrator approval, greater than (>) 3,300 people and less than (<) 10,000 people.

(ii) The Department determines that the supplier cannot financially afford to comply with an MCL or treatment technique based on the Department-specified affordability criteria. This includes compliance through one or more of the following:

(A) Treatment.

(B) An alternative source.

(C) Restructuring or consolidation, unless the Department makes a written determination that restructuring or consolidation is not practical.

(iii) The EPA Administrator has identified a small system variance technology that is applicable to the system's size and source water quality.

(A) The supplier must be financially and technically capable of installing, operating, and maintaining the applicable small system variance technology, as specified in guidance or regulations issued by the EPA Administrator.

(iv) The Department determines that the small system variance technology provides adequate protection of public health, considering the system's source water quality and the removal efficiencies and expected useful life of the small system variance technology.

(b) The Department will not grant a small system variance from:

(i) Treatment technique requirements or MCLs for a contaminant which was regulated in the *National Primary Drinking Water Regulations* on or before January 1, 1986.

(ii) A microbial contaminant (e.g., a bacterium, virus or other organism), an indicator for a microbial contaminant, or treatment technique requirement for a microbial contaminant.

(iii) A treatment technique for filtration of surface water sources specified in 11.8.

11.43(4) <u>Exemption Qualifications</u>

(a) The Department may grant an exemption from an MCL or treatment technique if all of the following criteria apply:

(i) Due to compelling factors, the supplier is unable to comply with an MCL or treatment technique requirement, or implement measures to develop an alternative source.

(A) Compelling factors may include economic factors (e.g., qualifying as a system that supplies a disadvantaged community).

(ii) The exemption will not result in an unreasonable risk to public health.

(iii) The supplier cannot reasonably make management and/or restructuring changes that result in compliance or, if compliance cannot be achieved, improve the drinking water quality.

(iv) The public water system was in operation on the effective date of the MCL or treatment technique requirement.

(A) The Department may grant an exemption to systems not in operation on the effective date of the MCL or treatment technique requirement if a reasonable alternative source is not available.

(b) If the supplier was granted a variance or small system variance, the supplier will not be granted an exemption.

(c) The supplier will not be granted an exemption from:

(i) The total coliform MCL.

(A) The effective date relating to the total coliform MCL has been stayed for a supplier that demonstrates to the Department that the violation of the total coliform MCL is due to a persistent growth of total coliforms in the distribution system rather than fecal or pathogenic contamination, a treatment lapse or deficiency, or a problem in the operation or maintenance of the distribution system. This is stayed until March 31, 2016.

(ii) The *E. coli* MCLs.

(iii) The entry point residual disinfectant concentration requirement for surface water systems.

(d) To be granted an exemption, the supplier must establish that all practical steps are being taken to meet the MCL or treatment technique requirement and that at least one of the following apply:

(i) The system cannot meet the MCL or treatment technique requirement without capital improvements and the capital improvements cannot be completed before the effective date of the MCL or treatment technique requirement.

(ii) The supplier has entered into an enforceable agreement to become a part of a regional public water system.

(iii) If the supplier needs financial assistance for necessary improvements, either:

(A) The supplier has entered into an agreement to obtain financial assistance; or

(B) Within the period of the exemption, a federal or state program will likely be available.

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11.45 MCLs, MCLGs, SMCLs, MRDLs, MRDLGs, AND ACTION LEVELS

11.45(1) MCLs and MCLGs for Microbiological Contaminants

The following MCLs and MCLGs apply to all public water systems regardless of size or type.

TABLE 11.45-I MCLs AND MCLGs FOR MICROBIOLOGICAL CONTAMINANTS			
Contaminant	Number of samples	MCL	MCLG
Cryptosporidium	.	N/A	Zero
Giardia lamblia	.	N/A	Zero
Viruses	.	N/A	Zero
Legionella	.	N/A	Zero
Coliforms (including fecal coliforms and *Escherichia coli*)[1]			Zero
Total Coliforms[1]	System collects 40 or more samples per month	No more than 5.0 percent of the samples collected during a month are total coliform-positive	.
	System collects less than 40 samples per month	No more than one sample collected during a month is total coliform-positive	.
Fecal coliform or *E. coli* repeat sample (following routine total coliform-positive sample) or any total coliform-positive repeat sample following a fecal coliform-positive or *E. coli*-positive routine sample.[1]	.	Absent	.
Escherichia coli[2]	.	*E. coli*-positive repeat sample following a total coliform-positive routine sample, total coliform-positive repeat sample following an *E. coli*-positive routine sample, failure to collect all required repeat samples following an *E. coli*-positive routine sample, or failure to analyze a total-coliform positive repeat sample for *E. coli*.	Zero

1 These MCLs and MCLGs are effective until March 31, 2016.

2 These MCLs and MCLGs are effective beginning April 1, 2016.

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11.46 ANALYTICAL REQUIREMENTS AND LABORATORY CERTIFICATION RULE

11.46(1) Applicability

For all public water systems, the supplier must ensure that all samples meet the testing requirements and analytical methods of this rule.

11.46(2) Bacteriological Analytical Requirements

(a) Total Coliform Analytical Requirements

(i) Until March 31, 2016, the testing requirements and analytical methods for total coliform analysis are specified in 40 CFR 141.21(f)(3) as amended July 1, 2014.

(ii) Beginning April 1, 2016, the testing requirements and analytical methods for total coliform analysis are specified in 40 CFR 141.852(a-c) as amended July 1, 2014.

(b) Fecal Coliform Analytical Requirements

Until March 31, 2016, the testing requirements and analytical methods for fecal coliform analysis are specified in 40 CFR 141.21(f)(5) as amended July 1, 2014.

(c) *Escherichia coli* Analytical Requirements

(i) Until March 31, 2016, the testing requirements and analytical methods for *Escherichia coli* analysis are specified in 40 CFR 141.21(f)(6-7) and 40 CFR 141.704(b) as amended July 1, 2014.

(ii) Beginning April 1, 2016, the testing requirements and analytical methods for *Escherichia coli* analysis are specified in 40 CFR 141.704(b) and 40 CFR 141.852(a-c) as amended July 1, 2014.

(d) *Cryptosporidium* Analytical Requirements

The testing requirements and analytical methods for *Cryptosporidium* analysis are specified in 40 CFR 141.704(a) and 40 CFR 141.707(c)(2) as amended July 1, 2014.

(e) Groundwater Source Analytical Requirements

The testing requirements and analytical methods for groundwater source water sample analysis are specified in 40 CFR 141.402(c) as amended July 1, 2014.

11.46(3) Inorganic Chemical Analytical Requirements

The testing requirements and analytical methods for inorganic chemical analysis are specified in 40 CFR 141.23(a)(4)(i) and 40 CFR 141.23(k)(1-2) as amended July 1, 2014.

11.46(4) SOC and VOC Analytical Requirements

The testing requirements and analytical methods for SOCs and VOCs are specified in 40 CFR 141.24(e) as amended July 1, 2014.

11.46(5) PCB Analytical Requirements

The testing requirements and analytical methods for PCBs are specified in 40 CFR 141.24(h)(13) as amended July 1, 2014.

11.46(6) Radionuclide Analytical Requirements

The testing requirements and analytical methods for radionuclides are specified in 40 CFR 141.25(a-c) as amended July 1, 2014.

11.46(7) Turbidity and Heterotrophic Plate Count Analytical Requirements

The testing requirements and analytical methods for turbidity and HPC are specified in 40 CFR 141.74(a) as amended July 1, 2014.

11.46(8) Disinfection, Disinfection Byproducts, and Disinfection Byproduct Precursors Analytical Requirements

(a) Disinfection Byproduct Precursors Rule Analytical Requirements

The testing requirements and analytical methods for the disinfection byproduct precursor rule are specified in 40 CFR 141.131(a)(1-2) and 40 CFR 141.131(d)(1-6) as amended July 1, 2014.

(b) Disinfection Residual Analytical Requirements

The testing requirements and analytical methods for free chlorine, chloramines, chlorine dioxide, and ozone are specified in 40 CFR 141.74(a), 40 CFR 141.131(a), and 40 CFR 141.131(c) as amended July 1, 2014.

(c) Disinfection Byproducts Rule Analytical Requirements

The testing requirements and analytical methods for disinfection byproducts rule are specified in 40 CFR 141.131(b) and 40 CFR 141.131(a) as amended July 1, 2014.

11.46(9) Lead and Copper Rule Analytical Requirements

The testing requirements and analytical methods for lead, copper, pH, conductivity, calcium, alkalinity, orthophosphate, silica, and temperature are specified in 40 CFR 141.89(a)(1-4) as amended July 1, 2014.

11.46(10) Secondary Contaminants Analytical Requirements

The testing requirements and analytical methods for secondary contaminants are specified in 40 CFR 143.4(b) as amended July 1, 2014.

11.46(11) Alternative Analytical Techniques

The use of alternative testing requirements and analytical methods are specified in 40 CFR 141.27(a) and Appendix A to Subpart C of 40 CFR 141 as amended July 1, 2014.

11.46(12) Certified Laboratories and Laboratory Certification

(a) Certified Laboratories

The requirements for a certified laboratory are specified in 40 CFR 141.28(a) as amended July 1, 2014.

(b) Laboratory Certification for Inorganic Chemicals

The laboratory certification requirements for inorganic chemicals are specified in 40 CFR 141.23(k)(3) as amended July 1, 2014.

(c) Laboratory Certification for VOCs

The laboratory certification requirements for VOCs are specified in 40 CFR 141.24(f)(17) and 40 CFR 141.24(f)(20) as amended July 1, 2014.

(d) Laboratory Certification for SOCs

The laboratory certification requirements for SOCs are specified in 40 CFR 141.24(h)(19) as amended July 1, 2014.

(e) Laboratory Certification for *Cryptosporidium*, *E. coli*, and Turbidity

The laboratory certification requirements for *Cryptosporidium*, *E. coli*, and turbidity are specified in 40 CFR 141.705(a-c) as amended July 1, 2014.

11.46(13) Laboratory Compositing

The requirements for compositing of samples by a laboratory are specified in 40 CFR 141.24(f)(14) as amended July 1, 2014.

11.46(14) Calculating Contact Time Values

(a) The requirements for calculating contact time values are specified in 40 CFR 141.74(b)(3-4) as amended July 1, 2014.

(b) Disinfectant contact time in pipelines must be calculated based on the consideration of the liquid level in the pipeline and dividing that volume by the maximum hourly flow rate through that pipe. Disinfectant contact time within mixing basins and storage reservoirs must be determined by tracer studies, or an equivalent demonstration, or by baffling factor estimates considering the minimum operating level.

11.47 UNREGULATED CONTAMINANT MONITORING RULE

11.47(1) Applicability and Requirements for Unregulated Contaminant Monitoring

All public water systems must monitor for unregulated contaminants as specified in 40 CFR 141.40 as amended July 1, 2014 and comply with the requirements specified in this rule.

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11.57 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE: January 12, 2015 rulemaking; Final Action March 10, 2015; Effective Date May 1, 2015

The following sections were affected by this rulemaking hearing: Adoption of 11.16 – Revised Total Coliform Rule, 11.28 – Storage Tank Rule, 11.39 – Backflow Prevention and Cross Connection Control Rule, and 11.41 – Water Hauler Rule, with amendments to Sections 11.3(38), 11.4(2), 11.5(3)(a)(iv)(A)(V), 11.8(3)(f)(iii), 11.11(3)(c)(i)(B), 11.11(3)(c)(iii), and 11.11(3)(d)(iii). The provisions of the Colorado Revised Statutes (CRS), section 25-1.5-202, provide specific statutory authority for adoption of these regulatory amendments. The Commission also adopted, in compliance with section 24-4-103(4), CRS, the following statement of basis and purpose.

BASIS AND PURPOSE

Background

All suppliers of drinking water in Colorado are subject to regulations adopted by the U.S. Environmental Protection Agency (EPA) under the Safe Drinking Water Act, (42 U.S.C. 300f et seq.) as well as

regulations adopted by the Water Quality Control Commission. Colorado, with the Colorado Department of Public Health and Environment (the Department) as the administering agency, has been granted primary enforcement responsibility (primacy) for the public water system supervision program under the federal Safe Drinking Water Act. The Water Quality Control Division (Division) is part of the Department and is responsible for implementing and enforcing the drinking water regulations that are adopted by the Commission and applicable regulations adopted by the Board of Health. In order to maintain primacy from the EPA, states must also promulgate new regulations that are no less stringent than those adopted by the federal government. In this rulemaking the Commission is adopting the Revised Total Coliform Rule which is no less stringent than the federally-mandated Revised Total Coliform Rule. By retaining primacy, the Department is able to protect the public health by ensuring that public water systems provide safe drinking water to Colorado citizens and visitors.

In addition to adopting the federally-mandated Revised Total Coliform Rule to maintain primacy, this rulemaking also included Colorado-specific requirements for storage tanks, backflow prevention and cross connection control, water haulers, minimum chlorine residual disinfectant concentration in the distribution system, and various other editorial revisions and clarifications. The Commission adopted these revisions to address outstanding waterborne disease outbreak reduction strategies that were developed as a result of the Salmonella outbreak in Alamosa in 2008. As published in the November 2009 report "Waterborne Salmonella Outbreak in Alamosa, Colorado March and April 2008" the following strategies were identified and were addressed with these amendments:

- Revise regulations associated with controlling hazardous cross connections at water systems;
- Enhance oversight of total coliform sampling, water storage, and distribution systems during inspections, and collect inventory information on these facilities;
- Ensure compliance with the requirement for water systems to maintain residual chlorine levels in water distribution systems.

Additionally, with this rulemaking, the Commission adopted the federal revisions to the definition of “lead free” as specified in the Federal Reduction of Lead in Drinking Water Act.

Policies, Handbooks and Guidance and Regulation 11

The Division originally adopted WQCD Policy Number 1, *Implementation Policy Framework* (Policy 1) in November 2010 and the associated *Procedure* 1 in August 2012; both were prepared in accordance with the Colorado Administrative Procedures Act, Article 4, Title 24 of the CRS.

The Commission adopts regulations that create binding norms or legal obligations of the Department or regulated entities. The Department may develop implementation policies and guidance/handbooks where implementation of Regulation 11 may require interpretation, decision-making flexibility, or a stream-lined approach for meeting compliance requirements.

These amendments to Regulation 11 include references to guidance/handbooks that the Department intends to develop as part of ongoing implementation of Regulation 11.

Policy 1 specifically states that implementation policies and associated procedures are not binding regulations and are not to be applied as such. The referenced guidance/handbooks in these amendments are not requirements. Violations or other notices of non-compliance cannot be issued against a policy or guidance/handbook. Violations or other notices of non-compliance can, and will, only be issued for a failure to comply with Regulation 11 or an applicable statute (law) included in the CRS. Implementation policies and guidance/handbooks have no compliance expectation.

Revised Total Coliform Rule

The Commission replaced the Total Coliform Rule in section 11.17 with the Revised Total Coliform Rule in section 11.16. The Revised Total Coliform Rule increases public health protection by requiring a more proactive approach to identifying and fixing issues that make the distribution system vulnerable to microbial contamination, and therefore provide incentives for improved water system operation. The Revised Total Coliform Rule includes the following provisions of the federal regulations as published in the Federal Register, Volume 78, Number 30, February 13, 2013, pages 10270 through 10365, National Primary Drinking Water Regulations:

- Additional definitions and recordkeeping and reporting requirements.
- Treatment technique triggers for Level 1 and Level 2 assessments.
- Additions to the written sampling plan as part of the monitoring plan requirements in section 11.5.
- Start-up procedures for seasonal systems.
- Reporting requirements for *E. coli*-positive special purpose samples.
- Increased routine sampling requirements for non-community groundwater systems supplying less than or equal to (≤) 1,000 people.
- Level 1 and Level 2 assessments.
- Treatment technique violations.
- Additional public notification requirements.

The amendments adopted by the Commission remain as stringent as the federal requirements for the Revised Total Coliform Rule while also establishing requirements that are more protective of public health. Examples of these requirements include the following:

- No allowance for reduced monitoring. Colorado did not adopt the allowance for reduced monitoring in the federal Total Coliform Rule and therefore not allowing reduced monitoring has historically been the Department's practice. Reducing the number of samples collected reduces the likelihood of detecting total coliforms and *E. coli*.
- No waivers will be granted from collecting three routine samples in the month following a total coliform-positive sample result. Collecting these additional routine samples helps identify whether the contamination is still present or if the previous month's activities fixed the problem. Granting a waiver from collecting these samples reduces the likelihood of detecting a persistent issue.
- No allowance for the supplier to forgo *E. coli* testing on a total coliform-positive sample in exchange for assuming that the sample is *E. coli*-positive. Certified laboratories automatically test total coliform-positive samples for *E. coli*. Also, having these data allow the Department to direct the appropriate follow-up activities in response to an *E. coli*-positive sample result.
- Adding a requirement that any special purpose sample that is *E. coli*-positive and is representative of water in the distribution system must be submitted to the Department but will not be used for compliance. This information will alert the Department to the potential of an acute contamination event and allow the Department to respond if necessary.

Minimum Distribution System Residual Disinfectant Concentration

The Centers for Disease Control and Prevention has called providing safe drinking water one of the greatest public health achievements of the 20th century. Colorado has long recognized the use of mandatory disinfection and the maintenance of a chlorine residual throughout distribution systems as necessary for the protection of public health from waterborne diseases. The Commission and the Department agree that the intent of the regulations has always been to actually have a chlorine residual present throughout all distribution systems.

Recently, two disease outbreaks occurred in Colorado - the 2008 salmonella outbreak in Alamosa and the Skyline Ranch norovirus outbreak in 2007. The Alamosa outbreak was particularly serious due to the large number of people who were sickened and one death associated with this particular disease outbreak. Alamosa had a disinfection waiver at the time of the outbreak (which has since been withdrawn) and, as a result, the city's drinking water was not being disinfected and the distribution system maintained no disinfectant residual. An extensive report was developed in the wake of the Alamosa outbreak. This report outlined a combined failure of physical, regulatory and human infrastructure all of which contributed to the outbreak. A key recommendation of this report was that all distribution systems should maintain appropriate disinfectant residual to maintain the final barrier to protect public health.

The Department presented evidence of the occurrence of *E. coli* within drinking water samples and found that there exists over a 300 percent rise in probability of a bacteria sample having *E. coli* when the chlorine residual is less than 0.2 mg/L. Furthermore, between eight and ten percent of samples taken in Colorado are at or below the proposed disinfectant residual limit.

Given the history and statewide practices of distribution system residual maintenance, the threat of waterborne illness, and to protect public health the Commission adopted a minimum allowable residual disinfectant concentration in the distribution system of 0.2 mg/L. The value of 0.2 mg/L includes only one significant digit and therefore any measurement of 0.15 mg/L or greater is compliant with this requirement.

These amendments replace the federal requirements for surface water systems and the Colorado-specific requirements for groundwater systems to maintain a detectable residual disinfectant concentration in the distribution system. The adopted minimum requirement for residual disinfectant concentration in the distribution system of 0.2 mg/L remains no less stringent than the federal standard of a detectable residual disinfectant concentration. The overall goal of these amendments is to further protect the public from microbial contamination and to correct the practice of maintaining less than a reasonable amount of chlorine in distribution systems. Amendments were made to sections 11.8, 11.11, 11.33 and 11.34.

The amendments included the following provisions:

- Replacement of the requirement that the disinfectant residual 'not be undetectable' with the requirement that public water systems maintain a minimum of 0.2 mg/L in the distribution system sampled at the same time as total coliform samples for all public water systems that are required to disinfect in sections 11.8 and 11.11.

- Establishment of a treatment technique violation for failure to comply with the minimum residual disinfectant concentration for only one monitoring period and maintenance of federal violation for failure to comply with the minimum residual disinfectant concentration for two consecutive monitoring periods in sections 11.8 and 11.11.

- Specific language requirements for public notification and consumer confidence reports in sections 11.33 and 11.34 when violations occur.

Backflow Prevention and Cross-connection Control Rule

The Commission amended Regulation 11 to include regulatory requirements for backflow prevention and cross-connection control in section 11.39 that replaces the Cross-connection Control Rule in section 11.37. The Cross-connection Control Rule in section 11.37 was written approximately 30 years ago and provided compliance challenges for public water systems, and for Department staff to determine and assure compliance. The Cross-connection Control Rule in section 11.37 required 100 percent compliance with annual cross connection control device testing requirements. Very few public water systems were able to comply with this unrealistic requirement. These amendments address many outstanding issues with the 30 year old rule including issues brought up by stakeholders during the November 2013 rulemaking; the amendments included the following provisions in sections 11.39, 11.33, and 11.36:

- Development of a written backflow prevention and cross-connection control program.
- Required notification to the Department of any suspected or confirmed backflow contamination event.
- System survey requirements to determine if cross connections are present including a five year compliance schedule for public water systems to build toward full compliance.
- Installation of backflow prevention assemblies or methods on uncontrolled cross connections.
- Annual backflow prevention assembly testing requirements to determine if assemblies are properly functioning including a five year compliance schedule for public water systems to build towards full compliance.
- Annual backflow prevention method inspection requirements to determine if methods are properly functioning.
- Development of an annual backflow prevention and cross-connection control program report.
- Specific language requirements for public notification in section 11.33 when violations occur.
- Recordkeeping requirements.

In considering the above revisions to the Backflow Prevention and Cross-connection Control Rule, the Department took into consideration many of the stakeholder comments. Specifically, stakeholders felt that they should have latitude to develop alternative compliance schedules for controlling cross connections or for surveying their system. The adopted revisions reflect these stakeholder recommendations. In addition, the stakeholder community agreed that the cross connection rule is difficult to implement in either form, and so they concurred with the five year timeline to move into full compliance with the regulation with increasingly stringent performance each year. Stakeholders agreed with lessening the 100 percent compliance requirement to 90 percent compliance after the five year ramp-up period.

Through oversight of the cross connection control program the Division has discovered that many industrial facilities, including domestic wastewater treatment works, have cross connections within their facilities. The internal plumbing of these facilities is not covered by the plumbing code. These cross connections pose a serious health risk to both the employees at these facilities and also visitors to the facilities. The Division believes it is a best industry practice for these facilities to inspect the plumbing within their facilities and as soon as possible control or remove any cross connections.

Storage Tank Rule

The Commission amended Regulation 11 to include regulatory requirements for the inspection of finished water storage tanks in the Storage Tank Rule in section 11.28. Storage tanks are infrastructure assets that require inspections and maintenance throughout their useful life. While EPA discussed including

storage tank requirements when developing the Revised Total Coliform Rule, it ultimately did not directly address storage tank inspection and maintenance in the final Revised Total Coliform Rule. The Commission believes that the Storage Tank Rule provides increased public health protection, since storage tanks that lack inspection and maintenance can present a pathway for microbial contamination.

One person died and 1,300 people got sick during the Alamosa outbreak including about 40 percent of the infants in the city. The outbreak cost millions of dollars and storage tank defects were the likely cause of that outbreak.

The rule is in response to the 2008 Alamosa outbreak as well as hundreds of preventable significant deficiencies that have been identified at storage tanks during sanitary surveys since 2008. The Storage Tank Rule makes it clear that uncorrected sanitary defects in storage tanks are violations and suppliers are required to develop and implement a plan to properly inspect and maintain their storage tanks. This rule is a measured, flexible and appropriate response that was developed with stakeholders and represents best practices that are already in place at many Colorado public water systems.

The adopted revisions, in response to stakeholder concerns, only apply to finished water storage tanks. The Commission believes that raw groundwater tanks and finished water clearwells may still need to be regulated; however the Department will evaluate the need for this as it implements the Storage Tank Rule.

The amendments included the following provisions in sections 11.28, 11.33, and 11.36:

- Development of a written plan for storage tank inspections.
- Requirements to conduct periodic and comprehensive inspections of all finished water storage tanks.
- Requirements to correct sanitary defects identified during periodic and comprehensive inspections.
- Specific language requirements for public notification in section 11.33 when violations occur.
- Recordkeeping requirements.

Water Hauler Rule

The Commission amended Regulation 11 to include regulatory requirements for water haulers which are defined as public water systems that transport drinking water using a vehicle, in section 11.41. On November 26, 1976 EPA published EPA Water System Guidance 6A: “Applicability of the Safe Drinking Water Act to Water Haulers” that clarified that water haulers are public water systems under the Safe Drinking Water Act and therefore are subject to the National Primary Drinking Water Regulations. In May, 1986 the Water Quality Control Division adopted policy DWT-8: “Monitoring Requirements for Water Haulers” to establish specific requirements for water haulers which address their unique drinking water operations. In addition to the policy, the Department has historically applied Regulation 11 to these types of public water systems. The amendments adopted in this rulemaking add regulatory requirements to address the unique operations of water haulers. It is not intended that water haulers not previously regulated will be regulated as a result of these amendments but the Commission does believe that the addition of these requirements to the regulations, instead of in policy, will make the water hauler industry more aware of the applicability of Regulation 11 to their industry.

The amendments adopted include many aspects of policy DWT-8 as well as provisions to comply with Department-approved operational standards.

The amendments included the following provisions in sections 11.16, 11.17, 11.36, and 11.41:

- Total Coliform Rule monitoring.
- Residual disinfectant concentration monitoring.
- Compliance with an Operational Plan.
- Recordkeeping requirements.

During the stakeholder process, water haulers were generally in agreement with the proposed rule. Based on stakeholder input, the adopted revisions include terminology that is consistent with and understood by the water hauler community.

Additional Amendments

The Commission made the following amendments to be consistent with Department practices, to add clarity, or update outdated requirements:

- 11.3(38) - Revisions to the lead free definition to be consistent with the new Federal Reduction of Lead in Drinking Water Act.
- 11.4(2) – Revisions to the siting requirements for waterworks.
- 11.5(3)(a)(iv)(A)(V) - Revisions to the requirements for master meters to be included in the monitoring plan.
- 11.8(3)(f)(iii) – Removal of the allowance for the supplier of a surface water system to not submit entry point chlorine residual measurements.
- 11.11(3)(c)(i)(B), 11.11(3)(c)(iii), and 11.11(3)(d)(iii) – Removal of the allowance for the supplier of a groundwater system to use membrane filters for virus treatment credit.
- All requirements incorporated by reference from 40 CFR 141 were updated to reference 40 CFR 141 as amended on July 1, 2014.
- Typographical errors, renumbering, and updated cross references were revised as necessary throughout Regulation 11.

PARTIES TO THE RULEMAKING

1. City of Boulder
2. City of Colorado Springs and Colorado Springs Utilities
3. Reliable Field Services
4. Colorado Water Utility Council
5. City of Aurora

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Office of the Attorney General

Tracking number: 2014-00992

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

Water Quality Control Commission (1002 Series)

on 03/10/2015

5 CCR 1002-11

REGULATION NO. 11 - COLORADO PRIMARY DRINKING WATER REGULATIONS

The above-referenced rules were submitted to this office on 03/11/2015 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

March 26, 2015 12:57:32

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

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Water Quality Control Commission (1002 Series)

CCR number

5 CCR 1002-21

Rule title

5 CCR 1002-21 REGULATION NO. 21 - PROCEDURAL RULES 1 - eff 04/30/2015

Effective date

04/30/2015

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Water Quality Control Commission

PROCEDURAL RULES

5 CCR 1002-21

21.3 Rulemaking Procedures

. . . .

E. Prehearing Conference

. . . .

2) In accordance with, and by the deadlines specified in the hearing notice, each applicant for party status, where applicable, the Division, and every interested person who intends to call witnesses at the hearing and offer exhibits into the record of the hearing, shall provide one PDF version of a prehearing statement to the Water Quality Control Commission. In addition, everyone who submits a prehearing statement electronically may be required to provide paper copies to the Commission Office in the number and by the deadline established in hearing notice. The hearing notice may establish different deadlines for prehearing statements by rulemaking proponents and by those responding to proposals. A prehearing statement shall contain the following:

a) A specific statement of the factual and legal claims asserted or a list of the issues to be resolved;

b) Copies of all exhibits to be introduced at the hearing;

i) Where the nature of an exhibit is such that providing copies would be unduly burdensome, the prehearing statement shall describe the exhibit and indicate that the exhibit shall be available for inspection at a specified location prior to the hearing. Any such exhibit shall where feasible be made available electronically and also be available for inspection at the prehearing conference and at the hearing, and shall become part of the record of the hearing.

ii) Where a party's or any governmental entity's position or proposal in a hearing is based in part on analysis of water quality data, the party or governmental entity shall submit its analysis of the data and a description of the data upon which the analysis is based, but is not required to submit the raw data into the hearing record. However, the party or governmental entity shall provide an electronically manipulable copy of its data to the Division and any party that requests it. If the Division or any party or governmental entity chooses to submit some or all of the data into the hearing record, the data exhibit may be provided in any electronic format that is on a list maintained by the Commission Office, notwithstanding the requirement to submit the prehearing statement in PDF format as specified above.

c) A list of witnesses to be called and a brief description of their testimony;

d) Any alternative proposal to the proposed rule (Note: The submission of a proposed statement of basis and purpose and regulatory analysis for any alternative proposal is encouraged but not required);

e) All written testimony to be offered into evidence at the hearing.

. . . .

M. Procedures to be Followed in Classifying State Waters, Setting Water Quality Standards and Adopting Control Regulations

. . . .

3) Any person desiring to propose a standard or regulation differing from the standard or regulation proposed by the Commission shall email one PDF version of such other written proposal and, in accordance with the notice of proposed rulemaking may be required to provide paper copies thereof to the Commission as part of a prehearing statement in accordance with section 21.3(E), or, if party status is not applied for, by submission to the Commission Office prior to the prehearing conference. When on file, such proposal shall be open for public inspection.

. . . .

21.4 Adjudicatory Procedures

. . . .

E. Prehearing Conference

. . . .

2) Seven days prior to any prehearing conference, or at such other time as stated in the hearing notice, each party or applicant for party status shall provide one PDF version of a prehearing statement to every other party or applicant for party status, (one copy to the hearing officer, as appropriate), and for hearings before the Commission, to the Commission, the Assistant Attorney(s) General, and the Director of the Water Quality Control Division. In addition, each party or applicant for party status may be required to provide paper copies to the Commission Office in the number and by the deadline established in the hearing notice. The prehearing statement shall contain the following:

a) A specific statement of the factual and legal claims asserted;

b) Copies of all exhibits to be introduced at the hearing;

c) A list of witnesses to be called and a brief description of their testimony, or written testimony for each witness if required by the hearing notice;

d) Proposed findings of fact and conclusions of law, unless a later date for this submission is specified in the hearing notice.

The notice may specify separate deadlines for submission of prehearing statements and rebuttal statements by proponents and opponents of an appeal.

. . . .

PROPOSED BY
WATER QUALITY CONTROL DIVISION

21.40 Statement of Basis, Specific Statutory Authority and Purpose (March 13, 2015 Rulemaking, Effective April 30, 2015)

The provisions of sections 25-8-202 and 401 provide the specific statutory authority for adoption of these regulatory requirements. The Commission also adopted the following statement of basis and purpose.

Basis and Purpose

In this rulemaking, the Commission amended section 21.3(E)(2)(b)(ii) to allow more flexibility in the format in which raw data can be submitted into the hearing record. The requirement that data exhibits be provided to the Commission office in PDF format was modified to allow data exhibits in any electronic format, in accordance with a list maintained by the Commission Office.

In addition, the Commission amended provisions regarding the format in which material must be submitted to the Commission office. The Commission revised language to allow the hearing notice to specify whether or not a paper copy of material must be submitted.

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DAVID C. BLAKE
Chief Deputy Attorney General

MELANIE J. SNYDER
Chief of Staff

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Tracking number: 2014-01156

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

Water Quality Control Commission (1002 Series)

on 03/10/2015

5 CCR 1002-21

REGULATION NO. 21 - PROCEDURAL RULES

The above-referenced rules were submitted to this office on 03/11/2015 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

March 26, 2015 12:58:15

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

Permanent Rules Adopted

Department

Department of Health Care Policy and Financing

Agency

Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)

CCR number

10 CCR 2505-10

Rule title

10 CCR 2505-10 MEDICAL ASSISTANCE - STATEMENT OF BASIS AND PURPOSE, AND RULE HISTORY 1 - eff 05/01/2015

Effective date

05/01/2015

THIS PAGE NOT FOR PUBLICATION

SECRETARY OF STATE
RULES ACTION SUMMARY AND FILING INSTRUCTIONS

SUMMARY OF ACTION ON RULE(S)

1. Department / Agency Name: Health Care Policy and Financing / Medical Services Board
2. Title of Rule: MSB 14-04-15-A, Revision to the Medical Assistnace Rule Concerning Long Term Care Efficiency Rule Review, Sections 8.400 to 8.499
3. This action is an adoption of: an amendment
4. Rule sections affected in this action (if existing rule, also give Code of Regulations number and page numbers affected):

   Sections(s) 8.400 through 8.499, Colorado Department of Health Care Policy and Financing, Staff Manual Volume 8, Medical Assistance (10 CCR 2505-10).
5. Does this action involve any temporary or emergency rule(s)? No
   If yes, state effective date:
   Is rule to be made permanent? (If yes, please attach notice of hearing). Yes

PUBLICATION INSTRUCTIONS*

Replace all current text beginning at §8.400 through the end of §8.497.2.B. This change is effective 05/01/2015.

*to be completed by MSB Board Coordinator

THIS PAGE NOT FOR PUBLICATION

Title of Rule:	Revision to the Medical Assistance Rule Concerning Long Term Care Efficiency Rule Review, Sections 8.400 to 8.499
Rule Number:	MSB 14-04-15-A
Division / Contact / Phone:	Long Term Services and Supports / Micah Jones / 303-866-5185

STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

   The Long Term Care rules define Colorado's Medical Assistance Programs for long term care, including Nursing Facilities, HCBS waivers, Alternative care facilities, and other programs. These regulations have been enacted over the past several decades to address changes in programs available, changes in state policy, and for other reasons.

   In March 2014, the Department of Health Care Policy and Financing (the "Department") completed a review of these rules. This review identified over 300 issues with the rules, ranging from spelling errors, inaccurate citations, invalid incorporations by reference, grammatical errors, and use of outdated terminology.

   This rule change will address the non-substantive issues identified by this review. The changes that are being made in this rule change do not affect the Department's policies, but are solely designed to clean up the rules and make them more reader friendly. The changes include:
   (1) Removing outdated offensive language and replacing it with the contemporary acceptable language.
   (2) Correcting identified spelling errors.
   (3) Correcting identified grammatical errors that do not affect the intent or meaning of the rule provisions.
   (4) Standardizing the format for citations within the rules to state statutes and rules.
   (5) Correcting inaccurate citations within the rules.
   (6) Updating rule language to reflect current practice.

2. An emergency rule-making is imperatively necessary

   ☐ to comply with state or federal law or federal regulation and/or

   ☐ for the preservation of public health, safety and welfare.

3. Federal authority for the Rule, if any:

   42 C.F.R. parts 400-505 and 42. U.S.C. section 1396

4. State Authority for the Rule:

Initial Review	**02/13/2015**	Final Adoption	**03/13/2015**
Proposed Effective Date	**05/01/2015**	Emergency Adoption	

25.5-1-301 through 25.5-1-303, C.R.S. (2014)

THIS PAGE NOT FOR PUBLICATION

Title of Rule:	Revision to the Medical Assistance Rule Concerning Long Term Care Efficiency Rule Review, Sections 8.400 to 8.499
Rule Number:	MSB 14-04-15-A
Division / Contact / Phone:	Long Term Services and Supports / Micah Jones / 303-866-5185

REGULATORY ANALYSIS

1. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

   The persons who will be affected by the proposed rules are all individuals currently receiving or providing long term care services under the Colorado Medical Assistance Act. Since this rule makes no changes to policy, the only impact will be removing offensive language and replacing it with less offensive language, standardizing references within the rules to improve clarity, fixing spelling errors to improve readability, and fixing inaccurate citations to reduce confusion.

2. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

   There will be no quantitative economic impact on the affected persons. The rules changes are not changes in policy, but changes in presentation.

   There may be a positive qualitative impact of the proposed rules. By cleaning up the rules, the rules should be more clear, less confusing, and more easily read. This will reduce frustration for regulated persons in reading and complying with rules, and will make identification of areas for improvement easier.

3. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

   There will be no costs to the Department or any other agency in implementing and enforcing the proposed rules.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

   There are no costs of the proposed rule, and the benefits are clearer, less confusing rules. The costs of inaction are keeping the offensive terminology and non-substantive errors in the rules. There are no costs to affected persons from these rules.

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

There are no less costly or less intrusive methods for achieving the purpose of the proposed rule. The purpose of the proposed rule is to clean up the rule, which can only be accomplished through a rule amendment.

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

   No alternative methods for achieving the purpose of the proposed rule were considered by the Department. The purpose is to clean up the rule, which can only be accomplished by amending the rule.

8.400 LONG TERM CARE

.10 Long term care includes nursing facility care as part of the standard Medicaid benefit package, and Home and Community Based Services provided under waivers granted by the Federal government.

.101 Nursing facility services and Home and Community Based Services are benefits only under Medicaid. Nursing Facility Services and Home and Community Based Services are non-benefits under the Modified Medical Program.

.102 State only funding will pay for nursing facility services for October 1988 and November 1988 for clients under the Modified Medical Program who were residing in a nursing facility October 1, 1988. This is intended to give clients time to qualify for Medicaid.

.103 Until the implementation of SB 03-176 a legal immigrant, as defined in C.R.S. section 25.5-4-103, who received Medicaid services in a nursing facility or through Home and Community Based Services for the Elderly, Blind and Disabled on July 1, 1997, who would have lost Medicaid eligibility due to his/her immigrant status, shall continue to receive services under State funding as long as he/she continues to meet Medicaid eligibility requirements.

.104 If a nursing facility client, who is only eligible for the Modified Medical Program, is making a valid effort to dispose of excess resources but legal constraints do not allow the conversion to happen by December 1, 1988, the client may have 60 additional days to meet SSI eligibility requirements.

.11 Standard Medicaid long term care services are services provided in:

- Skilled care facilities (SNF)
- Intermediate care facilities (ICF)
- Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID)

.12 Home and Community Based Services under the Medicaid Waivers include distinct service programs designed as alternatives to standard Medicaid nursing facility or hospital services for discrete categories of clients. These waivers are Home and Community Based Services Waiver for Persons Who Are Elderly, Blind and Disabled (HCBS-EBD), Home and Community Based Services Waiver for Persons with Spinal Cord Injury (HCBS-SCI), Community Mental Health Supports Waiver (HCBS-CMHS), Home and Community Based Services Waiver for Persons With Brain Injury (HCBS-BI); Home and Community Based Services Waiver for Persons with Developmental Disabilities (HCBS-DD), Supportive Living Services Waiver (HCBS-SLS); Home and Community Based Services Waiver for Children with Autism (HCBS-CWA), Children with Life-limiting Illness Waiver (HCBS-CLLI), Children's Habilitation Residential Program Waiver (HCBS-CHRP), Children Extensive Supports Waiver (HCBS-CES), Children's Home and Community Based Services Waiver (HCBS-CHCBS) and Home and Community Based Services for those inappropriately residing in nursing facilities (OBRA '87)..13 Unless specified by reference to the specific programs described above, the term Home and Community Based Services where it appears in these rules and regulations shall refer to the programs described herein above, and the rules and regulations within this section shall be applicable to all Home and Community Based Services programs.

.14 Nursing facilities are prohibited from admitting any new client who has mental illness or intellectual or developmental disability, as defined in 10 CCR 2505-10 section 8.401.18 Determination Criteria for Mentally Ill or Individuals with an Intellectual or Developmental Disability unless that client has been determined to require the level of services provided by a nursing facility as defined in 10 CCR 2505-10 section 8.401.19.

.15 Clients eligible for Home and Community Based Services are eligible for all Medicaid services including home health services.

.16 Target Population Definitions. For purposes of determining appropriate type of long term services, including home and community based services, as well as providing for a means of properly referring clients to the appropriate community agency, the following target group designations are established:

A. Developmentally Disabled - includes all clients whose need for long term care services is based on a diagnosis of Developmental Disability and Related Conditions, as defined in 10 CCR 2505-10 section 8.401.18.

B. Mentally Ill - includes all clients whose need for long term care is based on a diagnosis of mental disease as defined in 10 CCR 2505-10 section 8.401.18.

C. Functionally Impaired Elderly - includes all clients who meet the level of care screening guidelines for SNF or ICF care, and who are age 65 or over. Clients who are mentally ill, as defined in 10 CCR 2505-10 section 8.401.18, shall not be included in the target group of Functionally Impaired Elderly, unless the person's need for long term care services is primarily due to physical impairments that are not caused by any diagnosis included in the definition of mental illness at 10 CCR 2505-10 section 8.401.18, and determined by Utilization Review Contractor from the medical evidence.

D. Physically Disabled or Blind Adult - includes all clients who meet the level of care screening guidelines for SNF or ICF care, and who are age 18 through 64. Clients who are developmentally disabled or mentally ill, as defined in 10 CCR 2505-10 section 8.401.18, shall not be included in the Physically Disabled or Blind target group, unless the person's need for long term care services is primarily due to physical impairments not caused by any diagnosis included in the definition of intellectual or developmental disability or mental illness at 10 CCR 2505-10 section 8.401.18, as determined by Utilization Review Contractor from the medical evidence.

E. Persons Living with AIDS - includes all clients of any age who meet either the nursing home level of care or acute level of care screening guidelines for nursing facilities or hospitals, and have the -diagnosis of Human Immunodeficiency Virus (HIV) or Acquired Immune Deficiency Syndrome (AIDS). Clients who are diagnosed with HIV or AIDS may alternatively request to be designated as any other target group for which they meet the definitions above.

.17 Services in Home and Community Based Services programs established in accordance with federal waivers shall be provided to clients in accordance with the Utilization Review Contractor determined target populations as defined herein above.

8.401 LEVEL OF CARE SCREENING GUIDELINES

.01 The client must have been found by the Utilization Review Contractor to meet the applicable level of care guidelines for the type of services to be provided.

.02 The Utilization Review Contractor shall not make a level of care determination unless the recipient has been determined to be Medicaid eligible or an application for Medicaid services has been filed with the County Department of Social/Human services.

.03 Payment for skilled (SNF) and intermediate nursing home care (ICF) and Home and Community Based Services will only be made for clients whose functional assessment and frequency of need for skilled and maintenance services meet the level of care guidelines for long term care.

.04 Payment for care in an intermediate care facility for individuals with intellectual disabilities (ICF/IID) will only be made for developmentally disabled clients whose programmatic and/or health care needs meet the level of care guidelines for the appropriate class of ICF/IIDs. Payment for Home and Community Based Services for the Developmentally Disabled will only be made for developmentally disabled clients who meet the level of care guidelines for long term care services for the developmentally disabled.

.05 Services provided by nursing facilities are available to those clients that meet the guidelines below and are not identified as mentally ill or individuals with an intellectual or developmental disability by the Determination Criteria for Mentally Ill or Individuals with an Intellectual or Developmental Disability in 10 CCR 2505-10 10 CCR 2505-10 section 8.401.18.

8.401.1 GUIDELINES FOR LONG TERM CARE SERVICES (CLASS I SNF AND ICF FACILITIES, HCBS-EBD, *HCBS-CMHS, HCBS-BI, Children's HCBS, HCBS-CES, HCBS-DD, HCBS-SLS, HCBS-CHRP*, and Long Term Home Health)

.11 The guidelines for long term care are based on a functional needs assessment in which individuals are evaluated in at least the following areas of activities of daily living:

- Mobility
- Bathing
- Dressing
- Eating
- Toileting
- Transferring
- Need for supervision

.12 Skilled services shall be defined as those services which can only be provided by a skilled person such as a nurse or licensed therapist or by a person who has been extensively trained to perform that service.

.13 Maintenance services shall be defined as those services which may be performed by a person who has been trained to perform that specific task, e.g., a family member, a nurses' aide, a therapy aide, visiting homemaker, etc.

.14 Skilled and maintenance services are performed in the following areas:

- Skin care
- Medication
- Nutrition
- Activities of daily living
- Therapies
- Elimination
- Observation and monitoring

A. The Utilization Review Contractor shall certify as to the functional need for the nursing facility level of care. A Utilization Review Contractor reviews the information submitted on the ULTC 100.2 and assigns a score to each of the functional areas described in 10 CCR 2505-10 section 8.401.11. The scores in each of the functional areas are based on a set of criteria and weights approved by the State which measures the degree of impairment in each of the functional areas. When the score in a minimum of two ADLs or the score for one category of supervision is at least a (2), the Utilization Review Contractor may certify that the person being reviewed is eligible for nursing facility level of care.

B. The Utilization Review Contractor's review shall include the information provided by the functional assessment screen.

C. A person's need for basic Medicaid benefits is not a proper consideration in determining whether a person needs long term care services (including Home and Community Based Services).

D. The ULTC 100.2 shall be the comprehensive and uniform client assessment process for all individuals in need of long term care, the purpose of which is to determine the appropriate services and levels of care necessary to meet clients' needs, to analyze alternative forms of care and the payment sources for such care, and to assist in the selection of long term care programs and services that meet clients' needs most cost-efficiently.

LONG TERM CARE ELIGIBILITY ASSESSMENT

General Instructions: To qualify for Medicaid long term care services, the recipient/applicant must have deficits in 2 of 6 Activities of Daily Living, ADLs, (2+ score) or require at least moderate (2+ score) in Behaviors or Memory/Cognition under Supervision.

ACTIVITIES OF DAILY LIVINGI. BATHING

Definition: The ability to shower, bathe or take sponge baths for the purpose of maintaining adequate hygiene.

ADL SCORING CRITERIA

☐0=The client is independent in completing the activity safely.
☐1=The client requires oversight help or reminding; can bathe safely without assistance or supervision, but may not be able to get into and out of the tub alone.
☐2=The client requires hands on help or line of sight standby assistance throughout bathing activities in order to maintain safety, adequate hygiene and skin integrity.
☐3=The client is dependent on others to provide a complete bath.

Due To: (Score must be justified through one or more of the following conditions)

Physical Impairments :	☐Open Wound
☐Pain	☐Stoma Site
☐Sensory Impairment	Supervision:
☐Limited Range of Motion	☐Cognitive Impairment
☐Weakness	☐Memory Impairment
☐Balance Problems	☐Behavior Issues
☐Shortness of Breath	☐Lack of Awareness
☐Decreased Endurance	☐Difficulty Learning
☐Falls	☐Seizures
☐Paralysis	Mental Health:
☐Neurological Impairment	☐Lack of Motivation/Apathy
☐Oxygen Use	☐Delusional
☐Muscle Tone	☐Hallucinations
☐Amputation	☐Paranoia

Comments:

II. DRESSING

Definition: The ability to dress and undress as necessary. This includes the ability to put on prostheses, braces, anti-embolism hose or other assistive devices and includes fine motor coordination for buttons and zippers. Includes choice of appropriate clothing for the weather. Difficulties with a zipper or buttons at the back of a dress or blouse do not constitute a functional deficit.

ADL SCORING CRITERIA

☐0= The client is independent in completing activity safely.
☐1=The client can dress and undress, with or without assistive devices, but may need to be reminded or supervised to do so on some days.
☐2= The client needs significant verbal or physical assistance to complete dressing or undressing, within a reasonable amount of time.
☐3= The client is totally dependent on others for dressing and undressing

Due To: (Score must be justified through one or more of the following conditions)

Physical Impairments: ☐Pain ☐Sensory Impairment ☐Limited Range of Motion ☐Weakness ☐Balance Problems ☐Shortness of Breath ☐Decreased Endurance ☐Fine Motor Impairment ☐Paralysis ☐Neurological Impairment ☐Bladder Incontinence ☐Bowel Incontinence ☐Amputation ☐Oxygen Use ☐Muscle Tone	☐Open Wound Supervision: ☐Cognitive Impairment ☐Memory Impairment ☐Behavior Issues ☐Lack of Awareness ☐Difficulty Learning ☐Seizures Mental Health: ☐Lack of Motivation/Apathy ☐Delusional ☐Hallucinations ☐Paranoia

Comments:

III. TOILETING

Definition: The ability to use the toilet, commode, bedpan or urinal. This includes transferring on/off the toilet, cleansing of self, changing of apparel, managing an ostomy or catheter and adjusting clothing.

ADL SCORING CRITERIA

☐0=The client is independent in completing activity safely.
☐1=The client may need minimal assistance, assistive device, or cueing with parts of the task for safety, such as clothing adjustment, changing protective garment, washing hands, wiping and cleansing.
☐2=The client needs physical assistance or standby with toileting, including bowel/bladder training, a bowel/bladder program, catheter, ostomy care for safety or is unable to keep self and environment clean.
☐3=The client is unable to use the toilet. The client is dependent on continual observation, total cleansing, and changing of garments and linens. This may include total care of catheter or ostomy. The client may or may not be aware of own needs.

Due To: (Score must be justified through one or more of the following conditions)

Physical Impairments :	☐Ostomy
☐Pain	☐Catheter
☐Sensory Impairment	Supervision Need:
☐Limited Range of Motion	☐Cognitive Impairment
☐Weakness	☐Memory Impairment
☐Shortness of Breath	☐Behavior Issues
☐Decreased Endurance	☐Lack of Awareness
☐Fine Motor Impairment	☐Difficulty Learning
☐Paralysis	☐Seizures
☐Neurological Impairment	Mental Health:
☐Bladder Incontinence	☐Lack of Motivation/Apathy
☐Bowel Incontinence	☐Delusional
☐Amputation	☐Hallucinations
☐Oxygen Use	☐Paranoia
☐Physiological defect	
☐Balance	
☐Muscle Tone	
☐Impaction	

Comments:

IV. MOBILITY

Definition: The ability to move between locations in the individual's living environment inside and outside the home. Note: Score client's mobility without regard to use of equipment other than the use of prosthesis.

ADL SCORING CRITERIA

☐0=The client is independent in completing activity safely.
☐1=The client is mobile in their own home but may need assistance outside the home.
☐2=The client is not safe to ambulate or move between locations alone; needs regular cueing, stand-by assistance, or hands on assistance for safety both in the home and outside the home.
☐3=The client is dependent on others for all mobility.

Due To: (Score must be justified through one or more of the following conditions)

Physical Impairments:	Supervision Need:
☐Pain	☐Cognitive Impairment
☐Sensory Impairment	☐Memory Impairment
☐Limited Range of Motion	☐Behavior Issues
☐Weakness	☐Lack of Awareness
☐Shortness of Breath	☐Difficulty Learning
☐Decreased Endurance	☐Seizures
☐Fine or Gross Motor Impairment	☐History of Falls
☐Paralysis	Mental Health:
☐Neurological Impairment	☐Lack of Motivation/Apathy
☐Amputation	☐Delusional
☐Oxygen Use	☐Hallucinations
☐Balance	☐Paranoia
☐Muscle Tone	

Comments:

V. TRANSFERRING

Definition: The physical ability to move between surfaces: from bed/chair to wheelchair, walker or standing position; the ability to get in and out of bed or usual sleeping place; the ability to use assisted devices, including properly functioning prosthetics, for transfers. Note: Score Client's ability to transfer without regard to use of equipment.

ADL SCORING CRITERIA

☐0=The client is independent in completing activity safely.
☐1=The client transfers safely without assistance most of the time, but may need standby assistance for cueing or balance; occasional hands on assistance needed.
☐2=The client transfer requires standby or hands on assistance for safety; client may bear some weight.
☐3=The client requires total assistance for transfers and/or positioning with or without equipment.

Due To: (Score must be justified through one or more of the following conditions)

Physical Impairments:	Supervision Need:
☐Pain	☐Cognitive Impairment
☐Sensory Impairment	☐Memory Impairment
☐Limited Range of Motion	☐Behavior Issues
☐Weakness	☐Lack of Awareness
☐Balance Problems	☐Difficulty Learning
☐Shortness of Breath	☐Seizures
☐Falls	Mental Health:
☐Decreased Endurance	☐Lack of Motivation/Apathy
☐Paralysis	☐Delusional
☐Neurological Impairment	☐Hallucinations
☐Amputation	☐Paranoia
☐Oxygen Use	

Comments:

VI. EATING

Definition: The ability to eat and drink using routine or adaptive utensils. This also includes the ability to cut, chew and swallow food. Note: If a person is fed via tube feedings or intravenously, check box 0 if they can do independently, or box 1, 2, or 3 if they require another person to assist.

ADL SCORING CRITERIA

☐0=The client is independent in completing activity safely
☐1=The client can feed self, chew and swallow foods but may need reminding to maintain adequate intake; may need food cut up; can feed self if food brought to them, with or without adaptive feeding equipment.
☐2=The client can feed self but needs line of sight standby assistance for frequent gagging, choking, swallowing difficulty; or aspiration resulting in the need for medical intervention. The client needs reminder/assistance with adaptive feeding equipment; or must be fed some or all food by mouth by another person.
☐3=The client must be totally fed by another person; must be fed by another person by stomach tube or venous access.

Due To: (Score must be justified through one or more of the following conditions)

Physical Impairments: ☐Pain ☐Sensory Impairment ☐Limited Range of Motion ☐Weakness ☐Shortness of Breath ☐Decreased Endurance ☐Paralysis ☐Neurological Impairment ☐Amputation ☐ Oxygen Use ☐Fine Motor Impairment ☐Poor Dentition ☐Tremors ☐Swallowing Problems ☐Choking ☐Aspiration	☐Tube Feeding ☐IV Feeding Supervision Need: ☐Cognitive Impairment ☐Memory Impairment ☐Behavior Issues ☐Lack of Awareness ☐Difficulty Learning ☐Seizures Mental Health: ☐Lack of Motivation/Apathy ☐Delusional ☐Hallucinations ☐Paranoia

Comments:

VII. SUPERVISION

A. Behaviors

Definition: The ability to engage in safe actions and interactions and refrain from unsafe actions and interactions (Note, consider the client's inability versus unwillingness to refrain from unsafe actions and interactions).

Scoring Criteria

☐0=The client demonstrates appropriate behavior; there is no concern.
☐1=The client exhibits some inappropriate behaviors but not resulting in injury to self, others and/or property. The client may require redirection. Minimal intervention is needed.
☐2=The client exhibits inappropriate behaviors that put self, others or property at risk. The client frequently requires more than verbal redirection to interrupt inappropriate behaviors.
☐3=The client exhibits behaviors resulting in physical harm to self or others. The client requires extensive supervision to prevent physical harm to self or others.

Due To: (Score must be justified through one or more of the following conditions)

Physical Impairments:	Supervision needs:
☐Chronic Medical Condition	☐Short Term Memory Loss
☐Acute Illness	☐Long Term Memory Loss
☐Pain	☐Agitation
☐Neurological Impairment	☐Aggressive Behavior
☐Choking	☐Cognitive Impairment
☐Sensory Impairment	☐Difficulty Learning
☐Communication Impairment (not inability to speak English)	☐Memory Impairment
Mental Health:	☐Verbal Abusiveness
☐Lack of Motivation/Apathy	☐Constant Vocalization
☐Delusional	☐Sleep Deprivation
☐Hallucinations	☐Self-Injurious Behavior
☐Paranoia	☐Impaired Judgment
☐Mood Instability	☐Disruptive to Others
	☐Disassociation
	☐Wandering
	☐Seizures
	☐Self Neglect
	☐Medication Management

Comments:

B. Memory/Cognition Deficit

Definition: The age appropriate ability to acquire and use information, reason, problem solve, complete tasks or communicate needs in order to care for oneself safely.

Scoring Criteria

☐0= Independent no concern
☐1= The client can make safe decisions in familiar/routine situations, but needs some help with decision making support when faced with new tasks, consistent with individual's values and goals.
☐2= The client requires consistent and ongoing reminding and assistance with planning, or requires regular assistance with adjusting to both new and familiar routines, including regular monitoring and/or supervision, or is unable to make safe decisions, or cannot make his/her basic needs known.
☐3= The client needs help most or all of time.

Due To: (Score must be justified through one or more of the following conditions)

Physical Impairments: ☐Metabolic Disorder ☐Medication Reaction ☐Acute Illness ☐Pain ☐Neurological Impairment ☐Alzheimer's/Dementia ☐Sensory Impairment ☐Chronic Medical Condition ☐Communication Impairment (does not include ability to speak English) ☐Abnormal Oxygen Saturation ☐Fine Motor Impairment Supervision Needs: ☐Disorientation ☐Cognitive Impairment ☐Difficulty Learning ☐Memory Impairment	☐Self-Injurious Behavior ☐Impaired Judgment ☐Unable to Follow Directions ☐Constant Vocalizations ☐Perseveration ☐Receptive Expressive Aphasia ☐Agitation ☐Disassociation ☐Wandering ☐Lack of Awareness ☐Seizures ☐Medication Management Mental Health: ☐Lack of Motivation/Apathy ☐Delusional ☐Hallucinations ☐Paranoia ☐Mood Instability

Comments:

8.401.18 PRE-ADMISSION SCREENING AND ANNUAL RESIDENT REVIEW (PASRR) AND SPECIALIZED SERVICES FOR INDIVIDUALS WITH MENTAL ILLNESS OR INDIVIDUALS WITH AN INTELLECTUAL OR DEVELOPMENTAL DISABILITY

.181 Purpose of Program

A. The PASRR program requires pre-screening or reviewing of all clients who apply to or reside in a Medicaid certified nursing facility regardless of:

1. The source of payment for the nursing facility services; or

2. The individual's or resident's diagnosis.

B. The purpose of the PASRR Level I Identification screening is to identify for further review all those clients seeking nursing facility admission, for whom it appears a diagnosis of mental illness or intellectual or developmental disability is likely.

C. The purpose of the PASRR Level II evaluation is to evaluate and determine whether nursing facility services are needed, whether an individual has mental illness or intellectual or developmental disability and whether specialized mental health or intellectual or developmental disability services are needed.

.182 Definitions

A. Mental Illness

1. [Removed per S.B. 03-088, 26 CR 7]

2. A major mental disorder is defined as: A primary diagnosis of schizophrenic, paranoid, major affective, schizoaffective disorders or other psychosis.

3. An individual is considered to not have mental illness if he/she has:

   a. a primary diagnosis of dementia (including Alzheimer's disease or a related disorder); or

   b. a non-primary diagnosis of dementia (including Alzheimer's disease or a related disorder) without a primary diagnosis of serious mental illness, or intellectual or developmental disability or a related condition.

B. Intellectual or developmental disability and Related Conditions

[Removed per S.B. 03-088, 26 CR 7]

1. Intellectual or developmental disability refers to significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental years.

2. The provisions of this section also apply to individuals with "related conditions," as defined by 42 C. F. R. section 435.1010 (2013) which states: "Persons with related conditions" means individuals who have a severe, chronic disability that meets all of the following conditions:

   a. It is attributable to:

      1) Cerebral palsy or epilepsy; or

      2) Any other condition, other than mental illness, found closely related to intellectual or developmental disability. These related conditions result in impairment of general intellectual functioning or adaptive behavior similar to individuals with intellectual or developmental disability, and require treatment or services similar to those required for these individuals.

   b. It is manifested before the individual reaches age 22.

   c. It is likely to continue indefinitely.

   d. It results in substantial functional limitations in three or more of the following areas of major life activity:

      1) Self-care,

      2) Understanding and use of language,

      3) Learning,

      4) Mobility,

      5) Self-direction or

      6) Capacity for independent living.

8.401.183 Requirements for the PASRR Program

A. The Level of Care determination and the Level I screening reviews shall be required by the Utilization Review Contractor prior to admission to a Medicaid certified nursing facility.

B. The Utilization Review Contractor admission start date (the first date of care covered by Medicaid) shall be assigned after the required Level II PASRR evaluation is completed and the Utilization Review Contractor certifies the client is appropriate for nursing facility care. The admission start date for individuals who do not requiring a Level II evaluation shall be the date that the Initial Screening and Intake Form and Professional Medical Information pages from the ULTC 100.2 are faxed to the Single Entry Point.

C. Individuals other than Medicaid eligible recipients, who require a Level II evaluation, shall have the Level II evaluation prior to admission. The Level II contractor shall perform the evaluation. The Level II contractor can be a qualified mental health professional, a corporation that specializes in mental health, the community mental health center, or the community centered board.

D. The Level II contractor shall conduct a review and determination for individuals or clients found to be mentally ill or retarded who have had a change in mental health or developmental disabled status.

E. PASRR findings, as related to care needs, shall be coordinated with the nursing facility federally prescribed, routine Resident Assessments (Minimum Data Set) requirements. These requirements are described at 42 C.F.R. part 483.20 (October 1, 2000 edition), which is hereby incorporated by reference. The incorporation of 42 C.F.R. part 483.20 excludes later amendments to, or editions of, the referenced material. The Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at: Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, CO 80203. Certified copies of incorporated materials are provided at cost upon request.

8.401.184 Nursing Facilities Responsibilities Under the PASRR Program

A. The Utilization Review Contractor/Single Entry Point shall complete the Level I screening on the functional assessment form for Medicaid clients. The nursing facility shall complete the Level I screening for non-Medicaid individuals admitted from the community or pay source change. The hospital shall complete the Level I for non-Medicaid individuals admitted to nursing facility from the hospital. Medicaid Level I information is on the Level I screen in the ULTC-100.2 and is submitted to the Utilization Review Contractor with the rest of the Level of Care information. Private pay Level I information that indicates the resident may be mentally ill or individuals with an intellectual or developmental disability is submitted to the Utilization Review Contractor as well on the ULTC-100.2.

B. Nursing facility staff shall be trained in which diagnoses, medications, history and behaviors would result in a positive finding in a Level I screening (e.g., a Yes response to a psychiatric diagnosis or history).

C. Following review of information on the Functional Assessment form, the Utilization Review Contractor determines whether a Level II evaluation is necessary and notifies the facility.

D. If a Level II evaluation is necessary, the facility and the Level II contractor shall assure that the Level II is completed. Level II PASRR evaluations shall be done at no cost to the individual or facility by the Level II contractor for that geographic area.

E. If the individual is determined to be mentally ill or individuals with an intellectual or developmental disability as a result of the Level II, the nursing facility shall retain the results of the Level II in the resident's charts. The Level II evaluation shall be updated when the resident's condition changes. The Level II evaluations must be kept current in the resident's charts.

F. If a Level II evaluation is not required, documentation must be completed on the reasons a Level II one was not done and retained in the resident's chart.

G. The resident's chart shall contain the following information:

1. The psychiatric evaluation and/or Colorado Assessment Review form (COPAR);

2. The findings; and

3. The determination letter (from either mental health or intellectual or developmental disability authorities).

H. The nursing facility shall assure that the diagnoses are current and accurate by reconciling in the resident's record any diagnoses conflicting with the PASRR Level II diagnosis.

I. The nursing facility is responsible to arrange for services based on service recommendations from the Level II evaluation.

J. Nursing Facilities may contact the local community mental health centers or community center boards to make arrangements for the provisions of Specialized Services as indicated on the Level II reviews. Furthermore, nursing facilities are prohibited from providing Specialized Services.

.185 The State Survey and Certification Process

A. The State Survey and Certification Process will be used to determine whether the resident had the following:

1. A comprehensive Level I and Level II assessment;

2. An appropriate care plan; and

3. Specialized treatment, if needed.

B. The Colorado Department of Public Health and Environment (CDPHE) shall conduct the PASRR program surveys in accordance with the Agency Agreement between CDPHE and the Department.

.186 Responsibilities of the Utilization Review Contractor in Determining Level of Care

A. For private pay and nursing facility residents on admission with indications of mental illness or intellectual or developmental disability, the Utilization Review Contractor shall first determine appropriate admission to a nursing facility through the following process:

1. A Level of Care review;

2. The Level I identification screen verification;

3. A Categorical determination, if appropriate; and

4. A Level II referral, if appropriate.

B. A nursing facility placement shall be considered appropriate when the following conditions are met:

1. An individual's needs are such that he or she passes the Level of Care screen for admission and the individual is seeking Medicaid reimbursement; and

2. The Level I and II screens indicate nursing facility placement is appropriate.

8.401.19 LEVEL I IDENTIFICATION SCREEN

.191 The Level I Screen criteria shall be as follows:

A. The Level I Screen, used by the Utilization Review Contractor to identify those who may be mentally ill shall, be applied under the following conditions:

1. The individual has a diagnosis of mental illness as defined above; and/or

2. The individual has a recent (within the last two years) history of mental illness, as defined above; and/or

3. A major tranquilizer, anti-depressant or psychotropic medication has been prescribed regularly without a justifiable diagnosis of neurological disorder to warrant the medication; and/or

4. There is presenting evidence of mental illness (except a primary diagnosis of Alzheimer's disease or dementia) including possible disturbances in orientation, affect, or mood, as determined by the Utilization Review Contractor.

B. The Level I Screen, used by the Utilization Review Contractor to identify those who may be individuals with an intellectual or developmental disability or individuals with related conditions, shall be applied under the following conditions:

1. The individual has a diagnosis of intellectual or developmental disability or related conditions as defined above; and/or

2. There is a history of intellectual or developmental disability or related conditions, as defined above, in the individual's past; and/or

3. There is presenting evidence (cognitive or behavior functions) of intellectual or developmental disability or related conditions; and/or

4. The individual is referred by an agency that serves individuals with intellectual or developmental disability or related conditions, and the individual has been determined to be eligible for that agency's services.

.192 When the results of the Level I Screen indicate the individual may have mental illness or intellectual or developmental disability or related conditions, the individual must undergo the additional PASRR Level II evaluation specified below, unless one or more of the following is determined by the Utilization Review Contractor:

A. There is substantial evidence that the individual is not mentally ill or individuals with an intellectual or developmental disability; or

B. A categorical determination is made that:

1. The individual has:

a. A primary diagnosis of dementia, including Alzheimer's Disease or a related disorder;

b. The above must be substantiated based on a neurological examination.

2. The individual is terminally ill (i.e., the physician documents that the individual has less than six months to live).

3. An individual is in need of convalescent care.

    a. Convalescent care is defined as:

        1) A discharge from an acute care hospital;

        2) An admission for a prescribed, limited nursing facility stay for rehabilitation or convalescent care; and

        3) An admission for a medical or surgical condition that required hospitalization.

    b. If an individual is determined to need convalescent care, the Utilization Review Contractor must follow-up to determine if the individual still needs convalescent care (and the following must occur, including):

        1) A referral shall be made for a Level II evaluation if the individual remains in the nursing facility for longer than 60 days;

        2) The above referral shall be made to the appropriate community mental health center or community centered board or other designated agencies; and

        3) The individual shall receive a Level II evaluation within 10 calendar days of the referral.

4. An individual is severely ill.

    a. An individual is considered severely ill if he or she is:

        1) comatose;

        2) ventilator dependent;

        3) in a vegetative state.

    b. The following PASRR criteria must be met when an individual is severely ill:

        1) A Mental Health referral shall be made and a Level II evaluation shall be completed if the individual no longer meets the above criteria as determined by the Utilization Review Contractor.

        2) An Intellectual or developmental disability Level II referral shall be made and an evaluation shall be completed within 60 days of admission, even if the individual meets the above criteria as determined for severely ill by the Utilization Review Contractor.

5. Emergency procedure in C.R.S. section 27-65-105, et. seq., shall supersede the PASRR process. When the State Mental Health authorities, pursuant to C.R.S. section 27-65-106, et.seq., determine that an individual requires inpatient psychiatric care and qualifies under the emergency procedures for a hold and treat order, this procedure shall supersede the PASRR determination process.

.193 For individuals or residents who may have mental illness or intellectual or developmental disability as determined through the Level I screen and who are referred by the State authorities or designees for a PASRR Level II evaluation, the following applies:

A. The designated agencies completing the Level I screen shall send a written notice to the individual or resident and to his or her legal representative stating the Level I findings.

B. The Level I notice to the individual or resident shall be required if the Level I findings result in a referral for a Level II evaluation.

C. The Level I findings are not an appealable action.

.194 Categorical determinations which may delay a Level II referral shall not prevent the nursing facility from meeting the psychosocial, physical and medical needs of the resident.

.195 Categorical Determinations may be applied only if an individual is in no danger to him/herself or others.

8.401.20 LEVEL II PASRR EVALUATION

.201 The purpose of the Level II evaluation is to determine whether:

A. Each individual with mental illness or intellectual or developmental disability requires the level of services provided by a nursing facility.

B. An individual has a major mental illness or is individuals with an intellectual or developmental disability.

C. The individual requires a Specialized Services program for the mental illness or intellectual or developmental disability.

.202 Basic Requirements for LEVEL II PASRR Evaluations and Determinations include:

A. The State Mental Health authority shall make determinations of whether individuals with mental illness require specialized services that can be provided in a nursing facility as follows:

1. The determination must be based on an independent physical and mental evaluation.

2. The evaluation must be performed by an individual or entity other than the State Mental Health authority.

B. The State Intellectual or developmental disability authority shall conduct both the evaluation and the determination functions of whether individuals with intellectual or developmental disability require specialized services that can be provided in nursing facilities.

C. The PASRR Level II contractor shall complete the evaluation within 10 working days of the referral from the Utilization Review Contractor.

D. PASRR determinations made by the State Mental Health or Intellectual or developmental disability authorities cannot be countermanded by the Department through the claims payment process or through other utilization control/review processes, or by CDPHE, survey and certification agency, or by any receiving facility or other involved entities.

E. The Final Agency action by the Department may overturn a PASRR adverse determination made by State Mental Health or Intellectual or developmental disability authorities.

F. Timely filing of PASRR billings from providers is 120 days.

.203 An individual meets the requirements of a Depression Diversion Screen.

A. A Depression Diversion Screen shall be applied under the following conditions:

1. Depression is the only Level I positive finding (i.e. a depression diagnosis is the only Yes checked on the Level I screen); and

2. The Utilization Review Contractor or the PASRR Level II Contractor for that geographic area shall make the determination of need for a Depression Diversion Screen.

B. The nursing facilities are not authorized to apply the Depression Diversion Screen.

C. When a non-major mental illness depression is validated as the only Level I positive finding through the Depression Diversion Screen, a complete Level II referral and evaluation is not required unless the individual's condition changes.

.204 Appeals Hearing Process for the PASRR Program

A. A resident has appeal rights when he or she has been adversely affected by a PASRR determination as a result of the Level II evaluation made by the State Mental Health or Intellectual or developmental disability authorities either at Pre- admission Screening or at Annual Resident Review.

B. Adverse determinations related to PASRR mean a determination made in accordance with sections 1919(b)(3)(F) or 1919(e)(7)(B) of the Social Security Act that:

1. The individual does not require the level of services provided by a Nursing Facility; and/or

2. The individual does or does not require Specialized Services for mental illness or intellectual or developmental disability.

3. Section 1919 of the Social Security Act (1935) (42 U.S.C. section 1396r) is hereby incorporated by reference. The incorporation of 42 U.S.C. section 1396r excludes later amendments to, or editions of, the referenced material. The Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at: Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, CO 80203. Certified copies of incorporated materials are provided at cost upon request.

C. Appeals of Level of Care determination are processed through the Appeals section related to the Utilization Review Contractor's Level of Care process in 10 CCR 2505-10 section 8.057.

D. For adverse actions related to the need for Specialized Services, the individual or resident affected by the mental illness or mental-retardation determination may appeal through procedures established for appeals in the Recipient Appeals and Hearings section of 10 CCR 2505-10 section 8.057.

.205 The Level II PASRR Evaluation Process

A. The Utilization Review Contractor shall refer all Medicaid clients and private pay individuals who require a Level II evaluation, to the PASRR Level II contractor.

1. The PASRR Level II contractor shall complete the Level II evaluation..

2. The State Medicaid program shall pay for the private pay evaluations.

3. Nursing facilities shall not complete the Level II evaluation.

4. The findings of these evaluations shall be returned to the Utilization Review Contractor for review and referral to the State Mental Health and/or Intellectual or developmental disability authorities for final review and determination.

B. Evaluations shall be adapted to the cultural background, language, ethnic origin and means of communication used by the individual.

C. The Level II Mental Illness Evaluation for Specialized Services shall consist of the following:

1. A comprehensive medical examination of the individual. The examination shall address the following areas:

a. A comprehensive medical history;

b. An examination of all body systems; and

c. An examination of the neurological system which consists of an evaluation in the following areas:

1) Motor functioning;

2) Sensory functioning;

3) Gait and deep tendon reflexes;

4) Cranial nerves; and

5) Abnormal reflexes.

d. In cases of abnormal findings, additional evaluations shall be conducted by appropriate specialists; and

e. If the history and physical examinations are not performed by a physician, then a physician must review and concur with the conclusions and sign the examination form.

2. A psychosocial evaluation of the individual, which at a minimum, includes an evaluation of the following:

a. Current living arrangements;

b. Medical and support systems; and

c. The individual's total need for services are such that:

1) The level of support can be provided in an alternative community setting; or

2) The level of support is such that nursing facility placement is required.

3. A Functional Assessment shall be completed on the individual's ability to engage in activities of daily living.

4. A comprehensive psychiatric evaluation, at a minimum, must address the following areas:

a. A comprehensive drug history is obtained on all current or immediate past utilization of medications that could mask symptoms or use of medications that could mimic mental illness;

b. A psychiatric history is obtained;

c. An evaluation is completed of intellectual functioning, memory functioning, and orientation;

d. A description is obtained on current attitudes, overt behaviors, affect, suicidal or homicidal ideation, paranoia and degree of reality testing (presence and content of delusions, paranoia and hallucinations); and

e. Certification status under provisions at C.R.S. section 27-65-107 et.seq. and need for in-patient emergency psychiatric care shall be assessed. If an individual qualifies under the emergency provisions in the statute, emergency proceedings shall be considered. This action shall supersede any PASRR activity.

5. If the psychiatric evaluation is performed by a professional other than a psychiatrist, then a psychiatrist's countersignature shall be required.

6. The Mental Health evaluation shall identify all medical and psychiatric diagnoses which require treatment, and should include copies of previous discharge summaries from the hospital or nursing facility charts (during the past two years).

7. The Mental Health determination process shall insure that a qualified mental health professional, as designated by the State, must validate the diagnosis of mental illness and determine the appropriate level of mental health services needed.

D. The Level II Intellectual or developmental disability or related conditions evaluation for Specialized Services shall consist of the following:

1. A comprehensive medical examination review so that the following information can be identified:

a. A list of the individual's medical problems;

b. The level of impact on the individual's independent functioning;

c. A list of all current medications; and

d. Current responses to any prescribed medications in the following drug groups:

1) Hypnotics,

2) Anti-psychotics (neuroleptics),

3) Mood stabilizers and anti-depressants,

4) Antianxiety-sedative agents, and

5) Anti-Parkinsonian agents.

2. The Intellectual or developmental disability process must assess:

a. Self-monitoring of health status;

b. Self-administering and/or scheduling of medical treatments;

c. Self-monitoring of nutrition status;

d. Self-help development such as: toileting, dressing, grooming, and eating);

e. Sensorimotor development such as: ambulation, positioning, transfer skills, gross motor dexterity, visual motor/perception, fine motor dexterity, eye-hand coordination, and extent to which prosthetic, orthotic, corrective or mechanical supportive devices improve the individual's functional capacity);

f. Speech and language (communication) development, such as: expressive language (verbal and nonverbal), receptive language (verbal and nonverbal), extent to which non-oral communication systems improve the individual's functional capacity, auditory functioning, and extent to which amplification devices (e.g., hearing aid) or a program of amplification improve the individual's functional capacity);

g. Social development, such as: interpersonal skills, recreation-leisure skills, and relationships with others;

h. Academic/educational development, including functional learning skills;

i. Independent living development such as: meal preparation, budgeting and personal finances, survival skills, mobility skills (orientation to the neighborhood, town, city), laundry, housekeeping, shopping, bed making, care of clothing, and orientation skills (for individuals with visual impairments); and

j. Vocational development, including present vocational skills;

k. Affective development (such as: interests, and skills involved with expressing emotions, making judgments, and making independent decisions); and

l. Presence of identifiable maladaptive or inappropriate behaviors of the individual based on systematic observation (including, but not limited to, the frequency and intensity of identified maladaptive or inappropriate behaviors).

3. The Level II Intellectual or developmental disability evaluation shall insure that a psychologist, who meets the qualifications of a qualified intellectual or developmental disability professional completes the following:

    a. The individual's intellectual functioning measurement shall be identified; and

    b. The individual's intellectual or developmental disability or related condition shall be validated.

4. The Level II Intellectual or developmental disability evaluation shall identify to what extent the individual's status compares with each of the following characteristics, commonly associated with need for specialized services including:

    a. The inability to:

        1) Take care of most personal care needs;

        2) Understand simple commands;

        3) Communicate basic needs and wants;

        4) Be employed at a productive wage level without systematic long term supervision or support;

        5) Learn new skills without aggressive and consistent training;

        6) Apply skills learned to a training situation to other environments or settings without aggressive and consistent training; or

        7) Demonstrate behavior appropriate to the time, situation or place, without direct supervision.

    b. Demonstration of severe maladaptive behavior(s) which place the individual or others in jeopardy to health and safety;

    c. Inability or extreme difficulty in making decisions requiring informed consent; and

    d. Presence of other skill deficits or specialized training needs which necessitate the availability of trained intellectual or developmental disability personnel, 24 hours per day, to teach the individual functional skills.

5. The Intellectual or developmental disability evaluation shall collect information to determine whether the individual's total needs for services are such that:

    a. The level of support may be provided in an alternative community setting; or

    b. The level of support is such that nursing facility placement is required.

6. The Intellectual or developmental disability evaluation shall determine whether the individuals with an intellectual or developmental disability individual needs a continuous Specialized Services program.

.206 PASRR Findings from Level II Evaluations

A. PASRR Level II findings shall include the following documentation:

1. The individual's current functional level must be addressed;

2. The presence of diagnosis, numerical test scores, quotients, developmental levels, etc. shall be descriptive; and

3. The findings shall be made available to the family or designated representatives of the nursing facility resident, the parent of the minor individual or the legal guardian of the individual.

B. PASRR Findings from the Level II Evaluations shall be used by the Utilization Review Contractor in making determinations whether an individual with mental illness or intellectual or developmental disability is appropriate or inappropriate for nursing facility care, and

C. The individual shall be referred back to the Utilization Review Contractor for a determination of the need for long term care services if at any time it is found that the individual is not mentally ill or individuals with an intellectual or developmental disability, or has a primary diagnosis of dementia or Alzheimer's disease or related disorders or a non-primary diagnosis of dementia (including Alzheimer's disease or a related disorder) without a primary diagnosis of serious mental illness, or intellectual or developmental disability or a related condition.

D. The results of the PASRR evaluation shall be described in a report by the State Mental Health or Intellectual or developmental disability authorities, which includes:

1. The name and professional title of the person completing the evaluation, and the date on which each portion of the evaluation was administered.

2. A summary of the medical and social history including the individual's positive traits or developmental strengths and weaknesses or developmental needs.

3. The mental health services and/or intellectual or developmental disability services required to meet the individual's identified needs;

4. If specialized services are not recommended, any specific services identified which are of a lesser intensity than specialized services required to meet the evaluated individual's needs;

5. If specialized services are recommended, the specific services identified required to meet each one of the individual's needs; and

6. The basis for the report's conclusions.

E. Copies of the evaluation report will be made available to:

1. The individual and his or her legal representative;

2. The appropriate state authorities who make the determination;

3. The admitting or retaining nursing facility;

4. The individual's attending physician; and

5. The discharge hospital, if applicable.

.207 PASRR Determinations from the Level II Evaluation

A. Determinations which may result in admissions and/or specialized services shall include:

1. If an individual meets the level of care and needs the level of services provided in a nursing facility, as determined by the Utilization Review Contractor, and is determined not mentally ill or individuals with an intellectual or developmental disability, the individual may be admitted to the facility.

2. If an individual does not meet the level of care (as determined by the Utilization Review Contractor), and is determined to not be mentally ill or individuals with an intellectual or developmental disability through the PASRR determination and is not seeking Medicaid reimbursement, the individual may be admitted to the facility.

3. If the determination is that a resident or applicant for admission to a nursing facility requires BOTH the nursing facility level of care and specialized mental health or intellectual or developmental disability services, as determined by the Utilization Review Contractor and the State Mental Health and Intellectual or developmental disability authorities:

a. The individual may be admitted or retained by the nursing facility; and

b. The State Mental Health or Intellectual or developmental disability authorities shall provide or arrange for the provision of specialized services needed by the individual while he or she resides in the nursing facility.

4. Nursing facilities admitting residents requiring specialized mental health or intellectual or developmental disability services shall be responsible for assuring the provisions of services to meet all the resident needs identified in the Level II evaluations. The provisions of services shall be monitored through the State's survey and certification process.

B. Determinations which may result in denial of admission include:

1. If an individual does not require nursing facility services and is seeking Medicaid reimbursement, the individual cannot be admitted to the nursing facility.

2. If the determination is that an individual requires neither the level of services provided in a nursing facility nor specialized services, the nursing facility shall:

a. Arrange for the safe and orderly discharge of the resident from the facility; and

b. Prepare and orient the resident for the discharge.

c. Provide the resident with a written notice of the action to be taken and his or her grievance and appeal rights under the procedure found at section C.R.S. section 25-1-120 entitled "Nursing facilities - rights of patients".

C. If the determination is that a resident does not require nursing facility services but requires specialized services, the following action shall be taken:

1. For long term residents who have resided continuously in a nursing facility at least 30 months before the date of the first annual review determination and who require only specialized services, the nursing facility, in cooperation with the resident's family or legal representative and care givers, shall complete the following:

    a. The resident shall be offered the choice of remaining in the facility or receiving services in an alternative appropriate setting; and

    b. The resident shall be informed of institutional and non-institutional alternatives; and

    c. The effect on eligibility for Medicaid services shall be clarified if the resident chooses to leave the facility, including the effect on readmission to the facility; and

    d. The provision of specialized services shall be provided for, or arranged regardless of the resident's choice of living arrangements.

2. For short term residents who require only specialized services and who have not resided in a nursing facility for 30 continuous months before the date of PASRR determination, the nursing facility, in conjunction with the State Mental Health or Intellectual or developmental disability authority, in cooperation with the resident's family or legal representative and caregivers, shall complete the following:

    a. The safe and orderly discharge of the resident from the facility shall be arranged;

    b. The resident shall be prepared and oriented for the discharge; and

    c. A written notice shall be given to the resident notifying him or her of the action to be taken and of his or her grievance and appeal rights.

    d. The provision of specialized services shall be provided or arranged, regardless of the resident's choice of living arrangements.

D. Any individual with mental illness, determined through the PASRR process, to be in need of in-patient psychiatric hospitalization, shall not be admitted to the nursing facility until treatment has been received and the individual certified as no longer needing in-patient psychiatric hospitalization.

8.401.21 SPECIALIZED SERVICES FOR INDIVIDUALS WITH MENTAL ILLNESS OR INDIVIDUALS WITH AN INTELLECTUAL OR DEVELOPMENTAL DISABILITY

.211 Specialized Services shall include the following requirements:

A. Community Mental Health Centers and Community Centered Boards shall be authorized by the State to provide specialized services to individuals in Medicaid nursing facilities.

B. These services shall be reimbursed by the Medicaid program to the community mental health centers or community centered boards through Department of Institutions. The cost of these services shall not be reported on the Nursing Facility cost report.

C. Specialized services may be provided by agencies other than community mental health centers or community centered boards or other designated agencies on a fee for service basis, but the cost of these services shall not be included in the Medicaid cost report or the Medicaid rate paid to the nursing facility.

.212 Specialized Services for Individuals with Mental Illness shall be defined as services, specified by the State, which include:

A. Specified services combined with the services provided by the nursing facility, resulting in a program designed for the specific needs of eligible individuals who require the services.

B. An aggressive, consistent implementation of an individualized plan of care.

.213 Specialized services shall have the following characteristics:

A. The specialized services and treatment plan must be developed and supervised by an interdisciplinary team which includes a physician, a qualified mental health professional and other professionals, as appropriate.

B. Specific therapies, treatments and mental health interventions and activities, health services and other related services shall be prescribed for the treatment of individuals with mental illness who are experiencing an episode of severe mental illness which necessitates supervision by trained mental health personnel.

.214 The intent of these specialized services is to:

A. Reduce the applicant or resident's behavioral symptoms that would otherwise necessitate institutionalization.

B. Improve the individual's level of independent functioning.

C. Achieve a functioning level that permits reduction in the intensity of mental health services to below the level of specialized services at the earliest possible time.

.215 Levels of Mental Health services shall be provided, as defined by the State, including Enhanced and General Mental Health services.

.216 Specialized Services for Individuals with Intellectual or developmental disability shall be defined as a continuous program for each individual which includes the following:

A. An aggressive, consistent implementation of a program of specialized and generic training, specific therapies or treatments, activities, health services and related services, as identified in the plan of care.

B. The individual program plan includes the following:

1. The acquisition of the behaviors necessary for the individual to function with as much self determination and independence as possible; and

2. The prevention or deceleration of regression or loss of current optimal functional status.

8.401.4 GUIDELINES FOR INSTITUTIONS FOR MENTAL DISEASES (IMD's)

.41 DEFINITION

"Institution for Mental Diseases" (IMD) as defined in the Medicaid regulations at 42 C.F.R. section 435.1010 (2013), is an institution of more than sixteen (16) beds that is primarily engaged in providing diagnosis, treatment or care of persons with mental diseases, including medical attention, nursing care and related services. Whether an institution is an institution for mental diseases is determined by its overall character as that of a facility established and maintained primarily for the care and treatment of individuals with mental diseases, whether or not it is licensed as such.

.42 CRITERIA USED FOR DETERMINATION OF IMD STATUS

The primary criteria for the determination of the IMD status of an institution is that more than fifty percent (50%) of all patients in the facility have primary diagnoses of major mental illness as determined by the Level II Pre-Admission Screening and Resident Review (PASRR) process which is verified by the Utilization Review Contractor.

The State has defined the following diagnostic codes contained in the DSM IV as valid for the purpose of determining whether an individual has a "mental disease":

295.10 through 295.90

296.0 through 296.9

297.10

298.9

300.40

301.13

[Removed per S.B. 03-088, 26 CR 7]

Additional criteria applied for the purpose of IMD determination are as follows:

A. The facility is licensed as a psychiatric facility for the care and treatment of individuals with mental diseases;

B. The facility is accredited as a psychiatric facility by the Joint Commission for Accreditation for Health Care Organizations (JCAHCO);

C. The facility is under the jurisdiction of the state's mental health authority;

D. The facility specializes in providing psychiatric/psychological care and treatment as ascertained through a review of patients' records; and

E. The current need for institutionalization for more than 50 percent of all patients in the facility results from major mental diseases.

Facilities that meet the primary "50%" criterion at a minimum are at serious risk of being classified as an IMD by the State and federal government. However, facilities meeting any lesser criteria may or may not be at risk of being identified as an IMD.

The assurance that a facility is not an IMD is included in all nursing facility contracts.

.43 FFP DISALLOWANCE

FFP is not available for any medical assistance under Title XIX for individuals between the ages of 21 and 65 who are patients in an IMD. The Department, in cooperation with CDPHE, will monitor long term care facilities to determine whether any facility has a census of primary psychiatric patients in excess of fifty percent (50%) of its total census. Facilities whose psychiatric census approaches this fifty percent (50%) limit will be so notified by the Department. Should an on-site review by the Department document a psychiatric census in excess of fifty percent (50%) of total census in a facility, Medicaid reimbursement shall be denied for all residents between the ages of 21 and 65 until the Department determines that the facility is no longer an IMD.

.44 ADMINISTRATIVE PROCEDURES AND REQUIREMENTS

In order to determine whether a nursing home facility is an IMD the following administrative procedures and requirements are necessary:

A. All nursing homes shall indicate on the patient's medical record the primary, secondary and tertiary diagnoses (as applicable) of all their patients, Medicaid and private pay. All medical records shall contain this information no later than three calendar months after the effective date of this regulation.

B. All nursing homes shall report discharges to the Utilization Review Contractor. Discharge information shall include the name of the person, state identification number if applicable, discharge destination, date, payment source Utilization Review Contractor and primary and secondary diagnoses. Discharges of all patients shall be reported within one week of discharge. Discharge is defined to mean death, transfers, discharge to home, and absent without leave.

C. CDPHE shall use the medical records diagnosis information to determine the percentage of patients with mental diseases. In cases where the percentage is higher than 40%, a notice of the potentially high percentage shall be sent to the Department and Utilization Review Contractor.

d.(1) In cases where the percentage is over 40% and less than 50% the nursing home will be instructed by the Department to provide admission data and discharge data on all private pay as well as Medicaid patients to the Utilization Review Contractor. The admission and discharge data is necessary on all patients so that the entire psychiatric census of the facility can be determined and monitored by the Utilization Review Contractor.

(2) In cases where the percentage of psychiatric patients appears to be exceeding or about to exceed 50%, the Department may instruct the Utilization Review Contractor to deny admission authorization for Medicaid patients with psychiatric diagnoses. The facility shall be notified of the Department's intent to limit admissions to only non-psychiatric patients at least five (5) days in advance of the action. The facility may appeal this action in accordance with the regulations at 10 CCR 2505-10 section 8.050 et seq..

e.(1) In cases where the percentage of psychiatric patients in the census of the facility is over fifty (50) percent, and/or the facility meets some of the other criteria, the Department shall conduct an audit of the facility to determine if it is primarily engaged in the care and treatment of persons with mental diseases (i.e. an institution for mental diseases). The basis of such a finding shall be the criteria described in the regulations. This audit shall be conducted with assistance from CDPHE and shall include medical personnel with the necessary qualifications to determine the primary characterization of a facility.

e.(2) Should the audit indicate a finding that the facility is an Institution for Mental Disease, then all Medicaid funding for patients between the ages of 21 and 65 shall be denied. Furthermore, should the audit indicate the facility has been an IMD for a period of time prior to the time the audit was undertaken, the facility shall refund to the Medicaid program one hundred percent (100%) of the payments for patients between the ages of 21 and 65. Under no circumstances shall the refund extend to periods of time before the

effective date of the GUIDELINES FOR INSTITUTIONS FOR MENTAL DISEASES, issued April, 1987.

f. The Department shall make arrangements with the Medicaid patients of the facility determined to be an IMD to do any of the following:

(1) Relocate Medicaid patients between the ages of 21 and 65 in accordance with the regulations entitled NURSING HOME RESIDENT/CLIENT RELOCATION PLAN.

(2) Relocate a sufficient number of psychiatric patients from the facility so as to reduce the facility's psychiatric census to below 50%. Such relocation shall be completed in accordance with the NURSING HOME RESIDENT/CLIENT RELOCATION PLAN.

g. A nursing home facility determined to be an IMD may appeal such a finding in accordance with the regulations at 10 CCR 2505-10 section 8.050 et seq.. In cases where the administrative law judge issues a stay of the agency's action to terminate Medicaid payments to a provider, such an order of stay shall clearly indicate that should the State's IMD finding be correct, the facility shall repay the State one hundred percent (100%) of Medicaid payments it received during the period of the stay. In order to assure that such a payment shall be made, the administrative law judge shall require the facility to post a bond in the amount of one hundred percent (100%) of the anticipated nursing home payment for each month the stay is in effect.

8.401.50 GUIDELINES FOR CLASS V REHABILITATION FACILITIES

Section deleted eff. 3/01/02

8.402 ADMISSION PROCEDURES FOR LONG TERM CARE

8.402.01 PRE-ADMISSION REVIEW (NOT FOR DEVELOPMENTAL DISABILITIES)

When a physician or designee wishes to obtain skilled or maintenance services for a client, he/she shall contact the regional Utilization Review Contractor (URC). The Utilization Review Contractor will request and record information about the client's condition and the proposed treatment plan.

In order to promote the most appropriate placement of developmentally disabled clients when skilled or maintenance services are sought, the physician shall, unless an emergency admission is required, refer the client to the Residential Referral and Placement Committee (RR/PC) for the area served by the Community Centered Board (CCB) where the client resides. Class I services shall be authorized by the Utilization Review Contractor only when the following requirements have been met:

a. The RR/PC determines in collaboration with the physician and the client or the client's designated representative that Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) services or services available through Home and Community Based Services for the Developmentally Disabled (HCBS-DD) are not appropriate to meet the health care needs of the client.

b. ICF/IID or HCBS-DD services are not available if such services are appropriate.

c. The physician and the client or the client's designated representative chooses Class I services in preference to services available specifically for developmentally disabled clients, and the client meets the level of care criteria for these services.

Referrals by physicians of developmentally disabled clients for Class I services without review by the RR/PC will not be certified by the Utilization Review Contractor for Medicaid reimbursement. Clients for whom ICF/IID or HCBS-DD services are appropriate as defined in 10 CCR 2505-10

section 8.401.18, subject to the physician's and the client's or the client's designated representative concurrence, shall be referred immediately to the Utilization Review Contractor and to the appropriate Community Centered Board under the provisions at 10 CCR 2505-10 section 8.405.

.02 After reviewing the information taken from the physician or his designee, the Utilization Review Contractor shall assign a target group designation based upon the primary reason for which long term care services are needed. The Utilization Review Contractor shall follow the target group designations established at 10 CCR 2505-10 section 8.402.32(A) through 8.402.32(D).

8.402.10 ADMISSION PROCEDURES FOR CLASS I NURSING FACILITIES

.11 The URC/SEP shall certify a client for nursing facility admission after a client is determined to meet the functional level of care and passes the PASRR Level 1 screen requirements for long term care. However, the URC/SEP shall not certify a client for nursing facility admission unless the client has been advised of long term care options including Home and Community Based Services as an alternative to nursing facility care.

.12 The medically licensed provider must complete the necessary documentation prior to the client's admission.

.13 The ULTC 100.2 and other transfer documents concerning medical information as applicable, must accompany the client to the facility.

.14 The nursing facility or hospital shall notify the URC/SEP agency of the pending admission by faxing or emailing the appropriate form. The date the form is received by the URC/SEP agency shall be the effective start date if the client meets all eligibility requirements for Medicaid long term care services.

.15 The URC/SEP case manager shall determine the client's length of stay using the appropriate form developed by the Department. The length of stay shall be less than a year, one year or indefinite. All indefinite lengths of stay shall be approved by the case manager's supervisor.

.16 The URC/SEP agency shall notify in writing all appropriate parties of the initial length of stay assigned. Appropriate parties shall include, but are not limited to, the client or the client's designated representative, the attending physician, the nursing facility, the Fiscal Agent, the appropriate County Department of Social/Human Services, the appropriate community agency, and for clients within the developmentally disabled or mentally ill target groups, the Department of Human Services or its designee.

.17 The nursing facility shall be responsible for tracking the length of stay end date so that a timely reassessment is completed by the URC/SEP.

.18 The Utilization Review Contractor will determine the start date for nursing facility services. The start date of eligibility for nursing facility services shall not precede the date that all the requirements (functional level of care, financial eligibility, disability determination) have been met.

8.402.30 ADMISSION PROCEDURES FOR HOME AND COMMUNITY BASED SERVICES

.31 When the client meets the level of care requirements for long term care, is currently living in the community, and could possibly be maintained in the community, the URC/SEP agency shall immediately communicate with the appropriate community agency, according to the URC/SEP agency-determined target group, for an evaluation for alternative services. The URC/SEP agency shall forward a copy of the worksheet plus a State prescribed disposition form to the agency either immediately after the telephone referral, or in place of the telephone referral.

.32 Based upon information obtained in the pre-admission review, the URC/SEP case manager shall make the referral to the appropriate community agency based on the client's target group designation, as defined below:

A. Individuals determined by the URC/SEP agency to be in the Mentally Ill target group, regardless of source, shall be referred to the appropriate community mental health center or clinic.

B. Individuals determined by the Utilization Review Contractor to be in the Functionally Impaired Elderly target group or the Physically Disabled or Blind target group shall be referred to the appropriate Single Entry Point agency for evaluation for Home and Community Based Services for the Elderly, Blind and Disabled (HCBS-EBD).

C. Individuals identified by the Utilization Review Contractor to be in the Developmentally Disabled target group shall be referred to the appropriate Community Centered Board.

D. Individuals determined by the Utilization Review Contractor to be in the Persons Living with AIDS target group shall be referred to the appropriate single entry point agency for evaluation for HCBS-EBD.

E. The Utilization Review Contractor shall notify any clients referred to case management agencies of the referral, the provisions of the program, and shall inform them of the complaint procedures.

.33 The case management agency or community mental health center or clinic shall complete an evaluation for alternative services within five (5) working days of the referral by the Utilization Review Contractor.

.34 Single Entry Point agencies shall conduct the evaluation in accordance with the procedures at 10 CCR 2505-10 sections 8.486 and 8.390.

.35 Community Centered Boards shall conduct the evaluation in accordance with procedures at 10 CCR 2505-10 section 8.500.

.36 Community mental health centers and clinics shall conduct the evaluation in accordance with Standards/Rules and Regulations for Mental Health 2 CCR 502-1 section 21.940 and Rules and Regulations Concerning Care and Treatment of the Mentally Ill, 2 CCR 502-1 section 21.280.

.37 If the community agency develops an approved plan for long term care services, the Utilization Review Contractor will approve one (1) certification for long term care services and the client shall be placed in alternative services. Following receipt of the fully completed ULTC 100.2, the Utilization Review Contractor will review the information submitted and make a certification decision. If certification is approved, the Utilization Review Contractor shall assign an initial length of stay for alternative services. If certification is denied, the decision of the Utilization Review Contractor may be appealed in accordance with 10 CCR 2505-10 section 8.057 through 8.057.8.

.38 If the appropriate community agency cannot develop an approved plan for long term care services, the Utilization Review Contractor will approve certification for long term care services and utilize the procedure for nursing home admissions described previously in this section.

8.402.40 ADMISSION TO NURSING FACILITY WITH REFERRAL FOR COMMUNITY SERVICES

.41 When a client who meets the level of care requirements for long term care is currently hospitalized but could possibly be maintained in the community, certification shall be issued. The client may be placed in the nursing facility, given a short length of stay and immediately referred

to the appropriate community agency for evaluation for alternative services in accordance with the procedure described in the preceding section.

8.402.50 DENIALS (ALL TARGET GROUPS)

.51 When, based on the pre-admission review, the client does not meet the level of care requirements for skilled and maintenance services, certification shall not be issued. The client shall be notified in writing of the denial.

.52 If the Utilization Review Contractor denied long term care certification based upon the information on the ULTC 100.2, written notification of the denial shall be sent to the client, the attending physician, and the referral source (hospital, nursing facility, etc.).

If the information provided on the ULTC 100.2 indicates the client does meet the level of care requirements, the Utilization Review Contractor shall proceed with the admission and/or referral procedures described above.

.53 Denials of certification for long term care may be appealed in accordance with the procedures described at 10 CCR 2505-10 section 8.057 through 8.057.8.

.54 Denial of designation into a specifically requested target group may also be appealed in accordance with 10 CCR 2505-10 section 8.057 through 8.057.8.

8.402.60 CONTINUED STAY REVIEWS: SKILLED AND MAINTENANCE SERVICES

.61 The Utilization Review Contractor shall authorize all skilled nursing facility and intermediate care facility services, Home and Community Based Services for the Elderly, Blind and Disabled, and mental health clinic services when such services are appropriate and necessary for eligible clients. The Utilization Review Contractor may also limit the period for which covered long term care services are authorized by specifying finite lengths of stay, and may perform periodic continued stay reviews, when appropriate, given the eligibility, functional and diagnostic status of any eligible Client.

.62 Continued stay reviews shall, at a minimum, be conducted as frequently as necessary for the purpose of reviewing and re-establishing eligibility for all Home and Community Based Services waiver programs, in accordance with all applicable statutes, regulations and federal waiver provisions.

.63 The frequency of the continued stay reviews and the determination of length of stay for nursing facilities may be conducted for the purpose of program eligibility. The process for these decisions will be prescribed in criteria developed by the Department.

.64 Continued stay reviews for long term care clients receiving HCBS-EBD or mental health clinic services may be conducted more frequently at the request of the case manager, client, authorized representative, or the behavioral health organization.

.65 The Continued Stay Review will follow the same procedures found at section 8.401.11-.17(H) and if applicable, section 8.485.61(B)(3).

.66 As a result of the continued stay review, the Utilization Review Contractor shall renew or deny certification.

8.403 LONG TERM CARE - SERVICES TO THE DEVELOPMENTALLY DISABLED

Long term care services for the developmentally disabled include institutional services available through Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) and Home and Community Based Services for the Developmentally Disabled (HCBS-DD). These specialized services

are available to Medicaid eligible clients who meet the target group designation for the developmentally disabled, and meet the level of care guidelines described below.

8.403.1 LEVEL OF CARE GUIDELINES FOR LONG TERM CARE SERVICES FOR THE DEVELOPMENTALLY DISABLED

Level of care guidelines for programs for the developmentally disabled are used to determine if the profile of a client's programmatic and/or medical needs are appropriate to a specific ICF/IID nursing home class or equivalent set of HCBS-DD services.

.11 Clients shall be certified for admission to a specific class of ICF/IID or equivalent set of HCBS-DD services based on the following criteria:

A. Minimum/Moderate - developmentally disabled clients who exhibit the following characteristics:

1. Have deficiencies in adaptive behavior that preclude independent living and require a supervised sheltered living environment;

2. Need supervision and training in self help skills and activities of daily living, but do not display excessive behavior problems which are disruptive to other residents or which prevent participation in group or community activities;

3. Are capable of attending appropriate day services or engaging in sheltered or competitive employment; and,

4. Are capable of being maintained in a community-based setting.

Clients certified at this level of care may be provided Class II ICF/IID services or those HCBS-DD services as set forth in the regulations at 10 CCR 2505-10 section 8.500.

B. Specialized Intensive - developmentally disabled individuals whose psychological, behavioral, and/or developmental needs require 24-hour supervision, and who have potential for movement to a less restrictive living arrangement within 24 months (on the average). These individuals must conform to one of the profiles described below:

1. Behavior development profile:

- Function at a severe to moderate overall level of retardation;

- May present a danger to self or others in the absence of supervision and habilitative services;

- Display severe maladaptive and/or anti-social behaviors, and may have exhibited delinquent behaviors;

- May display destructive or physically aggressive behaviors;

- Need specialized behavior management, counseling, and supervision;

2. Social emotional development profile:

- Function at a moderate to mild overall level of retardation.

- Exhibit severe social and emotional problems attributable to a mental disorder.

- May be verbally abusive and/or physically aggressive toward self, others, or property.

- May display run-away, withdrawal, and/or bizarre behavior attributable to a mental disorder;

- Need social, adaptive, and intensive mental health services.

3. Intensive developmental profile:

- Function at a profound to severe level of intellectual or developmental disability;

- Exhibit severe deficiencies in behaviors such as eating, dressing, hygiene, toileting, and communication;

- May display inappropriate social and/or interpersonal behaviors;

- Need intensive self-management and adaptive behavior training.

Additionally, these individuals are capable of functioning in a community-based setting.

Clients certified at this level of care may be provided Class II or Class IV ICF/IID services or those HCBS-DD services as provided in the regulations at 10 CCR 2505-10 section 8.500.

C. Intensive Medical/Psychosocial - developmentally disabled individuals who have intensive medical and psychosocial needs that require highly structured, in house, comprehensive, medical, nursing and psychological treatment. These individuals must meet at least one of the following requirements:

1. Exhibits extreme deficiencies in adaptive behaviors in association with profound or severe retardation or in association with medical problems requiring availability of medical life support services on a continuous basis; and/or

   Exhibits maladaptive behavior(s) potentially injurious to self or others to the degree that intensive programming in an institutional or closed setting is required; and

   Inappropriate for placement in less restrictive settings, such as minimum/moderate or specialized intensive community based services, due to the nature and/or severity of their handicaps.

2. Appropriate for service in less restrictive community residential programs, but all local and statewide avenues for alternative placement have been investigated and exhausted prior to referral to a Class IV facility. Plans for eventual community placement have been established;

3. Committed by court action to a Regional Center under the Division for Developmental Disabilities, Department of Institutions.

Clients certified at this level of care may be provided Class IV ICF-MR services or HCBS-DD services as provided in the regulations at 10 CCR 2505-10 section 8.500.

8.404 ADMISSION CRITERIA: PROGRAMS FOR THE DEVELOPMENTALLY DISABLED

8.404.1 Clients needing ICF/IID and HCBS/DD level of care are those who:

A. Require aggressive and consistent training to develop, enhance or maintain skills for independence (e.g., on-going reliance on supervision, guidance, support and reassurance); or

B. Are generally unable to apply skills learned in training situations to other settings and environments; or

C. Generally cannot take care of most personal care needs, cannot make basic needs known to others, and cannot understand simple commands, (e.g., requires assistance or prompts in bathing and/or dressing, neglects to wear protective clothing, does not interact appropriately with others, speaks in muffled/unclear manner, fails to take medications correctly, confuses values of coins, spends money inappropriately); or

D. Are unable to work at a competitive wage level without support,(e.g., specially trained managers, job coach, or wage supplements) and are unable to engage appropriately in social interactions (e.g., alienates peers by teasing, arguing or being cruel, does not make decisions); or

E. Are unable to conduct themselves appropriately when allowed to have time away from the facility's premises (e.g., loses self-control when s/he cannot get what s/he wants, performs destructive acts, unsafe crossing streets or following safety signs) or

F. Have behaviors that would put self or others at risk for psychological or physical injury.

.11 Clients needing placement in an ICF/IID are those who require an active treatment program. An active treatment program is defined as the aggressive, consistent implementation of a program of specialized and generic training, treatment, health services and related services that is directed toward:

A. The acquisition of the behaviors necessary for the client to function with as much self-determination and independence as possible; and

B. The prevention or deceleration of regression or loss of current optimal functional status.

.12 Clients needing placement in the HCBS/DD program are those who require an active habilitation program. Active habilitation is determined by assessing that the quantity, quality, and importance of a client's opportunities for independence, social integration, and responsible decision making are being provided consistent with his/her needs and directed toward:

A. The acquisition of the behaviors necessary for the client to function with as much self-determination and independence as possible; and

B. The prevention or deceleration of regression or loss of current optimal functional status.

8.404.2 CONTINUED STAY REVIEW CRITERIA: PROGRAMS FOR THE DEVELOPMENTALLY DISABLED

Same as admission criteria unless the individual needs the help of an ICF/IID to continue to function independently because s/he has learned to depend upon the programmatic structure it provides. The fact that s/he is not yet independent, even though s/he can be, makes it

appropriate for s/he to receive active treatment services directed at achieving needed and possible independence.

8.404.3 Adherence to the following sections of CDPHE and/or Division for Developmental Disabilities rules and regulations are critical to the provision of active treatment and active habilitation:

A. Assessments

B. Individual habilitation plans

C. Individual program plans

D. Community integration

E. Independence training

F. Behavior management

G. Psychotropic medication use

For individuals needing placement in the ICF/IID facility and HCBS/DD Program, a list of specific services or interventions needed in order to make progress must be provided.

8.405 ADMISSION PROCEDURES: PROGRAMS FOR THE DEVELOPMENTALLY DISABLED

.10 PREADMISSION REVIEW

For admission to ICF/IID facilities or the provision of services through programs of Home and Community Based Services for the Developmentally Disabled (HCBS-DD), Developmentally Disabled clients must be evaluated by the Residential Referral/ Placement Committee (RR/PC) serving the Community Centered Board (CCB) in the area where the client resides. If services will be provided through a CCB in another area, the client shall be evaluated by that area's RR/PC.

The client shall be referred by the RR/PC to the Utilization Review Contractor for admission review and to the appropriate County Department of Social/Human Services for determination of Medicaid eligibility. The Utilization Review Contractor shall not determine admission certification under Medicaid for any Developmentally Disabled client in the absence of a referral from the RR/PC except for emergency admissions to the Class I facilities.

.11 The RR/PC evaluation must contain background information as well as currently valid assessments of functional, developmental, behavioral, social, health, and nutritional status to determine if the facility can provide for the client's needs and if the client is likely to benefit from placement in the facility.

.12 RR/PC ADVERSE RECOMMENDATION

In cases where the RR/PC declines to recommend placement of a developmentally disabled individual into an ICF/IID facility or equivalent HCBS-DD services, the RR/PC shall inform the client of the recommendation using the HCBS-DD-21 Form. The RR/PC shall also notify the client or the client's designated representative of the client's right to request a formal Utilization Review Contractor level of care review.

The client shall have thirty (30) days from the postmark date of the notice to request a formal Utilization Review Contractor review. If the client requests a formal Utilization Review Contractor level of care review, the RR/PC shall submit the required documentation plus any new documentation submitted by the client to the Utilization Review Contractor. The Utilization Review

Contractor shall review and make a level of care determination in accordance with the admission procedures below.

8.405.2 ADMISSION PROCEDURES FOR ICF/IID FACILITIES

.21 When the client, based on RR/PC review, cannot reasonably be expected to make use of ICF/IID or Home and Community Based Services for the Developmentally Disabled, the RR/PC shall notify the physician and the Utilization Review Contractor. The physician and the Utilization Review Contractor/Community Center Board (URC/CCB) agency then proceed with the SNF or ICF placement under the provisions set forth at 10 CCR 2505-10 section 8.402.10 through 10 CCR 2505-10 section 8.402.16.

22 When the RR/PC determines that a client is not appropriately served through HCBS-DD services or, in accordance with provisions permitting the client or the client's designated representative to choose institutional services as an alternative to HCBS-DD services, the RR/PC shall recommend placement to an ICF/IID facility. The RR/PC shall seek the approval of the client's physician. The physician shall notify the URC/CCB agency of the proposed placement. Based on information provided by the RR/PC and the client's physician, the URC/SEP agency may certify the client for long term care prior to ICF/IID admission.

.23 The URC/CCB agency shall advise the County Department of Social/Human Services of the certification to enable the County Department staff to assist with the placement arrangements.

24. The ULTC-100.2 and other transfer documents concerning medical information as applicable must accompany the client to the facility.

.25 Following receipt of the fully completed ULTC 100.2, the URC/CCB shall review the information and make a final certification decision. If certification is approved, the URC/CCB shall assign an initial length of stay according to 10 CCR 2505-10 section 8.404.1. If certification is denied, the decision of the URC/CCB may be appealed in accordance with the appeals process at 10 CCR 2505-10 section 8.057.

8.405.30 ADMISSION PROCEDURES FOR THE HOME AND COMMUNITY BASED SERVICES FOR THE DEVELOPMENTALLY DISABLED (HCBS-DD)

.31 RR/PC's may evaluate clients for HCBS-DD services if, in the judgment of the RR/PC, such services represent a viable alternative to SNF, ICF, or ICF/IID services. The evaluation shall be carried out in accordance with the procedures set forth in 2 CCR section 503-1.

.32 If the RR/PC recommends HCBS-DD placement, then the URC/CCB will approve certification for services for the developmentally disabled at the level of care recommended by the RR/PC. The client will be placed in alternative service.

Following receipt of the completed ULTC 100.2 and any other supporting information, the URC/CCB will review the information and make a final certification determination.

If certification is approved, the URC/CCB shall assign an initial length of stay for HCBS-DD services.

If certification is denied, the decision of the URC/CCB may be appealed in accordance with section 8.057.

8.405.4 CONTINUED STAY REVIEW PROCEDURES; SERVICES FOR THE DEVELOPMENTALLY DISABLED

.41 Continued stay reviews shall be conducted by the Utilization Review Contractor for all developmentally disabled clients in ICF/IID services. The frequency of these reviews will be

based on the length of stay assigned by the Utilization Review Contractor consistent with the following guidelines:

A. Minimum/Moderate Level of Care: No less than twelve months but no more than twenty-four months.

B. Specialized Intensive Level of Care: Twenty-four months.

C. Medical/Psychosocial Level of Care: No less than twelve months and no more than twenty-four months.

.42 Continued stay reviews shall be conducted by the Utilization Review Contractor for all developmentally disabled clients in HCBS-DD services at least annually.

.43 Continued stay reviews may be conducted more frequently at the request of the Community Centered Board case manager.

.44 As a result of the continued stay review, the Utilization Review Contractor shall renew or deny certification.

8.405.50 GENERAL PROVISIONS

A. THESE RULES SHALL NOT BE CONSTRUED NOR INTERPRETED TO EXPAND, DIMINISH, OR CHANGE ANY STATUTORY PROVISIONS OR DUTIES OF REGISTERED PROFESSIONAL NURSES, LICENSED PRACTICAL NURSES, OR ANY OTHER PERSON SUBJECT TO, OR UNDER THE SUPERVISION OF REGISTERED PROFESSIONAL NURSES OR LICENSED PRACTICAL NURSES PURSUANT TO THE PROFESSIONAL NURSES ACT, BUT ARE INTENDED TO EXPLAIN THE METHOD BY WHICH THE DEPARTMENT SHALL REIMBURSE THE PROVIDERS OF NURSING CARE SERVICES AVAILABLE UNDER THE COLORADO MEDICAL ASSISTANCE PROGRAM.

B. The Department of Health Care Policy and Financing ("Department") is the single state agency responsible for administration of the Medical Assistance Program ("Medicaid") pursuant to Title XIX of the Social Security Act. The Department is responsible for determining eligibility for program benefits; providers of medical care; level of reimbursement for the provision of medical care; and terms and conditions that shall govern the payment of such providers for the medical care services provided.

C. The Department receives partial reimbursement from federal funds pursuant to Titles I, X, XIV, XVI, and XIX of the Social Security Act.

D. All participating skilled nursing care facilities and intermediate health care facilities must be administered by a nursing facility administrator licensed pursuant to C.R.S. section 12-39-101 et seq. For inclusion in the audited cost rate (see 10 CCR 2505-10 section 8.440 et seq.) the administrator must be employed full-time by the applicant facility, and may not have other conflicting employment obligations. The administrator must be responsible on a 24-hour-a-day basis, with primary duties being performed during the day shift.

8.406 NURSING FACILITY CARE - LEVELS OF CARE

The Department provides payment for nursing facility care in three (3) categories or levels of care: (1) "skilled nursing care", (2) "intermediate nursing care", and (3) "residential care."

8.406.1 SKILLED NURSING CARE

Skilled nursing care is available for eligible clients when a physician licensed to practice in the State of Colorado certifies care to be medically necessary. Such care must be provided in a facility that holds a valid and current license from CDPHE as a Nursing Care Facility pursuant to the Standards for Hospitals and Health Facilities, CDPHE, Health Facilities Division. The facility must also meet the standards defined in the U.S. Code of Federal Regulations, Title 42 C.F.R., as rules of the Department. Title 42 of the Code of the Federal Regulations is hereby incorporated by reference. The Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at: Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, CO 80203. Certified copies of incorporated materials are provided at cost upon request.

Section 1902(a)(26) of the Social Security Act (42 U.S.C. section 1396a) and 42 C.F.R. section 400 et seq. require the Department to:

A. Pursue a regular program of medical review and evaluation of each eligible client's medical need for skilled nursing care; and

B. Conduct periodic inspections of all skilled nursing care facilities which participate in the Medicaid Program (see 10 CCR 2505-10 section 8.420) to ascertain:

1. The actual care being provided;

2. The adequacy of the services available to meet the current health needs and to promote the maximum physical well-being of the eligible client;

3. The necessity and desirability of the continued placement of eligible clients in skilled nursing care facilities; and

4. The feasibility of meeting the client's health care needs through alternative services.

C. Section 1902 of the Social Security Act (1935) (42 U.S.C. section 1396r) is hereby incorporated by reference. The incorporation of 42 U.S.C. section 1396r excludes later amendments to, or editions of, the referenced material. The Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at: Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, CO 80203. Certified copies of incorporated materials are provided at cost upon request.

8.406.2 INTERMEDIATE NURSING CARE

[Removed per S.B. 03-088, 26 CR 7]

The Department shall:

A. Pursue a regular program of medical review and evaluation of each eligible client's medical need for intermediate nursing care; and

B. Conduct periodic inspections of all intermediate health care facilities which participate in the Medicaid Program (see 10 CCR 2505-10 section 8.420) to ascertain:

1. The actual care that is being provided;

2. The adequacy of the services available to meet the current health needs and to promote the maximum physical well-being of the eligible client;

3. The necessity and desirability of the continued placement of eligible clients in intermediate health care facilities; and

4. The feasibility of meeting the client's health care needs through alternative services.

8.406.3 INTERMEDIATE NURSING CARE - INTELLECTUAL OR DEVELOPMENTAL DISABILITY 15 BEDS OR LESS

A. Intermediate nursing care is available in facilities of 15 beds or less for eligible clients who are individuals with an intellectual or developmental disability or have related conditions provided:

1. The facility holds a valid and current license from CDPHE as a residential care facility or higher classification.

2. [Removed per S.B. 03-088, 26 CR 7]

3. Clients who are individuals with an intellectual or developmental disability or have related conditions are certified by a physician licensed to practice in the State of Colorado to be (a) ambulatory, (b) receiving active treatment, (c) capable of following directions and taking appropriate action for self-preservation under emergency conditions, and (d) not in need of professional nursing services.

B. All other provisions of these rules shall apply to care and services provided in such facilities in accordance with the provisions of 42 C.F.R Part 442.

8.407 SPECIAL PROVISION CONCERNING CLIENTS ELIGIBLE FOR SOCIAL SECURITY AGE-72 BENEFITS (PROUTY)

8.407.1 SPECIAL AGE-72 BENEFITS (PROUTY)

Federal regulations require that welfare clients cannot receive both the Special Age-72 Benefit and a public assistance payment. Rule A-4232 requires that all available income to a client (or applicant) must be sought by the client or applicant.

SSA must receive assurance from the County Departments of Social/Human Services that as of a certain date no further assistance payments (including $50 personal needs allowance) will be paid to the client.

8.407.2 REQUEST FOR ADDITIONAL INFORMATION ON FORM SSA-1610

When a county has authorized a nursing facility placement for a person over 72 years of age, who is eligible for a Prouty Benefit, Social Security must be notified.

8.408 LEVELS OF CARE DEFINED - SKILLED NURSING CARE

A. Skilled nursing services in a licensed nursing care facility are those services performed by licensed nursing personnel, or personnel under their supervision. These services must be performed according to a plan of treatment written by a physician licensed to practice medicine in the State of Colorado. These services apply to clients whose condition(s) require medical services to maintain a degree of stability, which has been achieved. Components of these services include:

1. The medical need for the attending physician to visit the client on a professional basis at least once every thirty (30) days.

2. Observation and assessment of the total needs of the client, utilizing skilled nursing judgment.

3. Planning, organizing, and managing the client care plan which requires specialized training to accomplish delivery of health care, or to attain the desired results or to render direct services to "the patient".

B. These health care services require regular medical care and 24-hour licensed nursing services for illnesses, injury, or disability. Nursing service shall be organized and maintained to provide 24-hour licensed nursing services under the direction of a registered professional nurse employed full time and at least two (2) hours total nursing staff time for each patient per 24-hour day.

C. Covered skilled nursing services must adhere to one or more of the following principles:

1. A service which requires a substantial specialized judgment and skill based on knowledge and application of the principles of biological, physical, and social sciences, necessary to perform or supervise effectively the services rendered, or

2. A service that is unskilled but which requires skilled performance, supervision, or observation because of special medical complications. Medical complications and special services must be documented by the physician's order and the nursing notes.

D. In addition to meeting the definition of skilled nursing services, coverage of such services is warranted only if skilled nursing personnel must be available on a continuous 24-hour basis. In determining whether the continuous availability of such personnel is warranted, the following principles apply:

1. Frequency of Services - The frequency of skilled nursing services required, rather than their regularity, is the controlling factor in determining whether the continuous availability of skilled nursing personnel is warranted.

2. Observation - Where observation is the principle continuous service provided, because symptoms exist that indicate the need for immediate modification of treatment of institution of medical procedures.

E. The purpose of the above-stated components and principles, and of 10 CCR 2505-10 section 8.408.1 et seq., is to provide general direction and guidelines for admission, utilization review, and medical review; with the intent that the individual's overall medical situation (including mental condition) shall be taken into account in evaluation and determination of the level of care to be provided.

8.408.1 SPECIFIC SERVICES WHICH ARE SKILLED

Based upon the principles set forth, skilled nursing services include but are not limited to the following:

A. Subcutaneous or intramuscular injections and intravenous medications and/or feedings.

B. Levine tube and gastrostomy feedings.

C. Naso-pharyngeal aspiration.

D. Insertion and replacement of catheters.

E. Aseptic application of dressings involving prescription medications.

8.408.2 SPECIFIC SERVICES WHICH ARE SUPPORTIVE

Supportive services which can be learned and performed by the average non-medical person who has been trained in these procedures, provided to either skilled or intermediate care patients include but are not limited to the following:

A. Provision of routine maintenance medications.

B. Prevent decubiti, keep clean, and comfortable.

C. Safety measures against accident and injury.

D. General maintenance are of colostomy or ileostomy.

E. Routine services in connection with in-dwelling bladder catheters.

F. Changes in dressings in noninfected postoperative or chronic conditions.

G. Prophylactic and palliative skin care, including bathing and application of creams, and care of minor skin problems.

H. General methods of caring for incontinent patients, including use of diapers.

I. General care of patients with a plaster cast.

J. Routine care in connection with braces and similar devices.

K. Use of heat for palliative and comfort purposes.

L. Administration of medical gases after initial phases of institution of therapy.

M. Assistance in dressing, eating, and going to the toilet.

N. General supervision of exercises which have been taught to the patient.

O. Diet supervision and administration for those persons requiring specialized diet.

P. Skilled paramedical services involving specialized training outside the licensed nursing curriculum.

8.408.3 ORGANIZATION OF SKILLED NURSING SERVICE

The following nursing care services and organization must be established as a minimum in order for a skilled nursing care facility to receive reimbursement.

A. Administrative and supervisory responsibilities must be in writing.

B. Duties must be clearly defined in writing and assigned for staff members.

C. Written policies and procedures for client care must be available to all personnel.

D. All professional services rendered by the nursing facility staff, physician, or other professional personnel, must be entered in the client's individual record and signed.

8.408.4 PROFESSIONAL PERSONNEL

8.408.41 DIRECTOR OF NURSING

The nursing services must be under the direction of a director of nursing service who:

1. Is a registered professional nurse.

2. Is qualified by education, training, or experience for supervisory duties.

3. Is responsible to the administrator for development of standards, policies, and procedures governing skilled nursing care, and for assuring that such standards, policies, and procedures are observed.

4. Is responsible to the administrator for the selection assignment, and direction of the activities of nursing services personnel.

5. Is employed full time in the facility.

6. Devotes his/her full time to direction and supervision of the nursing services; and,

7. Is on duty during the day shift.

8.408.42 CHARGE NURSE (RN OR LPN)

At all times, there must be on duty and in charge of the facility's nursing activities either:

1. A registered professional nurse; or,

2. A practical (or vocational) nurse who:

    a. Is licensed by the State as a practical (or vocational) nurse; and

    b. Has graduated from a State-approved school of practical nursing; or,

    c. Has other education and formal training that is found by the State authority responsible for licensing of practical nurses to provide a background considered to be equivalent to graduation from a State-approved school of practical nursing.

8.408.43 NURSING PERSONNEL

Nursing personnel means registered nurse (RN), licensed practical nurse (LPN), and those auxiliary workers, other than RN or LPN, in the nursing service.

To assure the provision of adequate nursing services, each nursing care facility must provide sufficient:

1. Numbers and categories of personnel as determined by the number of patients in the facility and their particular nursing care needs. This determination is made in accordance with accepted policies of effective nursing care and with these guidelines will provide at least two (2) hours total nursing staff time for each patient per 24-hour day.

2. Nursing and auxiliary personnel employed and assigned to duties on the basis of their qualifications or experience to perform designated duties.

3. Amounts of nursing time to assure that each patient:

    a. Receives treatments, medications, and diet as prescribed;

    b. Is kept comfortable, clean, and well-groomed;

    c. Receives proper care to prevent decubitus ulcers;

    d. Is protected from accident and injury by appropriate safety measures;

    e. Is encouraged to perform out-of-bed activities as permitted; and,

    f. Receives assistance to maintain optimal physical and mental function.

8.408.44 ANCILLARY PERSONNEL

Authorized subsidiary personnel performing duties in support of professional health care services may or may not be included in arriving at the computation of cost allowances set forth in 10 CCR 2505-10 section 8.400 et seq.

A. Dietary - Professional planning and supervision of meal services.

Special and restricted diet files shall be maintained for thirty (30) days, and any substitutions or variations noted. The patient's reaction and acceptance of food must be observed and recorded.

Menus must be planned and supervised by professional personnel meeting the following qualifications:

1. A dietician who meets the American Dietetic Association's standards for qualification as a dietician; or,

2. A graduate holding at least a Bachelor's Degree from the university program, with major study in food or nutrition; or,

3. A trained food service supervisor, an associate degree dietary technician, or a professional registered nurse, with frequent and regularly scheduled consultation from a dietician or a nutritionist meeting the above-stated qualifications.

Inclusion of dietary consultation costs are an allowable item in computing the rate of payment above-referenced.

B. Pharmacy Consultant - A person licensed to practice pharmacy in the State of Colorado, and whose duties are related to the nursing facility administration of drugs to patients. Such duties relate to:

1. Drug interactions;

2. Proper medication usage pertinent to the diagnosis and length of medication; specific to proper usage in records, stop orders, etc.;

3. Appropriate storage and safeguards of medications;

4. Study of possible brand interchanges;

5. Check on authenticity of medication pursuant to labeling;

6. Contraindications and other professional activities related to drug administration, receipting, storage, etc.

Costs related to pharmacal consultation are allowable in determining the rate to be paid, under the same conditions as for dietary in item 1 above.

C. Housekeeping and Maintenance - Allowed pursuant to above-cited rules on cost computation.

8.408.5 CLINICAL RECORDS

8.408.51 MAINTENANCE

The following records, as a minimum, must be kept current, dated and signed, and must be made available for review if applicable:

1. Identification and summary sheets.

2. Hospital discharge summary sheet.

3. Medical evaluation and treatment plan.

4. Physician's orders.

5. Physician's progress notes.

6. Nurse's progress notes.

7. Medication and treatment record.

8. Laboratory and X-ray reports.

9. Consultation reports.

10. Dental reports.

11. Social Service notes.

12. Pharmacal Consultant records.

13. PASRR documentation to include the Level I and Level II Reviews and the determination letters.

8.408.52 RETENTION OF RECORDS

1. Files shall be retained for at least six years.

2. In the event that a client is transferred to another health facility, certain transfer information should be incorporated in a record to accompany the client. Such transfer information shall include:

    a. Transfer form with diagnosis;

    b. Aid to daily living information;

    c. Transfer orders;

    d. Nursing care plan;

    e. Physician's orders for care.

8.408.53 CONFIDENTIALITY OF RECORDS

1. Disclosed only to authorized persons.

2. Form APA-4, "Authorization for Release of Medical Information" shall be executed in duplicate (original to the nursing facility medical record with a copy to the County Department of Social/Human Services) at the time of admission. This form must be signed by the client, the client's designated representative, the client's parent (if a minor), guardian, or other legally responsible person.

8.408.54 RECORDS ADMINISTRATOR

The nursing care facility must have available, and a staff person designated:

a. A consultant or full-time employee who is a registered records administrator (Medical Records Librarian), or an accredited records technician, or;

b. A registered records administrator or other employee who is trained in medical records, and who receives supervision from a registered records administrator; or,

c. If the facility does not have such employee with such training, an employee of the facility is assigned the responsibility for assuring that records are maintained, completed, and preserved. Such person, however, must be trained by, and receive regular consultation from a registered records administrator or accredited records technician.

8.408.6 MEDICAL BASIS FOR CARE - SKILLED NURSING FACILITY CARE

Eligible clients may be admitted to approved facilities only upon the certification of a physician licensed to practice in Colorado that there is a medical need for such admission (Form ULTC-100). The clients' freedom of choice of physician shall be respected. Health care of the client must continue under the supervision of a physician. The facility must have a physician available for necessary medical care in case of emergency.

8.408.61 PHYSICIANS' INVOLVEMENT

8.408.62 DETERMINATION FOR SKILLED NURSING CARE

The medical need of a client for skilled nursing care shall be delineated in the plan of treatment and substantiating orders written by the physician and by the performance of the necessary skilled nursing services implementing such plans and orders. Upon admission to a skilled nursing care facility, the facility must obtain for the medical record of each such client:

1. A summary of the course of treatment by the attending physician or which was followed in the hospital, the diagnosis(es) and current medical findings, and the rehabilitation potential.

2. An evaluation by the physician. Physical examination must be accomplished within 48 hours of admission and recorded; unless such an examination has been accomplished within five days prior to admission to the skilled nursing care facility.

3. Physician's orders. Orders must be written for the immediate care of the client. These may be written by the attending physician or by the physician who has the responsibility for emergency care in this facility. The current hospital summary of the course of treatment, with orders used, is acceptable as emergency orders.

4. The physician's treatment plan. The plan must be written and must be directed towards maintaining the health status of the client, preventing further deterioration of the physical well-being of the client, and preparing the client for normal non-institutional life. The plan must be reviewed and revised as necessary, and must include medication and treatment orders which will be in effect for the specified number of days indicated by the physician. This period shall be monthly unless reordered in writing by the physician. Telephone orders may be accepted by licensed nurses only and must be written into the clinical record by the receiving nurse. These orders must be countersigned by the ordering physician within 48 hours.

   The medical necessity for a physician's visit, at least once every thirty (30) days, must be evidenced in the clinical record by a valid signed entry.

5. Plan for Emergency Care - Each skilled nursing care facility must provide for one, or more, physicians to be available to furnish emergency medical care if the attending physician is not immediately available. A schedule listing the name, telephone number and days on call for a given physician will be posted at each nursing station. The skilled nursing care facility must also

establish procedures which will be followed in the emergency care of the client, the persons to be notified, and the reports to be prepared.

8.408.63 PHYSICIANS' INVOLVEMENT - REDETERMINATION FOR SKILLED NURSING CARE

The medical need of the client for skilled nursing care shall be redetermined monthly at the time of the physician's required monthly visit.

The term "substantial change" does not encompass short-term treatment regimens for temporary illness, adjustments to prescribed medications, or changes to be in effect for less than a thirty (30) day period.

8.408.7 MEDICAL REVIEW AND MEDICAL INSPECTION - SKILLED NURSING CLIENTS

Medical review of the treatment of all clients in skilled nursing care facilities who are entitled to medical assistance will be accomplished prior to May 2, 1972 (to meet requirements of 42 C.F.R. section 456.2), and annually thereafter. Medical review procedures herein are in addition to those set forth in 10 CCR 2505-10 section 8.449 concerning Utilization Review.

8.408.71 MEDICAL REVIEW TEAM

8.408.72 COMPOSITION AND MEMBERSHIP REQUIREMENTS

The medical review team for skilled nursing care clients will be led by a Colorado Registered Nurse or a Colorado Licensed Physician. The teams will include other appropriate health and social service personnel. Nurse-led teams will report to a physician.

No member of the team may be employed by or have financial interest in any nursing facility. No physician member of a team may inspect the care of clients for whom he is the attending physician.

8.408.73 FUNCTION - MEDICAL REVIEW AND EVALUATION

1. The medical treatment of skilled nursing clients entitled to medical assistance shall be reviewed at least annually.

2. Annual review shall consist of an evaluation of the treatment, utilizing the medical record and personal contact with, and observation of, each client in the nursing facility surroundings. This review, at a minimum, will elicit:

    a. Medical necessity for visit by attending physician at least once every thirty (30) days.

    b. Adequacy in quality and quantity as well as the timeliness of treatment to meet health needs.

    c. Adherence to the written physician's treatment plan.

    d. Tests, or observations of clients, indicated by their medication regimen have been made at appropriate times and properly recorded.

    e. Physician, nurse, and other professional staff progress notes are made as required, and appear to be consistent with observed condition of the client.

    f. Adequate services are being rendered to each client as shown by such observations as cleanliness, absence of decubiti, absence of signs of malnutrition or dehydration, and apparent maintenance of optimal physical, mental, and psychosocial function.

    g. Client's need for any service not available in, or actually being furnished by the particular facility, or through arrangements with others.

h. Each client actually needs continued placement in the facility, or there is an appropriate plan to transfer the client to an alternate method of care.

8.408.74 REPORTS

1. Review reports of care in each facility are submitted to the Department.

   a. After review copies are forwarded to:

      1) Nursing care facility

      2) Nursing care facility Utilization Review Committee

      3) CDPHE

2. Reports will cover observations, conclusions and recommendations with respect to adequacy and quality of client services in the facility, and of physician services to clients in the facility. They will also cover specific findings with respect to individual clients and any recommendations resulting therefrom.

8.408.75 STATE DEPARTMENT ACTION

1. Reports submitted as a result of Medical Review may result in decisions to reclassify clients into a different level of care, or recommendations for modification of treatment.

   Such decisions or recommendations will be transmitted as appropriate, to the:

   a. Attending physician.

   b. Administration of the nursing facility.

   c. County Department of Social/Human Services responsible for the client.

2. Changes in classification recommended will be effected prior to the next billing period.

8.408.76 REVIEW OF STATE DEPARTMENT ACTION

Disagreements with the decisions and recommendations of the Review Team may be adjudicated through the Administrative Review mechanism of the Department; however, the Division of Medical Assistance will retain the right to final decision.

8.409 LEVELS OF CARE DEFINED - INTERMEDIATE NURSING CARE

Intermediate nursing services in a licensed intermediate health care facility are defined as those services furnished in an institution or distinct part thereof to those clients who do not have an illness, disease, injury, or other condition that requires the degree of care and treatment which a hospital, Extended Care Facility, or Skilled Nursing Care Facility is designed to provide. Such services are provided under the supervision of a registered professional nurse or licensed practical nurse during the day shift, seven (7) days per calendar week. Covered intermediate services will be at a level less than those described as skilled nursing services and will include guidance and assistance for each client in carrying out his personal health program to assure that preventive measures, treatment, and medications prescribed by the physician are properly carried out and recorded.

These services are provided for according to a plan of treatment written by a physician licensed to practice medicine in the State of Colorado, and apply to clients whose conditions require medical services to maintain a degree of stability which has been achieved.

There must exist a medical need for the attending physician to visit the client on a professional basis at least once in every calendar quarter.

8.409.1 SEPARATION OF SKILLED NURSING FACILITY PATIENTS FROM THOSE REQUIRING INTERMEDIATE CARE: DISTINCT PART REQUIREMENT

All nursing facilities which provide both skilled nursing facility care and care and services to clients classified as requiring intermediate nursing care, shall set aside a distinct part, or identifiable unit in such facility for the provision of such intermediate care to such clients.

A "distinct part" is one that meets the following conditions:

Identifiable unit - The distinct part of the nursing facility is an entire unit such as an entire ward or contiguous wards, wing, floor, or rooms. With respect to facilities having 2 or more rooms, such must be contiguous. The identifiable unit must consist of all beds and related facilities in the unit and house all patient-clients classified as intermediate care clients for whom payment is being made, except as provided in paragraph (d) below. It is clearly identified and is approved, in writing (licensed), by CDPHE.

Staff - Appropriate personnel shall be assigned to the identifiable unit and must work regularly therein. Immediate supervision of staff shall be provided at all times by qualified personnel as required for licensure.

Shared Facilities and Services - The identifiable unit may share such control services and facilities as management services, dietary, building maintenance and laundry, with other units.

Transfers Between Distinct Parts - Nothing herein shall be construed to require transfer of a client within the nursing facility, when, in the opinion of the client's physician, such transfer might be harmful to the physical or mental health of the client. Such opinion of the physician must be recorded on the patient's nursing facility medical chart and stand as a continuing order unless the circumstances requiring such exception change.

8.409.2 ORGANIZATION OF INTERMEDIATE NURSING SERVICE

The following nursing care services and organization must be established as a minimum in order for an intermediate nursing care facility to receive reimbursement:

1. Administrative and supervisory responsibilities must be in writing.

2. Duties must be clearly defined in writing and assigned for the staff members.

3. Written policies and procedures for client care must be available to all personnel.

8.409.21 PROFESSIONAL PERSONNEL - "DIRECTOR OF NURSING"

There must be on duty and in charge of the facility's nursing activities either a registered professional nurse or a licensed practical nurse who:

1. Is qualified by education, training, or experience for supervisory duties;

2. Is responsible to the administrator for development of standards, policies, and procedures governing intermediate nursing care, and for assuring that such standards, policies and procedures are observed;

3. Is responsible to the administrator for the selection, assignment, and direction of the activities of nursing service personnel;

4. Is employed full time (40 hours per week) in the facility;

5. Is devoted, full-time to direction and supervision of the nursing services; and

6. Is on duty during the day shift.

8.409.22 NURSING PERSONNEL

For the two day shifts (16 hours per calendar week) not covered by the Director of Nursing, there shall be a Registered Professional Nurse or a licensed Practical Nurse, and:

1. There shall be, at all times, a responsible staff member actively on duty in the facility, and immediately accessible to all residents, to whom residents can report injuries, symptoms of illness, or emergencies, and who is immediately responsible for assuring that appropriate action is promptly taken.

2. Assistance as needed to clients with routine activities of daily living including such services as help in bathing, dressing, grooming, and management of personal affairs.

3. Continuous supervision for residents whose mental condition is such that their personal safety requires such supervision.

8.409.23 PROFESSIONAL PLANNING AND SUPERVISION OF MEAL SERVICE

At least three meals a day, constituting a nutritionally adequate diet must be served in one or more dining areas separate from the sleeping quarters. Tray service must be provided for clients temporarily unable to leave their rooms.

If the facility accepts or retains clients in need of medically prescribed special diets, the menus for such diets shall be planned by a professionally qualified dietitian, or must be reviewed and approved by the attending physician. The facility must provide supervision of the preparation and serving of the meals and their acceptance by clients.

8.409.24 ANCILLARY PERSONNEL

Authorized subsidiary personnel performing duties in support of professional health care services include:

1. Nurse aides

2. Dietary

3. Housekeeping and maintenance

To assure the provision of adequate nursing services, each intermediate nursing care facility must provide sufficient:

1. Numbers and categories of personnel, as determined by the number of clients in the facility and their particular nursing care needs. This determination is made in accordance with accepted policies of effective nursing care and with these regulations.

2. Nursing and auxiliary personnel are employed and assigned to duties on the basis of their qualifications or experience to perform designated duties.

3. Bedside care under direction of the client's physician in the presence of minor illness and for temporary periods to include nursing service provided by, or supervised by, a professional nurse or licensed practical nurse.

An intermediate care facility may, at its option, secure the services of a pharmacy consultant. If such facility takes this option, the provisions of rule item 2 are applicable.

8.409.3 CLINICAL RECORDS

8.409.31 MAINTENANCE

The following records, as a minimum, must be kept current, dated and signed, and must be made available for review if applicable:

1. Identification and summary sheets.

2. Hospital discharge summary sheet.

3. Medical evaluation and treatment plan.

4. Physician's orders.

5. Physician's progress notes.

6. Nurse's progress notes.

7. Medication and treatment record.

8. Laboratory and X-ray reports.

9. Consultation reports.

10. Dental reports.

11. Social Service notes.

12. Pharmacy Consultant's notes.

8.409.32 RETENTION OF RECORDS

1. Files retained at least six (6) years. (Before destruction of records, however, the nursing home's legal counsel should be consulted.)

2. In the event that a patient is transferred to another health facility, certain transfer information should be incorporated in a record to accompany the patient. This information should include:

    a. A transfer form of diagnosis;

    b. Aid to daily living information;

    c. Transfer orders;

    d. Nursing care plan;

    e. Physician's orders for care.

8.409.33 CONFIDENTIALITY OF RECORDS

1. Disclosed only to authorized persons.

2. Form APA 4, "Authorization for Release of Medical Information" shall be executed in duplicate (original to the nursing home medical record with a copy to the county department) at the time of admission. This form must be signed by the client, or the client's designated representative, parent (if a minor), guardian, or other legally responsible person.

8.409.34 RECORDS ADMINISTRATOR

It is recommended that the Intermediate Health Care Facility have available:

1. A consultant who is a registered records administrator, or a person who is accredited as a records technician.

2. An employee who is trained or is receiving training in medical records management for accreditation as a records technician or a registered records administrator.

8.409.4 MEDICAL BASIS FOR CARE - INTERMEDIATE NURSING CARE

Eligible clients may be admitted to approved facilities only upon the certification of a physician licensed to practice in Colorado that there is a functional need for such admission. The client's freedom of choice of physician shall be respected. Health care of the client must continue under the supervision of a physician. The facility must have a physician available for necessary medical care in case of emergency.

8.409.41 PHYSICIANS' INVOLVEMENT

8.409.42 DETERMINATION FOR INTERMEDIATE NURSING CARE

The medical need of a client for Intermediate Nursing Care shall be delineated in the plan of treatment and substantiating orders written by the physician and by the performance of the necessary Intermediate nursing services implementing such plans and orders.

Upon admission to an Intermediate Nursing Care Facility, the facility must obtain for the medical record of each such client:

1. A summary of the course of treatment by the attending physician or which was followed in the hospital, the diagnosis(es) and current medical findings, and the rehabilitation potential.

2. An evaluation by the physician. Physical examination must be accomplished within 48 hours of admission and recorded, unless such an examination has been accomplished within five days prior to admission to the Intermediate Nursing Care Facility.

3. Physician's Orders. Orders must be written for the immediate care of the client. These may be written by the attending physician or by the physician who has the responsibility for emergency care in this facility. The current hospital summary of the course of treatment, with orders used, is acceptable as emergency orders.

4. The physician's treatment plan. The plan must be written and must be directed towards maintaining the health status of the client, preventing further deterioration of the physical well-being of the client, and preparing the client for normal noninstitutional life. The plan must be reviewed consistent with the continuing professional care by the physician, and revised as necessary, and must include medication and treatment orders which will be in effect for the specified number of days indicated by the physician. This period shall not exceed ninety (90) days unless reordered in writing by the physician. Telephone orders may be accepted by licensed nurses, but must be written into the clinical record by the receiving nurse. These orders must be countersigned by the ordering physician within 48 hours. The medical necessity for a physician's visit, at least once every quarter, must be evidenced in the clinical record by a valid signed entry.

5. Plan for Emergency Care. Each Intermediate Nursing Care Facility must provide for one, or more, physicians to be available to furnish emergency medical care, or surgical procedures, if the attending physician is not immediately available. A schedule listing the name, telephone number, and days on call for a given physician will be posted at each nursing station. An RPN or LPN must be on call (for availability to handle emergencies; to contact the physician, receive orders or medications) for all shifts other than the day shift. The Intermediate Nursing Care Facility must also establish procedures which will be followed in the emergency care of the client, the persons to be notified, and the reports to be prepared.

8.409.43 PHYSICIANS' INVOLVEMENT REDETERMINATION FOR INTERMEDIATE NURSING CARE

The medical need of the client for Intermediate Nursing Care shall be redetermined every six months or at the time of the physician's required quarterly visit if the client's condition has changed.

The term "substantial change" does not encompass short-term treatment regimens for temporary illness, adjustments to prescribed medications when the frequency and dosage is not affected, or changes to be in effect for less than a thirty (30) day period.

8.409.5 MEDICAL REVIEW AND MEDICAL INSPECTION - INTERMEDIATE CARE NURSING CLIENTS

Medical review of the treatment of all clients in intermediate nursing care facilities who are entitled to medical assistance will be accomplished annually.

8.409.51 MEDICAL REVIEW TEAM

8.409.52 COMPOSITION AND MEMBERSHIP REQUIREMENTS

The medical review team for intermediate nursing clients shall be composed of one or more nurses and other appropriate health and social service personnel as indicated and will function under the supervision of a physician.

No member of the team may be employed by or have financial interest in any nursing home. No physician member of a team may inspect the care of patients for whom he is the attending physician.

8.409.53 FUNCTION - MEDICAL REVIEW AND EVALUATION

1. The medical treatment of intermediate nursing facility clients entitled to medical assistance shall be reviewed at least annually.

2. Annual review consists of an evaluation of the treatment, utilizing the medical record and physical contact with, and observation of, each client in the nursing facility surroundings. This review, at a minimum, will elicit:

    a. Medical necessity for visit by attending physician at least once every calendar quarter.

    b. Adequacy in quality and quantity as well as the timeliness of treatment to meet health needs.

    c. Adherence to the written physician's treatment plan.

    d. Review of prescribed medications by the attending physician at least every ninety (90) days during the necessary client visit.

    e. Tests, or observations of clients, indicated by their medication regimen have been made at appropriate times and properly recorded.

f. Physician, nurse, and other professional staff progress notes are made as required, and appear to be consistent with observed condition of the client.

g. Adequate services are being rendered to each client as shown by such observations as cleanliness, absence of decubiti, absence of signs of malnutrition or dehydration, and apparent maintenance of optimal physical, mental, and psychosocial function.

h. Client's need for any service not available in, or actually being furnished by the particular facility, or through arrangements with others.

i. Each client actually needs continued placement in the facility, or there is an appropriate plan to transfer the client to an alternate method of care.

8.409.54 REPORTS

1. Review reports of care in each facility are submitted to the Department.

   a. After review copies are forwarded to:

      1) The intermediate care facility.

      2) The intermediate care facility Utilization Review Committee.

      3) CDPHE.

2. Reports will cover observations, conclusions, and recommendations with respect to adequacy and quality of client services in the facility, and of physician services to clients in the facility. They will also cover specific findings with respect to individual clients and any recommendations resulting therefrom.

8.409.55 STATE DEPARTMENT ACTION

1. Reports submitted as a result of Medical Review may result in decisions to reclassify clients into a different level of care, or recommendations for modification of treatment.

   Such decisions or recommendations will be transmitted as appropriate to the:

   a. Attending physician.

   b. Administration of the Intermediate Nursing Care Facility.

   c. County department responsible for the client.

2. Changes in classification recommended will be effected prior to the next billing period.

8.409.56 REVIEW OF STATE DEPARTMENT ACTION

Disagreements with the decisions and recommendations of the Review Team may be adjudicated through the Administrative Review mechanism of the Department; however, the Division of Medical Services will retain the right to final decision.

8.415 ROLE OF COUNTIES AND NURSING FACILITIES

.10 ROLE OF THE COUNTY DEPARTMENT OF SOCIAL/HUMAN SERVICE STAFF IN NURSING FACILITY PLACEMENTS

The County Department of Social/Human Services shall be responsible for the following in all nursing facility placements involving either clients of medical assistance or applicants for assistance:

A. The determination of existing or potential eligibility for medical assistance.

B. The referral, whenever possible, of all Medicaid eligible clients/applicants who are eligible for Medicare benefits to facilities certified for participation in the Medicare Program.

C. In those instances in which an individual residing in a nursing facility under some method of reimbursement other than Medicaid makes application for medical assistance, the county must provide notice of the application referral date to both the nursing facility and the Utilization Review Contractor.

1. Such notice must be provided verbally to both the facility and the Utilization Review Contractor within two (2) working days of the application referral date.

2. Written notice must be mailed to the facility within five (5) working days.

3. Such notice is critical to the timely conduct of admission review by the Utilization Review Contractor.

D. In those instances where eligibility is determined to be effective three months prior to the date of application pursuant to Department rules and regulations, the County Department of Social/Human Services shall notify the nursing facility of this circumstance in writing.

This should be written in the area reserved for comments in Section VI(5) of the Form AP-5615. Similar verbal or written notice must be given or mailed to the Utilization Review Contractor, utilizing a format as determined by the Department.

.11 The Form AP-5615 is intended as a method for communicating the status of a resident or applicant, or actions which change that status, between nursing facility, the County Department of Social/Human Services, and the Department. Examples of such actions are admission, discharge, readmission, death or changes in resident income. Failure to complete the AP-5615, or to properly verify information reported thereon in a timely fashion, results in inappropriate reimbursement to nursing facilities, inequitable assistance payments, and the loss of documentation necessary for Department field audit staff. Upon receipt of Form AP-5615, the County Department of Social/Human Services shall be responsible for the following.

A. Verify, correct, and complete, when necessary, the client/applicant's name, State ID number, and all other identifying data:

B. Verify client/applicant income. Such verification must occur on a regular basis. All income of the client which is in excess of the amount reserved for personal needs allowance, less earned income (if appropriate), less spousal and dependent care allowance, and less home maintenance allowance, and less allowable expenses for medical and remedial care (see PETI deductions as defined in 10 CCR 2505-10 sections 8.100.7.T and 8.482.33), must be applied by the client/applicant toward his/her care. Changes in income must be reflected in submission of a new eligibility reporting form and a new AP-5615.

C. Verify client payment. This amount must be calculated by per diem appropriately in all months for which Medicaid reimbursement covers less than a full month's care.

1. Client payment may be waived and zero (-0-) client payment applied only under the conditions as defined in 10 CCR 2505-10 section 8.482.34.D.1.

2. Client payment may not be waived (other than for the exceptions provided for in 10 CCR 2505-10 section 8.415.11.C.1), in the instances as defined in10 CCR 2505-10 section 8.482.34.D.2.

3. When client payment is calculated by per diem, the amount shown on the AP-5615 will be that amount to be paid by the resident, rather than the amount to be calculated by per diem calculation.

4. Corrections to income or client payment shall be initialed and dated by the income maintenance technician from the County Department of Social/Human Services.

D. Review the date of action, such as admission, readmission, discharge, death, or change in client payment being reported and verify as necessary;

E. Indicate approval or denial of action being reported and effective date of that approval or denial; and

F. Sign and date all copies, and distribute in accordance with instructions on the reverse side of page three of the AP-5615 form.

8.415.20 RESPONSIBILITY OF THE NURSING FACILITY IN NURSING FACILITY PLACEMENTS

These rules set forth the administrative procedures which must be followed by all facilities participating in the Medical Assistance Nursing Facility Program. Failure of the facility to meet the requirements set forth herein shall cause the facility to be denied reimbursement.

A. Admission

When an admission to the nursing facility is proposed, it is the responsibility of the nursing facility to:

1. Determine, prior to an applicant's admission, whether or not the individual is a client of medical assistance or has made application for medical assistance;

2. Complete the ULTC 100.2 prior to or on the day of admission. Based on this information, the Utilization Review Contractor will determine the level of care and assign an initial length-of-stay.

8.415.21

3. For purposes of this regulation, admission is defined as

a. any new admission; or

b. any change from other sources of reimbursement to the Medical Assistance Program.

B. Changes in Resident Status

Form AP-5615 shall be used by the nursing facility to notify the County Department of the current or changed status of all clients and applicants residing within the nursing facility.

1. The nursing facility shall initiate Form AP-5615 (in accordance with instructions on the reverse side), for all admissions, readmissions, transfers from private pay or Medicare,

discharges, deaths, changes in client pay, and leaves of absence; and shall submit three (3) copies to the responsible county.

2. The nursing facility is solely responsible for collecting the correct amount of client payment due from the resident, his family, or representatives. Failure to collect client pay, in whole or in part, shall not allow the nursing facility to bill the Medical Assistance Program for the uncollected client payment.

3. The county department may initiate the AP-5615 when appropriate, which may include, but is not limited to, changes in resident income of which the county becomes aware.

C. Transfer and Discharge

The nursing facility must determine that all requirements for an orderly transfer or discharge are met before relinquishing their responsibility to the resident. This is necessary in order to assure continuity of total care. Therefore, the nursing facility is responsible for following the procedures as outlined at section C.R.S. section 25-1-120 et. seq, entitled "Nursing and intermediate care facilities - rights of patients", including the section on grievance procedures.

8.420 REQUIREMENTS AND PROVISIONS FOR PARTICIPATION BY COLORADO NURSING FACILITIES

In order to receive vendor payments from the State Department for care of assistance recipients, a nursing facility must enter into a provider agreement with the Department, in such form as the Department prescribes. For the purposes of this section, the term "nursing facility" includes an intermediate care facility for individuals with intellectual disabilities (ICF/IID). The facility's provider agreement with the Department carries with it the responsibility of said nursing facility to subscribe to the terms and conditions for payment of care to recipients promulgated by the Colorado Medical Services Board in its rules and regulations set forth in this staff manual. Such nursing facilities also must adhere to all pertinent requirements of federal and state law, and to the rules, regulations, and requirements as prescribed by CDPHE in its minimum standards for nursing facilities. This means that the nursing facility must be duly and appropriately licensed, provide for the use of qualified staff and the provision of nursing care, and adhere to those regulations with respect to the number and qualifications of nursing personnel required by CDPHE in giving services to recipient patients.

All nursing facilities are required, as a condition for both initial and continuing participation, to comply with the provisions of Section 601 of Title VI of the Civil Rights Act of 1964. Annual on-site inspections for assurance of compliance will be made by CDPHE.

In addition, the nursing facility is required to maintain proper accounting of the personal needs funds of recipients as provided in 10 CCR 2505-10 section 8.482.5.

Participation in the Colorado Medicaid program of nursing facilities and/or nursing facility beds is limited to the regulations at 10 CCR 2505-10 sections 8.430 et seq.

8.421 RESPONSIBILITY OF COUNTY DEPARTMENT CONCERNING PARTICIPATION

It shall be the responsibility of each county department to inform the State Department whenever it is aware that:

A licensed nursing home has permanently discontinued or decreased the qualified nursing service under which it was licensed.

Any person is operating an unlicensed nursing home or violating terms of license for a nursing home in which there are three or more recipients not related to the owner, and is providing any nursing service in an unlicensed home or one with a limited license to such recipients in addition to board and room services.

Any other condition exists which operates to the detriment of the patients in the home. This would include observation by the county department of such things as uncleanliness, poor or inadequate food, safety hazards, overcrowding, poor or inhumane treatment of patients, etc.

8.422 VISITS TO RECIPIENTS BY SOCIAL SERVICES PERSONNEL, PRIVACY FOR CONFERENCES WITH RECIPIENTS

In order to maintain continuing eligibility to recipients, to provide necessary services to recipients, and to conduct other official business pertaining to nursing home payment, the nursing home is required to admit duly authorized representatives of the Colorado Department of Human Services or County Department of Social/Human Services at any reasonable time. Social Services personnel shall be afforded privacy for conferences with nursing home recipient/patients. All such information is considered in terms of the rules contained in the Income Maintenance Manual.

8.423 VISITS TO RECIPIENTS BY THE COLORADO LONG TERM CARE OMBUDSMAN AND DESIGNATED REPRESENTATIVES

A. Definitions:

Designated Representatives - are persons who have been specifically appointed by the Colorado Ombudsman to be an official part of the statewide ombudsman program.

Such designated representatives shall receive a minimum of twenty (20) hours of training using the manual provided by the Colorado Long Term Care Ombudsman Program as well as other materials. Included in this training shall be material regarding the rights of patients and specifically procedures which protect the confidentiality of information regarding Medicaid patients.

Official Colorado Ombudsman Program - the agency which has received the Ombudsman grant from the Older Americans Act through the Colorado Department of Human Services is for purposes of this regulation considered to be the official State Ombudsman Program.

B. The Colorado Ombudsman and designated representatives shall have access to the physical premises of nursing home facilities and the Medicaid residents of these facilities. Visits to the nursing home should be during reasonable hours except in instances where the nature of a complaint investigation requires visitation during off hours.

All designated representatives (after they have completed the necessary training) will be provided with identification showing them to be a part of the State Ombudsman Program. Under normal circumstances such identifications will be presented to the nursing home administrator or person in charge during the administrator's absence.

C. The Colorado Ombudsman or designees shall only disclose information received from a Medicaid patient's records and/or files when:

1. The Ombudsman authorizes the disclosure and

2. In cases of identifying a patient, the patient or the legal representative of the patient must consent in writing to the disclosure and specify to whom the identity may be disclosed or

3. A court orders the disclosure.

D. Non-compliance with the provisions of this section of the regulation will not be considered sufficient good cause as defined in 10 CCR 2505-10 section 8.130.4.

8.424 PERIODIC VISITS - NURSING HOME RECORDS TO BE MADE AVAILABLE

Members of the Department of Health and Human Services, the staff of the State Department of Human Services or specialized staff acting as agents of said Department or members of the Medicaid Fraud Control Unit, will make periodic visits to nursing homes for purposes of determining compliance of nursing homes with the rules set forth concerning nursing home care to Medicaid recipients, for purposes concerned with the appropriate rate to be paid for care of recipients under applicable rules, and such other purposes as may be related to administration of the Colorado Medical Assistance Program.

All medical records and documents related to the above purposes of visits by the staff members mentioned shall promptly be made available in Colorado to such persons by the nursing facility administrator or his delegated alternate.

"Closing" audits also are to be made at the point of impending change of ownership of a nursing facility in order to determine whether payment adjustments are necessary with respect to continuing payment to the new owner or such adjustments in payments, recoveries, etc., covering former owners or sellers.

8.425 Repealed, effective June 30, 2005

8.430 MEDICAID CERTIFICATION OF NEW NURSING FACILITIES OR ADDITIONAL BEDS

8.430.1 DEFINITIONS

Action means denial or approval of the application or request for additional information regarding an application.

Existing Colorado Nursing Facility means any nursing facility continuously licensed in Colorado for a period of at least 30 days prior to the date of application and which meets state and federal requirements.

Licensed Bed Capacity means the licensed bed capacity of a nursing facility on file with CDPHE.

New Nursing Facility means any nursing facility not licensed as a Colorado nursing facility as of the date of application or any nursing facility, which for a period of 30 or more days subsequent to the date of application, has not been licensed as a Colorado nursing facility.

8.430.2 APPLICABILITY

8.430.2.A. 10 CCR 2505-10 section 8.430 applies to all nursing facilities except:

1. A nursing facility change of ownership or placement into receivership if the ownership change or receivership action involves no increase to its previously approved Medicaid bed total.

2. A nursing facility exclusively serving the developmentally disabled (intermediate care facility for individuals with intellectual disabilities and home and community based services for the developmentally disabled group homes).

3. A replacement facility for existing residents in a facility owned/operated by the applicant. Approval for the beds shall only be granted if:

    a. The applicant clearly documents that the old structure was substantially inadequate to efficiently and effectively promote quality of care for the residents.

    b. The replacement facility is located no more than five miles from the original facility.

c. The number of beds in the replacement facility is limited to the original number of Medicaid-certified beds being replaced.

d. Residents living in the original facility at the time it is closed are given the right of first refusal for beds in the replacement facility.

8.430.3 NEW NURSING FACILITY CERTIFICATION

8.430.3.A. Procedures and Criteria for Medicaid Certification of a New Nursing Facility

1. The burden of demonstrating the need for a new Medicaid facility shall be entirely on the applicant.

2. The applicant for Medicaid certification of a new nursing facility shall:

a. File a letter of intent to apply for certification with the Department in January or July of the year in which the application will be filed. The letter of intent shall specify:

i) The person or corporation who will submit the application.

ii) The proposed service area.

iii) The number of beds in the new facility for which Medicaid approval will be requested.

b. No later than five months from the date of filing the letter of intent, the applicant shall submit a complete application. The application shall include:

i) The name, address and phone number of the person or corporation requesting approval for the new nursing facility.

ii) The total number of proposed beds and the number of beds requested for Medicaid certification.

iii) A description of the service area and justification that the service area can be reasonably served by the new nursing facility.

iv) If construction of the additional beds or the new nursing facility has not been completed by the date the application is filed, the following documentation shall also be provided:

1) Official written documentation showing ownership of the proposed new nursing facility.

2) Location of the proposed new nursing facility including documentation of ownership, lease or option to buy the land.

3) Documentation from a financial institution regarding financing support for the new nursing facility.

4) Complete, written documentation that preliminary architectural plans for the proposed new nursing facility have been submitted to CDPHE.

5) Expected completion date of the new nursing facility.

v) A statement regarding any previous contracts with or enrollment in any state's Medicaid program. The statement shall assure that the applicant has never been found guilty of fraud or been decertified from participation in the Medicaid program in Colorado or any other state.

3. A completed application shall be made available on the Department's Internet website for public review and comment. In addition, the applicant shall provide newspaper notice at the applicant's expense, that the application has been submitted. A public hearing on the application may be conducted.

4. As a condition of approval, the new provider may be required to execute an appropriate performance agreement.

5. Approval or denial of an application for Medicaid certification of a new nursing facility shall be based on the following information from the applicant:

a. Planned resident capacity and payer mix.

b. Planned differentiation of the proposed new facility from existing nursing facilities in the same service area (e.g., new models of care, special programs, or targeted populations).

c. The applicant's marketing plan, including planned communications and presentations to discharge personnel and placement agencies.

d. Demographic analysis of the applicant's designated service area, including a market analysis of other available long term care services, e.g., assisted living, home health, home and community based services, etc., and the extent to which such alternative services are utilized.

e. Projections of net patient revenue and operating costs.

f. Audited financial statements for the most recently closed fiscal year for the entity seeking Medicaid certification.

g. Additional financial, market or programmatic information requested by the Department within two months after the application date;

h. Historical information concerning the quality of care and survey compliance in other nursing facilities owned or managed by the applicant or a related entity or individual.

i. A statement assuring cooperation with de-institutionalization and community placement efforts.

j. Documentation of whether the proposed new facility provides needed beds to an underserved geographical area, as described in 10 CCR 2505-10 section 8.430.3.A.5.j.i), or to an underserved special population, as described in 10 CCR 2505-10 section 8.430.3.A.5.j.ii).

i) To qualify as an underserved geographical area of the state, the application must demonstrate, with appropriate documentation, that:

1) The new nursing facility is located in the service area defined by the application. The service area shall be no more than two contiguous counties in the state.

2) The service area shall have a nursing facility bed to population ratio of less than 40 beds per 1,000 persons over the age of 75 years.

   a) The population projections shall be based upon statistics issued by the State Department of Local Affairs.

   b) The applicable statistics for applications involving beds for which construction is complete at the time of application shall be the population statistics for the period including the date on which the application is filed.

   c) The applicable statistics for applications involving beds for which construction is not complete at the time of application shall be the population projections for the expected date of completion of the beds set forth in the application.

3) The occupancy of existing nursing facilities in the proposed service area exceeds ninety percent (90%) for the six (6) months preceding the filing date of the application, as demonstrated by the nursing facility quarterly census statistics maintained by CDPHE.

      ii) An application for a new nursing facility to serve an underserved special population shall contain the following information and documentation:

      1) A description of the special populations to be served and why they cannot be served in the community.

      2) Justification for the service area to be served.

      3) A determination of whether there are existing excess beds in the proposed service area and, if so, why the existing excess beds cannot be used by or converted for use by the special populations.

   a) The determination of existing excess beds shall include a population ratio analysis and occupancy analysis as set forth in 10 CCR 2505-10 section 8.430.3.A.5.j.i), and shall be calculated by utilizing the formulas, methods and statistics set forth therein.

   b) The justification of why existing excess beds cannot be used for or converted for use by the special populations(s) must be clearly demonstrated and supported by relevant and competent evidence.

4) Applications based on underserved special populations must document that one or more of the following special populations is underserved in the proposed service area:

   a) Clients with AIDS.

   b) Clients with mental or developmental disabilities, as defined by the Preadmission Screening and Annual Resident Review (PASRR) process described at 10 CCR 2505-10 section 8.401.18 et seq.

c) Clients with a traumatic head injury.

d) Clients who have been certified for a hospital level of care in accordance with 10 CCR 2505-10 section 8.470.

5) The following requirements also apply to approval of new nursing facilities for special populations:

a) The Statewide Utilization Review Contractor shall certify long term care prior authorization requests for Medicaid clients who are verified as meeting the special populations definitions provided in 10 CCR 2505-10 section 8.430.3.A.5.j.ii.4.

b) In the case of applications for approval of new nursing facilities for mentally disabled populations, all restrictions concerning Medicaid reimbursement described at 10 CCR 2505-10 section 8.401.41 et seq., Guidelines for Institutions for Mental Diseases (IMD's), shall apply.

6) A bed approved for a specific underserved special population shall not be used for any other population, even if a Medicaid client occupying this type of bed is discharged or experiences a change in physical condition which requires transfer to a general skilled nursing unit bed.

8.430.4 COMPLETION OF APPROVED BEDS

8.430.4.A. Construction of approved beds shall adhere strictly to the specifications provided in the application. A new application shall be submitted and shall be subject to the criteria for approval in effect at the time of the new application when any of the following changes apply to new beds for a new facility:

1. Person or corporation which has ownership.

2. The site upon which the new beds were built or will be constructed.

3. Proposed service area.

4. Condition under which approval of beds is requested.

8.430.4.B. The applicant shall complete the project within 30 months of the date of the Department's approval of the application.

8.430.4.C. No extension beyond the 30 month period shall be considered unless completion of the project is delayed for reasons beyond the applicant's control.

1. The following shall be considered reasons beyond the applicant's control:

a. Natural disasters.

b. Hazardous soil or water conditions documented by local authorities.

c. Fires or explosions at the construction site serious enough to substantially delay the project.

2. The following shall not be considered beyond the applicant's control:

a. Lack of financing or changes in need for financing.

b. Delays due to litigation.

c. Construction delays (examples of construction delays which would not be granted an extension: weather, management-labor problems, subcontractor missed deadlines, permit or zoning variance problems).

8.430.4.D. Applicants who complete the project within the 30 month period or any extension period shall be eligible for a Medicaid provider agreement provided the facility is inspected on-site and found by CDPHE to be in compliance with standards for licensure as a nursing facility and certification for Medicaid participation.

8.430.4.E. When two or more applications for the same service area or special population are received in the same application period the following conditions apply:

1. Upon request, each applicant shall submit the estimated per diem costs to be incurred by the provider/developer over the first five (5) years of the project. The applicant shall provide assurances that the per diem costs shall be sufficient to meet all quality of care standards during this period. The application with the lowest per diem costs shall be chosen for enrollment in the Medicaid program.

2. The rate to be paid for the new beds shall be based on the estimated per diem costs for all costs not including registered nurses, licensed practical nurses and nurses' aides for the five year period or the actual audited Medicaid rate during the period, whichever is lower. Should the estimated per diem costs for registered nurses, licensed practical nurses and nurses' aides be higher than the estimate, these costs shall be subject to the actual audited Medicaid rate-setting procedures. The rate to be paid to an existing provider is the per diem rate approved by the Department for that facility.

8.430.5 NOTIFICATION OF INCREASED OR DECREASED MEDICAID BEDS

8.430.5.A. Beginning June 1, 2004, any existing Colorado nursing facility shall notify the Department when it increases or decreases the number of certified Medicaid beds, i.e., when it converts some or all of its licensed non-Medicaid beds to or from general skilled Medicaid nursing facility beds

8.430.5.B. The notification shall contain the following:

1. The prior number of Medicaid beds, the number of additional or decreased Medicaid beds and the date effective.

2. The nursing facility's total licensed bed capacity, consisting of Medicaid-certified beds and licensed non-Medicaid beds. A copy of the current facility license shall be attached.

8.435 ENFORCEMENT REMEDIES

8.435.1 DEFINITIONS

Civil Money Penalty (CMP) means any penalty, fine or other sanction for a specific monetary amount that is assessed or enforced by the Department for a Class I non-State-operated Medicaid-only Nursing Facility or by the Centers for Medicare and Medicaid Services (CMS) for all other Class I nursing facilities.

Deficiency means a nursing facility’s failure to meet a participation requirement specified in 42 C.F.R. Part 483 Subpart B, which is hereby incorporated by reference. The incorporation of 42 C.F.R. Part 483 Subpart B excludes later amendments to, or editions of, the referenced material. The Department maintains copies of this incorporated text in its entirety, available for public inspection during regular

business hours at: Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, CO 80203. Certified copies of incorporated materials are provided at cost upon request..

Enforcement Action means the process of the Department imposing against a Class I non-State operated Medicaid-only nursing facility one (or more) of the remedies for violation of federal requirements for participation as a nursing facility enumerated in the Federal Omnibus Reconciliation Act of 1987, 1989, and 1990, 42 U.S.C. 1396r(h), which is hereby incorporated by reference. The incorporation of 42 U.S.C. 1396r(h) excludes later amendments to, or editions of, the referenced material. The Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at: Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, CO 80203. Certified copies of incorporated materials are provided at cost upon request.

Nursing Home Innovations Grant Board means a board authorized by C.R.S. section 25-1-107.5 (2013) to distribute funds from the nursing home penalty cash fund for measures that will benefit residents of nursing facilities by improving their quality of life at the facilities.

Grantee means a recipient of funds from the Nursing Home Penalty Cash Fund for measures that will benefit residents of nursing facilities by improving their quality of life as specified in 10 CCR 2505-10 section 8.435.2.E.4.b.

Immediate Jeopardy means a situation in which the nursing facility's non-compliance with one or more requirements of participation has caused, or is likely to cause, serious injury, harm, impairment or death to a resident.

Medicaid-Only Nursing Facility means a nursing facility that is reimbursed by Medicaid, but not Medicare.

Nursing Home Penalty Cash Fund means the account that contains the money collected from CMPs imposed by the Department and also the amount transmitted by CMS from CMPs imposed by CMS. CMS computes the amount to be transmitted, the Medicaid portion, by applying the percentage of Medicaid clients in the nursing facility to the total CMP amount.

8.435.2 GENERAL PROVISIONS

8.435.2.A. The Department enforces remedies for Class I Non-State-Operated Medicaid-Only Nursing Facilities and CMS enforces remedies for all other Class I nursing facilities, pursuant to 42 C.F.R. section 488.330. Class I nursing facilities are subject to one or more of the following remedies when found to be in substantial non-compliance with program requirements:

1. Termination of the Medicaid provider agreement.

2. CMP.

3. Denial of payment for new admissions of Medicaid clients.

4. Temporary management.

5. Transfer of residents.

6. Transfer of residents in conjunction with facility closure.

7. The following three remedies with imposition delegated to CDPHE:

    a. State monitoring.

    b. Directed plan of correction.

    c. Directed in-service training.

8.435.2.B. The following factors shall be considered by the Department in determining what remedy will be imposed on the Class I non-State-operated Medicaid-only nursing facility:

1. The scope and severity of the Deficiency(ies).

2. The most serious Deficiency in relationship to other cited Deficiencies.

3. The nursing facility's past Deficiencies and willingness to become compliant with program rules and regulations.

4. The recommendation of CDPHE pursuant to C.R.S. section 25-1-107.5.

5. The requirements and guidelines for selecting remedies in 42 C.F.R. sections 488.408-414, which are hereby incorporated by reference. The incorporation of 42 C.F.R. sections 488.408-414 excludes later amendments to, or editions of, the referenced material. The Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at: Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, CO 80203. Certified copies of incorporated materials are provided at cost upon request.

8.435.2.C. Enforcement Guidelines for Class I Non-State-Operated Medicaid-Only Nursing Facilities

1. At the Department's discretion, nursing facilities may be given an opportunity to correct Deficiencies before remedies are imposed or recommended for imposition except as stated below.

2. Nursing facilities shall not be given the opportunity to correct Deficiencies prior to a remedy being imposed or recommended for imposition under the following:

   a. Nursing facilities with Deficiencies of actual harm or of greater severity on the current survey, and

      i) Deficiencies of actual harm or of greater severity on the previous standard survey, or

      ii) Deficiencies of actual harm or of greater severity on any type of survey between the current survey and the last standard survey.

   b. Nursing facilities, previously terminated, with Deficiencies of actual harm or of greater severity on the first survey after re-entry into the Medicaid program.

   c. Nursing facilities for which a determination of Immediate Jeopardy is made during the course of a survey.

   d. Nursing facilities with a per instance CMP imposed due to non-compliance.

3. The Class I non-State-operated Medicaid-only nursing facility shall be notified of any adverse action and may appeal these actions pursuant to 10 CCR 2505-10 section 8.050.

   a. Advance notice for state monitoring is not required.

   b. The advance notice requirement for other remedies is two days when Immediate Jeopardy exists and 15 days in other situations, with the exception of CMP.

   c. The notice requirement for CMP is in accordance with 42 C.F.R. sections 488.434 and 488.440, which are hereby incorporated by reference. The

incorporation of 42 C.F.R. sections 488.434 and 488.440 excludes later amendments to, or editions of, the referenced material. The Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at: Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, CO 80203. Certified copies of incorporated materials are provided at cost upon request.

8.435.2.D. Enforcement Actions

1. Termination of the Medicaid provider agreement:

   a. Shall be effective within 23 days after the last day of the survey if the nursing facility has not removed the Immediate Jeopardy as determined by CDPHE.

   b. May be rescinded by the Department when CDPHE notifies the Department that an Immediate Jeopardy is removed.

2. Denial of payment for new Medicaid admissions shall end on the date CDPHE finds the nursing facility to be in substantial compliance with all participation requirements.

3. CMP

   a. CMP amounts range in $50 increments from $50-$3,000 per day for Deficiencies that do not constitute immediate jeopardy, but either caused actual harm or caused no actual harm with the potential for more than minimal harm, and from $3,050 to $10,000 per day for Deficiencies constituting immediate jeopardy, or $1,000 to $10,000 per instance as recommended by CDPHE.

   b. CMPs are effective on the date the non-compliance began.

   c. If the nursing facility waives its right to an appeal in writing within 60 calendar days from the date the CMP is imposed, the CMP shall be reduced by 35%, notwithstanding the provisions of 10 CCR 2505-10 section 8.050.

   d. The CMP shall be submitted to the Department by check or subsequent Medicaid payment to the provider shall be withheld until the CMP is satisfied.

   e. Upon notice to the Department of change in ownership or intent to terminate the Medicaid agreement, the Department shall withhold all Medicaid payments to satisfy any CMP that has not been paid in full.

   f. Payment of CMP shall not be an allowable cost on the nursing facility's annual Med-13 cost reports as described in 10 CCR 2505-10 section 8.441.

8.435.2.E. Nursing Home Penalty Cash Fund

1. All CMPs collected from non-State-operated Medicaid-only nursing facilities shall be transmitted by the Department to the state treasurer to be credited to the Nursing Home Penalty Cash Fund.

   a. The Medicaid portions of CMPs imposed by CMS and transmitted to the State shall be credited to the Nursing Home Penalty Cash Fund.

2. The Department and CDPHE have joint authority for administering the Nursing Home Penalty Cash fund, with final authority in the Department.

a. For measures aimed at improving the quality of life of residents of nursing facilities, the Nursing Facility Culture Change Accountability Board shall review and make recommendations to the departments regarding the use of the funds in the Nursing Home Penalty Cash Fund available for quality of life measures as specified in 10 CCR 2505-10 section 8.435.2.E.4.b.

3. The maximum amount of funds to be distributed from the Nursing Home Penalty Cash Fund each fiscal year for the purposes in 10 CCR 2505-10 section 8.435.2.E.4.b is specified in C.R.S. section 25-1-107.5.

4. As a basis for distribution of funds from the Nursing Home Penalty Cash Fund:

a. The Department and CDPHE shall consider the need to pay costs to:

1) Relocate residents to other facilities when a nursing facility closes

2) Maintain the operation of a nursing facility pending correction of violations;

3) Close a nursing facility;

4) Reimburse residents for personal funds lost.

b. The Nursing Facility Culture Change Accountability Board shall review and recommend distribution of funds for measures that will benefit residents of nursing facilities by improving their quality of life at the facilities, including:

1) Consumer education to promote resident-centered care in nursing facilities;

2) Training for state surveyors, supervisors and the state and local long term care ombudsman, established pursuant to C.R.S. section 26-11.5-104 et seq., regarding resident-centered care in nursing facilities;

3) Development of a newsletter and web site detailing information on resident-centered care in nursing facilities and related information;

4) Education and consultation for purposes of identifying and implementing resident-centered care initiatives in nursing facilities.

c. Expenses to administer and operate the accountability board, including reimbursement of expenses of accountability board members.

1) This expense shall not exceed 10 percent of the fiscal year amount authorized under 10 CCR 2505-10 section 8.435.2.E.3.

5. The Department and CDPHE shall consider the recommendations of the Nursing

Facility Culture Change Accountability Board regarding the use of the funds available each fiscal year for quality of life improvement purposes specified in 10 CCR 2505-10 section 8.435.2.E.4.b.

6. For fiscal year 2009-2010 only, the Department shall contract with Colorado Health Care Education Foundation (CHCEF) to serve as the agent to disburse to grantees $194,997.00, the fiscal year 2009-2010 appropriation for measures that will benefit residents of nursing facilities by improving their quality of life.

a. This total amount of $194,997.00 is in accordance with the recommendations of the Nursing Facility Culture Change Accountability Board and approved by the Department and CDPHE, with final authority in the Department.

b. This appropriation of $194,997.00 from the Nursing Home Penalty Cash Fund is within the maximum appropriation of $200,000.00 authorized in C.R.S. section 25-1-107.5 for fiscal year 2009-2010.

c. If any grantee does not accept any portion of its approved disbursement amount, within thirty days of grantee notification to CHCEF, CHCEF shall return that portion to the Department to be credited to the Nursing Home Penalty Cash Fund.

7. For fiscal year 2010-2011 and successive fiscal years:

a. If any grantee does not accept any portion of its approved disbursement amount:

i. If funds are disbursed through an agent, the disbursement agent shall return that portion, within thirty days of grantee notification, to the Department to be credited to the Nursing Home Penalty Cash Fund.

ii. If funds are disbursed directly to the grantee, the grantee shall return that portion to the Department, within thirty days of disbursement, to be credited to the Nursing Home Penalty Cash Fund.

8. By October 1, 2010, and by each October 1 thereafter, the Department and CDPHE, with the assistance of the Nursing Facility Culture Change Accountability Board, shall jointly submit a report to the governor and the health and human services committees of the senate and house of representatives of the general assembly, or their successor committees, regarding the expenditure of moneys in the Nursing Home Penalty Cash Fund for the purposes described in 10 CCR 2505-10 section 8.435.2.E.4.b. The report shall detail the amount of moneys expended for such purposes, the recipients of the funds, the effectiveness of the use of the funds, and any other information deemed pertinent by the Department and CDPHE or requested by the governor or the committees.

a. The Nursing Facility Culture Change Accountability Board is responsible for monitoring grantee compliance in expending moneys for the approved measures.

b. If the total amount distributed to the grantee is not expended on the approved measure, the grantee shall return the remaining amount, within thirty days of completion of the measure, to the Department to be credited to the Nursing Home Penalty Cash Fund.

c. If the Department and CDPHE, based on the review of the Nursing Facility Culture Change Accountability Board, determine that any portions of the moneys received for the purposes described in 10 CCR 2505-10 section 8.435.2.E.4.b was not used appropriately, the grantee shall return that portion of the moneys, within thirty days of Nursing Facility Culture Change Accountability Board notification, to the Department to be credited to the Nursing Home Penalty Cash Fund.

d. Misuse of the funds by a grantee is subject to the false Medicaid claims provisions of C.R.S. sections 25.5-4-304 through 25.5-4-307.

8.440 NURSING FACILITY BENEFITS

Special definitions relating to nursing facility reimbursement:

1. “Acquisition Cost” means the actual allowable cost to the owners of a capital-related asset or any improvement thereto as determined in accordance with generally accepted accounting principles.

2. “Actual cost” or “cost” means the audited cost of providing services.

3. “Administration and General Services Costs” means costs as defined at 10 CCR 2505-10 section 8.443.8.

4. “Appraised value” means the determination by a qualified appraiser who is a member of an institute of real estate appraisers, or its equivalent, of the depreciated cost of replacement of a capital-related asset to its current owner. The depreciated replacement appraisal shall be based on the “Boechk Commercial Underwriter’s Valuation System for Nursing Homes.”

   The depreciated cost of replacement appraisal shall be redetermined every four years by new appraisals of the nursing facilities. The new appraisals shall be based upon rules promulgated by the state board.

5. “Array of facility providers” means a listing in order from lowest per diem cost facility to highest for that category of costs or rates, as may be applicable, of all Medicaid-participating nursing facility providers in the state.

6. a. “Base value” means:

      i) The appraised value of a capital-related asset for the fiscal year 1986-87 and every fourth year thereafter.

      ii) The most recent appraisal together with fifty percent of any increase or decrease each year since the last appraisal, as reflected in the index, for each year in which an appraisal is not done pursuant to subparagraph (i) of this paragraph (a).

   b. For the fiscal year 1985-86, the base value shall not exceed twenty-five thousand dollars per licensed bed at any participating facility, and, for each succeeding fiscal year, the base value shall not exceed the previous year’s limitation adjusted by any increase or decrease in the index.

   c. An improvement to a capital-related asset, which is an addition to that asset, as defined by rules adopted by the state board, shall increase the base value by the acquisition cost of the improvement.

7. “Capital-related asset” means the land, buildings, and fixed equipment of a participating facility.

8. “Case-mix” means a relative score or weight assigned for a given group of residents based upon their levels of resources, consumption, and needs.

9. “Case-mix adjusted direct health care services costs” means those costs comprising the compensation, salaries, bonuses, workers’ compensation, employer-contributed taxes, and other employment benefits attributable to a nursing facility provider’s direct care nursing staff whether employed directly or as contract employees, including but not limited to DONs, registered nurses, licensed practical nurses, certified nurse aides and restorative nurses.

10. “Case-mix index” means a numeric score assigned to each nursing facility resident based upon a resident’s physical and mental condition that reflects the amount of relative resources required to provide care to that resident.

11. “Case-mix neutral” means the direct health care costs of all facilities adjusted to a common case-mix.

12. “Case-mix reimbursement” means a payment system that reimburses each facility according to the resource consumption in treating its case-mix of Medicaid residents, which case-mix may include such factors as the age, health status, resource utilization, and diagnoses of the facility’s Medicaid residents as further specified in this section.

13. “Class I facility” means a private for-profit or not-for-profit nursing facility provider or a facility provider operated by the state of Colorado, a county, a city and county, or special district that provides general skilled nursing facility care to residents who require twenty-four-hour nursing care and services due to their ages, infirmity, or health care conditions, including residents who are behaviorally challenged by virtue of severe mental illness or dementia. Swing bed facilities are not included as class I facilities.

14. “Core Components” means the health care, administrative and general and fair rental allowance for capital-related assets prospective per diem rate components.

15. “Direct health care services costs” means those costs subject to case-mix adjusted direct health care services costs.

16. “Direct or indirect health care services costs” means the costs incurred for patient support services as defined at 10 CCR 2505-10 section 8.443.7.

17. “Facility population distribution” means the number of Colorado nursing facility residents who are classified into each resource utilization group as of a specific point in time.

18. “Fair rental allowance” means the product obtained by multiplying the base value of a capital-related asset by the rental rate.

19. “Improvement” means the addition to a capital-related asset of land, buildings, or fixed equipment.

20. “Index” means the R. S. Means construction systems cost index or an equivalent index that is based upon a survey of prices of common building materials and wage rates for nursing home construction.

21. “Index maximization” means classifying a resident who could be assigned to more than one category to the category with the highest case-mix index.

22. “Median per diem cost” means the daily cost of care and services per patient for the nursing facility provider that represents the middle of all of the arrayed facilities participating as providers or as the number of arrayed facilities may dictate, the mean of the two middle providers.

23. “Minimum data set” means a set of screening, clinical, and functional status elements that are used in the assessment of a nursing facility provider’s residents under the Medicare and Medicaid programs.

24. “Normalization ratio” means the statewide average case-mix index divided by the facility’s cost report period case-mix index.

25. “Normalized” means multiplying the nursing facility provider’s per diem case-mix adjusted direct health care services cost by its case-mix index normalization ratio for the purpose of making the per diem cost comparable among facilities based upon a common case-mix in order to determine the maximum allowable reimbursement limitation.

26. “Nursing facility provider” means a facility provider that meets the state nursing facility licensing standards established pursuant to C.R.S. section 25-1.5-103, and is maintained primarily for the care and treatment of inpatients under the direction of a physician.

27. “Nursing salary ratios” means the relative difference in hourly wages of registered nurses, licensed practical nurses, and nurse’s aides.

28. “Nursing weights” means numeric scores assigned to each category of the resource utilization groups that measure the relative amount of resources required to provide nursing care to a nursing facility provider’s residents.

29. “Occupancy-imputed days” means the use of a predetermined number for patient days rather than actual patient days in computing per diem cost.

30. “Per diem cost” means the daily cost of care and services per patient for a nursing facility provider.

31. “Per diem rate” means the daily dollar amount of reimbursement that the state department shall pay a nursing facility provider per patient.

32. “Provider fee” means a licensing fee, assessment, or other mandatory payment as specified under 42 CFR section 433.55.

33. “Raw food” means the food products and substances, including but not limited to nutritional supplements, that are consumed by residents.

34. “Rental rate” means the average annualized composite rate for United States treasury bonds issued for periods of ten years and longer plus two percent. The rental rate shall not exceed ten and three-quarters percent nor fall below eight and one-quarter percent.

35. “Resource utilization group” (RUG) means the system for grouping a nursing facility’s residents according to their clinical and functional status identified from data supplied by the facility’s minimum data set as published by the United States Department of Health and Human Services.

36. “Statewide average per diem rate” means the average daily dollar amount of the per patient payments to all Medicaid-participating facility providers in the state.

37. “Medicare patient day” means all days paid for by Medicare. For instance, a Medicare patient day includes those days where Medicare pays a Managed Care Organization for the resident’s care.

38. “Per diem fee” means the daily dollar amount of provider fee that the state department shall charge a nursing facility provider per non-Medicare day.

39. “Substandard Quality of Care means one or more deficiencies related to participation requirements under 42 CFR section 483.13 , resident behavior and facility practices, 42 CFR section 483.15 , quality of life, or 42 CFR section 483.25 , quality of care, that constitute either immediate jeopardy to resident health or safety (level J, K, or L); a pattern of widespread actual harm that is not immediate jeopardy (level H or I); or a widespread potential for more than minimal harm, but less than immediate jeopardy, with no actual harm (level F)” per State Operations Manual, chapter 7.

40. “Supplemental Medicaid Payment” means a lump sum payment that is made in addition to a provider’s per diem rate. A supplemental Medicaid payment is calculated on an annual basis using historical data and paid as a fixed monthly amount with no retroactive adjustment.

8.440.1 SERVICES AND ITEMS INCLUDED IN THE PER DIEM PAYMENT

8.440.1.A. Payment to nursing facilities, swing-bed facilities and intermediate care Facilities for Individuals with Intellectual Disabilities shall be an all-inclusive per diem rate, except as provided for within this rule. This rate covers the necessary services to the resident, including room and board, as well as nursing and ordinary supplies and equipment related to the day-to-day care of the resident and the operation of the facility.

8.440.1.B. The following general service areas shall be provided within the per diem rate:

1. Nursing services, therapies, aide services and medically related social services;

2. Dietary services;

3. Activities program;

4. Room/bed maintenance services;

5. Routine personal hygiene items and services; and

6. Laboratory services.

a. Waivered laboratory services provided by nursing facilities enrolled in the Medicaid program are subject to the requirements of the Clinical Laboratory Improvement Amendments of 1988 (CLIA) as set forth in 42 C.F.R. part 493, October 1, 1994 edition.. Facilities that collect specimens, including drawing blood specimens, but do not perform testing of specimens, are not subject to CLIA requirements. A facility shall obtain a Certificate of Waiver from the Centers for Medicare and Medicaid or its designated agency if the facility only performs waivered tests as defined by CLIA.

b. 42 C.F.R. part 493 (1994) is hereby incorporated by reference. The incorporation of 42 C.F.R. part 493 excludes later amendments to, or editions of, the referenced material. The Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at: Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, CO 80203. Certified copies of incorporated materials are provided at cost upon request.

8.440.1.C. Each nursing facility shall furnish, within the per diem rate, equipment necessary to the operation of the facility and provide for necessary medical, nursing, respiratory and rehabilitation care. Such equipment includes, but is not limited to, the following:

1. Adaptive equipment for activities of daily living;

2. Air mattresses, other special mattresses, sheepskins and other devices for preventing/treating decubitus ulcers;

3. Apnea monitors and necessary supplies and equipment;

4. Atomizers;

5. Autoclaves and sterilizers;

6. Bath equipment, i.e., raised and/or padded toilet seats, trapeze benches, tub/shower stools or benches;

7. Bedrails, footboards, trapeze bars, traction and fracture frames, bedside stands;

8. Bed linens;

9. Beds, including hospital beds;

10. Blood glucose monitors;

11. Commode chairs;

12. Deodorizers;

13. Emesis basins;

14. Flameproof curtains;

15. Flashlights;

16. Foot pumps;

17. Gerry chairs, cushioned chairs;

18. Ice bags or equivalent;

19. Intermittent positive pressure breathing equipment, including Sodium Chloride or sterile water required for operation;

20. Irrigating solutions, i.e., Acetic Acid, Potassium Permanganate, Sodium Chloride, and sterile water;

21. Lifts, i.e., hydraulic, tub, slings;

22. Lymphedema pumps and compressors;

23. Medically necessary manual or power wheelchairs for intermittent and full-time use, including cushions and pads as required for the prevention or treatment of skin breakdown, if purchased by the nursing facilities.

    a. Wheelchairs, if required, shall meet the specific needs of the resident and shall be ordered by a physician. The Primary Care Physician shall concur that the wheelchair being prescribed for the resident is medically necessary.

    b. All costs associated with the purchase of the wheelchair shall be charged to the health care line of the nursing facility. Wheelchair expenses shall be reported in the appropriate health care line of the Med-13

    c. The wheelchair shall be sent with the resident in the event the resident is transferred to another facility or returns home. The transferring facility shall expense the remainder of the chair in the fiscal year during which the transfer occurs.

24. Medicine cups;

25. Oxygen masks, regulators, humidifiers, hoses, nasal catheters, as needed, for the administration of oxygen;

26. Percussors and respirators;

27. Positioning pillows;

28. Reading lights;

29. Scissors, forceps, and nail files;

30. Sitz baths;

31. Sphygmomanometers, stethoscopes, and other examination equipment;

32. Splints;

33. Stryker pads;

34. Suction apparatus and gavage tubing;

35. Supplies and equipment necessary for delivery of special dietary needs;

36. Surgical stockings for routine use;

37. Ventilators and related equipment and supplies;

38. Walkers, crutches, canes and medically necessary accessories for ambulatory devices;

39. Weighing scales.

8.440.1.D. All supplies, including disposables, necessary for effective resident care shall be provided by the nursing facility within the per diem rate. Such supplies include, but are not limited to, the following:

1. Band-Aids, gauze pads, dressings and bandages;

2. Bedside utensils, bedpans, basins;

3. Catheters and related supplies, irrigating trays and accessories;

4. Charting supplies;

5. Colostomy and ileostomy bags, supplies, and dressings, ostomy supplies;

6. Disposable sterile nursing supplies including, but not limited to, cotton, face masks, gloves, tape, finger cots;

7. Drinking tubes/straws, water pitchers/glasses;

8. Fleece pads;

9. Foot soaks;

10. Hypodermic syringes and needles, including syringes and needles for insulin administration, intravenous supplies and equipment and related equipment;

11. Minor medical surgical supplies;

12. Miscellaneous applicators;

13. Nebulizers, recreational/therapeutic equipment and supplies to conduct on-going activities program;

14. Safety pins;

15. Thermometers;

16. Tongue depressors;

17. Tracheostomy care kits, cleaning supplies;

18. Urinals, urinary bags, and tubes and supplies.

8.440.1.E. Routine personal hygiene items/services shall be provided by the nursing facility within the per diem rate. These items include, but are not limited to, hair hygiene services (i.e., simple trims, such as trimming bangs or cutting of some hair that may need minor cutting in the back) hair hygiene supplies (i.e., shampoo, hair conditioner, comb, brush); bath soap, disinfecting soaps or specialized cleaning agents when indicated to treat special skin problems or to fight infection; razors, shaving cream; toothbrush, toothpaste, mouthwash, denture adhesive, denture cleanser, dental floss; moisturizing lotion; tissues, cotton balls, cotton swabs; deodorant) incontinence care and supplies (i.e., pads, cloth and disposable diapers, pants, liners, sanitary napkins and related supplies) towels, washcloths; and hospital gowns; bathing; shaving; nail hygiene services (i.e., routine trimming, cleaning and filing, not polishing).

8.440.1.F. Various over-the-counter (OTC) drugs and supplies as required to meet the residents' assessed needs shall be furnished by the facility, within the per diem rate, at no charge to the resident. OTC drugs/supplies including but not limited to:

1. Artificial tears;

2. Aspirin, acetaminophen, ibuprofen, and other non-prescription analgesics available now or in the future;

3. Cough and cold supplies, i.e., cold tablets, decongestants, cough syrup/tablets;

4. Douches;

5. Evacuant suppositories, laxatives, stool softeners, enemas;

6. First aid supplies, i.e., alcohol, hydrogen peroxide, merthiolate and other antiseptics/germicides, Betadine, Phisohex, chlorhexidene gluconate, providone/iodine solution and wash, epsom salt;

7. Lubricants, rubbing compounds and ointments, i.e., petroleum jelly, bag balm, other body lotions for treatment of dry skin or skin breakdowns, bacitracin ointment and other ointments used in treatment of wounds;

8. Vitamins (multi and single) and mineral supplements.

8.440.1.G. The following services and provisions shall be provided by the facility within the per diem rate:

1. Food and dietary services, including special diets, supplements and nutrients ordered by the physician, in accordance with the needs of the residents and appropriate licensing requirements;

2. Room for accommodation of the resident in accordance with licensing requirements, including storage for personal belongings, bedside equipment, suitable bed, clean and comfortable mattress, pillows and an adequate supply of clean linen;

3. Maintenance of clean, comfortable and sanitary environment through provision of heat, light, ventilation and sanitation to meet health and aesthetic needs of the resident, in accordance with the physicians' orders and licensing regulations;

4. Basic personal laundry, excluding dry-cleaning, mending, hand washing, or other specialties.

5. Consultant services when the facility employs or contracts with consultants in an effort to meet regulations.

6. Specialized rehabilitative services, including, but not limited to, physical therapy, speech-language pathology, occupational therapy and mental health rehabilitative services for mental illness and intellectual or developmental disability, when required in the resident's comprehensive plan of care. Specialized rehabilitative services shall be provided under the written order of a physician by qualified personnel. The facility shall provide the required services or obtain the required services from a provider of specialized rehabilitative services.

7. Ongoing activities program directed by a qualified professional, to meet the interests and the physical, mental and psychosocial well-being of each resident. The nursing facility can charge for entertainment and social events that are outside the scope of the required activities program.

8.440.2 SERVICES AND ITEMS NOT INCLUDED IN THE PER DIEM PAYMENT

8.440.2.A. The following general categories and examples of items and services are not included in the facility's per diem rate. Items 1 – 11 may be charged to the resident's personal needs funds if requested, in writing by a resident and/or the resident's family:

1. Cosmetic and grooming items and services in excess of those for which payment is allowed under the per diem rate, i.e., beauty permanents, hair relaxing, hair coloring, hair styling, hair curling, shaving lotion and cosmetics such as lipstick, perfume, eye shadow, rouge/blush, haircuts, beyond simple trimming, normally performed by licensed barbers or beauticians;

2. Gifts purchased on behalf of a resident;

3. Non-covered special care services, i.e., a private duty nurse not employed by the nursing facility.

4. Items or services requested by the resident, including but not limited to, over the counter drugs/related items not prescribed by a physician, not included in the nursing care plan and not ordinarily furnished for effective patient care. In these instances, it is required that:

   a. The resident has made an informed decision supported by a statement in the Personal Needs Funds file that he/she/family is willing to use personal funds.

   b. The balance in the Personal Needs Funds in the resident's ledger is sufficient to cover the charge.

5. Personal clothing and dry cleaning;

6. Personal comfort items, including smoking materials, notions, novelties and confections/candies;

7. Personal reading material, subscriptions;

8. Private room;

9. Social events and entertainment offered off premises and outside the scope of the regular facility activities program;

10. The facility shall provide each resident with a nourishing, palatable, well-balanced diet that meets the daily nutritional and special dietary needs of each resident. If the resident refuses the prepared food the facility shall offer substitutes. Residents may be charged for specially prepared food only if they are informed that there will be a charge, and the charge may be only the difference in price between the requested item and the covered item pursuant to 42 C.F.R. 483.35.

11. Telephone, television/radio for personal use, if not equally available to all residents.

12. Provider fee.

13. Prescription drugs, with certain specific exemptions.

14. Ambulance and medical transport, including emergent and non-emergent.

15. Oxygen

16. Physician fees

17. Non-nursing costs, including but not limited to direct and indirect outpatient therapy, assisted living, independent living, adult day care and meals-on-wheels.

8.440.2.B. The Department’s approval shall be required in order for a resident or his/her relatives to be billed for the following:

1. The physician orders that a full-time R.N. or L.P.N. is needed. The R.N. or L.P.N. is not employed by the nursing facility and has duties limited to the care of a particular resident, or two such residents in the same room.

2. The physician orders a private room.

3. The attending physician shall indicate the medical necessity on the resident's chart for either service above and shall submit to the Department a completed copy of Form 10013 (Physician's Request for Additional Benefits).

4. Upon approval of the Form 10013, payment for such services may be received from the resident's personal needs fund, relatives or others.

8.440.2.C The following items are allowable costs for class II and class IV facilities only:

1. Eye/Hearing examinations

2. Eyeglasses and repairs

3. Hearing aids and batteries

4. Provider fees

8.441 NURSING FACILITY COST REPORTING

8.441.1 SUBMISSION OF THE MED-13 AND MINIMUM DATA SET (MDS)

8.441.1.A. For purposes of completing MED-13, each nursing facility shall:

1. Establish a 12-month period that is designated to the Department as the facility's fiscal year. The fiscal year shall remain the same as designated to the Department with two exceptions:

   a. Providers seeking to coordinate their fiscal year with the fiscal year they have established with the Internal Revenue Service.

   b. Subchapter “S” corporations required by law to have a fiscal year end of December 31.

2. Provide adequate cost data that:

   a. Is based on their financial and statistical records. All financial and statistical records of the facility shall be maintained in accordance with generally accepted accounting principles as approved by the American Institute of Certified Public Accountants.

   b. Is verifiable through adequate supporting documentation provided to auditors during the normal course of their audit;

   c. Is based on the accrual basis of accounting.

      i) Under the accrual basis of accounting, revenue is reported in the period when it is earned, regardless of when it is collected and expenses are reported in the period in which they are incurred, regardless of when they are paid.

      ii) Where a governmental institution operates on a cash basis of accounting, cost data based on such accounting shall be acceptable, subject to appropriate treatment of capital expenditures.

   d. Includes the Medicare cost report that was most recently filed with the Medicare fiscal intermediary. If the facility cannot file a current Medicare cost report for reasons beyond its control, the facility shall submit other reliable Medicare cost information that the Department has approved.

3. Maintain financial and statistical records in a manner consistent from one reporting period to another in order to provide the required cost data and not impair comparability.

4. Retain all records required to support information supplied on the MED-13 for a period of at least five (5) years from the date of submission.

8.441.1.B. Nursing facilities shall submit all Minimum Data Set (MDS) resident assessments and tracking documents to the Centers for Medicare and Medicaid Services (CMS) MDS database for Colorado maintained at CDPHE. All assessment data submitted shall conform to federal and state specifications and meet minimum editing and validation requirements.

8.441.1.C. Failure to maintain adequate accounting and/or statistical records shall be cause for termination or suspension of the facility’s provider agreement.

8.441.2 COMPLETION OF THE MED-13 – GENERAL INSTRUCTIONS

8.441.2.A. The MED-13 consists of the certification page and all schedules. All information called for in the schedules must be furnished unless:

1. It is not applicable to the nursing facility operation; or

2. The books and records do not provide the information and it is not available by other reasonable means.

8.441.2.B. The financial information included shall be based on that appearing in the facility's audited financial statements. Adjustments to convert to the accrual basis of accounting shall be required if the records are maintained on other accounting bases.

8.441.2.C. Nursing facilities that are a part of a larger health facility extending short term, intensive or other health care not generally considered nursing facility care may submit a cost apportionment schedule prepared in accordance with recognized methods and procedures. In certain instances, such cost apportionment schedules may be required by the Department if deemed necessary for a fair presentation of expenses attributable to nursing facility patients.

8.441.2.D. The instructions regarding the MED-13 are designed to cover those items that may require additional explanation or to provide an example.

8.441.3 COMPLETION OF THE MED-13 CERTIFICATION PAGE

8.441.3.A. Type of control indicates ownership or auspices under which the nursing facility is conducted.

8.441.3.B. Accounting basis:

1. Accrual Recording revenue when earned and expenses when incurred.

2. Modified Cash Recording revenue when received and expenses when incurred.

3. Cash Recording revenue when received and expenses when paid after giving effect to adjustments for pre payments, etc. and depreciation.

4. Nursing facilities not using the accrual basis of accounting shall adjust recorded amounts to the accrual basis.

8.441.3.C. Statistical Data

1. The statistical data shall be accurate. A resident day is that period of service rendered to resident between the census taking hours on two (2) successive days, the day of discharge being counted only when the resident was admitted that same day.

2. The total resident days for the period shall be accurate and not an estimate of days of care provided. Resident days shall include days for residents having special duty nurses.

3. The accumulation method format set forth in Form NH 1 ("Monthly Census Summary -- Nursing Home Patients") shall be used. Such monthly record shall be kept concerning all patients, both Medicaid residents and non-Medicaid residents, by the nursing facility. Sample copies of the required format may be obtained from the Department.

8.441.3.D. The certification statement on the MED-13 shall be read and signed by the licensed owner or corporate officer and the preparer of the MED-13.

8.441.3.E. The Department may require a nursing facility to provide the opinion of a certified public accountant if, in the Department's opinion, adjustments made to prior reports indicate disregard of the certification and reporting instructions. The CPA shall certify that the report is in compliance with the Department's regulations and shall give an opinion of fairness of presentation of operating results or revenues and expenses.

8.441.4 COMPLETION OF REVENUES SCHEDULE

8.441.4.A. Revenues shall be listed as recorded in the general books and records and are affected by the accounting basis and procedures used. Expense recoveries credited to expense accounts shall not be reclassified in order to be reflected as revenues for purposes of completing the revenue schedule.

8.441.4.B. Revenue from patients shall be classified sufficiently in the accounting records to allow preparation of this schedule.

1. “Routine services” or “daily services” are those services that include room, board, nursing services and such services as supervision, feeding, and incontinency for which the associated costs are in nursing service.

2. "Routine services” or “daily services" shall represent only the established charge for daily care, excluding additional charged, if any, for other services.

8.441.4.C. Revenue from ancillary services provided to residents, such as pharmacy, medical supplies and occupational therapy supplies shall be applied in reduction of the related expense. The resulting expense, after adjustment, shall not be a negative figure. A revenue classification "Miscellaneous" or "Sundry" requires an analysis and determination of the amounts included therein, which represent expense recoveries or income to be applied in reduction of a related expense.

8.441.4.D. Medical supplies, with certain specific exceptions, shall be provided to Medicaid residents without separate additional charges to the resident or relatives. The costs of these supplies or services shall be included in audited costs.

8.441.4.E. Account for specific medical supplies or services for which a separate additional charge is allowed as "Items Purchased for Resale." Show the cost on the appropriate line for elimination.

8.441.4.F. Revenues related to services rendered which are not an obligation of the state shall be offset against allowable costs if the associated expense cannot be determined. If the associated expense can be determined, related expense should be removed as non-allowable (i.e., if barber and beauty shop revenue is $1,000 and the related expense is $900, enter $900; however, if expenses cannot be determined, enter $1,000).

8.441.4G. Revenues not related to patient care ("Other Revenue Centers") shall be applied in reduction of the related expense. Remove the cost, if known, (such as employee meals or telephone expense) or the gross revenue if cost cannot be determined.

8.441.4.H Revenue from residents, or others, resultant from charges made for room reservations, shall be classified sufficiently in the accounting records, and such amount shall be entered on the Revenue Schedule and identified as room reservation charges. This revenue shall also be offset against allowable expenses.

8.441.4.I. An investment or interest income adjustment shall be necessary only if interest expense is incurred, and only to the extent of such interest expense.

8.441.4.J. Laundry revenue shall be applied to laundry expense.

8.441.4.K. Open lines are provided for entry of sundry sources of revenue not directly related to patients, such as pay telephone commissions, contributions and grants received. These items need not be applied as a reduction of expense.

8.441.4.L. Accounts receivable charged off or provision for uncollectible accounts shall be reported on the Revenue Schedule as a deduction from gross revenue. However, if a nursing home

accounts for such revenue deductions as an administrative expense, the amounts shall be entered as "Other expenses not related to patient care."

8.441.5 COMPLETION OF NON-REIMBURSABLE EXPENSES AND EXPENSE LIMITATIONS AND ADDITIONS SCHEDULE

8.441.5.A. The following expenses shall be excluded or limited from operating expenses because they are not normally incurred in providing patient care:

1. Fees paid directors and non-working officers' salaries shall not be allowed as reimbursable costs.

2. Loan acquisition fees and standby fees shall not be considered part of the current expense of patient care but shall be amortized over the life of the related loan.

8.441.5.B. COMPENSATION OF OWNERS AND OWNER-RELATED EMPLOYEES

1. For purposes of 10 CCR 2505-10 section 8.441.5.B, the following definitions shall apply:

   a. Compensation means the total benefit received by the owner for services rendered to the facility. Such compensation shall only include:

      i) Salary amounts paid for managerial, administration, professional and other services;

      ii) Amounts paid by the facility for the personal benefits of the owner;

      iii) The costs of assets and services which the owner receives from the facility; and

      iv) Deferred compensation.

   b. Necessary Services means those services needed for the efficient operation and sound management of the facility such that, had the owners or owner-related individuals not rendered the services, the facility would have had to employ another individual to perform the services.

   c. Owner means an individual with a five percent (5%) or more ownership interest in the facility.

   d. Owner-Related Individual means an individual who is a member of an owner's immediate family which includes a spouse, natural or adoptive parent, natural or adopted child, step-parent, step-child, sibling or step-sibling, in-laws, grandparents and grandchildren.

   e. Ownership Interest means the entitlement to a legal or equitable interest in any property of the facility whether such interest is in the form of capital, stock or profits of the facility.

2. Compensation for services of owners and owner related employees shall be adequately documented to be necessary and such employees shall adequately documented to be qualified to provide these services. Adequate documentation shall include but not be limited to:

   a. Date and time of services;

   b. Position description;

c. Individual's educational qualifications, professional title and work experience;

d. Type and extent of ownership interest;

e. Relationship to and name of owner (if an owner related individual).

3. The methods set forth below shall determine the allowable costs of salaries paid to owner and owner related employees. For each method, if an owner or owner-related employee is compensated for services to the facility, any compensation paid to another individual in the same position shall be excluded from the allowable costs for that cost reporting period.

a. Owner and Owner-Related Administrators: The maximum allowable cost of salaries paid to owner and owner-related administrators shall be equal to the median of salaries paid to all non-owner and non-owner related administrators in facilities of comparable size. The median shall be computed by the Department from a survey of all Colorado Medicaid participating facilities conducted each January, and shall be applied to salaries for that calendar year. Categories of facilities, based on licensed bed capacity, for purposes of determining comparability shall be as follows: 1 to 74; 75 to 99; 100 to 149; 150 to 200 and more than 200.

b. Owner and Owner-Related Assistant Administrator: The maximum allowable cost for such services shall be 75% of the maximum allowable salary of an owner or owner related assistant administrator of a comparable facility. No costs shall be allowable for owner or owner related assistant administrators in facilities with licensed bed capacities less than 150.

c. Owner and Owner-Related Physicians Performing Administrative Services: Salaries shall be an allowable cost up to the maximum established for owner and owner-related administrators in a comparable facility.

d. Owner and Owner-Related Nursing Directors: Salaries shall be an allowable cost up to a maximum of 65% of the maximum allowable salary of an owner or owner-related administrator of a comparable facility.

4. Fringe benefits for owner and owner-related employees shall be allowable costs up to a maximum established by the Department each March for that calendar year. This maximum shall be equal to the fringe benefit percentage of private employees in Colorado as determined by the survey conducted by the State Department of Personnel, minus that portion of the computation that includes holidays, vacation and sick leave days.

5. Exceptions to the application of the median as the maximum allowable salary for owner and owner-related employees shall be approved by the Department only where the nursing home can demonstrate that it has unique characteristics or the employee in question has special qualifications and experience which would make application of the median for that size facility unreasonable. Requests for exceptions shall be submitted to the Department in writing no later than 90 days prior to the end of the facility's fiscal year.

8.441.5.C. LEGAL FEES, EXPENSES AND COSTS

1. Legal fees, expenses and costs incurred by nursing facilities shall be allowable, in the period incurred, if said costs are reasonable, necessary and patient-related. These legal fees, expenses and costs shall be documented in the provider's files, and shall be clearly identifiable, including identification by case number and title, if possible. Failure to clearly identify these costs shall result in disallowance.

2. The following categories shall not be deemed reasonable, necessary and patient-related:

a. Legal fees, expenses and costs incurred in connection with the appeal of a Medicaid classification or reimbursement rate, rate adjustment, personal needs audit, or payment for any financial claim by or against the State of Colorado, or its agencies by a provider, in the event the State of Colorado or any of its agencies prevails in such a proceeding. In the event that each party prevails on one or more issues in litigation, allowable legal fees, expenses and costs in such cases shall be apportioned by percentage, for reimbursement purposes, by the administrative law judge rendering the final agency decision. In the event of the stipulated settlement of any such appeal, the parties shall, by agreement, determine the allowability for the provider's legal fees, expenses and costs. If a settlement agreement is silent concerning legal fees, expenses or costs, they shall not be allowable.

b. Legal fees, expenses and costs incurred in connection with a proceeding by the Department or CDPHE to deny, suspend, revoke or fail to renew or terminate the license or provider contract of a long term care facility, or to refuse to certify, decertify or refuse to recertify a long term care facility as a provider under Medicaid and the Departments prevail in such a proceeding. Legal fees, expenses and costs incurred in connection with a proceeding by the United States Department of Health and Human Services to refuse to certify, decertify, or refuse to recertify a long term care facility and the Department prevails in such a proceeding. For the purposes of this paragraph, the word "prevail" shall mean a result, whether by settlement, administrative final agency action or judicial judgment, which results in a change of the terms of a previously granted provider license, certification, or contract, including involuntary change of ownership or probation.

c. Legal fees, expenses and costs incurred in connection with a civil or criminal judicial proceeding against the provider by the State of Colorado and any of its agencies as the result of the provider's participation in the Medicaid program, resulting from fraud or other misconduct by the provider, and the State or its agencies prevail in such proceeding. For the purposes of this paragraph, the word "prevail" shall mean any result but dismissal or acquittal of a criminal action or dismissal, directed judgment, or judgment for the provider in a civil action.

d. Legal fees, expenses and costs incurred in connection with an investigation by federal, state, or local governments and their agencies that might lead to a civil or criminal proceeding against the provider as a result of alleged fraud or other misconduct by the provider in the course of the provider's participation in the Medicaid program shall not be allowable where the provider makes any payment of funds to any federal, state, or local governments and their agencies as a result of the alleged fraud or misconduct which was the subject of the investigation.

e. Legal fees, expenses and costs incurred for lobbying Congress, the Legislature of Colorado, or the Medical Services Board, Health or Human Services.

f. Legal fees, expenses and costs incurred by the seller in the normal course of the sale of a nursing home.

g. Nonrefundable retainers paid to Counsel.

h. Legal fees, expenses and costs associated with a change of ownership incurred for any reason after a change of ownership has occurred.

i. Legal fees, expenses, or costs as a result of an attorney entering an appearance in person or in writing by counsel for the provider during the Informal Reconsideration. Legal fees, expenses and costs that are advisory in nature before and during the Informal Reconsideration process will be allowable.

8.441.5.D. DEPRECIATION

1. For purposes of this section concerning depreciation, the following definitions shall apply:

"MAI Appraiser" means the designation "Member, Appraisal Institute" awarded by the American Institute of Real Estate Appraisers.

"Straight Line Method of Depreciation" means the method of depreciation where the amount to be depreciated is first determined by subtracting the estimated salvage value of the asset from its cost or fair market value in the case of donated assets. The amount to be depreciated is then distributed equally over the estimated useful life of the asset.

2. Except as specified in this manual, Medicare rules and regulations as delineated in the Medicare and Medicaid Guide, 1981, published by Commerce Clearing House, paragraph 4501-4897P, shall be utilized in the treatment of depreciation costs for purposes of reimbursement under Medicaid. The Medicare and Medicaid Guide (1981) is hereby incorporated by reference. The incorporation of The Medicare and Medicaid Guide (1981) excludes later amendments to, or editions of, the referenced material. The Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at: Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, CO 80203. Certified copies of incorporated materials are provided at cost upon request.

3. Depreciation on assets used to provide covered services to Medicaid recipients may be included as an allowable patient cost. Only the straight-line method of computing depreciation may be utilized for purposes of Medicaid reimbursement. Depreciation costs shall be identifiable as such, and shall be recorded in the provider's accounting records in accordance with "generally accepted accounting principles."

4. Depreciable items must be capitalized and written off over the estimated useful life of the item using the straight-line method of depreciation. With respect to expenditures during every facility fiscal year which begins on or after July 1, 1998, the following items must be depreciated:

a. Assets that, at the time of acquisition, had an estimated useful life of (2) two years or more; and a historical cost of $5,000 or more.

b. Betterments or improvements that extend the original estimated useful life of an asset by (2) two years or more, or increase the productivity of an asset significantly; and cost $5,000 or more.

c. For the purpose of applying the $5,000 threshold in paragraphs A and B above, the costs of assets, betterments, and/or improvements shall be combined if the costs:

i) Are incurred within the same fiscal year of the nursing facility; and

ii) Are of the same type or relate to the same project. For example, costs related to renovations or improvements to a facility's kitchen must be combined.

d. Major repairs are repairs which:

i) Occur infrequently, involve significant amounts of money, and increase the economic usefulness of the asset in the future, because of either increased efficiency, greater productivity, or longer life; or

ii) Restore the original estimated useful life of an asset where without such repairs, the useful life of the asset would be reduced or immediately ended; these repairs occur infrequently and have a significant cost in relation to the asset being repaired.

e. If the composite method of depreciation is used, the time period over which the major repair must be depreciated is not necessarily the remaining life of the composite asset. For example, a major repair to a roof of a facility that has a remaining useful life of thirty (30) years would not have to be depreciated over thirty (30) years if the normal life of the roof is only fifteen (l5) to twenty (20) years; the shorter period could be used.

f. The following are examples of major repairs and are not intended as a complete list: replacement or partial replacement of a roof, flooring, boiler, or electrical wiring.

8.441.5.E. EXPENSED ITEMS

1. Items which are to be entirely expensed in the year of purchase, rather than depreciated, are as follows:

a. All repair and maintenance costs, except major repairs.

b. Assets that, at the time of acquisition, had an estimated useful life of less than two (2) years; or cost less than $5,000.

c. Betterments or improvements that do not extend the useful life of an asset by two (2) years or more, or do not increase the productivity of an asset significantly; or cost less than $5,000.

d. For the purpose of applying the $5,000 threshold in paragraphs “b” and “c” above, assets, betterments, and/or improvements that are purchased separately shall be combined if they meet the criteria described in 10 CCR 2505-10 section 8.441.5.D.

8.441.5.F. HISTORICAL COSTS

1. Historical costs shall be established in accordance with the Medicare and Medicaid Guide, 1981, published by Commerce Clearing House, paragraphs 4501-4897P, except that any appraisals required or recommended shall be performed by an MAI Appraiser rather than an "appraisal expert" as defined in the Medicare and Medicaid Guide. The Medicare and Medicaid Guide (1981) is hereby incorporated by reference. The incorporation of The Medicare and Medicaid Guide (1981) excludes later amendments to, or editions of, the referenced material. The Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at: Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, CO 80203. Certified copies of incorporated materials are provided at cost upon request.

2. When the Internal Revenue Service requires a facility to change its allocation of costs of land, buildings or equipment for purposes of tax reporting, a copy of the IRS notice shall be submitted to the Department in order for the changes to be reflected in the cost report.

3. In regards to a determination of a bona fide sale, an initial presumption that the sale was not bona fide may be offset by a valuation report of an MAI appraiser of the reproduction cost depreciated to date on a straight-line basis. Cost determined in this manner shall be accepted for future depreciation purposes.

4. An initial presumption that a sale was not bona fide shall be made when any of the following factors exist:

   a. The seller and purchaser are persons for whom a loss from the sale or exchange of property is not allowed under the Internal Revenue Services Code between:

      i) Members of a family;

      ii) An individual and a corporation if the individual owns (directly or indirectly) more than 50% in value of the outstanding stock;

      iii) Two corporations if more than 50% in value of the outstanding stock in both is owned, directly or indirectly, by the same individual, but only if either one of the corporations was a personal holding company or a foreign personal holding company for the taxable year preceding the date of the sale or exchange;

      iv) A grantor and a fiduciary of any trust;

      v) A fiduciary of one trust and a fiduciary of another trust, if the same person is grantor of both trusts;

      vi) A fiduciary of a trust and any beneficiary of such trust;

      vii) A fiduciary of a trust and a beneficiary of another trust, if the same person is a grantor of both trusts;

      viii) A fiduciary of a trust and a corporation more than 50% in value of the outstanding stock of which is directly or indirectly owned by or for the trust or a grantor of the trust. This would, for example, have the effect of denying a loss in a transaction between a corporation, more than 50% of the stock of which was owned by a father, and a trust established for his children. Under the constructive ownership rules (below), the children are treated as owning the stock owned by the father; and

      ix) A person and an exempt charitable or education organization controlled by the person or, if the person is an individual, by the individual or his family.

   b. The term "family" means a brother or sister (whole or half-blood relationship, spouse, ancestor, or lineal descendant, including in laws and in laws of ancestors of lineal descendants.

   c. In determining stock ownership;

   d. The transaction was effected without significant investment on the part of the purchaser; i.e., cash or property was not transferred from the purchaser to the seller and the sales price was met by assumption of existing debt and promises to pay additional amounts or issuance of life annuities to the seller.

e. The sales price could be considered excessive when compared with other sales or costs of constructing, furnishing, and equipping other facilities of comparable size and quality during the preceding twelve months.

8.441.5.G. INTEREST

1. For purposes of this section concerning interest, the following definitions shall apply:

a. Interest means the cost incurred for the use of borrowed funds.

b. Interest on current indebtedness means the cost incurred for funds borrowed for a relatively short term. This is usually for such purposes as working capital for normal operating expense.

c. Interest on capital indebtedness means the cost incurred for funds borrowed for capital purposes such as acquisition of facilities and equipment, and capital improvements. Generally, loans for capital purposes are long term loans.

d. Necessary means that the interest:

i) Is incurred on a loan made to satisfy a financial need of the provider. Loans which result in excess funds or investments shall not be considered necessary;

ii) Is incurred on a loan made for a purpose reasonably related to patient care; and

iii) Is reduced by investment income except where such income is from gifts and grants whether restricted or unrestricted, and which are held separate and not commingled with other funds. Income from funded depreciation or provider's qualified pension fund shall not be used to reduce interest expense.

e. Proper means that interest:

i) Is incurred at a rate not in excess of what a prudent borrower would have had to pay in the money market existing at the time the loan was made; and

ii) Is paid to a lender not related through control or ownership or personal relationship to the borrowing organization. However, interest shall be allowable if paid on loans from the provider's donor restricted funds, the funded depreciation account or provider's qualified pension funds.

2. To be allowable, the interest expense shall be incurred on indebtedness established with lenders or lending organizations not related through control, ownership, or personal relationship to the borrower. Presence of any of these factors affects the bargaining process that usually accompanies the making of a loan and could be suggestive of an agreement on higher rates of interest or of unnecessary loans. Loans shall be made under terms and conditions that a prudent borrower would make in arms-length transactions with lending institutions. The intent of this provision is to assure that loans are legitimate and needed and that the interest rate is reasonable.

3. Interest on loans to providers by partners, stockholders or related organizations are allowable as costs at a rate not in excess of the prime rate.

4. Where the general fund of a provider "borrows" from a donor-restricted fund and pays interest to the restricted fund, the interest shall be an allowable cost. The same treatment shall be accorded interest paid by the general fund on money "borrowed" from the funded depreciation account of the provider or from the provider's qualified pension fund. In addition, if a provider operated by members of a religious order borrows from the order, interest paid to the order shall be an allowable cost.

5. Where funded depreciation is used for purposes other than improvement, replacement, or expansion of facilities or equipment related to patient care, allowable interest expense is reduced to adjust for offsets not made in prior years for earnings on funded depreciation. A similar treatment will be accorded deposits in the provider's qualified pension fund where such deposits are used for other than the purpose for which the fund was established.

6. Allowable interest expense on current indebtedness of a provider shall be adjusted to reflect the extent to which working capital needs which are attributable to covered services for beneficiaries have been met by payment to the provider designed to reimburse currently as services are furnished to beneficiaries.

8.441.5.H. MANAGEMENT SERVICES

1. The following requirements apply to all management companies:

   a. Management company costs shall be considered administrative costs except as described at 10 CCR 2505-10 section 8.443.7.A.13.

   b. Management company costs allocated to facilities shall be based on actual services provided to the facility. The allocation shall be documented.

   c. If the compensation to on-site management staff is separately reported on the cost report, that compensation shall not also be included in the allowable management costs for the facility. This rule shall apply regardless of whether owners or owner-related organizations are involved in the administration or management services.

2. In addition to the requirements of 10 CCR 2505-10 section 8.441.5.H.1, the following requirements shall apply to owner-related management companies:

   a. "Owner-related management company" means an individual or organization that is related to, owned or controlled by the owner(s) of the nursing facility, as described in 10 CCR 2505-10 section 8.441.5.B.

   b. Management services provided to the nursing facility by an owner-related management company are subject to the related party rules at 10 CCR 2505-10 section 8.441.5.B.

   c. When management services are provided to a nursing facility by an owner-related management company, the nursing facility shall compile and present for inspection supporting documentation of actual costs incurred in providing the management company services. This shall include, at a minimum, the following:

      i) Documentation supporting the reasonableness of salaries paid to owners and owner-related employees of the management company, as specified in 10 CCR 2505-10 section 8.441.5.B;

      ii) Allocation schedules;

iii) Medicare Home Office cost reports;

iv) All tax records and filings of the management company;

v) All management company records to support financial statements.

d. Documentation supporting the reasonableness of salaries and other compensation paid to owners and employees of an owner-related management company shall be available for inspection and shall include, but not be limited to, the following:

i) Salary survey(s) for the geographic location demonstrating that the salaries and other compensation are comparable to market for their respective position and size of entity;

1) If the provider does not provide a salary survey, the auditor shall use the latest survey of the Healthcare Financial Management Association (HFMA).

2) Salary surveys are to be of a sufficiently large sample, including non-related nursing facility management companies, to lend support to the salaries. Surveys including a small number of facilities (less than ten), facilities related through common ownership or control or facilities of incomparable size shall be considered unacceptable.

ii) A position description for the person listing the duties performed;

iii) Date and time of services provided by each owner-related individual;

iv) Job applications, resumes, professional title, educational qualifications, and other documentation of work experience and qualifications; and

v) The type and extent of ownership interest for each owner or owner-related individual employed by or performing services for the management company.

e. Limitations shall be based on the median salaries included in the survey(s) referenced in 10 CCR 2505-10 section 8.441.5.H.2.d. If the owner or owner-related party receives compensation from two or more entities, the total compensation received from those entities shall be evaluated for reasonableness. In the absence of reasonable documentation that the owners and/or owner-related parties are working employees, the compensation claimed for these persons shall be disallowed as a cost not related to patient care.

f. Compensation to owners of related party companies, regardless of organizational structure, must be paid within seventy-five (75) days of the end of the fiscal year. Payment of the compensation shall be evidenced by documentation submitted to the IRS. Failure to provide adequate documentation during the field audit process shall result in disallowance of unsupported or unpaid amounts. Disallowed compensation shall not be allowed in any future period.

8.441.5.I. ITEMS FURNISHED BY RELATED ORGANIZATIONS OR COMMON OWNERSHIP

1. Costs applicable to services, facilities and supplies furnished by organizations related to the nursing facility by common ownership or control are allowable costs of the nursing facility at the cost to the related organization or the open market price, whichever is less.

2. The following definitions are applicable for the purposes of this regulation:

   a. Common ownership means that an individual or individuals directly or indirectly possess a significant (5% or more) ownership interest, as defined in 10 CCR 2505-10 section 8.441.5.B, in the nursing facility and the institution or organization serving the nursing facility.

   b. Control means that an individual or an organization has common ownership with or is related to another organization or institution, or has the power, directly or indirectly, to influence significantly or to direct the actions or policies of another organization or an institution.

   c. Related to the nursing facility means:

      i) The nursing facility, to a significant extent, is associated or affiliated with, or has control of, or is controlled by the organization furnishing the services, facilities or supplies; or

      ii) An owner-related individual, as defined in 10 CCR 2505-10 section 8.441.5.B, is employed by the nursing facility at the time that the nursing facility is obtaining services, facilities or supplies from an organization whose owner is related to the nursing facility employee; or

      iii) An owner-related individual, as defined in 10 CCR 2505-10 section 8.441.5.B, is employed by an organization which is providing services, facilities or supplies to a nursing facility whose owner is related to the supplier's employee.

3. Related providers or organizations shall be identified by the nursing facility on Schedule F of the MED-I3.

4. The charge by the related provider or organizations for the services, facilities or supplies shall be considered an allowable cost when the nursing facility demonstrates all of the following by clear and convincing evidence:

   a. The supplying organization is a bona fide separate organization; and

   b. A substantial part of the supplier's business activity of the type carried on with a nursing facility is transacted with others than the nursing facility and organizations related to the supplier by common ownership or control; and there is an open, competitive market for the type of services, facilities, or supplies furnished by the organization; and

   c. The services, facilities or supplies are those which commonly are obtained by institutions, such as the nursing facility, from other organizations and are not basic elements of patient care ordinarily furnished directly to the patients by such institutions; and

   d. The charge to the nursing facility is in line with the charge for such services, facilities, or supplies in the open market and no more than the charge made under comparable circumstances to others by the organization for such services, facilities or supplies.

8.441.5.J. NON-SALARIED STAFF

1. Members of religious orders serving under an agreement with their administrative offices shall be allowed comparable salaries paid persons performing comparable services.

2. If maintenance is provided such persons by the nursing facility, i.e., room board, clothing, the amount of these benefits shall be deducted from the amount otherwise allowed for a person not receiving maintenance.

8.441.5.K. OXYGEN

1. Only purchased oxygen concentrator costs, whether expensed or capitalized, shall be allowable costs on the MED-13. Such costs include, but are not limited to, all supplies, equipment and servicing expenses related to the maintenance of the purchased concentrators.

2. Oxygen concentrators of any size leased by medical supply companies to Medicaid nursing facility residents shall not be allowable costs and shall not be included in the MED-13.

8.441.5.L. LIMITATION ON MEDICARE PART A AND PART B COSTS

1. Only those Medicare costs that are reasonable, necessary and patient-related shall be included in calculating the allowable Medicaid reimbursement for class I nursing facilities.

2. The Medicare Part A ancillary costs (“Part A costs”) allowed in calculating the Medicaid per diem rate for a class I facility shall be: The level of Part A costs allowed in the facility’s latest Medicare cost report submitted by the facility to the Department prior to July 1, 1997.

3. The Medicare Part A ancillary costs (“Part A costs”) allowed in calculating the Medicaid per diem rate for newly certified Medicaid nursing facilities shall be: The level of Part A costs allowed in the facility’s first full year Medicaid cost report submitted by the facility to the Department.

4. Part B direct costs for Medicare shall be excluded from the allowable Medicaid reimbursement for class I nursing facilities.

8.441.6 COMPLETION OF OPERATING EXPENSES SCHEDULE

8.441.6.A. All expenses should be reported on the operating expenses schedule. All adjustments to eliminate expenses or to apply expense recoveries shall be made on the operating expenses schedule.

8.441.6.B. Expense centers in operating expenses shall be used for distribution of expenses by object or natural classifications within the department or function. The expenses shall be classified sufficiently within the accounting records to allow preparation of operating expenses schedule.

8.441.6.C. Total expenses reported on the operating expenses schedule shall agree with the total expenses in the general ledger.

8.442 SUBMISSION OF COST REPORTING INFORMATION

8.442.1 Each nursing facility shall complete a Financial and Statistical Report for Nursing Facilities (MED-13) and submit it to the Department’s designee at 12-month intervals within ninety (90) days of the close of the facility’s fiscal year.

8.442.1.A. A nursing facility may request an extension of time to submit the MED-13. The request for extension shall:

1. Be in writing and shall be submitted to the Department.

2. Properly document the reasons for the failure to comply.

3. Be submitted no less than ten (10) working days prior to the due date for submission of the MED-13.

8.442.1.B. Failure of a nursing facility to submit its MED-13 within the required ninety (90) day period shall result in the Department withholding all warrants not yet released to the provider as described below:

1. When a nursing facility fails to submit a complete and auditable MED-13 (i.e., the information represented on the MED-13 can not be verified by reference to adequate documentation as required by generally accepted auditing standards) on time, the MED-13 shall be returned to the facility with written notification that it is unacceptable.

a. The facility shall have either 30 days from the postmark date of the notice or until the end of the original 90-day submission period, whichever is later, to submit a corrected MED-13.

b. If the corrected MED-13 is still determined to be incomplete or unauditable, the nursing facility shall be given written notification that it shall, at its own expense, submit a MED-13 that has been prepared by a certified public accountant (CPA). The CPA shall certify that the report is in compliance with all Department regulations and shall give an opinion of fairness of presentation of operating results or revenues and expenses.

c. The Department shall withhold all warrants not yet released to the provider once the original 90-day filing period and 30-day extension have expired and no acceptable MED-13 has been submitted.

2. If the audit of the MED-13 is delayed by the nursing facility's lack of cooperation, the effective date for the new rate shall be delayed until the first day of the month in which the audit is completed. Lack of cooperation shall mean failure of the nursing facility to meet its responsibility to submit a timely MED-13 or failure to provide documents, personnel or other resources within its control and necessary for completion of the audit, within a reasonable time.

3. When the rate for the facility during a period of delay is found to have been higher than the new rate, the new rate shall be applied retroactively to this period and the Department shall make any adjustments and/or recoveries of overpayments.

8.442.2 DELAYS OR CORRECTIONS IN MINIMUM DATA SET (MDS) SUBMITTAL

8.442.2.A. A nursing facility shall be notified each quarter of its residents' case mix index values, and shall be granted not less than 14 calendar days in which to make any corrections to the resident MDS assessments. After the period of time for correcting resident assessments has passed each quarter, the final nursing facility resident assessment data shall be used by the Department, or its designee, to calculate that quarter's resident case mix acuity adjustment for each facility.

8.442.2.B. A nursing facility may request to amend or correct the MED-13 after it has been submitted to the Department's designee as follows:

1. Requests shall be in writing and shall include an explanation of the need for the revision.

2. If the revision will not be submitted to the Department's designee within the original 90-day filing period, the date of submission of the MED-13 shall be the date of receipt of the submission. The Department may grant a 30-day extension of the filing period.

3. Once the original 90-day filing period and 30-day extension have expired, the Department shall withhold all warrants not yet released to the provider if the revision still has not been submitted to the Department.

8.442.2.C. Where the Department withholds warrants not yet released to the provider, the following shall apply:

1. The Department shall withhold all warrants not yet released to the provider for services rendered in the prior three calendar months (four months if an extension was granted) and thereafter until an acceptable MED-13 is received.

2. Once the Department determines that the MED-13 submitted is complete and auditable, the provider's withheld payments shall be released.

3. If an acceptable MED-13 has not been submitted within 90 days after the Department began withholding payments, the provider's participation in the Medicaid program shall be terminated and the payments withheld shall be released to the provider.

4. Interest paid by the provider on loans for working capital while payments are being withheld shall not be allowable costs for purposes of reimbursement under Medicaid.

5. When the delayed submission of the MED-13 causes the effective date of a new lower rate to be delayed, the new rate shall be applied retroactively to this period and the Department shall make recoveries of overpayments.

8.442.3 PROPOSED ADJUSTMENTS

8.442.3.A. Following completion of a field audit, desk review or rate calculation, the Department or its contract auditor shall notify the affected provider in writing of any proposed adjustment(s) to the costs reported on the facility's MED-13 form and the basis of the proposed adjustment(s).

8.442.3.B. The provider may submit additional documentation in response to proposed adjustments. The department or its contract auditor must receive the additional documentation or other supporting information from the provider within 60 calendar days of the date of the proposed adjustments letter or the documentation will not be considered.

8.442.3.C. The Department may grant an additional period, not to exceed 30 calendar days, for the facility to submit such documents and information, when necessary and appropriate, given the facility's particular circumstances.

8.442.3.D. The Department’s contract auditor shall complete the field audit, desk review or rate calculation within 30 days of the expiration of the 60 day provider response period. The contract auditor shall also complete and deliver the resulting rate letter to the Department by the 30th day following the expiration of the 60 day provider response period.

8.443 NURSING FACILITY REIMBURSEMENT

8.443.1.A. Where no specific Medicaid authority exists, the sources listed below shall be considered in reaching a rate determination:

1. Medicare statutes.

2. Medicare regulations.

3. Medicaid and Medicare guidelines.

4. Generally accepted accounting principles.

8.443.1.B. For class I nursing facilities, a payment rate for each participating nursing facility shall be determined on the basis of information on the MED-13, the Minimum Data Set (MDS) resident assessment information and information obtained by the Department or its designee retained for the purpose of cost auditing.

The nursing facility prospective per diem rate includes the following components:

1. Health Care.

2. Administrative and General.

3. Fair Rental Allowance for Capital-Related Assets.

The Health Care, Administrative and General and Fair Rental Allowance for Capital-Related Assets components are referred to as “core components”.

In addition to the above per diem reimbursement for core components, a nursing facility prospective supplemental payment shall be made for:

1. Residents who have moderately to very severe mental health conditions, cognitive dementia, or acquired brain injury.

2. Residents who have severe mental health conditions that are classified at Level II by the Medicaid program’s Preadmission Screening and Resident Review (PASRR) assessment tool.

3. Care and services rendered to Medicaid residents to recognize the costs of the provider fee. Only Medicaid’s portion of the provider fee will be included in the supplemental payment. The provider fee supplemental payment shall not be equal to the amount of the fee charged and collected but shall be an amount equal to a calculated per diem fee charged multiplied by the number of Medicaid resident days for the facility. Costs associated with the provider fee are not an allowable cost on the MED-13.

4. Facilities that have implemented a program meeting specified performance criteria beginning July 1, 2009.

8.443.1.C For class II and privately-owned class IV intermediate care Facilities for Individuals with Intellectual Disabilities, a payment rate for each participating facility shall be determined on the basis of the MED-13 and information obtained by the Department or its designee retained for the purpose of cost auditing.

The facility’s prospective per diem rate includes the following components:

1. Health Care.

2. Administrative and General.

3. Fair Rental Allowance for Capital-Related Assets.

8.443.1.D For state-operated class IV intermediate care Facilities for Individuals with Intellectual Disabilities, a payment rate for each participating facility shall be determined on the basis of the MED-13 and information obtained by the Department or its designee retained for the purpose of cost auditing.

The facility’s retrospective per diem rate includes the following components:

1. Health Care.

2. Administrative and General, which includes capital.

8.443.1.E. For swing-bed facilities, the annual payment rate shall be determined as the state-wide average class I nursing facilities payment rate at January 1 of each year.

8.443.1.F. No nursing facility care shall receive reimbursement unless and until the nursing facility:

1. Has a license from CDPHE, and

2. Is a Medicaid participating provider of nursing care services, and

3. Meets the requirements of the Department's regulations.

8.443.2 NURSING FACILITY CLASSIFICATIONS

1. Class I facilities are those facilities licensed and certified to provide general skilled nursing facility care.

2. Class II facilities are those facilities whose program of care is designed to treat developmentally disabled individuals whose medical and psychosocial needs are best served by receiving care in a community setting.

   a. Class II facilities shall provide care and services designed to maximize each resident's capacity for independent living and shall seek out and utilize other community programs and resources to the maximum extent possible according to the needs and abilities of each individual resident.

   b. Class II facilities serve persons whose medical and psychosocial needs require services in an institutional setting and are expected to provide such services in an environment which approximates a home-like living arrangement to the maximum extent possible within the constraints and limitations inherent in an institutional setting.

   c. Class II facilities shall be certified in accordance with 42 C.F.R. part 442, Subpart C, and 42 C.F.R. part 483 and shall be licensed by CDPHE. Class II facilities shall provide care and a program of services consistent with licensure and certification requirements.

3. Class IV facilities are those facilities whose program of care is designed to treat developmentally disabled individuals who have intensive medical and psychosocial needs which require a highly structured in-house comprehensive medical, nursing, developmental and psychological treatment program.

   a. Class IV facilities shall offer full-time, 24-hour interdisciplinary and professional treatment by staff employed at such facility. Staff must be sufficient to implement and carry out a comprehensive program to include, but not necessarily be limited to, care, treatment, training and education for each individual.

   b. Class IV facilities shall be certified in accordance with 42 C.F.R. part 442, Subpart C, and 42 C.F.R. part 483 and shall be licensed by CDPHE. Class IV facilities shall provide care and a program of services consistent with licensure and certification requirements.

   c. State-administered, tax-supported facilities are not subject to the maximum reimbursement provisions and do not earn an incentive allowance.

   d. Private, non-profit or proprietary facilities that are not tax-supported or state-administered are subject to the maximum reimbursement provisions and may earn an incentive allowance.

8.443.3 IMPUTED OCCUPANCY FOR CLASS II AND PRIVATELY OWNED CLASS IV FACILITIES

8.443.3.A. The Department or its designee shall determine the audited allowable costs per patient day.

1. The Department shall utilize the total audited patient days on the MED-13 unless the audited patient days on the MED-13 constitute an occupancy rate of less than 85 percent of licensed bed day capacity when computing the audited allowable cost per patient day for all rates.

2. In such cases, the patient days shall be imputed to an 85 percent rate of licensed bed day capacity for the nursing facility and the per diem cost along with the resulting per diem rate shall be adjusted accordingly except that imputed occupancy shall not be applied in calculating the facility's health care services and food costs.

3. The licensed bed capacity shall remain in effect until the Department is advised that the licensed bed capacity has changed through the filing of a subsequent cost report.

4. The imputed patient day calculation shall remain in effect until a new rate from a subsequent cost report is calculated. Should the subsequent cost report indicate an occupancy rate of less than 85 percent of licensed bed day capacity, the resulting rate shall be imputed in accordance with the provisions of this section.

8.443.3.B. Nursing facilities located in rural communities with a census of less than 85 percent shall not be subject to imputed occupancy. A nursing facility in a rural community shall be defined as a nursing facility in:

1. A county with a population of less than fifteen thousand; or

2. A municipality with a population of less than fifteen thousand which is located ten miles or more from a municipality with a population of over fifteen thousand; or

3. The unincorporated part of a county ten miles or more from a municipality with a population of fifteen thousand or more.

8.443.3.C. Any nursing facility that has a reduction in census, causing it to be less than 85 percent, resulting from the relocation of mentally ill or developmentally disabled residents to alternative facilities pursuant to the provisions of the Omnibus Reconciliation Act of 1987 shall:

1. Be entitled to the higher of the imputed occupancy rate or the median rate computed by the Department for two cost reporting periods.

2. The imputed occupancy calculation shall be applied when required at the end of this period.

8.443.3.D. Imputed occupancy shall be applied to a new nursing facility as follows:

1. A new nursing facility means a facility not in the Colorado Medicaid program within thirty days prior to the start date of the Medicaid provider agreement.

2. For the first cost report submitted by a new facility, the facility shall be entitled to the higher of the imputed rate or the median rate computed by the Department.

3. For the second cost report submitted by a new facility, imputed occupancy shall be applied but the rate for the new facility shall not be lower than the 25th percentile nursing facility rate as computed by the Department in the median computation.

4. For the third cost report and cost reports thereafter, imputed occupancy shall be applied without exception.

8.443.3.E. Nursing facilities undergoing a state-ordered change in case mix or patient census that significantly reduces the level of occupancy in the facility shall:

1. Be entitled to the higher of the imputed occupancy rate or the monthly weighted average rate computed by the Department for two cost reporting periods.

2. At the end of this period, the imputed occupancy calculation shall be applied when required.

8.443.4 INFLATION ADJUSTMENT

8.443.4.A For class I nursing facilities, the per diem amount paid for direct and indirect health care services and administrative and general services costs shall include an allowance for inflation in the costs for each category using a nationally recognized service that includes the federal government's forecasts for the prospective Medicare reimbursement rates recommended to the United States Congress. Amounts contained in cost reports used to determine the per diem amount paid for each category shall be adjusted by the percentage change in this allowance measured from the midpoint of the reporting period of each cost report to the midpoint of the payment-setting period.

1. The percentage change shall be rounded at least to the fifth decimal point.

2. The index used for this allowance will be the Skilled Nursing Facility Market Basket (without capital) published by Global Insight, Inc. The latest available publication prior to July 1 rate setting shall be used to determine inflation indexes. The inflation indexes shall be revised and published every July 1 to be used for rate effective dates between July 1, and June 30.

8.443.4.B For class II and privately-owned class IV facilities , at the beginning of each facility's new rate period, the inflation adjustment shall be applied to all costs except provider fees, interest, and costs covered by fair rental allowance.

1. The inflation adjustment shall equal the annual percentage change in the National Bureau of Labor Statistics Consumer Price Index (U.S. city average, all urban consumers), from the preceding year, times actual costs (less interest expense and costs covered by the fair rental allowance) or times reasonable cost for that class facility, whichever is less.

2. The annual percentage change in the National Bureau of Labor Statistics Consumer Price Index shall be rounded at least to the fifth decimal point.

3. The price indexes listing in the latest available publication prior to the July 1 limitation setting shall be used to determine inflation indexes. The inflation indexes shall be revised and published every July 1 to be used for rate effective dates between July 1 and June 30.

4. The provider's allowable cost shall be multiplied by the change in the consumer price index measured from the midpoint of the provider's cost report period to the midpoint of the provider's rate period.

8.443.5 ADMINISTRATIVE COST INCENTIVE ALLOWANCE FOR CLASS II AND PRIVATELY OWNED CLASS IV FACILITIES

8.443.5.A. If the nursing facility's combined audited administration, property, and room and board (excluding raw food, land, buildings, leasehold and fixed equipment) cost per patient day is less than the maximum reasonable cost for administration, property and room and board (excluding raw food, land, buildings, leasehold and fixed equipment) costs for the class, the provider will earn an incentive allowance.

8.443.5.B. The incentive allowance for class II and privately owned class IV facilities shall be calculated at 25 percent of the difference between the facility's audited inflation adjusted cost and the maximum reasonable cost for that class. The incentive allowance will not exceed 12 percent of the reasonable cost.8.443.5.C. No incentive allowance shall be paid on health care services, raw food, fair rental value allowance and leasehold costs.

8.443.6 CASE MIX ADJUSTMENTS

8.443.6.A. The resource utilization group–III (RUG-III) 34 category, index maximizer model, version 5.12b, as published by the Centers for Medicare and Medicaid Services (CMS), the resource utilization group–III (RUG-III) 34 category, index maximizer model, version 5.12b is hereby incorporated by reference. The incorporation of RUG-III 34 category, index maximizer model, version 5.12b excludes later amendments to, or editions of, the referenced material. The Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at: Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, CO 80203. Certified copies of incorporated materials are provided at cost upon request. The Department may update the classification methodology to reflect advances in resident assessment or classification subject to federal requirements.

8.443.6.B. The Department shall distribute facility listings identifying current assessments for residents in the nursing facility on the 1st day of the first month of each quarter as reflected in the Department’s MDS assessment database.

1. The listings shall identify resident social security numbers, names, assessment reference date, the calculated RUG-III category and the payor source as reflected on the prior full assessment and/or current claims data.

2. Resident listings shall be reviewed by the nursing facility for completeness and accuracy.

3. If data reported on the resident listings is in error or if there is missing data, facilities shall have until the last day of the second month of each quarter to correct data submissions, or until a later date if approved by the Department pursuant to 10 CCR 2505-10 section 8.442.2.

    a. Errors or missing data on the resident listings due to untimely submissions to the CMS database maintained by CDPHE shall be corrected by the nursing facility transmitting the appropriate assessments or tracking documents to CDPHE.

    b. Errors in key field items shall be corrected by following the CMS key field specifications through CDPHE

    c. Errors on the current payor source shall be noted on the resident listings prior to signing and returning to the Department.

4. Each nursing facility shall sign and return its resident listing to the Department no later than 15 calendar days after it was mailed by the Department.

5. Residents shall be assigned a RUG-III group calculated on their most current non-delinquent assessment available on the 1st day of the first month of each quarter as amended during the correction period.

a. The RUG-III group shall be translated to the appropriate case mix index or weight.

b. Two average case mix indices for each Medicaid nursing facility shall be determined from the individual case mix weights for the applicable quarter:

i) The facility average case mix index shall be a simple average, carried to four decimal places, of all resident case mix indices.

ii) The Medicaid average case mix index shall be a simple average, carried to four decimal places, of all residents where Medicaid is the per diem payor source anytime during the 30 days prior to their current assessment.

c. Any incomplete assessments and current assessment in the database older than 122 days shall be included in the calculation of the averages using the case mix index established in these rules.

8.443.7 HEALTH CARE REIMBURSEMENT RATE CALCULATION

8.443.7.A Health Care Services Defined: Health Care Services means the categories of reasonable, necessary and patient-related support services listed below. No service shall be considered a health care service unless it is listed below:

1. The salaries, payroll taxes, worker compensation payments, training and other employee benefits of registered nurses, licensed practical nurses, restorative aides, nurse aides, feeding assistants, registered dietician, MDS coordinators, nursing staff development personnel, nursing administration (not clerical) case manager, patient care coordinator, quality improvement, clinical director. These personnel shall be appropriately licensed and/or certified, although nurse aides may work in any facility for up to four months before becoming certified.

If a facility employee or a management company/home office employee or owner has dual health care and administrative duties, the provider must keep contemporaneous time records or perform time studies to verify hours worked performing health care related duties. If no contemporaneous time records are kept or time studies performed, total salaries, payroll taxes and benefits of personnel performing health care and administrative functions will be classified as administrative and general. Licenses are not required unless otherwise specified. Periodic time studies in lieu of contemporaneous time records may be used for the allocation. Time studies used must meet the following criteria:

a. A minimally acceptable time study must encompass at least one full week per month of the cost reporting period.

b. Each week selected must be a full work week (Monday to Friday, Monday to Saturday, or Sunday to Saturday).

c. The weeks selected must be equally distributed among the months in the cost reporting period, e.g., for a 12 month period, 3 of the 12 weeks in the study must be the first week beginning in the month, 3 weeks the 2nd week beginning in the month, 3 weeks the 3rd, and 3 weeks the fourth.

d. No two consecutive months may use the same week for the study, e.g., if the second week beginning in April is the study week for April, the weeks selected for March and May may not be the second week beginning in those months.

e. The time study must be contemporaneous with the costs to be allocated. Thus, a time study conducted in the current cost reporting year may not be used to allocate the costs of prior or subsequent cost reporting years.

f. The time study must be provider specific. Thus, chain organizations may not use a time study from one provider to allocate the costs of another provider or a time study of a sample group of providers to allocate the costs of all providers within the chain.

2. The salaries, payroll taxes, workers compensation payments, training and other employee benefits of medical records librarians, social workers, central or medical supplies personnel and activity personnel.

Health Information Managers (Medical Records Librarians): Must work directly with the maintenance and organization of medical records.

Social Workers: Includes social workers, life enhancement specialists and admissions coordinators.

Central or Medical Supply personnel: Includes duties associated with stocking and ordering medical and/or central supplies.

Activity personnel: Personnel classified as “activities” must have a direct relationship (i.e., providing entertainment, games, and social opportunities) to residents. For instance, security guards and hall monitors do not qualify as activities personnel. Costs associated with security guards and hall monitors are classified as administrative and general.

3. If the provider’s chart of accounts directly identifies payroll taxes and benefits associated with health care versus administrative and general cost centers, the amounts directly identified will be appropriately allowed as either health care or administrative and general. If these costs are comingled in the chart of accounts, payroll taxes and benefits shall be allocated to the cost centers (health care and administrative and general) based on total employee wages reported in those cost centers. The reporting method for payroll taxes and benefits by cost center is required to be consistent from year to year. When a provider wishes to change its reporting method because it believes the change will result in more appropriate and a more accurate allocation, the provider must make a written request to the Department for approval of the change ninety (90) days prior to the end of that cost reporting period. The Department has sixty (60) days from receipt of the request to make a decision or the change is automatically accepted. The provider must include with the request all supporting documentation to establish that the new method is more accurate. If the Department approves the provider's request, the change must be applied to the cost reporting period for which the request was made and to all subsequent cost reporting periods. The approval will be for a minimum three year period. The provider cannot change methods until the three year period has expired.

4. Personnel licensed to perform patient care duties shall be reported in the administrative and general cost center if the duties performed by these personnel are administrative in nature.

5. Non-prescription drugs ordered by a physician that are included in the per diem rate, including costs associated with vaccinations.

6. Consultant fees for nursing, medical records, registered dieticians, patient activities, social workers, pharmacies, physicians and therapies. Consultants shall be appropriately licensed and/or certified, as applicable and professionally qualified in the field for which they are consulting. The guidance provided in (1) above for employees also applies to consultants.

7. Purchases, rental, depreciation, interest and repair expenses of health care equipment and medical supplies used for health care services such as nursing care, medical records, social services, therapies and activities. Purchases, lease expenses or fees associated with computers and software (including the associated training and upgrades) used in departments within the facility that provide direct or indirect health care services to residents. Dual purpose software that includes both a health care and administrative and general component will be considered a health care service.

8. Purchase or rental of motor vehicles and related expenses, including salary and benefits associated with the van driver(s), for operating or maintaining the vehicles to the extent that they are used to transport residents to activities or medical appointments. Such use shall be documented by contemporaneous logs if there is dual purpose. An example of the dual purpose vehicle is one used for both resident transport and maintenance activities.

9. Copier lease expense.

10. Salaries, fees, or other expenses related to health care duties performed by a facility owner or manager who has a medical or nursing credential. Note that costs associated with the Nursing Home Administrator are an administrative and general cost.

11. Related Party Management Fees and Home Office Costs

    Related party management fees and home office costs shall be classified as administrative and general. However, costs incurred by the facility as a direct charge from the related party which are listed in this section, may be included in the health care cost center equal to the actual costs incurred by the related party. Documentation supporting the cost and health care licenses must be maintained. Only salaries, payroll taxes and employee benefits associated with health care personnel will be considered as allowable in the health care cost center. No overhead expenses will be included. The amount allowable in the health care cost category will be calculated in one of two ways:

    a. Keeping contemporaneous time logs in 15 minute increments supporting the number of hours worked at each facility.

    b. Distributing the cost evenly across all facilities as follows: the amount allowable in each health care facility's health care costs shall be equal to the total salary, payroll taxes and benefits of the health care personnel divided by the number of facilities where the health care personnel worked during the year. For example, if a nurse's total salary, payroll taxes, and benefits total $80,000, and the nurse worked on five facilities during the year, $16,000 is allowable in each of the facility's health care costs.

    Auditable documentation supporting the number of facilities worked on during the year must be maintained. Even if a related party exception is granted in accordance with 10 CCR 2505-10 section 8.441.5.I.4, no mark-up or profit will be allowed in the health care cost center, only supported actual costs.

    Non-Related Party Management Fees

    Non-related party management fees shall be classified as administrative and general. However, costs incurred by the facility as a direct charge from the management company which are listed in this section, may be included in the health care cost center. Management contracts which specify percentages related to health care services will not be considered a direct charge from the management company.

12. Professional liability insurance, whether self-insurance or purchased, loss settlements, claims paid and insurance deductibles.

13. Medical director fees.

14. Therapies and services provided by an individual qualified to provide these services under Federal Medicare/Medicaid regulations including:

    Utilization review

    Dental care, when required by federal law

    Audiology

    Psychology and mental health services

    Physical therapy

    Recreational therapy

    Occupational therapy

    Speech therapy

15. Nursing licenses and permits, disposal costs associated with infectious material (medical or hazardous waste), background checks and flu or hepatitis shots and uniforms for personnel listed in (1) above.

16. Food Costs. Food costs means the cost of raw food, and shall not include the costs of property, staff, preparation or other items related to the food program.

8.443.7.B CLASS I HEALTH CARE STATE-WIDE MAXIMUM ALLOWABLE PER DIEM REIMBURSEMENT RATES (LIMIT)

For the purpose of reimbursing Medicaid-certified nursing facility providers a per diem rate for direct and indirect health care services and raw food, the state department shall establish an annual maximum allowable rate (limit). In computing the health care per diem limit, each nursing facility provider shall annually submit cost reports, and actual days of care shall be counted, not occupancy-imputed days of care. The health care limit will be calculated as follows:

1. Determination of the health care limit beginning on July 1 each year shall utilize the most current MED-13 cost report filed, in accordance with these regulations, by each facility on or before December 31 of the preceding year.

2. The MED-13 cost report shall be deemed filed if actually received by the Department's designee or postmarked by the U.S. Postal Service on or before December 31.

3. If, in the judgment of the Department, the MED-13 contains errors, whether willful or accidental, that would impair the accurate calculation of the limit, the Department may:

    a. Exclude part, or all, of a provider's MED-13.

    b. Replace part, or all, of a provider's MED-13 with the MED-13 the provider submitted in its most recent audited cost report adjusted by the percentage change in the Skilled Nursing Facility Market Basket (without capital) published by Global Insight, Inc. measured from the midpoint of the reporting period to the midpoint of the payment-setting period.

4. The health care limit and the data used in that computation shall be subject to administrative appeal only on or before the expiration of the thirty (30) day period following the date the information is made available.

5. The health care limit shall not exceed one hundred twenty-five percent (125%) of the median costs of direct and indirect health care services and raw food as determined by an array of all class I facility providers; except that, for state veteran nursing homes, the health care limit will be one hundred thirty percent (130%) of the median cost.

   a. In determining the median cost, the cost of direct health care shall be case-mix neutral.

   b. Actual days of care shall be counted, not occupancy-imputed days of care, for purposes of calculating the health care limit.

   c. Amounts contained in cost reports used to determine the health care limit shall be adjusted by the percentage change in the Skilled Nursing Facility Market Basket (without capital) inflation indexes published by Global Insight, Inc. measured from the midpoint of the reporting period of each cost report to the midpoint of the payment-setting period.

      i). The percentage change shall be rounded at least to the fifth decimal point.

      ii). The latest available publication prior to July 1 rate setting shall be used to determine the inflation indexes.

6. Annually, the state department shall redetermine the median per diem cost based upon the most recent cost reports filed during the period ending December 31 of the prior year.

7. The health care limit for health care reimbursement shall be changed effective July 1 of each year and individual facility rates shall be adjusted accordingly.

8.443.7.C. CLASS I HEALTH CARE PER DIEM LIMITATION ON HEALTH CARE GROWTH

For the fiscal year beginning July 1, 2009, and for each fiscal year thereafter, any increase in the direct and indirect health care services and raw food costs shall not exceed eight percent (8%) per year. The calculation of the eight percent per year limitation for rates effective on July 1, 2009, shall be based on the direct and indirect health care services and raw food costs in the as-filed facility's cost reports up to and including June 30, 2009. For the purposes of calculating the eight percent limitation for rates effective after July 1, 2009, the limitation shall be determined and indexed from the direct and indirect health care services and raw food costs as reported and audited for the rates effective July 1, 2009.

8.443.7.D. CLASS I HEALTH CARE PER DIEM REIMBURSEMENT RATES AND MEDICAID CASE MIX INDEX (CMI):

For the purpose of reimbursing a Medicaid-certified class I nursing facility provider a per diem rate for the cost of direct and indirect health care services and raw food, the State Department shall establish an annually readjusted schedule to pay each nursing facility provider the actual amount of the costs. This payment shall not exceed the health care limit described at 10 CCR 2505-10 section 8.443.7B. The health care per diem reimbursement rate is the lesser of the provider's acuity adjusted health care limit or the provider's acuity adjusted actual allowable health care costs.

The state department shall adjust the per diem rate to the nursing facility provider for the cost of direct health care services based upon the acuity or case-mix of the nursing facility provider's

residents in order to adjust for the resource utilization of its residents. The state department shall determine this adjustment in accordance with each resident's status as identified and reported by the nursing facility provider on its federal Medicare and Medicaid minimum data set assessment. The state department shall establish a case-mix index for each nursing facility provider according to the resource utilization groups system, using only nursing weights. The state department shall calculate nursing weights based upon standard nursing time studies and weighted by facility population distribution and Colorado-specific nursing salary ratios. The state department shall determine an average case-mix index for each nursing facility provider's Medicaid residents on a quarterly basis

1. Acuity information used in the calculation of the health care reimbursement rate shall be determined as follows:

    a. A facility’s cost report period resident acuity case mix index shall be the average of quarterly resident acuity case mix indices, carried to four decimal places, using the facility wide resident acuity case mix indices. The quarters used in this average shall be the quarters that most closely coincide with the cost reporting period.

    b. The facility’s Medicaid resident acuity case mix index shall be a two quarter average, carried to four decimal places, of the Medicaid resident acuity average case mix indices. The two quarter average used in the July 1 rate calculation shall be the same two quarter average used in the rate calculation for the rate effective date prior to July 1.

    c. The statewide average case mix index shall be a simple average, carried to four decimal places, of the cost report period case mix indices for all Medicaid facilities calculated effective each July 1.

    d. The normalization ratio shall be determined by dividing the statewide average case mix index by the facility’s cost report period case mix index.

    e. The facility Medicaid acuity ratio shall be determined by dividing the facility’s Medicaid resident acuity case mix index by the facility cost report period case mix index.

    f. The facility overall resident acuity ratio shall be determined by dividing the facility cost report period case mix index by the statewide average case mix acuity index.

2. The annual facility specific direct health care maximum reimbursement rate shall be determined as follows:

    a. The percentage of the normalized per diem case mix adjusted nursing cost to total health care cost shall be determined by dividing the normalized per diem case mix adjusted nursing cost by the sum of the normalized per diem case mix adjusted nursing cost and other health care per diem cost.

    b. The statewide health care maximum allowable reimbursement rate (calculated at 10 CCR 2505-10 section 8.443.7B) shall be multiplied by the percentage established in the preceding paragraph to determine the amount of the statewide health care maximum allowable reimbursement rate that is attributable to the case mix reimbursement rate component.

    c. The facility specific maximum reimbursement rate for case mix adjusted nursing costs shall be determined by multiplying the facility specific overall acuity ratio by the amount of the statewide health care maximum allowable reimbursement rate

that is attributable to the case mix reimbursement rate component as established in the preceding paragraph.

3. The annual facility specific indirect health care maximum allowable reimbursement shall be determined as follows:

   a. The percentage of the indirect health care per diem cost to total health care cost shall be determined by dividing the indirect health care per diem cost by the sum of the normalized per diem case mix adjusted nursing cost and other health care per diem cost.

   b. The facility specific in direct health care maximum reimbursement rate shall be determined by multiplying the statewide health care maximum allowable reimbursement rate by the percentage established in the preceding paragraph.

4. The case mix reimbursement rate component shall be determined as follows:

   a. The case mix reimbursement rate component shall be established using the facility Medicaid resident acuity ratio.

   b. This ratio shall be multiplied by the lesser of the facility's allowable case mix adjusted nursing cost or the facility specific maximum reimbursement rate for case mix adjusted nursing costs. The resulting calculation shall the case mix reimbursement rate component.

5. The indirect health care reimbursement rate shall be the lesser of the facility's allowable other health care cost or the facility specific other health care maximum reimbursement rate.

8.443.7.E DETERMINATION OF THE HEALTH CARE SERVICES MAXIMUM ALLOWABLE RATE (LIMIT) FOR CLASS II AND IV FACILITIES

1. For class II facilities, one hundred twenty-five percent (125%) of the median actual costs of all class II facilities;

2. For non-state administered class IV facilities, one hundred twenty-five percent (125%) of the median actual costs of all class IV facilities.

3. State-administered class IV facilities shall not be subject to the health care limit. The Med-13s of the state-administered class IV facilities shall be included in the health care limit calculation for other class IV facilities.

4. The determination of the reasonable cost of services shall be made every 12 months.

5. Determination of the health care limit beginning on July 1 each year shall utilize the most current MED-13 cost report filed in accordance with these regulations, by each facility on or before May 2.

6. The MED-13 cost report shall be deemed submitted if actually received by the Department's designee or postmarked by the U.S. Postal Service on or before May 2nd.

7. If, in the judgment of the Department, the MED-13 contains errors, whether willful or accidental, that would impair the accurate calculation of reasonable costs for the class, the Department may:

   a. Exclude part, or all, of a provider's MED-13; or

b. Replace part, or all, of a provider's MED-13 with the MED-13 the provider submitted in its most recent audited cost report adjusted by the change in the "medical care" component of the Consumer Price Index published for all urban consumers (CPI-U) by the United States Department of Labor, Bureau of Labor Statistics over the time period from the provider's most recent audited cost report.

8. State-administered class IV facilities shall not be subject to the maximum reasonable rate ceiling. The Med-13s of the state-administered class IV facilities shall be included in the maximum rate calculation for other class IV facilities.

9. The maximum reasonable rate and the data used in that computation shall be subject to administrative appeal only on or before the expiration of the thirty (30) day period following the date the information is made available.

10. The maximum rate for reimbursement shall be changed effective July 1 of each year and individual facility rates shall be adjusted accordingly.

8.443.8 REIMBURSEMENT FOR ADMINISTRATIVE AND GENERAL COSTS

8.443.8.A. Administration Costs means the following categories of reasonable, necessary and patient-related costs:

1. The salaries, payroll taxes, worker compensation payments, training and other employee benefits of the administrator, assistant administrator, bookkeeper, secretarial, other clerical help, hall monitors, security guards, janitorial and plant staff and food service staff. Staff who perform duties in both administrative and health care services shall maintain contemporaneous time records or perform a time study in order to properly allocate their salaries between cost centers. Time studies used must meet the criteria described in 10 CCR 2505-10 section 8.443.7.A.1.

2. Any portion of other staff costs directly attributable to administration.

3. Advertising and public relations.

4. Recruitment costs and staff want ads for all personnel.

5. Office supplies.

6. Telephone costs.

7. Purchased services: accounting fees, legal fees; computer network infrastructure fees. Computers and software used in administrative and general departments.

8. Management fees and home office costs, except as described in 10 CCR 2505-10 section 8.443.7.A.13.

9. Licenses and permits (except health care licenses and permits) and training for administrative personnel, dues for professional associations and organizations.

10. All business related travel of facility staff and consultants, except that required for transporting residents to activities or for medical purposes.

11. Insurance, including insurance on vehicles used for resident transport, is an administrative cost. The only exception is professional liability insurance, which is a health care cost.

12. Facility membership fees and dues in trade groups or professional organizations.

13. Miscellaneous general and administrative costs.

14. Purchase or rental of motor vehicles and related expenses for operating or maintaining the vehicles. However, such costs shall be considered health care services to the extent that the motor vehicles are used to transport residents to activities or medical appointments. Such use shall be documented by contemporaneous logs.

15. Purchases (including depreciation and interest), rentals, repairs, betterments and improvements of equipment utilized in administrative departments, including but not limited to the following:

    Resident room furniture and decor, excluding beds and mattresses

    Office furniture and decor

    Dining room and common area furniture and decor

    Lighting fixtures

    Artwork

    Computers and related software used in administrative departments

16. Allowable audited interest not covered by the fair rental allowance or related to the property costs listed below.

17. All other reasonable, necessary and patient-related costs which are not specifically set forth in the description of "health care services" above, and which are not property, room and board, food or capital-related assets.

18. Background checks and flu or hepatitis shots and uniforms for personnel listed in (1) above.

19. Provider fees for Class II and Class IV facilities.

8.443.8.B Property costs include:

1. Depreciation costs of non fixed equipment (i.e., major moveable equipment and minor equipment not used for direct health care).

2. Rental costs of non fixed equipment (i.e., major moveable equipment and minor equipment not used for direct health care).

3. Property taxes.

4. Property insurance.

5. Mortgage insurance.

6. Interest on loans associated with property costs covered in this section.

7. Repairs, betterments and improvements to property not covered by the fair rental allowance.

8. Repair, maintenance, betterments or improvement costs to property covered by the fair rental allowance payment which are to be expensed as required by the regulations regarding expensing of items.

8.443.8.C Room and board includes:

1. Dietary, other than raw food, and salaries related to dietary personnel including tray help, except registered dieticians which are health care.

2. Laundry and linen.

3. Housekeeping.

4. Plant operation and maintenance (except removal of infectious material or medical waste which is health care).

5. Repairs, betterments and improvements to equipment related to room and board services.

8.443.8.D Determination of the Administrative and General Maximum Allowable Rate (Limit) for Class II and IV Facilities.

The determination of the reasonable cost of services shall be made every 12 months. The maximum allowable reimbursement of administration, property and room and board costs, excluding raw food, land, buildings and fixed equipment, shall not exceed:

1. For class II facilities, one hundred twenty percent (120%) of the median actual costs of all class II facilities.

2. For class IV facilities, one hundred twenty percent (120%) of the median actual costs of all class IV facilities.

3. Determination of the rates beginning on July 1 each year shall utilize the most current MED-13 cost report filed, in accordance with these regulations, by each facility on or before May 2.

4. The MED-13 cost report shall be deemed submitted if actually received by the Department's designee or postmarked by the U.S. Postal Service on or before May 2.

5. If, in the judgment of the Department, the MED-13 contains errors, whether willful or accidental, that would impair the accurate calculation of reasonable costs for the class, the Department may:

   a. Exclude part, or all, of a provider's MED-13 or

   b. Replace part, or all, of a provider's MED-13 with the MED-13 the provider submitted in its most recent audited cost report adjusted by the change in the "medical care" component of the Consumer Price Index published for all urban consumers (CPI-U) by the United States Department of Labor, Bureau of Labor Statistics over the time period from the provider's most recent audited cost report to May 2.

6. State-administered class IV facilities shall not be subject to the maximum reasonable rate ceiling. The Med-13s of the state-administered class IV facilities shall be included in the maximum rate calculation for other class IV facilities.

7. The maximum reasonable rate and the data used in that computation shall be subject to administrative appeal only on or before the expiration of the thirty (30) day period following the date the information is made available.

8. The maximum rate for reimbursement shall be changed effective July 1 of each year and individual facility rates shall be adjusted accordingly.

8.443.8.E. Class I Administrative and General Per Diem Reimbursement Rate

For the purpose of reimbursing a Medicaid-certified class I nursing facility provider a per diem rate for the cost of its administrative and general services, the Department shall establish an annually readjusted schedule to pay each facility a reasonable price for the costs.

1. Determination of the class I rates beginning on July 1 each year shall utilize the most current MED-13 cost report submitted, in accordance with these regulations, by each facility on or before December 31 of the preceding year.

2. The reasonable price shall be a percentage of the median per diem cost of administrative and general services as determined by an array of all nursing facility providers.

3. For facilities of sixty licensed beds or fewer, the reasonable price shall be one hundred ten percent of the median per diem cost for all class I facilities. For facilities of sixty-one or more licensed beds, the reasonable price shall be one hundred five percent of the median per diem cost for all class I facilities.

4. In computing per diem cost, each nursing facility provider shall annually submit cost reports to the Department.

5. Actual days of care shall be counted rather than occupancy-imputed days of care.

6. The cost reports used to establish this median per diem cost shall be those filed during the period ending December 31 of the prior year following implementation.

7. Amounts contained in cost reports used to establish this median shall be adjusted by the percentage change in the Skilled Nursing Facility Market Basket (without capital) inflation indexes published by Global Insight, Inc., measured from the midpoint of the reporting period of each cost report to the midpoint of the payment-setting period.

    a. The percentage change shall be rounded at least to the fifth decimal point.

    b. The latest available publication prior to July 1 rate setting shall be used to determine the inflation indexes.

8. The reasonable price determined at July 1, 2008 will be adjusted annually at July 1st for three subsequent years. The reasonable price shall be adjusted by the annual percentage change in the Skilled Nursing Facility Market Basket (without capital) inflation indexes published by Global Insight, Inc. The percentage change shall be rounded at least to the fifth decimal point. The latest available publication prior to July 1 rate setting shall be used to determine the inflation indexes.

9. For each succeeding fourth year, the Department shall re-determine the median per diem cost based upon the most recent cost reports filed during the period ending December 31 of the prior year.

10. The reasonable price established by the median per diem costs determined each succeeding fourth year will be adjusted annually at July 1st for the three intervening years. The reasonable price shall be adjusted by the annual percentage change in the Skilled Nursing Facility Market Basket (without capital) inflation indexes published by Global Insight, Inc. The percentage change shall be rounded at least to the fifth decimal point. The latest available publication prior to July 1 rate setting shall be used to determine the inflation indexes.

11. For fiscal years commencing on and after July 1, 2008, through the fiscal year commencing July 1, 2014, the state department shall compare a nursing facility provider's administrative and general per diem rate to the nursing facility provider's administrative and general services per diem rate as of June 30, 2008, and the state department shall pay the nursing facility provider the higher per diem amount for each of the fiscal years.

12. For fiscal years commencing on and after July 1, 2009, through the fiscal year commencing July 1, 2014, if a reallocation of management costs between administrative and general costs and the health care costs causes a nursing facility provider's administrative and general costs to exceed the reasonable price established by the state department, the state department may pay the nursing facility provider the higher per diem payment for administrative and general services.

13. The reasonable price will be phased in over three years in accordance with the following schedule:

July 1, 2008	50% reasonable price
.	50% cost-based rate
July 1, 2009	50% reasonable price
.	50% cost-based rate
July 1, 2010	75% reasonable price
.	25% cost-based rate
July 1, 2011	100% reasonable price

The phase in will allow a percentage of the reasonable price established in accordance with these rules (reasonable price) and a percentage of the July 1, 2008 administrative and general rate in accordance with the rules in effect prior to implementation of these rules (cost-based rate). The cost-based rate determined at July 1, 2008 will be adjusted annually at July 1st for two subsequent years. The cost-based rate shall be adjusted by the annual percentage change in the Skilled Nursing Facility Market Basket (without capital) inflation indexes published by Global Insight, Inc. The percentage change shall be rounded at least to the fifth decimal point. The latest available publication prior to July 1 rate setting shall be used to determine the inflation indexes.

8.443.8.F For the purpose of reimbursing class II and privately-owned class IV facilities a per diem rate for the cost of administrative and general services, the Department shall establish an annually readjusted schedule to reimburse each facility, as nearly as possible, for its actual or reasonable cost of services rendered, whichever is less, its case-mix adjusted direct health care services costs and a fair rental allowance for capital-related assets.

1. In computing per diem cost, each class II and class IV facility provider shall annually submit cost reports to the Department.

2. The per diem reimbursement rate will be total allowable costs for administrative and general and health care services (actual or the limit per 10 CCR 2505-10 section 8.443.7.D) divided by the higher of actual resident days or occupancy imputed days per 10 CCR 2505-10 section 8.443.3.

3. An inflation adjustment per 10 CCR 2505-10 section 8.443.4B will be applied to the per diem administrative and general and health care reimbursement rates.

4. An incentive allowance for administrative and general costs may be included per 10 CCR 2505-10 section 8.443.5.

5. Each facility will be paid a per diem for capital-related assets per 10 CCR 2505-10 section 8.443.9.A.

8.443.9 FAIR RENTAL ALLOWANCE FOR CAPITAL-RELATED ASSETS

8.443.9.A. FAIR RENTAL ALLOWANCE: DEFINITIONS AND SPECIFICATIONS

1. For purposes of this section concerning fair rental allowance, the following definitions shall apply:

   a. Appraised Value means the determination by a qualified appraiser who is a member of an institute of real estate appraisers or its equivalent, the depreciated cost of replacement of a capital-related asset to its current owner. The depreciated replacement appraisal shall be based on the most recent edition of the Boeckh™ Commercial Building Valuation System available on December 31st of the year preceding the year in which the appraisals are to be performed. Boeckh™ Commercial Building Valuation System is hereby incorporated by reference. The Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at: Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, CO 80203. Certified copies of incorporated materials are provided at cost upon request.

   b. Base Value means the value of the capital related assets as determined by the most current appraisal report completed by the Department or its designee and any additional information considered relevant by the Department. For each year in which an appraisal is not done, base value means the most recent appraisal value increased or decreased by fifty percent (50%) of the change in the Index. Under no circumstances shall the base value exceed $25,000 per bed plus the percentage rate of change referred to as the per bed limit.

   c. Capital-Related Asset means the land, buildings and fixed equipment of a participating facility.

   d. Fair Rental Allowance means the product obtained by multiplying the base value of a capital-related asset by the rental rate.

   e. Fair Rental Allowance Per Diem Rate means the fair rental allowance described above, divided by the greater of the audited patient days on the provider's annual cost report or ninety percent (90%) of licensed bed capacity on file. This calculation applies to both rural and urban facilities.

   f. Fiscal Year means the State fiscal year from July 1 through June 30.

   g. Fixed equipment means building equipment as defined under the Medicare principle of reimbursement as specified in the Medicare provider reimbursement manual, part 1, section 104.3. Specifically, building equipment includes attachments to buildings, such as wiring, electrical fixtures, plumbing, elevators, heating systems, air conditioning systems, etc. The general characteristics of this equipment are:

      i) Affixed to the building and not subject to transfer; and

ii) A fairly long life but shorter than the life of the building to which it is affixed.

   h. Index means the square foot construction costs for nursing facilities in the Means Square Foot Costs Book, a publication of R.S.Means Company, Inc. that is

updated annually (section M.450, “Nursing Home”), hereafter referred to as the Means Index. The Means index is hereby incorporated by reference. The Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at: Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, CO 80203. Certified copies of incorporated materials are provided at cost upon request.

i. Rental Rate means the average annualized composite rate for United States treasury bonds issued for periods of ten years and longer plus two percent; except that the rental rate shall not exceed ten and three-quarters percent nor fall below eight and one-quarter percent.

2. In the case of facilities for which an appraisal was completed pursuant to RFP GB 347 (October 21, 1985) and no major physical plant expansions or additions were completed prior to the Department’s reappraisal of the property, the following data shall remain unchanged through following appraisals:

   a. Average story height.

   b. Gross floor area.

   c. Total perimeter.

   d. Construction classification.

   e. Construction quality.

   f. Year built.

3. In the case of those facilities that have completed a major physical plant expansion, addition or deletion, the initial appraisal measurements and data specified in paragraph 2 above shall be modified only to the extent of the relevant appraisal data specific to the new expansion, addition or deletion.

4. The appraisal shall take into consideration the economic impact the addition, deletion or use modification may have had on the overall value of the entire facility.

5. The variables from the Boeckh program that are to be calculated/determined by the Department or its designee, and which will be incorporated into the Request for Proposal (RFP) which defines the scope of the appraisals, include:

   a. Record information: State identification number of the nursing facility as provided by the Department.

   b. Property owner: Name of nursing facility.

   c. Street, address, city.

   d. Zip code.

   e. Land value.

   f. Section number: Assign lowest to oldest section and have basements immediately follow the section they are beneath.

   g. Occupancy: Primarily nursing facility or basement.

h. Construction classification.

i. Number of stories.

j. Gross floor area: The determination of the exterior dimensions of all interior areas including stairwells of each floor. In addition, interior square footage measurements shall be reported for (a) non-nursing facility areas; (b) shared service area by type of service; and (c) revenue-generating areas so that these non-nursing facility portions of the facility can be omitted from the total square footage or allocated based on their nursing facility related use.

k. Construction quality.

l. Year nursing facility was built.

m. Building effective age.

n. Building condition.

o. Exterior wall material.

p. Total perimeter: Common walls between sections shall be excluded from both sections.

q. Average story height.

r. Roof material.

s. Roof pitch.

t. Heating System.

u. Cooling system.

v. Plumbing fixtures (Basements only).

w. Passenger Elevators: Actual number.

x. Freight elevators: Actual number.

y. Sprinkler system: Percent of gross area served.

z. Manual Fire Alarm System: Percent of gross area served.

aa. Automatic fire detection: Percent of gross area served.

bb. Floor finish.

cc. Ceiling finish.

dd. Total partition walls (Basement only).

ee. Partition wall structure.

ff. Partition wall finish.

gg. Miscellaneous additional items: All components not included in the preceding list and also not automatically calculated by the Boeckh Program shall be included here. The appraiser shall use professional judgment when valuing such items. Items shall be entered at depreciated value.

hh. Site improvements: Items shall be included at depreciated value, except landscaping, to be determined by the appraiser based upon professional judgment. Depreciation for site improvements, in many instances, is different from the depreciation for the structure. A list of site improvements and corresponding values shall be retained with the appraiser's work papers.

ii. User adjustment factor: Used in those cases where facilities are appraised in total and only partly used as a nursing facility, i.e., hospital and nursing facility combined or a residential and nursing facility combined.

6. The fair rental allowance shall only be adjusted due to the following:

a. The base value of a facility shall be increased in subsequent cost reports due to improvements. Construction-in-progress will not be considered an improvement until the project is complete and the asset is placed into service.

b. At the start of a new state fiscal year by a new rental rate amount or additional indices.

c. The base value of a facility can be decreased by a change in either the physical (structural) condition and/or use modification of the facility.

d. The provider has constructed and occupied a new physical plant and is no longer using the old structure for providing care to nursing facility residents. Base value shall be a new appraisal conducted by the Department or its designee at the time the new physical plant is ready for occupancy.

i) The provider shall continue to be reimbursed at the old fair rental allowance rate until the first scheduled MED-13 after the move sets a new rate.

ii) A new appraisal shall be performed to coincide with the filing of the next scheduled cost report following the move.

8.443.9.B FAIR RENTAL ALLOWANCE PER DIEM REIMBURSEMENT RATES

In addition to the reimbursement components paid pursuant to 10 CCR 2505-10 section 8.443.7 (Health Care Services) and 8.443.8 (Administrative and General Costs), a per diem rate constituting a fair rental allowance for capital-related assets shall be paid to each nursing facility provider as a rental rate based upon the nursing facility's appraised value.

1. For the purpose of reimbursing Medicaid-certified nursing facility providers a per diem rate for capital-related assets, the state department shall establish an annual per bed limit.

2. The annual per bed limit established July 1, 1985 is $25,000 per bed plus the percentage rate of change in the Means Index.

3. The Means Index means the square foot construction costs for nursing facilities in the Means Square Foot Costs Book, a publication of R.S.Means Company, Inc. that is updated annually (section M.450, “Nursing Home”).

4. The per bed limit shall be changed effective July 1 of each year and individual facility rates shall be adjusted accordingly.

5. The fair rental allowance will be calculated for each facility using the lesser of the Base Value plus non-appraisal year modifications to the physical structure due to improvements or a change in the condition and/or use of the facility subsequent to the appraisal increased or decreased by fifty percent (50%) of the change in the Means Index or the annual per bed limit.

6. In computing the fair rental allowance per diem rate, the fair rental allowance is multiplied by the rental rate to obtain the annual allowable fair rental payment.

7. The rental rate is the average annualized composite rate for United States treasury bonds issued for periods of ten years and longer plus two percent; except that the rental rate shall not exceed ten and three-quarters percent nor fall below eight and one-quarter percent.

8. The resulting fair rental payment amount is divided by the greater of the audited patient days based on the provider's annual cost report or ninety percent (90%) of licensed bed capacity on file. This calculation applies to both rural and urban facilities.

8.443.10 SUPPLEMENTAL PAYMENTS FOR FACILITIES WITH COGNITIVE IMPAIRED AND PASRR II RESIDENTS, PROVIDER FEE AND QUALITY PERFORMANCE FOR CLASS I NURSING FACILITIES

8.443.10.A In addition to the reimbursement components paid pursuant to 10 CCR 2505-10 section 8.443.7 (Health Care Services) and 8.443.8 (Administrative and General Costs) and 8.443.9 (Fair Rental Allowance for Capital-Related Assets), the state department shall pay a supplemental payment to nursing facility providers who have residents who have moderately to very severe mental health conditions, cognitive dementia, or acquired brain injury. To reimburse the nursing facility providers who serve residents with severe cognitive dementia or acquired brain injury, the state department shall pay a supplemental payment based upon the resident's score on the Cognitive Performance Scale (CPS) used in the RUG-III Classification system and reported on the MDS form. Resident CPS scores range from zero (intact) to six (very severe impairment).

1. Annually the Department will identify those Medicaid residents with a CPS score of 4, 5, or 6 for each nursing facility. They will then calculate the percent of Medicaid residents with a CPS score of 4, 5, or 6 as a percentage of all Medicaid residents for the facility. This amount is the facility's CPS percentage. The MDS for residents on the April roster will be the source data used in these calculations.

2. The state-wide mean (average) CPS percentage will be determined, along with the standard deviation from the mean.

3. Those facilities with a CPS percentage greater than the mean plus one, two or three standard deviations will receive an add-on rate for their Medicaid residents with a CPS score of 4, 5, or 6 in accordance with the following table:

   Mean plus one standard deviation $1.00

   Mean plus two standard deviations $2.00

   Mean plus three or more standard deviations $3.00

4. If the expected average payment for those residents receiving a supplemental payment is less than one percent of the average nursing facility rate (prior to supplemental payments), the above table rates will be proportionately increased or decreased in order

to have an expected average Medicaid supplemental payment equal to one percent of the average nursing facility rate prior to supplemental payments.

5. These calculations will be performed annually to coincide with the July 1st rate setting process. Each facility's aggregate CPS add-on will be calculated by taking the add-on rate times Medicaid days with a CPS score of 4, 5 or 6.

6. The CPS supplemental payment will be calculated by dividing the facility aggregate CPS amount determined above by the facility's expected Medicaid case load (Medicaid patient days). Medicaid case load for each facility will be determined using Medicaid paid claims data for the calendar year ending prior the July 1st rate setting. Providers with less than a full year of paid claims data will have their case load annualized.

8.443.10.B For those residents who have severe mental health conditions or developmental disabilities that are classified at Level II by the Medicaid program's preadmission screening and resident review assessment tool (PASRR II), the nursing facility provider shall be paid a supplemental payment.

1. On May 1st each year, the Department will identify those Medicaid residents meeting the PASRR II criteria for each nursing facility.

2. The Department will determine the number of PASRR II days eligible for the PASRR II add-on by taking the number of PASRR II residents in each facility on May 1st times 365 days. The Department will then calculate the aggregate PASRR II payment for each facility by taking the number of PASRR II eligible days times the per diem PASRR II rate.

3. The supplemental PASRR II payment will be calculated as two percent of the statewide average per diem rate for the combined rate components paid pursuant to 10 CCR 2505-10 sections 8.443.7 (Health Care Services) and 8.443.8 (Administrative and General Costs) and 8.443.9 (Fair Rental Allowance for Capital-Related Assets),

4. The supplemental PASRR II payment for each facility will be calculated by dividing the aggregate PASRR II payment by expected Medicaid case load (Medicaid patient days). Medicaid case load for each facility will be determined using Medicaid paid claims data for the calendar year ending prior to the July 1st rate setting. Providers with less than a full year of paid claims data will have their case load annualized.

5. These calculations will be performed annually to coincide with the July 1st rate setting process.

6. An additional supplemental payment will be made to facilities that offer specialized behavioral services to residents who have severe mental health conditions that are classified at a PASRR Level II. Specialized services include, but are not limited to, enhanced staffing in social services and activities, specialized training for staff on behavior management, creating resident specific written guidelines with positive reinforcement, crisis intervention and psychotropic medication training. Specialized programs also include daily therapeutic groups such as anger management, conflict resolution, effective communication skills, hygiene, art therapy, goal setting, problem solving Alcoholics Anonymous and Narcotics Anonymous, in addition to stress management/relaxation groups such as Yoga, Tai Chi, drumming and medication. Therapeutic work programming, community safety training, and life skills training that include budgeting and learning how to navigate public transportation and shopping, for example, are also required to increase the resident’s skills for successful community reintegration.

7. Facilities that offer specialized behavioral services must meet the specified criteria described above and have the program approved by the Department. The additional

payment for facilities that have an approved specialized behavioral services program will be calculated as follows:

On May 1st each year, the Department will identify those Medicaid residents meeting the PASRR II criteria for the nursing facility with an approved specialized behavioral program.

The Department will determine the number of PASRR II days eligible for the PASRR II specialized behavioral program add-on by taking the number of PASRR II residents in the facility on May 1st times 365 days. The Department will then calculate the aggregate PASRR II payment for the facility by taking the number of PASRR II eligible days times the per diem PASRR II rate.

The supplemental PASRR II payment will be calculated as two percent of the statewide average per diem rate for the combined rate components paid pursuant to 10 CCR 2505-10 sections 8.443.7 (Health Care Services) and 8.443.8 (Administrative and General Costs) and 8.443.9 (Fair Rental Allowance for Capital-Related Assets),

8.443.10.C In addition to the per diem core rate components paid pursuant to 10 CCR 2505-10 sections 8.443.7 (Health Care Services) and 8.443.8 (Administrative and General Costs) and 8.443.9 (Fair Rental Allowance for Capital-Related Assets) the state department shall pay a nursing facility provider an additional supplemental amount for care and services rendered to Medicaid residents to offset payment of the provider fee. This amount shall not be equal to the amount of the fee charged and collected but shall be an amount equal to the per diem fee charged multiplied by the number of Medicaid resident days for the facility.

1. Each July 1st the Department will calculate the funding obligation required to pay for supplemental payments related to CPS (10 CCR 2505-10 section 8.443-10A), PASRR II (10 CCR 2505-10 section 8.443.10B), Pay for Performance (10 CCR 2505-10 section 8.443.12) and any annual increase greater than the statutory limitation in the growth of the general fund share of the aggregate statewide average per diem rate described in 10 CCR 2505-10 section 8.443.11.

2. Once the funding obligation is determined, that amount will be divided by twelve to determine the supplemental payment amount that will be paid monthly to each facility as a pass through payment.

   The following example illustrates how the state department will calculate the per diem amount to be added to each facility's Medicaid per diem rate to offset the provider fee:

   Example Facility's Provider Fee Medicaid Supplemental Payment

7/1/xx provider fee per diem required to c over funding obligation	$7.30
TIMES: Expected non-Medicare resident days during the state fiscal year	17,000
EQUALS: 7/1/xx FY actual facility provider fees which will be paid	$124,100
DIVIDED BY: Expected total resident days during the state fiscal year	20,000
EQUALS: per diem amount per resident	$6.21.
TIMES: Medicaid resident days	16,000
Total annual supplemental payment	$99,360
DIVIDE BY: Twelve Months for monthly supplemental payment	$8,280

8.443.11 FUNDING SPECIFICATIONS

The general fund share of the aggregate statewide average of the per diem rate net of patient payment pursuant to 10 CCR 2505-10 sections 8.443.7 (Health Care Services) and 8.443.8 (Administrative and General Costs) and 8.443.9 (Fair Rental Allowance for Capital-Related Assets) shall be limited by statute. Any provider fee used as the state's share and all federal funds shall be excluded from the calculation of the general fund limitation. In the event that the reimbursement system described in this section would result in anticipated payments to nursing facility providers exceeding the statutory limitation on annual growth in the general fund share of the aggregate statewide average of the per diem rate net of patient payment, proportional decreases will be made to the rates so that anticipated payments will equal the statutory growth limitation in the general fund share of the per diem rate. The percentage will be determined in accordance with the following fraction: Legislative appropriations / The Sum of Each Facility's Calculated Rate Multiplied by Each Facility's Proportional Share of the Anticipated (Budgeted) Case Load for all class I Nursing Facilities.

1. Non-state and federal payment percent: Annually the Department will determine the percent of nursing facility per diem rates paid by non-state and non-federal fund sources. This determination will be based on an analysis of Medicaid nursing facility class I paid claims. A sample period of claims may be used to perform this analysis. The analysis will be prepared prior to the annual July 1st rate setting.

2. Legislative appropriation base year amount: The base year will be the state fiscal year (SFY) ending June 30, 2008. The legislative appropriation for the base year will be determined by multiplying each nursing facility’s time weighted average Medicaid per diem rate during the base year by their expected Medicaid case load (Medicaid patient days) for the base year. This amount will be reduced by the non-state and non-federal payment percentage, and then the residual will be split between state and federal sources using the time weighted Federal Medical Assistance Percentage (FMAP) during the base year.

3. Medicaid case load for each facility will be determined using Medicaid paid claims data for the calendar year ending prior to the July 1st rate setting. Providers with less than a full year of paid claims data will have their case load annualized. Providers with no paid claims data for the calendar year ending prior to the July 1st rate setting will have their Medicaid caseload estimated by the Department.

4. Preliminary state share: Effective July 1, 2009 and each succeeding year the Department shall calculate a preliminary state share commitment towards the class I Medicaid nursing facility reimbursement system. The preliminary state share shall be calculated using the same methodology used to calculate the legislative appropriation base year amount. The Medicaid per diem rates used in this calculation are the preliminary rates that would be effective July 1st prior to any rate reduction provided for within this section of the rule.

5. For SFY 2009 and each succeeding year the final state share of Medicaid per diem rates will be limited to the legislative appropriation amount from the base year increased by the statutory growth limitation over the prior SFY. These determinations will be made during the July 1st rate setting process each year. If the preliminary state share (less the amount applicable to provider fees) is greater than the indexed legislative base year amount, proportional reductions will be made to the preliminary nursing facility rates to reduce the state share to the indexed legislative appropriation base year amount.

6. Provider fee revenue will first be used to pay the provider fee offset payment, then the payment for acuity or case-mix of residents, then the Pay-for-Performance program, then payments for residents who have moderately to severe mental health conditions, cognitive dementia or acquired brain injury, and then the supplemental Medicaid payments for the amount by which the average statewide per diem rate exceeds the general fund share established under C.R.S. section 25.5-6-202(9)(b)(II). Any difference between the amount of provider fees expected to be available, and the amount needed to fund these programs will be used to adjust the preliminary state share above.

7. The following calculation illustrates the above and, for illustration purposes, assumes the statutory limit on general fund is 3%:

			Rate Components paid pursuant to 8.443.7 Health Care Services (HC) and 8.443.8 Administrative and General Costs (A&G) and 8.443.9 Fair Rental Allowance for Capital-Related Assets (FRV)
Actual Prior Year General Fund Legislative Appropriations		55,000,000	
Actual Medicaid Days		324,000	
Average of the Per Diem Rate Net of Patient Payment		169.75	
Three Percent Increase		103.00 %	
Current Year Limit on Legislative Appropriations		174.85	
Times Estimated Medicaid Days		325,644	
Current Year Limit on Legislative Appropriations		56,937,446	(Legislative Appropriation)
			Provider fee revenue will first be used to pay the state share of CPS, PASRR II, provider fee and pay for performance rate add-ons. Any difference between the amount of the provider fees expected to be available, and the amount needed to fund these programs will be used to adjust the preliminary state share. In this example, the General Fund (GF) anticipated increase is $1,067,867 more than the 3% limit and the provider fees expected to be available equal $1,000,000. After considering the
3% Limit in GF Growth Funded by Increase in Provider Fees		1,000,000	$1,000,000, the provider fee is at the limit (currently 5.5% of revenue).
Expenditure Limit	(d)	57,937,446	
			(The Sum of Each Facility's Calculated Rate Multiplied by Each Facility's Proportional
Estimated Current Fiscal Year Expenditures	(e)	58,608,313	Share of the Anticipated (Budgeted) Case Load)
Estimated Impact of General Fund Cap	(e) - (d)	670,867	
3% Cap Adjustment Factor	(d) / (e)	0.98855338	

The following calculation is an example of how the 3% cap adjustment factor will be applied:

Facility	Estimated Medicaid Days (a)	Estimated Per Diem Rate for Rate Components: FRV, A&G, HC (b)	Total Projected Payments (c) = (a) * (b)	3% Cap Adjustment Factor (f) = (d) / (e)	Facility Medicaid Rate for Components: FRV, A&G, HC (g) = (c) * (f)	Legislative Appropriations (a) * (g)
Facility #1	7,021	187.70	1,317,842	0.98855338	185.55	1,302,757
Facility #2	49,933	201.57	10,064,745	0.98855338	199.26	9,949,538
Facility #3	24,958	195.40	4,876,868	0.98855338	193.16	4,820,847
Facility #4	45,512	183.54	8,353,272	0.98855338	181.44	8,257,656
Facility #5	25,315	163.66	4,142,926	0.98855338	161.78	4,095,504
Facility #6	17,513	195.42	3,422,303	0.98855338	193.18	3,383,129
Facility #7	24,529	173.85	4,264,244	0.98855338	171.86	4,215,433
Facility #8	51,164	159.80	8,175,751	0.98855338	157.97	8,082,167
Facility #9	53,070	165.99	8,808,824	0.98855338	164.09	8,707,993
Facility #10	26,629	194.59	5,181,737	0.98855338	192.36	5,122,424
	325,644		58,608,313			57,937,446

8.443.12 PAY-FOR-PERFORMANCE COMPONENT

Starting July 1, 2009, the Department shall make a supplemental payment based upon performance to those nursing facility providers that provide services that result in better care and higher quality of life for their residents (pay-for-performance). The payment will be based on a nursing facility's performance in the domains of quality of life, quality of care and facility management.

1. The application for the additional quality performance payment includes specific performance measures in each of the domains, quality of life, quality of care and facility management. The application includes the following:

   a. The number of points associated with each performance measure;

   b. The criteria the facility must meet or exceed to qualify for the points associated with each performance measure.

2. The prerequisites for participating in the program are as follows:

   a. No facility with substandard deficiencies on a regular annual, complaint, or any other CDPHE survey will be considered for pay for performance.

   b. The facility must perform a resident/family satisfaction survey. The survey must (a) be developed, recognized, and standardized by an entity external to the facility; and, (b) be

administered on an annual basis with results tabulated by an agency external to the facility. The facility must report their response rate, and a summary report must be made publically available along with the facility's State's survey results.

3. To apply the facility must have the requirements for each Domain/sub-category in place at the time of submitting an application for additional payment. The facility must maintain documentation supporting its representations for each performance measure the facility represents it meets or exceeds the specified criteria. The required documentation for each performance measure is identified on the application and must be submitted with the application. In addition, the facility must include a written narrative for each sub-category to be considered that describes the process used to achieve and sustain each measure.

4. The Department or the Department's designee will review and verify the accuracy of each facility's representations and documentation submissions. Facilities will be selected for onsite verification of performance measures representations based on risk.

5. A nursing facility will accumulate a maximum of 100 points by meeting or exceeding all performance measures indicated on the matrix.

6. The per diem rate add-on will be calculated according to the following table:

   0 – 20 points = No add-on

   21 – 45 points = $1.00 per day add-on

   46 – 60 points = $2.00 per day add-on

   61 – 79 points = $3.00 per day add-on

   80 – 100 points = $4.00 per day add-on

   If the expected average payment for those facilities receiving a supplemental payment is less than twenty-five hundredths of one percent of the statewide average per diem base rate, the above table rates will be proportionately increased or decreased in order to have an expected average Medicaid add-on payment equal to twenty-five hundredths of one percent of the average nursing facility base rate.

7. These calculations will be performed annually to coincide with the July 1st rate setting process.

8.443.13 RATE EFFECTIVE DATE

8.443.13.A. For cost reports filed by all facilities except the State-administered Class IV facilities, the rate shall be effective on the first day of the eleventh (11th) month following the end of the nursing facility's cost reporting period.

8.443.13.B. For 12-month cost reports filed by the State-administered Class IV facilities, the rate shall be effective on the first day covered by the cost report.

8.443.13.C. The permanent rate shall be established, issued and shall pay Medicaid claims billed on and after the later of the following dates:

1. The beginning of the provider's new rate period, as set forth in 10 CCR 2505-10 section 8.443.13.A, or

2. One hundred (100) days after the date the MED-13 is filed by the provider.

8.443.13.D. In the event a permanent rate cannot be established, issued and paid as set forth at 10 CCR 2505-10 section 8.443.13.A:

1. The Department shall establish and issue a temporary rate calculated on the provider's filed cost report without adjustments.

2. All temporary rates shall, at the time the permanent rate is established, issued and paid, be subject to adjustment and recovery of any over or under payments.

8.443.13.E. Any delay in completion of the audit of the MED-13 that occurs within 90 days from the filing of the MED-13, and that is attributable to the provider, shall operate, on a time equivalent basis, to extend the time in which the Department shall establish, issue and pay a temporary rate under the provisions set forth above.

8.443.13.F. Delay in completion of the audit that is attributable to the provider shall include, but not be limited to, the following:

1. Failure of the provider to meet with the contract auditor at reasonable times requested by the auditor;

2. Failure of the provider to supply the contract auditor with information reasonably needed to complete the audit, including the Medicare cost report that the provider most recently filed with the Medicare fiscal intermediary or other Medicare information approved by the Department.

3. The time period that elapses during completion of the procedures described in 10 CCR 2505-10 section 8.442.1, whichever is relevant and later in a particular case.

8.443.14 RATES FOR NEW FACILITIES

8.443.14.A. A new nursing facility means a facility:

1. That has not previously been certified for participation under Title XIX of the Social Security Act (42 U.S.C. section 1396r); or

2. That has not participated in Title XIX for a period in excess of 30 days prior to the effective date of the current Title XIX certification; or

3. That has changed from one class designation to another.

8.443.14.B. Nursing facilities that have undergone a transfer of ownership are not new nursing facilities provided the previous owner had participated in Title XIX in the last 30 days prior to ownership change.

8.443.14.C. A new nursing facility shall receive a per diem rate equal to the most recent average weighted rate for the appropriate nursing facilities class at the time the new facility begins business as a Medicaid provider.

1. This per diem rate shall remain in effect until a new rate is established based on the first cost report submitted as specified below.

2. The average weighted rate shall be calculated by the Department on the 30th of each month and shall not be revised when new rates are established which would retroactively affect the calculation.

3. The average weighted rate paid a new facility shall be adjusted on July 1 each year by the average weighted rate in effect on July 1.

8.443.14.D. New nursing facilities shall submit MED-13s during their initial year of operation as follows:

1. The first cost report shall be for a period covering the first day of operation through the facility's fiscal year end.

   a. If the first cost report for the period covers a period of 90 days or more, imputed occupancy shall be applied as described in 10 CCR 2505-10 section 8.443.3.A.

   b. If the first cost report for the period covers a period of 90 days or more, the first cost report shall set the base for limitations on growth of allowable costs as described in 10 CCR 2505-10 section 8.443.11.A.

2. If the first cost report for the period specified above covers a period of 89 days or less, the facility's first cost report shall not be submitted until the next fiscal year end.

3. The next cost report shall be submitted for the twelve month period following the period of the first cost report.

4. A new nursing facility shall advise the Department of the date its fiscal year will end and of the reporting option selected.

8.443.14.E. Imputed occupancy shall be applied to the first cost report submitted by a new class II or privately owned class IV facility. The facility shall be entitled to the higher of the imputed rate or the monthly weighted average rate computed by the Department.

8.443.14.F. Imputed occupancy shall be applied to the second cost report submitted by a new class II or privately owned class IV facility. The rate for the new facility shall not be lower than the 25th percentile nursing facility rate as computed by the Department in median computation.

8.443.15 CHANGE OF OWNERSHIP OR WITHDRAWAL FROM MEDICAID

8.443.15.A. A licensed nursing facility owner(s) that intends to change the ownership of a Medicaid nursing facility, or that intends to terminate its participation in the Medicaid program, shall notify the Department in writing at least 45 calendar days in advance of the proposed change or termination.

1. The advance written notice shall include a specific date for the proposed change or termination and shall be delivered to the Department.

2. The exact date of the change of ownership or termination of Medicaid participation shall be subject to approval by the Department, after consultation with the parties to the proposed transaction and CDPHE.

8.443.15.B. In the case of a change of ownership that does not require a new license from CDPHE, the existing Medicaid provider agreement shall continue in effect, together with all associated rights and responsibilities.

8.443.15.C. In the case of a change of ownership which does require a new license from CDPHE, the transferring owner's Medicaid provider agreement shall be assigned to the successor owner, unless the successor owner refuses in writing to accept assignment of that provider agreement.

1. The assignment of an existing Medicaid provider agreement shall be accomplished by the successor owner's signature of an appropriate acceptance document, as specified by the Department.

2. The assignment of the Medicaid provider agreement shall not be effective prior to the effective date of the successor owner's nursing facility license from CDPHE.

3. In the event that a successor owner refuses to accept assignment of the transferring owner's Medicaid provider agreement, the successor owner shall indicate such refusal in a written communication to the Department.

4. Until a successor owner has signed a written acceptance of assignment, the Department shall assume that the successor owner intends to refuse such assignment, and the Department shall act accordingly to protect its interests and those of the facility's residents.

8.443.15.D. An assigned Medicaid provider agreement shall be subject to all applicable statutes and regulations and to the terms and conditions under which it was originally issued, including but not limited to the following:

1. Any existing plan of correction;

2. Any expiration date for a Class II provider agreement;

3. Compliance with applicable health and safety requirements;

4. Compliance with the ownership and financial interest disclosure requirements, and any other requirements described elsewhere in this staff manual;

5. Compliance with the civil rights requirements cited in the provider agreement; and

6. At the discretion of the Department, payment of any debts or other obligations, whether known, fixed, definite, liquidated, or not, owed to the Department by the transferring owner. Such liability may also apply, at the discretion of the Department, to any debts or obligations that arose under any earlier, assigned provider agreement(s), but shall not apply to any debt or obligation that was assigned prior to August 1, 2003.

7. The assignment of liability described in the preceding paragraph 6 shall not prejudice the Department's right to pursue any remedy against a previous facility owner or owners for repayment of the assigned debts or obligations.

8.443.15.E. In the event that a successor owner refuses to accept assignment of the transferring owner's Medicaid provider agreement:

1. The transferring owner's Medicaid provider agreement shall terminate on the date approved by the Department for the change of ownership.

2. Prior to the termination of the transferring owner's Medicaid provider agreement, the Department shall have the discretion to withhold reimbursement to the transferring owner for whatever period of time is necessary to recover overpayments or other debts owed to the Department by the transferring owner.

3. The successor owner shall file a new application for a Medicaid provider agreement with the Department or its designated agent. The Department shall not approve the new agreement until the successor owner complies with all requirements for such approval. The Department may delay the effective date of the successor owner's Medicaid provider agreement until the expiration of the withholding period described in the preceding paragraph 2, or until the Department has approved alternative payment arrangements or security for the transferring owner's debts.

4. The Department may require a new facility survey as part of the successor owner's application for a new Medicaid provider agreement even if a new facility survey is not required by the federal Medicare program (e.g., where the successor owner has accepted assignment of an existing Medicare provider agreement).

5. No Medicaid reimbursement shall be paid to the successor owner until the application for a Medicaid provider agreement has been approved, regardless of the effective date of the successor owner's license from CDPHE.

6. Where appropriate in connection with a proposed change of ownership, the Department shall have the discretion to notify facility residents and/or their guardians that Medicaid reimbursement for facility care may be temporarily or permanently discontinued.

8.443.15.F. A licensed nursing facility owner that transfers ownership or terminates its Medicaid participation shall submit a final MED-13 covering the period from the ending date of the last previous report through the date of the transfer or termination.

1. The initial rate for the successor owner shall be the rate which would have been paid to the previous owner based on the audited final cost report.

2. If the previous owner's final cost report is for a period of less than 89 days, that report shall be disregarded and the previous owner's last cost report for a twelve (12) month period shall be used to set a rate for the successor owner.

8.443.16 STATE-OPERATED INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH INTELLECTUAL DISABILITIES (CLASS IV)

8.443.16.A State-operated Intermediate Care Facilities for Individuals with Intellectual Disabilities (class IV) shall be reimbursed based on the actual costs of administration, property, including capital-related assets, and room and board, and the actual costs of providing health care services. Actual costs will be determined on the basis of information on the MED-13 and information obtained by the Department or its designee retained for the purpose of cost auditing.

1. These costs shall be projected by such facilities and submitted to the state department by July 1 of each year for the ensuing twelve-month period.

2. Reimbursement to state-operated Intermediate Care Facilities for Individuals with Intellectual Disabilities shall be adjusted retrospectively at the close of each twelve-month period.

3. The retrospective per diem rate will be calculated as total allowable costs divided by total resident days.

8.443.17 CLASS I NURSING FACILITY PROVIDER FEES

8.443.17.A The state department shall charge and collect provider fees on health care items or services provided by nursing facility providers for the purpose of obtaining federal financial participation under the state’s medical assistance program. The provider fees shall be used to sustain or increase reimbursement for providing medical care under the state’s medical assistance program for nursing facility providers.

1. Each class I nursing facility that is licensed in this State shall pay a fee assessed by the state department.

2. The following nursing facility providers are excluded from the provider fee:

a. A facility operated as a continuing care retirement community that provides a continuum of services by one operational entity providing independent living services, assisted living services and skilled nursing care on a single, contiguous campus. Assisted living services include assisted living residences as defined in C.R.S. section 25-27-102(1.3), or that provide assisted living services on-site, twenty-four hours per day, seven days per week;

b. A skilled nursing facility owned and operated by the state;

c. A nursing facility that is a distinct part of a facility that is licensed as a general acute care hospital; and

d. A facility that has forty-five or fewer licensed beds.

3. To determine the amount of the fee to assess pursuant to this section, the state department shall establish a rate per non-Medicare patient day that is equivalent to a percentage of accrual basis gross revenue (net of contractual allowances) for services provided to patients of all class I nursing facilities licensed in this State. The percentage used to establish the rate must not exceed that allowed by federal law. For the purposes of this section, total annual accrual basis gross revenue does not include charitable contributions or revenues received by a nursing facility that are not related to services provided to nursing facility residents (for example, outpatient revenue).

4. The state department shall calculate the fee to collect from each nursing facility during the July 1 rate-setting process.

   a. Each July 1, the state department will determine the aggregate dollar amount of provider fee funds necessary to pay for the following:

      (i) State department's administrative cost pursuant to 10 CCR 2505-10 section 8.443.17.B.1

      (ii) CPS pursuant to 10 CCR 2505-10 section 8.443.10.A

      (iii) PASRR pursuant to 10 CCR 2505-10 section 8.443.10.B

      (iv) Pay for Performance pursuant to 10 CCR 2505-10 section 8.443.12

      (v) Provider Fee Offset Payment pursuant to 10 CCR 2505-10 section 8.443.10.C

      (vi) Excess of the statutory limited growth in the general fund pursuant to 10 CCR 2505-10 section 8.443.11

      (vii) Acuity or case-mix of residents pursuant to 10 CCR 2505-10 section 8.443.7.D

   b. This calculation will be based on the most current information available at the time of the July 1 rate-setting process.

   c. The aggregate dollar amount of provider fee funds necessary will be divided by non-Medicare patient days for all class I nursing facilities to obtain a per day provider fee assessment amount for each of the two following categories:

      (i) nursing facilities with 55,000 total patient days or more;

      (ii) nursing facilities with less than 55,000 total patient days.

The state department will lower the amount of the provider fee charged to nursing facility providers with 55,000 total patient days or more to meet the requirements of 42 CFR section 433.68(e). In addition, the 55,000 total patient day threshold can be modified to meet the requirements of 42 CFR section 433.68(e).

d. Each facility's annual provider fee amount will be determined by taking the per day provider fee calculated above times the facility's reported annual non-Medicare patient days.

e. Each nursing facility will report annually its total number of days of care provided to non-Medicare residents to the Department of Health Care Policy & Financing. The non-Medicare patient days reported will be from the calendar year prior to the July 1 rate setting process. Providers with less than a full year of non-Medicare patient days data will have their non-Medicare days annualized. New providers with no non-Medicare patient days data will have their non-Medicare days estimated by the Department. The non-Medicare patient days will be used for the provider fee calculation.

f. A facility's non-Medicare patient days will be estimated in order to determine the provider's fee payment if and only if one of the following conditions exist:

A new facility

A facility that will close during the rate year

A facility that has had a change of certification or licensure

The facility will have their non-Medicare patient days estimated for each model year until the facility has 12 months of data for the calendar year preceding the rate year.

If a facility's non-Medicare patient days are estimated, and the facility's actual non-Medicare days differ by more than 5% from the prior year estimated non-Medicare patient days used to determine the provider's fee payment, the state department will review the facility's provider fee calculation, and an adjustment to the facility's annual provider fee payment will be made in the subsequent year.

g. Each facility's annual provider fee amount will be divided by twelve to determine the facility's monthly amount owed the state department.

h. The state department shall assess the provider fee on a monthly basis.

i. The fee assessed pursuant to this section is due 30 days after the end of the month for which the fee was assessed.

8.443.17.B All provider fees collected pursuant to this section by the state department shall be transmitted to the state treasurer, who shall credit the same to the Medicaid nursing facility cash fund, which fund is hereby created and referred to in this section as the "fund".

1. All monies in the fund shall be subject to federal matching as authorized under federal law and subject to annual appropriation by the general assembly for the purpose of paying the administrative cost of implementing C.R.S. section 25.5-6-202 and this section and to pay a portion of the per diem rates established pursuant to C.R.S. section 25.5-6-202 (1) to (4).

2. Following payment of the amounts described above, the moneys remaining in the fund shall be subject to federal matching as authorized under federal law and subject to annual appropriation by the general assembly for the purpose of paying the rates established under C.R.S. section 25.5-6-202 (5) to (7).

3. Any monies in the fund not expended for these purposes may be invested by the state treasurer as provided by law.

a. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund.

b. Any unexpended and unencumbered moneys remaining in the fund at the end of any fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or any other fund but may be appropriated by the general assembly to pay nursing facility providers in future fiscal years.

8.443.17.C The state department shall establish administrative penalties for the late payment by a nursing facility of a fee assessed pursuant to this section.

1. The state department may recoup any payments made to nursing facilities providing services pursuant to the Medicaid program up to the amount of the fees owed as determined pursuant to this section and any administrative penalties owed if a nursing facility fails to remit the fees and administrative penalties owed within 30 days after the date they are due. Before recoupment of payments pursuant to this section, the state department may allow a nursing facility that fails to remit fees and administrative penalties owed an opportunity to negotiate a repayment plan with the state department. The terms of the repayment plan may be established at the discretion of the state department.

8.443.17.D The state department will prepare an annual reconciliation of provider fees received and payments made. Any shortfall or excess in the provider fee cash fund will be used to increase or reduce provider fees in the following year. Except that in the event the state department determines there is not enough provider fee available, the state department may reduce payments to facilities proportionately to the amount of provider fee available. The state department can, at its discretion, establish a provider fee fund minimum balance or cash reserve.

8.443.18 RATES FOR RECEIVERSHIP

8.443.18.A. The following rate provisions apply for a facility where a receiver has been appointed by the Court, pursuant to C.R.S. section 25-3-108, at the request of CDPHE:

1. During the Receivership

a. During the term of the receivership, the facility shall be reimbursed the rate payable to the previous operator.

i) The Department may increase the rate if it finds that the patient-related, necessary and reasonable costs of the facility operation are not covered by the rate payable to the previous operator.

ii) The Department's analysis of necessary, patient related and reasonable costs incurred by the receiver shall not include any previous unpaid expenses of the prior owner or the mortgage costs of the facility.

b. The receiver shall submit a cost report for the time beginning when the receiver is appointed until the time the receiver is no longer operationally in control of the nursing facility operation.

i) This cost report shall set a rate payable to the receiver for the date the receiver took operational control of the facility.

ii) This retrospective rate may set a rate higher or lower than the initial rate established and paid to the receiver in which case the under or over payment shall be either paid to or collected from the receiver.

iii) The retrospectively set rate shall not exceed the established maximum allowable rates for that period.

2. New providers after the receivership period

a. The new operator shall receive the rate paid to the prior owner until the new provider submits a cost report unless the new operator chooses the retrospective option described below where a new operator takes control and ownership of a nursing facility from the receiver.

b. The new operator may elect to have a retrospective rate set for the initial three months of operation.

i) In order to exercise this option, the new operator shall file a cost report for the first three months of operation.

ii) The first day of operation shall mean the first day of licensure of the new operator. The last day of the initial three months of operation shall be the last day of the month in which the 90th day occurs.

iii) The cost report shall be filed within 90 days of the end of the initial three months of operation.

c. The retrospective rate established from the three month cost report shall be in effect from the first date of licensure of the new owner until the last day of the month in which the 90th day occurs. This rate shall be a prospectively paid rate to the new operator beginning with the first day of the month after the three month cost reporting period.

d. The initial rate paid to the new operator shall be the prior owner's rate.

i) The retrospective rate established by the three month cost report shall replace the initial rate paid to the operator.

ii) The retrospective rate may be higher or lower than the initial rate established and paid to the new operator in which case the under or over payment shall be either paid to or collected from the new operator.

iii) The retrospectively established rate shall not exceed the maximum reasonable cost rates for that period.

e. The three month cost report shall establish the prospective rate for the period established by the regulations at 10 CCR 2505-10 section 8.443.13.

f. The provider shall file the first cost report after the three month cost report. If the first cost report filed for the period immediately following the three month cost report demonstrates a reduction in per diem costs more than five percent which is caused by a reduction in per diem costs and not an increase in census, the following special provision shall apply:

i) The provider's prospective per diem rate driven by the three month cost report shall be retroactively reduced to the per diem rate as determined by the actual costs of the provider.

ii) The Department shall recover the difference between the provider's actual costs and the prospective rate paid to the provider. This recovery shall not apply to the three month retrospective rate as established by the initial three month cost report.

8.443.18.B. These special provisions do not apply when the receiver is appointed at the request of any other party such as the previous operator, landlord or other interested party.

8.443.19 PAYMENT FOR OUT OF STATE NURSING FACILITY CARE

8.443.19.A. Payments for out-of-state nursing facility care shall be made to providers when:

1. The nursing facility services are needed because of a medical emergency.

2. The nursing facility services are needed because the resident's health would be endangered if he/she were required to travel to Colorado and the attending physician has certified to such in the resident's medical records.

3. The Department determines, on the notification from the client's primary care physician, the needed medical services or necessary supplementary resources, are not available in Colorado but are available in another state;

a. The Department's State Utilization Review Contractor may review the appropriateness of care plan and documentation that the resident will demonstrate significant improvement.

8.443.19.B. Where the resident needs rehabilitation services, the resident shall meet all of the following criteria:

1. The resident's medical condition, as documented by the physician, shall be stable to the extent that the resident's primary need is no longer for acute medical care but for intensive, multi-disciplinary rehabilitation care.

2. The resident's disability shall be within 12 months of admission.

8.443.19.C. The out-of-state nursing facility shall send the following to the Department monthly:

1. Problem list and rehabilitation goals;

a. Treatment plan relative to each rehabilitation goal;

b. Time frame for goal achievement; and

2. Statement of expected discharge status (e.g., timing and the resident's condition on discharge).

8.443.19.D. Those residents without need for rehabilitation services shall be expected to meet Colorado nursing facility admission requirements as described in 10 CCR 2505-10 section 8.402.01 through 8.402.10 and can be admitted if:

1. It is general practice for residents in a particular locality to use nursing facility services in another state; or

2. The resident of an out-of-state nursing facility has been determined to be eligible for Colorado Medicaid due to his inability to indicate his/her intended state of residence.

8.443.19.E. The out-of-state nursing facility shall:

1. Enroll as a provider in the Colorado Medicaid Program;

2. Submit a copy of the re-certification survey yearly upon completion done by the survey and certification and/or licensure agency in their state;

3. Submit a copy of the following documentation with the claims:

a. The current Medicaid provider agreement with the state where it is located;

b. The provider number in the state where it is located; and

c. Their Medicaid rate, at the time services were rendered, in the state where it is located.

8.443.19.F. Payment shall not exceed 100 percent of audited Medicaid costs as determined by the Department or its designee. Audited costs shall be based on Medicaid costs in the state where the facility is located.

8.443.19.G. If the facility is not a Medicaid participant in the state where it is located, it shall submit to the Department an audited Medicare cost report. The payment shall not exceed 100 percent of audited Medicare costs.

8.443.20 CLASS II AND CLASS IV NURSING FACILITY PROVIDER FEE

8.443.20.A. The Department shall charge and collect provider fees on services provided by all class II and class IV nursing facility providers for the purpose of obtaining federal financial participation under the state's medical assistance program. The provider fees and federal matching funds shall be used to sustain reimbursement for providing medical care under the state's medical assistance program for class II and class IV nursing facility providers.

1. Each class II and class IV nursing facility that is licensed in Colorado shall pay a fee assessed by the Department.

2. To determine the amount of the fee to assess pursuant to this section, the Department shall establish a fee rate on a per patient day basis.

a. The total annual fees due for class II and class IV nursing facilities will be calculated such that they do not exceed the federal limits as established in 42 C.F.R. section 433.68(f)(3)(i)(A), or five percent of the total costs for all class II and class IV nursing facilities, whichever is lower. 42 C.F.R. section 433.68(f)(3)(i)(A) (2013) is hereby incorporated by reference. The incorporation of 42 C.F.R. section 433.68(f)(3)(i)(A) excludes later amendments to, or editions of, the referenced material. The Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at: Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, CO 80203. Certified copies of incorporated materials are provided at cost upon request..

b. The total annual fees will be divided by annual patient days for class II and class IV facilities from the most recently available MED-13 cost reports to establish the per patient day fee.

c. The Department may use estimated patient days in the per patient day fee calculation to adjust for expected changes in utilization.

d. When final audited MED-13 cost reports are available, the Department will review the fees charged during each state fiscal year to ensure that the fee amount was less than five percent of the total costs for all class II and class IV nursing facilities five percent statutory limit. If the fees were greater than five percent of the total costs for all class II and class IV nursing facilities, the Department will retroactively adjust the fees.

3. The Department shall calculate the fee to collect from each class II and class IV nursing facility by August 1 for the state fiscal year.

a. The Department shall notify the providers of their fee obligation in writing at least 30 days prior to due date of the fee.

b. The Department shall assess the provider fee on a monthly basis.

i. Each facility's annual provider fee amount will be divided by twelve to determine the facility's monthly amount owed to the Department.

ii. The monthly fee is due by last day of the month for which the fee was assessed

iii. Fees may be paid through intragovernmental transfer, Automated Clearing House, or check.

8.444 through 8.446 Repealed, effective June 30, 2005

Repealed, effective June 30, 2005

8.448 REPEALED, EFFECTIVE MAY 30, 2006

8.449.1 REQUIREMENTS FOR UTILIZATION REVIEW

Utilization review requirements are that all long term health care facilities participating in the Medical Assistance Program make provision for utilization review and medical care appraisal to assure quality patient care and appropriate use of health care facilities. Each facility shall submit to the Department of Human Services a plan for doing so that agrees in principle with the model plan attached. Individual case reviews are to be so scheduled as to provide for annual review of each patient certified for skilled nursing care and semi-annual review of each patient certified for intermediate care.

The Utilization Review Plan developed by the long term care facility lists the members of the Utilization Review Committee. Any change in membership of the Committee is to be communicated to the State Department of Human Services and the State Department of Public Health and Environment.

The minutes of Utilization Review Committee meetings are to be kept on file in the facility and available to representatives of the Department of Human Services and the State Department of Public Health and Environment.

8.449.2 USE OF FORMS AND COMMUNICATION CONCERNING RESULTS OF UTILIZATION REVIEW

Recommendations as to individual patients shall be recorded in duplicate on Forms MED-60. The original is filed with the committee minutes, the copy in the patient's administrative file.

When the U.R. Committee recommends a change in the level of care to be given to the patient, form letter Med-60A is completed in triplicate and sent to the patient's physician by the nursing home. If the attending physician agrees with the recommendations, he should date and sign the Med-60A and return it to the Nursing Home U.R. Committee. The nursing home shall then complete Form NH-8 to be sent, together with the Med-60A to the State Department of Human Services and to the county department. The original of Form Med-60A shall be kept in the patient's chart.

If the attending physician disagrees with the recommendations, he shall return the Form Med-60A with the reasons entered in the space provided, to the U.R. Committee. The U. R. Committee will review the reasons the physician did not accept the recommendations, and if valid, the classification will remain the same, and the U.S. Committee will notify the State and County Departments. If the Committee does not agree, a copy of the minutes and the form will be sent to the Colorado Medical Society Utilization Review Committee for review and evaluation. The results of that review will be communicated to the physician, the State Department of Human Services, the County Department of Social Services, and to the U.R. Committee.

It shall be the responsibility of the Department to make the final decision, in all such cases, following a review of the recommendations of the Colorado Medical Society Utilization Review Committee, the facility Utilization Review Committee, and the attending physician.

8.461 REPEALED, EFFECTIVE MAY 30, 2006

8.470 HOSPITAL BACK UP LEVEL OF CARE

8.470.1 DEFINITIONS

“Complex wound care” means that the client meets the following criteria:

1. Has at least one of the following:
    a. A complex surgical or traumatic wound;
    b. Complicated wound graft surgery;
    c. At least one stage IV pressure ulcer; or
    d. A specialized wound-healing device, (e.g., Wound-Vac).
2. Requires a Medicare-rated group 2 or 3 pressure-relieving surface in order to heal.
3. Be receiving treatment for existing nutritional deficiencies.
4. Had any required debridement therapy initiated.
5. Had a consultation with a wound specialist and a resulting care plan has been initiated.

“Medically complex” means that a client meets the requirements of at least one of the following two subsections:

1. The client shall meet five of the seven following criteria:
    a. Have difficulty communicating needs verbally, or require use of specialized adaptive equipment to communicate which requires set up by trained staff, or is unable to seek assistance through use of call light due to physical impairment;
    b. Require on-site assessment by a physician once per week;

c. Require artificial nourishment via a gastro-intestinal tube (G-tube or NG-tube), and/or jejunostomy tube (J-tube);

d. Have a tracheotomy requiring suctioning, airway maintenance, or both at least every four hours;

e. Require total parenteral nutrition (TPN) with or without lipids;

f. Require central line in active use for fluids and/or medications, excluding TPN;

g. Require skilled therapy, skilled nursing, or both for assessment, monitoring, and intervention at a greater frequency than is usually provided in a class I nursing facility.

2. The client shall meet all of the following criteria:

a. Be a participant in the hospital back up level of care program immediately prior to qualifying under the criteria of **the first** subsection **of the definition of medically complex or any subsection of the ventilator-dependent definition**; and

b. Have difficulty communicating needs verbally, or require use of specialized adaptive equipment to communicate which requires set up by trained staff, or is unable to seek assistance through use of call light due to physical impairment; and

c. Require on-site assessment by a physician once every other week; and

d. Require artificial nourishment via a gastro-intestinal tube (G-tube or NG-tube), a jejunostomy tube (J-tube), or both; and

e. Have a tracheotomy requiring respiratory assessment, treatment or both at least every six hours; and

f. Require suctioning, assessment, and/or treatment by a skilled therapist or skilled nurse **with specialized training and demonstrated skill in respiratory therapy evaluation and treatment** as necessary in addition to the regular respiratory assessment, treatment, or both equating to a greater frequency than usually provided in a class I nursing facility.

"Client who is Ventilator-dependent" means that a client meets the requirements of at least one of the following **three** subsections:

1. If the client is actively weaning from the ventilator, the client shall:

a. Require intermittent ventilator support between two and 24 hours each day; and

b. Require skilled nursing or respiratory therapy at least 12 hours each day in order to progress with weaning; and

c. Require physical therapy, occupational therapy and/or speech therapy five days per week; and

d. Have documented rehabilitation potential.

2. If active weaning fails, the client shall:

a. Require continuous ventilator support between eight and 24 hours each day; and

b. Require respiratory therapy at least 3.5 hours each day in order to remain medically stable; and

c. Have one of the following scores on the ULTC 100.2 assessment form:

i) A score of at least two, in a minimum of two ADLs; or

ii) A score of at least two, in one category of supervision; and

d. Have difficulty communicating needs verbally, or require use of specialized adaptive equipment to communicate which requires set up by trained staff, or is unable to seek assistance through use of call light due to physical impairment.

3. If the client has been weaned off the ventilator and is actively weaning to reduce oxygen needs and/or remove the tracheotomy tube, the client shall:

a. Have one of the following scores on the ULTC 100.2 assessment form:

i) A score of at least two, in a minimum of two ADLs; or

ii) A score of at least two, in one category of supervision; and

b. Have documented rehabilitation potential from a physician; and

c. Require the expertise of a respiratory therapist under the direction of a pulmonologist at least 3.5 hours each day in order to remain medically stable and/or show progression towards decannulation; and

d. Require the expertise of a speech therapist to evaluate for a complete functioning swallow and/or require speech therapy treatment for strengthening of the oral muscles required to swallow properly; and

e. Have minimal difficulty communicating needs and be able to follow simple commands.

8.470.2 CLIENT ELIGIBILITY

8.470.2.A. In order to be eligible for the hospital back up level of care, a client shall:

1. Meet long term level of care requirements as determined by the appropriate Single Entry Point (SEP) agency;

2. Fall into one of the following categories:

a. Ventilator-dependent;

b. Complex wound care; or

c. Medically complex.

3. Be medically stable in a chronically acute state;

4. Be in the hospital prior to approval; and

5. Have a level of care reimbursement authorized by the Department. The level of care reimbursement shall be determined by the Department to exceed nursing facility's Class I reimbursement rate.

8.470.3 CLIENT ELIGIBILITY DETERMINATION

8.470.3.A. Upon referral from a hospital, the State Utilization Review Contractor (SURC) shall:

1. Conduct a review to determine whether the client meets the hospital back up level of care criteria and may be successfully treated in a nursing facility; and

2. Consider all other Medicaid programs and services and determine whether those programs would fail to meet the client's needs if the client were to be returned to the home.

8.470.3.B. When a hospital contacts a nursing facility regarding a potential client's eligibility for the hospital back up level of care, the nursing facility shall:

1. Assess the client on-site (in the hospital) to determine if the nursing facility can provide appropriate care.

2. Notify the SURC and the Department that it is considering admitting the client.

3. Prepare a care plan and submit it to the SURC.

4. Secure a transfer agreement with the discharging hospital in which the hospital agrees to readmit the client should care problems develop.

8.470.3.C. The care plan submitted to the SURC shall demonstrate that the nursing facility proposing to provide hospital back up level of care can meet the needs of the prospective client. The SURC shall review care plans to determine whether they meet pre-established professional standards of care.

8.470.3.D. The SURC shall review the medical documentation, the nursing facility care plan and the Single Entry Point (SEP) required documentation to determine whether or not the client meets the established hospital back up level of care criteria. The SURC may request any medical information and any other demographic information that the SURC deems necessary to make such determination. The SURC shall notify the Department in writing whether the client can be successfully treated in the nursing facility.

8.470.3.E. The SURC shall obtain a physician review for all clients who are considered to meet the hospital back up level of care criteria on initial evaluation. The physician's determination upon review shall be in writing and submitted to the SURC and the Department.

8.470.3.F. The SURC shall submit the care plan and supporting documentation to the Department with the written determination of approval or denial.

8.470.3.G. The SURC shall notify the client and the hospital, in writing, of the final determination. Notification to the client shall include recipient appeal rights as outlined in 10 CCR 2505-10 section 8.057.

8.470.4 INITIAL LENGTH OF STAY

8.470.4.A. Prior authorization for the initial length of stay of hospital back up nursing facility clients shall not exceed 90 days.

8.470.5 CONTINUED STAY REVIEW FOR HOSPITAL BACK UP LEVEL OF CARE NURSING FACILITY CLIENTS

8.470.5.A. The SURC shall conduct an on-site continued stay review for each hospital back up level nursing facility client 15 days prior to the end of the client's currently approved stay.

8.470.5.B. A continued stay review shall be conducted at least annually. The Department may request the SURC to conduct an unscheduled continued stay review at any time during the length of stay.

8.470.5.C. The continued stay review shall determine whether:

1. The client continues to meet the hospital back up level of care criteria for hospital-level care in a nursing facility.

2. The client's care needs are adequately being met;

3. The approved care plan is being implemented;

4. Appropriate services are being provided; and

5. The care plan for the client should be adjusted to more appropriately meet the client's needs.

8.470.5.D. If the SURC determines, during the on-site continued stay review, that the client no longer meets the hospital back up level of care criteria:

1. A physician shall conduct an additional review to confirm the determination of the SURC.

2. If the physician review confirms that the client no longer meets the hospital back up level of care criteria, the SURC shall notify the client of the SURC’s determination in writing. This letter shall include recipient appeal rights as outlined in 10 CCR 2505-10 section 8.057.

3. The SURC shall notify the Department in writing if both the physician review and the SURC determine the client no longer meets the hospital back up level of care criteria and shall include the supporting documentation.

4. The Department shall notify the client and/or the client’s legal representative, the nursing facility currently providing the hospital back up level of care and the treating primary care physician that the SURC and the physician reviewer have determined that the client no longer meets hospital back up level of care criteria and that within 60 days the rate shall be reduced to the nursing facility’s class I rate. Within 15 days of the date on the notice the nursing facility providing the hospital back up level of care shall notify the Department in writing whether it will provide care for the client at its standard class I rate.

    a. In circumstances in which the nursing facility chooses to transfer or discharge a client who ceases to meet the hospital back up level of care criteria, the nursing facility shall comply with notification requirements of 10 CCR 2505-10, section 8.057.1.D. and E, including notification of the client’s right to appeal the transfer or discharge.

    b. The discharging nursing facility shall adhere to CDPHE rules specific to client discharge or transfer as outlined in 6 CCR 1011-1, Chapter V, Section 12.6.

5. The receiving class I nursing facility shall prepare a care plan and submit it to the SURC. The care plan submitted to the SURC shall demonstrate that the receiving class I nursing facility can meet the needs of the prospective client. The SURC shall review care plans to determine whether they meet pre-established professional standards of care.

6. The Department shall notify CDPHE at the time of the transfer from the hospital back up level of care the name of the client being transferred and the name of the receiving class I nursing facility.

8.470.6 NURSING FACILITY QUALIFICATION FOR HOSPITAL BACK UP LEVEL

8.470.6.A. In order to participate as a hospital back up level nursing facility, the nursing facility shall submit an application to the Department that demonstrates:

1. The nursing facility is Medicaid certified and licensed to provide skilled care;

2. Financial stability for corporate and individual nursing facility;

3. Availability of skilled nursing services 24 hours per day;

4. Staff stability;

5. History of survey compliance;

6. Compliance with the direct client care regulations “Chapter II – General Licensure Standards” and “Chapter V – Long Term Care Facilities” administered by CDPHE; and

7. A recommendation from CDPHE for the nursing facility to participate in the hospital back up level of care program.

8.470.6.B. The Department may request evidence of financial stability and survey compliance periodically throughout the nursing facility’s participation.

8.470.6.C. If the nursing facility has applied to admit clients who are ventilator dependent, the nursing facility shall meet the following additional requirements:

1. Maintain staff dedicated to the ventilator unit 24 hours a day, seven days a week;

2. Have a generator that is capable of providing heating, cooling and continuous electricity for needed equipment in the event of power outages;

3. Maintain staff that has experience and current training in the care of clients who are ventilator dependent;

4. Have a wound care consultant available as needed; and

5. Maintain 24 hour on-site coverage by a respiratory therapist.

8.470.6.D. If the nursing facility has applied to admit clients with complex wounds, the nursing facility shall meet the following additional requirements:

1. Have a wound care specialist nurse or nurses capable of providing the wound care required by the clients with complex wounds on a 24 hour basis; and

2. Have access to specialized wound care equipment necessary to meet the needs of the clients with complex wounds.

8.470.6.E. If the nursing facility has applied to admit clients who are medically complex, the nursing facility shall meet the following additional requirements:

1. Maintain sufficient skilled nursing staff experienced in and trained in the care of clients who are medically complex;

2. Have 24 hour on-site coverage by a respiratory therapist or therapists to meet the assessed respiratory therapy needs of each medically complex client;

3. Have access to respiratory equipment necessary to meet the assessed needs of each medically complex client;

4. Have a wound care consultant available as needed; and

5. Provide physician support necessary for onsite monitoring of clients who are medically complex at least one time per week.

8.470.6.F. A nursing facility participating in the hospital back up level of care program shall:

1. Use the forms approved by the Department to document the care of clients who meet the hospital back up level of care.

2. Evaluate all clients upon admission, whenever there is a change in the client's condition and annually.

3. Notify the Department of a client's change of condition, discharge or death.

8.470.6.G. The Department may deny a nursing facility's request to participate as a hospital back up level of care nursing facility if the nursing facility does not meet all of the criteria for participation.

8.470.6.H. The Department may revoke a nursing facility's authorization to participate in the hospital back up level of care program if the nursing facility is not in compliance with the criteria.

8.470.7 REIMBURSEMENT OF NURSING FACILITIES SERVING CLIENTS WHO MEET THE HOSPITAL BACK UP LEVEL OF CARE

8.470.7.A. The Medicaid reimbursement for services provided to a hospital-back up level of care nursing facility client shall be negotiated between the Department and nursing facility in accordance with this subsection.

1. The Medicaid reimbursement for each client shall correspond to the negotiated cost of the services, durable medical equipment, and supplies as identified in the client's SURC approved care plan.

2. The Medicaid reimbursement for a client who meets the hospital back up level of care shall not be based upon or related to the audited, cost-based reimbursement for a nursing facility's class I nursing facility residents. The appeal rights and procedures applicable to the Department's determination of a nursing facility's class I rate shall not apply to the reimbursement offered or paid by the Department for a client who meets the hospital back up level of care.

3. The Department and nursing facility shall negotiate the Medicaid reimbursement for an approved client who meets the hospital back up level of care, at the time of initial placement in the nursing facility and whenever there is a significant change in the client's approved care plan or other relevant circumstances.

4. In the event that the Department and nursing facility are unable to reach agreement on an appropriate level of Medicaid reimbursement for a client who meets the hospital back up level of care, arrangements shall be made for the discharge of the client to another appropriate placement. The Department shall continue to reimburse the nursing facility for the client's care at the most recently agreed level of reimbursement until the nursing facility can provide appropriate placement, not to exceed 60 days.

5. Under no circumstances shall the payment for a client who meets the hospital back up level of care exceed 90 percent of the Medicaid payment to the discharging hospital.

6. If the Department determines that the client's third party coverage (private insurance or Medicare) will cover the cost of the client's care in either a hospital or nursing facility, Medicaid payment under this program shall be approved only after utilization of third party benefits.

8.470.7.B. Drugs and oxygen shall be billed directly to Medicaid by providers.

8.470.8 REPORTING ON MED-1

8.470.8.A. The Medicaid reimbursement for clients who meet the hospital back up level of care (hereafter referred to in this paragraph as "hospital-level reimbursement") shall not impact the Medicaid per diem cost and rate set for the nursing facility's class I Medicaid clients based on the MED-13 cost reporting process. The hospital-level reimbursement shall be reported on the MED-13 cost report form in the following manner so that it does not impact the class I Medicaid per diem rate established by the cost report:

1. The hospital-level reimbursement shall be included on the appropriate line in columns 1 8 on Schedule C.

2. Offset of the hospital-level reimbursement shall be made on Schedule B with a detailed supplemental schedule attached.

8.481 MEDICAL REVIEW/INDEPENDENT PROFESSIONAL REVIEW

The Department has entered into a Memorandum of Understanding with the Colorado Foundation for Medical Care (PRO) for the conduct of medical review in skilled nursing homes and independent professional review in intermediate care facilities.

The PRO, under the terms of its agreement with the Department and with the Department of Health and Human Services, Section 1151 et seq. of the Social Security Act and the rules and regulations of the Department of Health and Human Services, shall establish procedures for the review program. Such procedures as established pursuant to the plan of review approved by the Department pursuant to the Memorandum of Understanding between the Department and the PRO shall cover the following areas of review:

A. Medicaid residents' need for admission;

B. Need for continuing care;

C. Quality of care;

D. Facility assessment of care provided in the facility;

E. Adequacy and quality of services provided; and

F. Where applicable, plans for care and rehabilitation.

The Memorandum of Understanding between the Department and the PRO is hereby incorporated by reference. The incorporation of the Memorandum of Understanding excludes later amendments to, or editions of, the referenced material. The Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at: Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, CO 80203. Certified copies of incorporated materials are provided at cost upon request.

8.481.1 RESPONSIBILITY OF NURSING HOMES IN MEDICAL REVIEW PROCESS

It shall be the responsibility of all nursing homes participating in the Colorado Medical Assistance Program to cooperate with the PRO in its conduct of Medical Review/Independent Professional Review, and to follow those requirements and procedures set forth by the PRO, pursuant to the plan for review as approved by the Department pursuant to the Memorandum of Understanding between the Department and the Colorado Foundation for Medical Care.

8.482 RESIDENT INCOME AND POSSESSIONS

8.482.1 PURPOSE AND LIMITATIONS

Resident income, whether contributed or direct, shall be used for the care of the resident, except for 2 personal needs allowance as see forth in 10 CCR 2505-10 section 8.482.5.

No person, institution, partnership, corporation or other entity shall divert resident income from the control and exclusive use of the resident, without proper legal authorization or power.

8.482.2 DEFINITIONS

A. "Contributed income" is defined as the amount of income of parent or unseparated spouse, over and above the needs of such spouse or parent, which is contributed toward the needs of the resident.

B. "County Department" is defined as the County Departments of Social/Human Services.

C. "Department" is defined as the Colorado Department of Health Care Policy and Financing.

D. "Direct income" is defined as payments made directly to the resident, or to a conservator or guardian for the exclusive use of the resident. Examples of such income are Social Security benefits, supplementary security income, railroad or other retirement benefits.

E. "Nursing facility" is defined as an intermediate or skilled care facility, the owners, administrators, and staff thereof.

F. "Personal needs" is amount specified in 10 CCR 2505-10 section 8.110.42 to be deducted from resident income, end used for the exclusive benefit of the resident prior to application of income to nursing facility care.

G. "Resident income" is defined as all income used in the determination of eligibility for Medicaid payments.

H. "Patient payment" is defined as the payment made by the resident for nursing facility care, after the personal needs allowance is deducted.

I. "Responsible Party" is defined as any of the persons below, who accepts the responsibility for a resident's funds, mail or personal possessions and is willing to sign a written declaration of such responsibility:

   1. a legally appointed guardian, conservator or trustee;

   2. relative or friend;

   3. the county department.

J. "Post Eligibility Treatment of Income (PETI)" is defined as the reduction of resident payment to a nursing facility, for the costs of care provided to an individual by the amount that remains after

certain deductions are applied to reduce the individual's total income. The individual is liable to pay the remaining amount to the institution.

8.482.3 RESIDENT INCOME

The control of resident income is vested in the resident, or in such person as the resident may designate. Such designee may be a conservator, administrator, family member or other representative. The income is to be used by the resident, or on behalf of the resident. No such designee, or any other person or institution, shall convert any of these monies to their own use for any reason.

8.482.31 DETERMINATION OF INCOME

A. The initial determination of resident income shall be made by the county department. The county department shall then notify the nursing facility of current resident income as detailed in 10 CCR 2505-10 section 8.482.34.B.

B. The nursing facility must notify the county immediately of any changes in resident income. And, if the facility is authorized to receive the resident's income, the facility has the duty and obligation to verify the amount of resident income.

C. If the nursing facility is not authorized to receive the payments for resident income, it is the responsibility of the resident, or the person administering such income on behalf of the resident, to report all changes in such income, as required by the Colorado Department of Human Services Income Maintenance Staff Manual, Volume 3, under the penalties set forth in 10 CCR 2505-10 section 8.482.45.

8.482.32 COLLECTION OF INCOME

A. Responsibility of Nursing Facility

1. It shall be the responsibility of the nursing facility to collect from the resident, or from the resident's family, conservator or administrator, all income which is to be applied to the cost of resident care. The Department is not responsible for any deficiency in patient payment accounts, due to failure of the nursing facility to collect such income.

2. If, however, the nursing facility is unable to collect such funds, through refusal of the resident or the resident's family, conservator, or administrator to release such income, the nursing facility shall immediately notify the county department.

B. Responsibility of County Department

When notified by the nursing facility of the refusal of the resident or the resident's family, conservator or administrator to release resident income due, the County Department shall immediately contact the refusing party. If, after such contact, the party still refuses to release such income, the action shall be deemed a failure to cooperate, and the county department shall proceed to discontinue Medicaid benefits for the resident.

8.482.33 POST ELIGIBILITY TREATMENT OF INCOME

Effective April 8, 1988, with respect to the post-eligibility treatment of income of individuals who are institutionalized there shall be taken into account amounts for incurred expenses for medical or remedial care that are not subject to payment by Colorado Medicaid or third party insurance, including health insurance premiums, deductibles or co-insurance, dental care, hearing aids, supplies and care, and corrective lenses, eye care, and supplies, and other incurred expenses for medical or remedial care that are not subject to payment by a third party.

A. All PETI expenses in excess of $400 per calendar year must be prior authorized by the Department or its designee. The purpose of the prior authorization process is to verify the medical necessity of the services or supplies, to validate that the requested expense is not a benefit Of the Medicaid program, and to determine if the expenses requested are a duplication of expenses previously prior authorized.

B. Health insurance premiums, deductibles, or co-insurance as defined by state law.

1. Monthly premium payment paid by the resident for health insurance. If payments exceed the patient payment amount for one month, a monthly average is calculated by dividing the total premium by the number of months of coverage. The resulting amount is to be applied as a monthly PETI expense for the months of coverage.

2. Medicare premiums are not an allowable deduction except in "medical only" eligibility cases and only for the first two months not covered by Medicaid.

3. Health insurance premiums will be allowed for the resident only.

4. Health insurance premiums will only be allowed if the health, insurance information is entered into the automated system for purposes of third party recovery.

5. Health insurance premiums, deductibles, and coinsurance must be reviewed by the Department or its designee for final approval. If duplicate coverage has been purchased, only the cost of the least expensive policy will be allowed. Premiums, deductibles and co-insurances which the Department or its designee determine to be too expensive in relation to coverage purchased shall not be allowed.

C. The allowable expenses for special medical services (dental care, hearing corrective lenses) are subject to the following criteria:

1. General Instructions (applies to all special medical services).

a. All PETI expenses exceeding $400 per calendar year for equipment, supplies, or services must be authorized by the Department or its designee to be considered an allowable cost.

b. Costs will be allowed only if they are not a benefit of the Medicaid program, or not a benefit of other insurance coverage the resident may have.

c. All allowable costs must be documented in the resident's record with date of purchase and receipt of payment, whether or not these costs meet the requirements for prior authorization. Lack of documentation shall cause the patient payment deduction to be disallowed, causing the provider to be overpaid by the Medicaid program.

d. All allowable costs must be for items that are medically necessary as described in 8.011, and medical necessity must be documented by the attending physician. The physician statement must be current, within one year of the authorization.

e. The resident or legally-appointed guardian must agree to the purchase of the service/equipment and related charge, with signed authorization in the resident’s record.

f. Nursing facilities are not permitted to assess surcharge or handling fee to the resident’s income.

g. For special medical services/supplies provided but not yet paid for, the encumbrance agreement and monthly payment schedule must be documented in the resident's record, as well as receipts of payment.

h. The allowable costs for services and supplies may not exceed the basic Medicaid rate.

i. In the case of damage or loss of supplies, replacement items may be requested with relevant documentation. If the damage or loss is due to negligence on the part of the nursing facility, the nursing facility is responsible for the cost of replacement.

j. Costs will not be allowed if the equipment, supplies or services are for cosmetic reasons only.

k. If the client does not make a patient payment; then no PETI will be allowed.

l. PETI payments may not exceed the patient payment Payments made over a period of time shall only be allowed if the provider agrees to accept installment payments.

2. Dental Care Instructions

a. Prescription of dentures (partial or full plate, fixed or removable) must be made by a licensed dentist (Doctor of Dental Surgery, Doctor of Medical Dentistry).

b. The prescription (as defined in 10 CCR 2505-10 section 8.482.33.2.a.) must be part of a comprehensive evaluation to determine the medical necessity and suitability for wearing dentures.

c. Oral and maxillofacial surgery that is required to render soft-tissue and bony structures suitable for wearing dentures must be prior authorized by the Department as defined in 10 CCR 2505-10 section 8.200 et seq.

3. Hearing Aid Instructions

a. All referrals for hearing aids must be certified by the attending physician, and must include an evaluation for suitability and specifications of the appropriate appliance, in accordance with 10 CCR 2505-10 section 8.287.02.

b. Purchase of new hearing aids to replace pre-existing hearing aids must include documentation of necessity of replacement of the pre-existing hearing aid. The documentation shall also describe the trade-in value given for the pre-existing aid, if appropriate.

4. Corrective Lenses Instructions

a. The evaluation of the need for corrective eyeglasses (lenses) must be a part of a comprehensive general visual examination conducted by a licensed ophthalmologist or optometrist.

b. The medical necessity for prescribed corrective lenses should not be based on the determination of the refractive state of the visual system alone, but should be identified by the current procedural terminology in the Physician Current Procedures Terminology (CPT) Code as established by the American Medical Association. This document is available through the American Medical Association, 515 North State Street, Chicago, Illinois 60610 or http://www.ama-

assn.org/catalog. The document referred to does not include later amendments to or editions of the CPT4. Copies are available for inspection and available at cost at the following address: Director, Office of Medical Assistance, Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado 80203-1714; or may be examined at any State Publications Depository Library.

D. Prior Authorization Request Process:

For allowable PETI expenses that exceed $400 per client in a calendar year, costs must be prior authorized by the Department or its designee. The process is as follows:

1. Prior authorization requests must be submitted to the Department or its designee on the form prescribed by the State. In addition to the information requested on the form, the following attachments must be included:

   a. A description of the service or supply, and the estimated cost.

   b. A physician's statement indicating the medical necessity of the service or supply.

2. Prior authorizations will be certified based on the following criteria:

   a. The request is not a benefit of the Medicaid program.

   b. The cost of the request does not exceed the basic Medicaid rate for such services or supply.

   c. The special medical service or supply is medically necessary.

3. The Department or its designee shall review and approve/deny the Prior Authorization Request within ten working days of receipt

4. Upon receipt of the approved Prior Authorization Request (PAR), the nursing facility shall adjust the patient payment by the amount authorized on the following month's Medicaid billing or on the nursing facility's next billing cycle.

5. All documentation of the incurred expenses must be available in the client's financial and medical record for audit purposes. Lack of documentation shall cause the patient payment deduction to be disallowed causing the provider to be overpaid by the Medicaid program.

8.482.34 THE "STATUS OF NURSING FACILITY CARE" FORM, AP-5615

A. Responsibilities of the Nursing Facility

1. The AP-5615 form is to be completed by the nursing facility, in duplicate, for all admissions, readmissions, transfers from private pay or Medicare, discharges, deaths, changes in income and/or patient payment, and leaves of absence.

2. Each form must carry the date completed and the actual signature of the nursing facility administrator or his/her authorized representative.

3. All copies of the AP-5615 must be mailed to the appropriate county department within five working days of the action which is being reported, or in the case of a change in resident income, within five working days of the time the change becomes known, in order to expedite reimbursement.

4. The nursing facility will be responsible for assuring that the patient payment, as shown on the AP-5615 and approved by the County Department, is identical to that claimed on the monthly nursing facility, billing form. Failure to enter the latest patient payment data on the billing form will render the nursing facility liable for any discrepancies.

B. Responsibilities of the County Department

On receipt of Form AP-5615, the county department will, within five working days:

1. For an admission, a readmission or a transfer from/to private pay or Medicare:

   a. Verify and correct, if necessary, data entered by the nourishing facility.

   b. List and/or verify the resident's monthly income; and compute patient payment. Distribute completed form as instructed on back of form.

   c. Correct the automated system to indicate the nursing facility name and provider number and to reflect the current distribution of income. Submit the AP-5615 to the Department.

2. For change in patient payment with respect to changes in resident income:

   a. Verify changes in resident income, and correct if necessary. All such corrections must be initialed,

   b. Correct eligibility reporting form and submit to state department

3. For change in patient payment with respect to the post-eligibility treatment of income, the county department shall:

   a. Review the AP 5615 for Medicare premium deduction allowances for the first two months of admission of readmission.

   b. If client is already on the Medicare Buy-In program, do no: adjust patient payment on Form 5615 for the Medicare premium deduction. If client is not on the Buy-In program, adjust Form 5615 for the Medicare premium deduction for the first two months of nursing facility eligibility.

4. For resident leave of absence:

   a. Non-Medical/Programmatic Leave. Verify adherence to the restrictions and conditions of 10 CCR 2505-10 section 8.482.44.

   b. Medical Leave. Verify that the charges made to the resident or the resident's family are correct and that no Medicaid payment is requested for the period. See also 10 CCR 2505-10 section 8.482.43.

5. For discharge or death of resident:

   a. Verify the date of death or discharge, and verify the correct patient payment (or resident's monthly income) for the discharged month, and the amount calculated by per diem. All corrections must be initialed.

   b. Note if the resident entered another nursing facility and, if so, provide the name of the new nursing facility. This information is needed to assure that duplicate payment will not be made.

c. In the event the resident may return to the same facility, the AP-5615 may be completed at the end of the month for discharges due to hospitalization.

d. Make necessary changes on the automated system to reflect the appropriate circumstances. Submit the AP-5615 to the Department

6. Failure to submit the correct form may result in the refusal of the Department to reimburse such nursing facility care.

7. General Instructions:

a. The AP-5615 form must be verified and the original returned to the nursing facility.

b. The AP-5615 form must be signed and dated by the director of the County Department, or by his/her designee.

c. AP-5615 forms may be initiated by either the nursing facility or County Department. If the County Department is aware of information requiring a change in financial arrangements of a resident, and a new AP-5615 form is not forthcoming from the nursing facility, the County Department may initiate the revision to the AP-5615. In such case, one copy of the AP-5615 showing the changes, will be sent to the nursing facility.

8. The Department may deduct excess payments from the county administrative reimbursement as stated in the Colorado Department of Human Services Finance Staff Manual, Volume 5 if the County Department fails to:

a. Perform the duties as detailed in section B; or

b. Adhere to the limitations on $0.00 patient payment; as detailed in 10 CCR 2505-10 section 8.482.34.D.; or

c. Notify the nursing facility immediately of any changes in resident income, provided the nursing facility is not authorized to receive the resident's income; and excessive Medicaid funds are paid to the nursing facility as a result of this negligence.

C. Calculating Partial Month Payments

1. Whenever a resident is in the nursing facility on the first day of the month, remains a resident for each day of the month, and is still a resident on the first day of the next month, the total resident income. in excess of the amount reserved for personal needs allowance, less earned income (if appropriate), less spousal and dependent care allowance, less home maintenance allowance, and less allowable expenses for medical and remedial care (see PETI deductions as defined in 10 CCR 2505-10 sections 8.110.49 and 8.482.33) will be used as the patient payment, regardless of the actual number of days in that month. If the resident is in the facility less than this period, the rate is computed using the calculation below.

2. In figuring the number of days for payment, the day of admission is included, but not the day of discharge (i.e., the resident dies or leaves the facility).

3. In order to calculate the patient payment:

a. determine the amount of available resident income for the month (see subsection 1. above).

b. subtract the cost of the care provided to the resident during that month (computed by multiplying the number of days in the facility times the per diem cost of care).

4. If the cost of care exceeds the available resident income, Medicaid will pay the difference. If the available resident income exceeds the cost of care, the excess income is the property of the resident (10 CCR 2505-10 section 8.482.3) and must be refunded to the resident or the legal guardian/designated responsible party.

5. When patient payment is calculated by per diem, the final amount shown will be that amount to be paid by the resident, not the amount to be returned to the resident

6. If, at the time the resident is discharged or dies, the patient payment for that month is greater than the properly computed per diem patient payment, the following rules apply:

   a. If the resident is discharged to another nursing facility, or to the resident's own home, the excess patient payment and personal needs monies must be forwarded to the resident in his/her own home or in the transferred nursing facility, within 45 working days of the date of discharge.

   b. If the resident is discharged to a hospital, other medical institution, or if the resident dies, the excess patient payment must be immediately transferred from the nursing care account to the resident's personal needs account. These funds then are to be disposed of as detailed in 10 CCR 2505-10 section 8.482.52.F. If the nursing facility does not handle the resident's personal needs funds, the excess patient payment must be immediately returned to the responsible party.

      1) However, if the resident is discharged from the nursing facility to a hospital or other medical institution and is admitted with Medicaid as the primary source of funding, the patient payment in excess of the amount due to the discharging nursing facility may be due to the hospital or medical institution. Any excess patient payment should be sent to the hospital at the end of the month (see10 CCR 2505-10 section 8.358.1). If the resident discharged to a hospital or other medical institution is not readmitted to the nursing facility, the resident's funds, either excess patient payment or personal needs, must be lawfully disposed of as indicated in 10 CCR 2505-10 section 8.482.52.F.

      2) If the resident dies in the nursing facility or is discharged to a hospital or other medical institution where he/she subsequently dies, the resident's funds entrusted to the nursing facility must be transferred as indicated in 10 CCR 2505-10 section 8.482.52.F.

7. Changes of financial status within the facility:

   a. Residents transferring from private pay to Medicaid may have a patient payment liability for the Medicaid-funded portion of the month depending on the amount of income applicable to care, as determined on the AP-5615 form.

   If the resident's income exceeds the cost of care paid for the private resident portion of the month, the excess income is applicable to the remaining Medicaid portion of the month.

   b. The same patient payment calculation applies for residents transferring from Medicaid to private pay status. The patient payment is first applied to the

Medicaid portion of the month and any excess is then applied to the remaining private pay days.

D. Zero Patient Payment

1. Patient payment may be waived and zero $0.00 patient payment applied only under the following conditions:

   a. A resident's income is equal to or less than the personal needs allowance (see 10 CCR 2505-10 section 8.110.42); or

   b. A resident's income is equal to or less than the personal needs allowance, less earned income (if appropriate), less spousal and dependent care allowance, or less home maintenance allowance, or less allowable expenses for Medicare premiums (see PETI deductions as defined in 10 CCR 2505-10 sections 8.110.49 and 8.482.33); or

   c. A resident is admitted to the nursing facility from his/her home and the resident's funds are committed elsewhere for that month; or

   d. The resident is admitted from his/her home, where his/her funds were previously committed, to the hospital, and subsequently to the nursing facility, in the same calendar month; or

   e. The resident is discharged to his/her home, and the county department determines that the income is necessary for living expenses; or

   f. The resident is admitted from another nursing facility or from private pay within the facility and has committed the entire patient payment for the month in payment of care already provided in the month of admission.

2. Patient payment may not be waived (other than for the exceptions provided for in 10 CCR 2505-10 section 8.482.34.D.1.) in the following instances:

   a. A resident with income in excess of the personal needs allowance, less earned income (if appropriate), less spousal and dependent care allowance, or less home maintenance allowance, or less allowable expenses for Medicare premiums (see PETI deductions as defined in 10 CCR 2505-10 sections 8.110.49 and 8.482.33), except as provided in the Colorado Department of Human Services Income Maintenance Staff Manual Volume 3, concerning increased personal needs allowance; or

   b. Transfers between nursing facilities; or

   c. Discharges from nursing facility to a hospital or other medical institution; or

   d. Changes from private pay within the facility and patient payment not already committed for care provided; or

   e. The death of the resident

3. The amount of SSI benefits received by a person who is institutionalized is not considered when calculating patient payment

8.482.4 NO DUPLICATE OR ADDITIONAL PAYMENTS

8.482.41 DUPLICATE PAYMENTS

A. "Duplicate payment" is defined as:

1. Payment to two or more facilities, hospitals or other institutions for per diem or room and board care for the same resident for the same time period;

2. Payment from two sources, including but not limited to, Medicare and Medicaid, for the same service to the same resident. Supplementary payments in which each source pays a portion (not overlapping) of the total due, is not considered duplicate payment.

B. Duplicate payment shall not be made:

1. To a hospital and a nursing facility for the same period of time for care of any one resident;

2. To two or more nursing facilities for the same period of time for the care of any one resident;

3. For any other instance, whether billed by the provider in good faith or in error.

C. Any provider billing for such duplicate services for any period of time during which the resident was not actually in the facility or the resident did not actually receive any facility billing for services will be subject to the penalties as set forth in 10 CCR 2505-10 section 8.482.45.

D. In any instance in which duplicate billings result in Medicaid reimbursement to both providers, a recovery shall be made by the Department against one or both providers.

8.482.42 ADDITIONAL PAYMENTS

A. "Additional payments" are defined as payments made by the resident, or by a resident's family, conservator or administrator for items which are not a benefit of the Medicaid program, such as:

1. Items covered in 10 CCR 2505-10 section 8.442.1, Services and items not included in the Per Diem Rate (chargeable to Patient Trust Funds).

2. Room reservations for medical leave in accordance with 10 CCR 2505-10 section 8.482.43.

3. Room reservations for non-medical and/or programmatic leave days in excess of 42 days per calendar year in accordance with 10 CCR 2505-10 section 8.482.44.

4. Limitations covered in 10 CCR 2505-10 section 8.462.

B. Additional payment for resident care and services which are to be furnished within the nursing facility per diem rate are specifically prohibited (10 CCR 2505-10 section 8.442). The nursing facility can neither solicit additional funds for such care and services nor accept voluntary monetary contributions for them, from residents or responsible parties. Any such monies collected or accepted by the nursing facility shall render such facility liable for the penalties set forth in 10 CCR 2505-10 section 8.482.48.

C. Additional payments may be charged for:

1. Services and items not included in the per diem rate, as specified in 10 CCR 2505-10 section 8.442.1. These items may be billed to the resident, to the resident's estate or other responsible party, subject to the restrictions set forth in 10 CCR 2505-10 section 8.442.1.

2. Room reservations. "Room reservation" is hereby defined as that charge made to a resident or to a resident's family, conservator or administrator, or other responsible party, to retain the resident's room and provide space for clothing and other personal items during the time which the resident is absent from the facility. Room reservation charges may be made under the circumstances outlined at 10 CCR 2505-10 sections 8.482.43 and 8.482.44.

   a. Medical leave. See 10 CCR 2505-10 section 8.482.43 for conditions and restrictions.

   b. Non-medical and/or programmatic leave. See 10 CCR 2505-10 section 8.482.44.

D. Failure to comply with the following restrictions on additional payment will render the nursing facility liable for repayment of any such funds, or to prosecution as set forth in 10 CCR 2505-10 section 8.482.45, or both:

   1. Exact physician's orders on the nursing facility charts, for such additional care or services;

   2. Fully itemized billings to the resident or responsible party;

E. Additional payments by persons other than the resident shall not be regarded as income to the resident, and shall not affect the eligibility of the resident for the Medicaid program.

F. Additional payments may not be deducted from the resident's personal needs funds, nor may they be applied to a PETI deduction as described in 10 CCR 2505-10 section 8.482.33, unless authorized by such resident or the party responsible for such resident. Such authorization must be a separate written authorization for each billing from the nursing facility.

8.482.43 MEDICAL LEAVE FROM NURSING FACILITY

A. Definition. "Medical leave" is defined as absence of the resident from the nursing facility due to admittance to a hospital or other institution.

B. Medical leave, as addressed in this section, is subject to the following restrictions:

   1. Such absence of the resident must be on the specific orders of a physician, as noted in the resident's chart;

   2. There must be a presumption by the doctor and by the resident that the resident will return to the nursing facility;

   3. The nursing facility must prepare an AP-5615 showing the dates such medical leave commenced and ended. See 10 CCR 2505-10 section 8.482.34.

   4. The resident, or the responsible party if the resident is unable to respond, must be advised, in writing, that payment for holding the nursing facility room cannot be made by Medicaid. In addition, he/she must give written consent to the additional charge, both the daily rate thereof and the anticipated number of days. If the resident is absent from the facility longer than the anticipated number of days shown on the consent form, the nursing facility must obtain agreement on another consent form before continuing to charge for medical leave. The consent form(s) must be retained with other resident records and be subject to audit.

C. Room reservation charges for Medical leave:

1. The per diem charge for room reservations for medical leave cannot exceed the per diem rate currently authorized for the nursing facility, less total food and linen service costs. In no case shall the charge be greater than the current per diem rate less $2.

2. The specific bed which the resident had occupied prior to leave must be reserved. No other resident may occupy a bed so reserved.

3. If no source of payment, other than the resident's funds, are available, and the nursing facility's current occupancy is less than 90 percent of capacity. The room must be reserved at no charge to the resident.

4. Revenues to the nursing facility from room reservations must be used in reduction of related expenses, on the MED-13 form.

5. If no other funds are available, the room reservation charges may be deducted from the resident's personal needs funds, subject to the restrictions in 10 CCR 2505-10 section 8.482.42. However, the resident's personal needs must retain at least $10 at all times, if used for room reservations payment. In case of death of the resident, the entire personal needs account may be used, if necessary.

8.482.44 Room Reservations for Non-Medical and/or Programmatic Leave

Medicaid will pay a nursing facility to hold a bed for non-medical and/or programmatic leave days up to a combined total of 42 days per resident per calendar year.

Non-medical leave days are defined as days of leave from the nursing facility for non-medical reasons. Programmatic leave days are days of leave prescribed by a physician for therapeutic and/or rehabilitative reasons. Programmatic leave may entail visits to family, friends or guardians, or leave to participate in approved therapeutic and/or rehabilitative programs. A leave day is considered to have been incurred for any day during which the resident is absent from the nursing facility for therapeutic and/or rehabilitative purposes and does not return by midnight of that day.

Before Medicaid payment is made for room reservation costs for non-medical and/or programmatic leave, the attending physician must approve each leave and affirm that such leave is not contrary to the resident's written plan of care. In the case of programmatic leave, this approval must be in writing and noted on the resident's chart and/or Individual Habilitation Plan (IHP). In addition, the physician must affirm that the resident's programmatic leave is of therapeutic and rehabilitative value and consistent with the overall plan of care and/or Individual Habilitation Plan developed for the resident.

If the resident has the approval of the attending physician in writing, and such approval is noted on the resident's chart, room reservations for non-medical and/or programmatic leave may be paid for by the resident, after the allowable 42 days per calendar year has been paid from Medicaid funds. Charges to residents for this leave are subject to the following restrictions:

A. Such charges must not commence until after 42 days of non-medical and/or programmatic leave in any one calendar year.

B. The Medicaid Program has not been billed for such leave. Billing both Medicaid and the resident for the same leave period will subject the nursing facility to the penalties as set forth in10 CCR 2505-10 section 8.482.45.

C. The resident or the resident's family must be advised that payment for the nursing facility room cannot be paid from Medical Assistance funds after the resident's allowable leave has been consumed. In addition, the resident and/or legal guardian must give written consent to the room reservation charges, both the daily rate and the anticipated number of days. The consent form must be retained with other resident records and subject to audit.

D. The maximum allowable charge for non-medical and/or programmatic leave is the same as stated for medical leave in paragraph C of 10 CCR 2505-10 section 8.482.43.

E. The specific bed which the resident occupied prior to leave must be reserved. No other resident may occupy a bed so reserved.

F. Revenues to the nursing facility from room reservations must be used in reduction of related expenses, on the MED-13 form.

G. In no case shall the nursing facility deduct non-medical and/or programmatic leave charges from the resident's personal needs account, unless specific authorization has been received, in writing, from the resident and/or legal guardian.

8.482.45 PENALTIES

A. Obtaining vendor payments fraudulently, as outlined in C.R.S. section 26-1-127 (1995 Supp).

B. Obtaining additional payments from residents, or resident's families, as outlined in C.R.S. section 25.5-4-301.

C. License may be revoked according to the provisions of C.R.S. section 25-3-103.

D. Falsification of reports as outlined in C.R.S. section 26-1-127.

E. Incorrect payments due to omission, error or fraud may be recovered as outlined in C.R.S. section 25.5-4-301(2).

F. Duty of resident to report changes in income and penalties for non compliance, as outlined in C.R.S. section 26-2-128.

G. In addition to all penalties imposed above, the Department may also require the reimbursement of the entire amount of any benefits unlawfully obtained.

8.482.46 UTILIZATION OF MEDICARE BENEFITS

A. Services and equipment which are a benefit of Medicare, as described in 42 CFR Part 405.230-252, must be billed to Medicare before billing Medicaid. 42 CFR Part 405.230-252 is hereby incorporated by reference. The incorporation of 42 U.S.C. section 1396r excludes later amendments to, or editions of, the referenced material. The Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at: Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, CO 80203. Certified copies of incorporated materials are provided at cost upon request.

B. Part "B" deductible and co-insurance amounts for Medicare-eligible Medicaid recipients will be reimbursed by Medicaid. Reimbursement will be made for any service covered by Part "B" of the Medicare program, as described in 42 CFR sections 405.230-.252, even though that service is not ordinarily covered under the medical assistance program. The services paid for by Medicare cannot be included in costs for calculation of the nursing home provider's daily reimbursement rate. If Medicare Part "B" type services are provided by the facility and the facility has a provider number which it used to bill Medicare, then the following entries must be made to the cost report (MED-13):

1. The cost of the care reimbursed by Medicare and/or Medicaid crossover for residents who are Medicaid recipients may be deducted from Schedule "C" of the MED-13 Schedule "B" if the costs for providing that care are determinable and auditable; or

2. The Medicare and/or Medicaid crossover revenue for residents who are Medicare eligible will be deducted from Schedule "C" on Schedule "A".

C. When the facility provides Medicare Part "B" type services to non-residents of the facility, the following entries must be made to the cost report (MED-13):

1. Cost of the care reimbursed by Medicare and/or Medicaid crossover for non-residents of the facility must be deducted from Schedule "C" of the MED-13 on Schedule "B" if the costs for providing that care are determinable and auditable; or

2. The Medicare and/or Medicaid crossover revenue for non-residents of the facility must be deducted from Schedule "C" on Schedule "A".

D. Co-insurance and deductible costs for the following services (which are covered by Medicare Part "B") may be billed to the Medicaid program without prior authorization:

1. Laboratory Services

2. Medical Supplies

3. Durable Medical Equipment

4. Speech Therapy

5. Occupational and Physical Therapy

6. Practitioner Services

E. Facilities or their suppliers when billing the Medicaid program for those services reimbursed by Medicare, are to use the Medicare/Medicaid crossover system of billing. The facility, in order to bill through the Medicare/Medicaid crossover system, needs only to complete a Medicare billing form and indicate on that form that they wish to "accept assignment." A Medicare claim form for a Medicare/Medicaid patient, indicating acceptance of assignment, will cross over to Medicare, and co-insurance and/or deductibles will be paid on a Medicaid remittance advice.

8.482.5 RESIDENT'S PERSONAL NEEDS FUNDS

8.482.51 STATEMENT OF POLICY

A. All residents receiving nursing facility care are allowed to retain the amount of income specified in 10 CCR 2505-10 section 8.110.42 as personal needs funds, to purchase necessary clothing or incidentals. These funds may not be used to supplement the Medicaid nursing facility payment, and such funds cannot be used for any other purpose whatsoever by the nursing facility.

B. Personal needs money is for the exclusive use of the resident as he/she desires. The resident or relatives may not be charged for such items as Chux, tripads, toilet paper, or other nursing facility maintenance items since these items are included in the audited cost described in 10 CCR 2505-10 section 8.442. Other charges which could be disallowed are as follows:

1. Nursing facility maintenance items and nursing care supplies and services.

2. Charges without the following documentation:

a. vendor receipts;

b. signed cash receipts; or

c. statement signed by the resident for any specifically requested over-the-counter drug.

3. Charges which constitute a duplicate payment as defined in10 CCR 2505-10 section 8.482.41.

4. Charges which constitute an additional payment as defined in 10 CCR 2505-10 section 8.482.42.

5. Handling charges, such as personal needs trust account bank service fees.

C. Items not covered by Medicaid, such as personal items, clothing, private room, etc., may be charged to the personal needs account of the resident. However, all of the restrictions of 10 CCR 2505-10 section 8.442.1 apply. In addition, only those items actually requested by the resident may be charged to his/her personal needs funds, and there must be a signed, dated receipt for each such item or service signed by the resident, the resident's conservator, guardian or relative, or by a responsible party, retained in the resident's accounts.

8.482.52 RESPONSIBILITIES OF NURSING FACILITIES

A. General Accounting Practices

1. Nursing facilities must administer a resident personal needs fund for those residents who are unable to or have no desire to handle their own personal needs monies. The nursing facility is obligated to exercise due care in the handling of resident funds per federal regulations.

2. If a resident elects to have the nursing facility handle his/her personal needs monies, a personal needs trust agreement must be entered into and signed by the resident or the resident's legal personal representative. This agreement creates a fiduciary relationship between the nursing facility and the resident which includes the legal rights and responsibilities provided for in C.R.S. section 15-1-101. As a condition of the trust agreement, the nursing home is allowed to return the personal needs allowance portion of the resident's income. (See 10 CCR 2505-10 section 8.110.42).

3. If the resident or responsible party does not elect to have the facility handle the personal needs monies, the resident or responsible party must enter into and sign a personal needs exclusion agreement with the facility.

4. If the total personal needs trust fund balance is less than $50.00, the resident's personal needs trust fund monies may be held in either an interest or non-interest-bearing account with a depository institution or in cash at the facility.

5. If the total personal needs trust fund balance is $50.00 or more, the resident's personal needs funds must be kept in an interest-bearing account. The account can be a checking account, a savings account, or a certificate of deposit.

6. The bank account must be designated as "resident trust funds account."

7. The funds in the depository institution (most often a bank) must be insured.

8. The personal needs trust monies must not be commingled with either the operating funds of the facility or with any other individual's fund who is not a resident of the facility.

9. The personal needs monies of more than one resident: can be commingled in the same bank account as long as separate accounting records (i.e., subsidiary ledgers) are maintained.

10. No charge for handling such trust accounts may be made to the recipient or to the estate of the recipient at any time. Such expenses should be included as a part of the audited costs as determined in 10 CCR 2505-10 section 8.440.

11. A subsidiary ledger, as specified by the Department, must be kept for each resident for recording personal needs transactions.

12. A reconciliation of the sum of the ledger balances to the bank balance (plus petty cash, if applicable) must be performed on a monthly basis.

13. Deposits and disbursements from the personal needs trust account must be recorded in an accurate amount and in accordance with 10 CCR 2505-10 section 8.482.51.B for purchases and 10 CCR 2505-10 section 8.482.52.F for refunds.

14. Any interest income must be recorded on the ledgers. If the resident trust funds are pooled in one interest - bearing account, the interest earned on the account must be allocated to each resident's account proportionately (i.e., by dividing the individual resident's account balance by the total personal needs trust fund balance then multiplying that quotient times the amount of interest income).

15. The resident shall be notified when his/her personal needs trust fund balance reaches $200 less than the SSI resource limit as provided in 10 CCR 2505-10 section 8.110.53.A

16. This accounting system must be adequate for audit by the representative of the Department, and in accordance with generally accepted accounting principles.

17. All such accounts, original bank statements, and supporting documentation must be available for audit by any authorized employee of the county department. State Department, or agent of the State Department at any time.

18. Personal needs money is the property of the residents and all accounting records, bank accounts and other documents must remain with the nursing facility when ownership is transferred.

B. Bonding Requirements

1. An additional condition of nursing facility participation in the Medicaid program is the purchase of a surety bond as required by C.R.S. section 25.5-6-206(3)(c) The sum of the surety bond must not be less than the personal needs trust fund liability as computed quarterly during interest proration, or the licensed operator ("licensee") shall otherwise demonstrate to the satisfaction of the Department that the security of the residents' personal needs funds is assured. State owned/operated facilities are bonded separately under the risk management program up to $100,000 and are exempt from this requirement.

2. The effective dates of the surety bond shall be from January of each calendar year through December 31 of the following calendar year. The nursing facility licensee's Medicaid participation shall be terminated immediately upon lapse of such bond.

3. A copy of the Surety Bond Patient Needs Trust Fund (Form MED-181), or the Certificate of Insurance (Surety Bond), fully executed, signed and sealed, shall be filed with the Department within 15 days prior to the effective date thereof.

4. Upon the termination of Medicaid participation of a nursing facility provider for any reason, either voluntarily or through Departmental action, the bond must be kept in effect until the final audits of resident personal needs funds and resident nursing care accounts

can be completed by the Department, and until any adjustments required by such audits have been made.

C. Change of Licensed Operator -Requirements

1. When the licensed operator ("licensee") of a nursing facility is changed, as described in 10 CCR 2505-10 section 8.441.5, it shall be the duty of the new Medicaid provider:

   a. To execute a new personal needs account agreement on behalf of Medicaid residents, as required by this section. The new provider shall furnish proof to the Department that it has properly established resident's personal needs accounts and carried forward the proper balance remaining in each resident's ledger.

   b. To post a surety bond as required by C.R.S. section 25.5-6-206 (3)(c)., and 10 CCR 2505-10 section 8.482.52.B. above, or to otherwise demonstrate to the satisfaction of the Department that the security of residents' personal needs funds is assured.

   c. Upon notice to the Department that a nursing facility's licensed operator will change or Medicaid participation will be terminated as required in 10 CCR 2505-10 section 8.441.5, the Department may withhold all or part of any monies due the prior nursing facility licensee until the personal needs accounts of the residents have been determined to be correct. If such accounts are found to be deficient, the amount of the bond established by the prior licensee shall be forfeited to the Department, and any additional deficit shall be deducted from such monies due to the prior licensee of fee nursing facility. (See also 10 CCR 2505-10 section 8.444.) The Department will, in such cases, assume the responsibility for proper distribution of such monies to the deficient resident accounts.

2. It shall be the duty of the prior licensee to provide the new licensee written verification, by a public accountant, of the amount of personal needs money being transferred for each resident's personal needs fund. This verification shall include a statement that this amount corresponds to the total of the balances shown on the resident's individual ledger

D. New Admission

When a patient is admitted to a nursing facility for the first time. or transferred from Medicare or private pay, the nursing facility shall set up a new account for personal needs funds, which lists a beneficiary or beneficiaries (with percentages), as specified in A. of this subsection.

E. Readmissions, Transfers from Another Nursing Facility.

1. Upon readmission or transfer of a resident, the nursing facility shall determine the amount of personal needs funds currently in the resident's account in the previous facility, make every effort to obtain such funds, and show this amount as a balance forward in the current ledger. Reconfirmation of the listed beneficiary or beneficiaries shall also be done at this time.

2. Failure to make such effort shall be considered a breach of trust agreement, and may be cause for cancellation of the participation agreement.

3. If, upon making every effort, the current nursing facility is unable to obtain the balance of funds from the resident's previous facility, the current nursing facility should notify the Department immediately. Failure to do so may be construed as a failure to make every effort.

F. Discharge from a Nursing Facility

1. Upon discharge of a resident to the resident's home, to another nursing facility or to the care of a responsible party, the nursing facility shall determine the amount remaining in the personal needs account within 45 days, and make payment of this amount to the resident, responsible party, or transfer these funds to the current nursing facility, if appropriate. Failure to so dispose of the resident's personal needs funds shall render the nursing facility liable for cancellation of the participation agreement or to the penalties as set forth in 10 CCR 2505-10 section 8.482.45, or both. All patient's personal possessions shall also be relinquished, as required by 10 CCR 2505-10 section 8.482.6.

2. At the end of the month in which a resident is discharged to a hospital, the nursing facility shall:

   a) set aside the personal needs allowance of S50 for the resident;

   b) apply the balance of any monies to the established Medicaid rate for the number of days the resident lived in the facility; and

   c) if there is still a balance, transfer the funds to the receiving hospital, if Medicaid is the primary funding source.

   If the resident returns to the same nursing facility, no additional accounting is necessary. If the resident does not return to the same facility, however, disposition of the personal needs funds shall be made as specified in this section.

3. Death of a resident.

   a. The nursing facility is required to determine if:

      1) The nursing facility resident dies intestate (i.e., without a will) with known relatives, or a listed beneficiary, for whom current addresses are known; or

      2) The nursing facility is unsure of the existence of a will or whether there are known relatives and there is no listed beneficiary; or

      3) There is a public administrator in the county in which the death occurred. If not, the nursing facility shall, within ten days from the date of death, contact the Department. It shall then be the responsibility of the Department to turn the funds over to the Colorado State Treasurer for inclusion in the next Great Colorado Payback listing.

      Within 60 days after a resident's death, the facility shall transfer the resident's personal needs funds and a final accounting of the funds to the person responsible for settling the resident's estate or, if there is none, to the resident's heirs in accordance with the provisions of C.R.S. sections 15-1-101 et seq. Within 15 days after receiving the funds, the executor, administrator, or other appropriate representative of the resident's estate shall provide written notice to the Department regarding the receipt of the funds. Upon receipt of the notice, the Department may initiate action to recover the funds pursuant to the provisions of this article.

   b. When a nursing facility resident dies intestate (i.e., without a will) and is known to be without relatives or a listed beneficiary, the nursing facility is required to pay

any funds remaining in the personal needs account to the Public Administrator of the county in which the nursing facility resident died. C.R.S. section 15-12-620(4) specifically requires that whenever a person without known heirs dies intestate on the premises of another, the personnel in possession of such premises must give immediate notice thereof to the public administrator or incur liability for any damages that may be sustained through neglect. The Clerk of the District Court should be contacted to obtain the name of the current Public Administrator appointed for the county.

c. In those instances in which the nursing facility resident dies testate (i.e., with a will) the funds in his personal needs account must be transferred to the executor of the estate, unless another person or persons are listed as beneficiaries, in which case the funds can be passed outside the will. Other personal property of the deceased should be given to the executor. C.R.S. section 15-12-711 provides that a personal representative or executor has the same power over the title of the property of the estate as an absent owner.

d. If the proper disposition of the deceased resident's personal needs funds and/or personal property cannot be made, the nursing facility may elect to use the following provisions of the Colorado Small Estate Act to be discharged from further liability.

1) In accordance with C.R.S. sections 15-12-1201 et seq. after ten or more days following the death of a nursing facility resident, a person claiming to be the successor or acting on behalf of all successors of the deceased resident may present an affidavit (Form CPC-40, Rev. 6/81) stating that:

a) The fair market value of the property owned by the decedent and subject to disposition by will or intestate succession, less liens and encumbrances, does not exceed $27,000;

b) At least ten days have elapsed since the death of the decedent;

c) No application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and

d) The claiming affiant(s) and successor (s) are entitled to payment of all monies due and to delivery of all tangible personal property.

2) In accordance with C.R.S. section 15-12-1202, the nursing facility administrator is discharged and released from further responsibility once funds or personal property have been released to an individual presenting an affidavit as referenced above. The nursing facility need not inquire as to the truth of the affidavit or of any successor's right to succeed to the deceased resident.

e. The nursing facility shall also require a signed and dated receipt listing all the resident's personal property items released to a successor, as required by 8.482.6.C.

4. Any failure of the nursing facility to properly dispose of the resident's personal needs funds within 90 days of death or discharge will be considered a breach of trust, and may be cause for cancellation of the participation agreement, forfeiture of the required surety bond, and prosecution under the penalties provided in 10 CCR 2505-10 section 8.482.45.

8.482.53 RESPONSIBILITIES OF COUNTY DEPARTMENT

A. It shall be the responsibility of the county department, to explain to the resident the various options for handling the personal needs monies, as well as the resident's rights to such funds. If the resident chooses to allow the nursing facility to hold such funds in trust, the county department is responsible for assuring that the resident assigns all income to the nursing facility. See 10 CCR 2505-10 section 8.482.52.A.2.

B. It shall be the responsibility of the county department, to assure that the nursing facility properly transfers or disposes of the resident's personal needs funds within 45 days of discharge from the nursing facility, or transfer to another nursing facility.

C. The county department shall notify the State Department if they become aware that a nursing facility has retained personal needs funds more than 90 days after the death of a resident.

8.482.54 RESPONSIBILITIES OF THE STATE DEPARTMENT

A. It shall be the responsibility of the State Department to accept and to properly dispose of residual personal needs funds, upon the death of the resident, in any of the following conditions:

1. The resident dies intestate (i.e., without a will), but with known relatives or a listed beneficiary for whom current addresses are unknown;

2. There is no Public Administrator in the county and there are no listed relatives or beneficiaries;

3. The nursing facility is unsure of the existence of a will, or whether there are known relatives.

B. The facility shall be obligated to provide explanation for withholding personal needs funds beyond 90 days after the death of a resident. The Department may apply any or all of the following remedies:

1. Demand immediate return of such funds,-

2. Order an audit of all personal needs accounts;

3. Cancel the participation agreement of such nursing facility.

C. Perform periodic audits of nursing facility accounts. Audits may be performed at such intervals as determined necessary by the Department. Audits will always be performed when a nursing facility is discontinued from the Medicaid program for any reason and when a change of ownership or management occurs.

D. If an audit of personal needs accounts reveals discrepancies the Department, on behalf of the resident, may take administrative action as outlined in Volume 8, Recoveries from Providers; or the Executive Director may refer the case to the appropriate legal authorities. See 10 CCR 2505-10 section 8.482.45.

E. If the nursing facility cannot offer proof that any apparent discrepancies in personal needs accounts have been corrected the Department may withhold payment of nursing care costs in the amount shown due and payable by the audit.

8.482.55 MANAGEMENT OF PERSONAL NEEDS FUNDS BY OTHER THAN RESIDENT

A. For residents unable to manage their own funds due to a physical or mental condition, a conservator, guardian-trustee, or other responsible person may carry out these acts for the resident.

B. Personal needs funds shall not be turned over to persons other than a duly accredited agent or guardian of the resident. With the written consent of the resident (is the resident is able and willing to give such consent) the administrator may turn over personal funds belonging to said resident to a close relative or friend to purchase a particular item. However, a signed, itemized, dated receipt will be required.

8.482.6 PATIENT'S PERSONAL POSSESSIONS

A. The Department rules and regulations are designed to insure that clothing and other property of each resident shall be properly safeguarded and reserved for personal use, and to comply with standards established by CDPHE.

B. The nursing facility shall be responsible for safeguarding personal possessions (including money) and to:

1. Provide a method of identification of the resident's suitcases, clothing, and other personal effects, listing the items on an appropriate form attached to the resident's nursing facility record at the time of admission. Such listings are to be kept current. Any personal effects released to a relative or designated representative of a resident must be delineated in a signed receipt.

2. Provide adequate storage facilities for the resident's personal effects.

3. Exercise careful Judgment in the release of resident's personal property to other than the actual owner, and to secure an itemized statement of release, the signature of the resident, duly authorized agent, or responsible party.

4. Insure that all mail is delivered unopened to the resident to whom it is addressed, except for those residents who have a legal guardian or conservator, other legal arrangement, or have voluntarily given written consent to allow opening such mail, in which case the mail is held, unopened, until delivered to the resident.

C. In the event of death of a resident in the nursing facility, or in a medical institution or on medical leave from a nursing facility, the following rules apply:

1. The nursing facility shall provide the deceased resident's executor, administrator or successor claiming under the Small Estates Act (See 10 CCR 2505-10 section 8.482.F.3.d) with a copy of the resident's personal needs ledger.

2. The nursing facility shall turn over to such responsible party all of the deceased resident's personal property in its possession. All items shown by the personal needs ledger as purchased by or in behalf of the resident must be returned to the responsible party.

3. The responsible party claiming the possessions must sign a dated, itemized receipt for all such items before removal of the items from the nursing facility.

D. In the event of discharge of a resident, all personal possessions and a copy of the personal needs ledger signed and dated by the administrator shall be turned over to the patient, or to the responsible party, as is required for a deceased patient in C above.

8.482.7 NURSING FACILITY RESPONSIBILITY FOR ESTABLISHING PERSONAL NEEDS ACCOUNT

Many nursing facility residents are either unable or unwilling to manage their personal funds and the residents or their families or guardians wish this responsibility to be assumed by the nursing facility. Also, since nursing facility residents who are recipients of Medicaid benefits often have income from Social Security, Supplemental Security Income, Railroad Retirement, or other sources, it is necessary for participating nursing facilities to maintain a system of accounting for Medicaid funds, resident income, and resident's personal needs funds. Such system shall be maintained in accordance with standards required by the Department, and adequate for audit by representatives thereof. The following sections outline a standard system of accounting to be used by participating nursing facilities for these purposes. Any deviation from this system must have written approval of the Department.

8.482.71 REQUIRED ITEMS

A. Book of money receipts in triplicate.

B. Cash receipts journal including columns for nursing facility operating and resident trust cash accounts.

C. Checking accounts for nursing facility operating and resident trust accounts.

D. Cash Disbursements Journal including columns for nursing facility operating and resident trust cash accounts.

E. General Ledger accounts as follows:

1. Cash-General or Operating account

2. Cash-Patient Trust Fund

3. Cash-Patient Trust Imprest Fund

4. Accounts Receivable - Nursing Care (Control Account.)

5. Accounts Payable - Personal Needs Liability (Control Account)

(Note: This is not a complete listing of every account which would normally appear in a General Ledger, but includes the accounts necessary for purposes of this system of accounting.)

F. Subsidiary Ledger for Accounts Receivable-Nursing Care sub-classified by resident name.

G. Subsidiary Ledger for Personal Needs sub-classified by resident name.

H. Personal Needs Cash Paid Out and Personal Needs Cash Request Slips for use with Personal Needs Imprest Fund.

I. Forms for Certificate of no responsibility for resident's personal needs funds and Appointment of Agent and authorization to handle resident's personal needs funds.

J. Cash box or other secure place for petty cash used in Personal Needs Imprest Fund.

8.482.72 GLOSSARY

A. Basic Bookkeeping Terms

1. ACCOUNT -- Basic classification device used in bookkeeping. In a double-entry bookkeeping system, an account consists of a Debit side and a Credit side. Individual accounts within a ledger serve as the basis for financial statements.

2. ACCRUAL OR ACCRUED CHARGE -- A charge arising from an individual or business entity providing goods or services to another individual or entity. An accrual or charge is entered on the Debit side of an individual account. A charge may be accrued in advance of the goods or services provided, or may be accrued afterward, depending upon the basis of accounting used (See ACCRUAL BASIS and/or CASH BASIS)

3. ACCRUAL BASIS -- A basis of accounting wherein revenues are recognized at the time they are "earned" (i.e., at the time goods or services are provided) and expenses are recognized when they are incurred as liabilities. (Opposite of CASH BASIS accounting- See CASH BASIS.)

4. BOOK OF ORIGINAL ENTRY -- An accounting book or record which serves as the point of original entry of accounting transactions recorded. The book of original entry serves as the basis for classification of items to individual accounts. Examples of Books of Original Entry include Cash Receipts Journal, Cash Disbursements Journal, General Journal, etc.

5. CASH BASIS -- A basis of accounting wherein revenues are recognized for accounting purposes at the time they are collected in cash and expenses are recognized at the time that they are paid in cash (Opposite of ACCRUAL BASIS accounting - See ACCRUAL BASIS.)

6. CASH DISBURSEMENTS JOURNAL -- A book of original entry in which transactions involving payments of cash are recorded and summarized for later classification to individual accounts. A Cash Disbursements Journal usually consists of one column for entries to a cash account and another column (or columns) for entries to other accounts affected by the transactions recorded.

7. CASH RECEIPTS JOURNAL -- A book of original entry used to facilitate accounting for receipts of cash by an enterprise. A Cash Receipts Journal usually consists of one column for entries to a cash account and another column (or columns) for entries to other accounts affected by the transactions recorded.

8. CONTROL ACCOUNT -- A general ledger account which summarizes items which are classified in SUBSIDIARY ACCOUNTS or SUBSIDIARY LEDGERS (See SUBSIDIARY ACCOUNT.) The total of the balances in the subsidiary accounts should equal the balance of the control account in the general ledger.

9. CREDIT (Abbreviated CR.) -- In a double-entry bookkeeping system, an entry made on the right-hand side of an account is called a "Credit" entry.

10. DEBIT (Abbreviated DR.) -- In a double-entry bookkeeping system an entry made to the left-hand side of an account is called a "Debit" entry.

11. DOCUMENTATION - Supporting data or proof explaining an entry in the accounting records; e.g., a payment on account may be "documented" by an invoice, cancelled check, etc.

12. DOUBLE ENTRY BOOKKEEPING SYSTEM -- A system of bookkeeping wherein at least two entries are made for every transaction recorded; for each entry made to the "debit" side, a corresponding entry (or entries) must be made to the "credit" side. A double-entry system is used for purposes of proof of accuracy of transactions recorded; total of "debits" must be equal to the total of "credits" for the system to be "in balance." (See ACCOUNT, DEBIT, and CREDIT.)

13. GAAP -- Generally Accepted Accounting Principles.

14. IMPREST FUND (Also called PETTY CASH FUND) -- A fund set up for the purpose of control over cash transactions; most often used when a large number of small transactions must be made. The balance of an imprest fund is constant, and must consist of either cash or receipts or other documentation showing the use of the cash. An imprest fund is "replenished" periodically when the cash in the fund reaches a low point by removing the receipts, totalling them, and replacing them with the amount of cash spent. An imprest fund is sometimes called a "revolving fund".

15. LIABILITY -- An "obligation" or "debit" of an individual or business enterprise to pay a sum of money at some future time. Examples of liabilities are accounts payable, notes payable, bonds payable, monies held in a fiduciary or trust capacity, such as the personal trust funds.

16. LEDGER -- A grouping of accounts in a bookkeeping or accounting system. For example, a "general ledger" may contain all the accounts of a business enterprise, while a "subsidiary ledger" may consist of sub-classifications of one particular account in a "general ledger." (See SUBSIDIARY ACCOUNT or SUBSIDIARY LEDGER.)

17. POSTING -- A basic bookkeeping operation wherein information for accounting records is transferred from one place to another; as in "posting" to the general ledger from the cash receipts journal, etc. Posting is usually a preliminary operation to summarization of data for preparation of financial statements, etc.

18. RECONCILIATION -- An explanation of differences in accounting records for the purpose of ensuring accuracy of the records. An example is the "Reconciliation" of a bank statement balance to the balance in the check book or cash book.

19. SUBSIDIARY ACCOUNT or SUBSIDIARY LEDGER -- An account or group of accounts sub-classifying a particular account in a general ledger which is used with a CONTROL ACCOUNT. An example is Accounts Receivable. The Accounts Receivable would be represented in the general ledger by a control account and sub-classified by name of debtor in a subsidiary ledger. Each account in the subsidiary ledger has an individual balance, and the total of all the balances in the subsidiary ledger should equal to the balance of the control account in the general ledger. (See CONTROL ACCOUNT.)

20. TRIAL BALANCE -- A bookkeeping operation in which balances of all accounts in a ledger are taken and summarized to ascertain that postings of debts equal postings of credits. A "Trial Balance" may also be taken of a subsidiary ledger to be certain that the postings to the subsidiary ledger agree with those to the control account in the general ledger.

21. FIDUCIARY OR TRUST -- A party who is entrusted to conduct the financial affairs of another person.

B. Terms Related to Nursing Facility Bookkeeping

1. BENEFICIARY -- The listed person/persons/charitable institution or other agency a resident has elected to receive the balance of his/her personal needs trust monies in the event of death.

2. CENSUS -- A nursing facility record of admissions and/or discharges of residents within a given time period (examples are 24-hour or "midnight" census, monthly census, etc.) The census is used to determine the number of patient days of care provided by the nursing facility.

3. FISCAL AGENT -- Agency under contract to the State Department of Health Care Policy and Financing for the purpose of disbursing funds to providers of services under the

Medicaid Program. The fiscal agent collects eligibility and payment information from the county and state Departments and processes this information for payment to providers (nursing care facilities).

4. FORM AP-5615 -- For purposes of reporting change in patient status, admissions discharges, changes in resident payments, etc. to the county department(s). Commonly referred to as "5615"s.

5. GENERAL (OR OPERATING) ACCOUNT -- May describe either an account in the general ledger (as Cash-Genera] or Operating) or a bank account. Used to record monies due to the nursing facility for care or services provided to the resident, are recorded in this account (as distinguished from a Personal Needs or Resident Trust account, which is used to account for personal funds belonging to residents of a facility).

6. INTESTATE -- A person who dies without leaving a will is said to have died "intestate."

7. MEDICAID (TITLE XIX) PROGRAM -- Program funded by federal and state governments which provides for nursing facility care for the categorically eligible. It is administered in Colorado through the Department of Health Care Policy and Financing.

8. NURSING CARE (ACCOUNTS RECEIVABLE) ACCOUNT -- Account in a subsidiary patient ledger which is used to record accrued nursing care charges, patient payments, and Medicaid payments for a Medicaid eligible resident.

9. PERSONAL NEEDS ACCOUNT - An account in a subsidiary resident ledger used to record personal needs fund transactions of a resident. Same as "Patient Trust Fund".

10. PERSONAL NEEDS ALLOWANCE - A nursing facility resident's monthly allowance for spending money and personal items.

11. PERSONAL NEEDS LIABILITY - The liability of a nursing facility or its representatives for funds which the facility is managing on behalf of its residents. If the resident elects to have the facility manage these funds, a fiduciary (trust) capacity is established for the resident, and the facility is responsible to the resident for due care of the funds and sufficient accounting of transactions made by the facility on behalf of the resident.

12. PROVIDER (OR VENDOR) - A nursing facility which provides services to residents under the Medicaid Program. A provider facility must be licensed and certified by various government agencies to become eligible to participate in this program.

13. PUBLIC ADMINISTRATOR -- An appointed government official with various fiduciary responsibilities, including that of disposition of funds of deceased residents with no known heirs. (Nursing facility residents often die without leaving a will and with no known heirs, and their remaining funds are paid to the Public Administrator.)

14. RESIDENT TRUST FUND - Same as "Patients' or Resident's Personal Needs Account". Most often used as a title for a bank account for residents' personal needs funds.

15. RESIDENT OR PATIENT PAYMENT - The portion of a nursing facility resident's income which is applied toward his/her care at the facility (according to state department regulations, all income received by a resident, with the exception of the monthly personal needs allowance, or the allowable cost with respect to the post -eligibility treatment of income as defined in 10 CCR 2505-10 section 8.110.49, shall be applied toward the resident's care, with the balance paid by Medicaid). A resident's income may be from Social Security, Veterans' Administration, Railroad Retirement, government pensions, an estate or trust, or other sources. The amount of SSI benefits received by a person who is institutionalized is not considered when calculating patient payment.

16. RESPONSIBLE PARTY -- A party who is responsible for a nursing facility resident's financial affairs. A nursing facility, a friend or designated representative, or a county department may be a responsible party, or a resident may act as his/her own responsible party, if he/she is managing his/her own affairs.

17. TESTATE -- A person who dies leaving a will is said to have died "testate."

18. UB92 CLAIM FORM -- Form utilized by providers to bill nursing facility services.

8.483 ADULT FOSTER CARE - REPEALED

[Repealed effective April 2, 2007]

8.484 HOME CARE ALLOWANCE - REPEALED

[Repealed effective April 2, 2007]

8.485 HOME AND COMMUNITY BASED SERVICES FOR THE ELDERLY, BLIND AND DISABLED (HCBS-EBD) GENERAL PROVISIONS

8.485.10 LEGAL BASIS

The Home and Community Based Services for the Elderly, Blind and Disabled (HCBS-EBD) program in Colorado is authorized by a waiver of the amount, duration and scope of services requirements contained in Section 1902(a)(10)(B) of the Social Security Act. The waiver was granted by the United States Department of Health and Human Services, under Section 1915(c) of the Social Security Act. The HCBS-EBD program is also authorized under state law at C.R.S. section 25.5-6-301 et seq. – as amended.

8.485.20 KEYS AMENDMENT COMPLIANCE

All congregate facilities where any HCBS client resides must be in compliance with the “Keys Amendment” as required under Section 1616(e) of the Social Security Act of 1935 and 45 C.F.R. Part 1397 (October 1, 1991), by possession of a valid Assisted Living Residence license issued under C.R.S. section 25-27-105, and regulations of CDPHE at 6 CCR 1011-1, Chapters 2 and 7. C.R.S. section 25-27-105 and 6 CCR 1011-1 are hereby incorporated by reference. The incorporation of C.R.S. section 25-27-105 and 6 CCR 1011-1 excludes later amendments to, or editions of, the referenced material. The Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at: Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver Colorado 80203. Certified copies of incorporated materials are provided at cost upon request.

8.485.30 SERVICES PROVIDED [Eff. 12/30/2007]

.31 HCBS-EBD services provided as an alternative to nursing facility or hospital care include:

A. Adult day services; and

B. Alternative care facility services, including homemaker and personal care services in a residential setting; and

C. Electronic monitoring; and

D. Home modification; and

E. Homemaker services; and

F. Non-medical transportation; and

G. Personal care; and

H. Respite care; and

I. In-Home Support Services; and

J. Community Transition Services; and

K. Consumer Directed Attendant Support Services.

.32 Case management is not a service of the HCBS-EBD waiver program, but shall be provided as an administrative activity through Single Entry Point Agencies.

.33 HCBS-EBD clients are eligible for all other Medicaid state plan benefits, including the Home Health program.

8.485.40 DEFINITIONS OF SERVICES [Eff. 12/30/2007]

A. Adult day services shall be as defined at 10 CCR 2505-10 section 8.491.

B. Alternative Care Facility services shall be as defined at 10 CCR 2505-10 section 8.495.

C. Electronic monitoring services shall be as defined at 10 CCR 2505-10 section 8.488.

D. Home modification shall be as defined at 10 CCR 2505-10 section 8.493.

E. Homemaker services shall be as defined at 10 CCR 2505-10 section 8.490.

F. Non-medical transportation services shall be as defined at 10 CCR 2505-10 section 8.494.

G. Personal care services shall be as defined at 10 CCR 2505-10 section 8.489.

H. Respite care shall be as defined at 10 CCR 2505-10 section 8.492.

I. In-Home Support Services shall be as defined at 10 CCR 2505-10 section 8.552.

J. Community Transition Services (CTS) shall be as defined at 10 CCR 2505-10 section 8.553.

K. Consumer Directed Attendant Support Services (CDASS) shall be defined at 10 CCR 2505-10 section 8.510.

8.485.50 GENERAL DEFINITIONS

A. Agency shall be defined as any public or private entity operating in a for-profit or nonprofit capacity, with a defined administrative and organizational structure. Any sub-unit of the agency that is not geographically close enough to share administration and supervision on a frequent and adequate basis shall be considered a separate agency for purposes of certification and contracts.

B. Assessment shall be as defined at 10 CCR 2505-10 section 8.390.1.B.

C. Case management shall be as defined at 10 CCR 2505-10 section 8.390.1.D., including the calculation of client payment and the determination of individual cost-effectiveness.

D. Categorically eligible shall be defined in the HCBS-EBD program as any client eligible for medical assistance (Medicaid), or for a combination of financial and medical assistance; and who retains eligibility for medical assistance even when the client is not a resident of a nursing facility or hospital, or a recipient of an HCBS program. Categorically eligible shall not include persons who

are eligible for financial assistance, but not for medical assistance, or persons who are eligible for HCBS-EBD as three hundred percent eligible persons, as defined at 10 CCR 2505-10 section 8.485.50.U..

E. Congregate facility shall be defined as a residential facility that provides room and board to three or more adults who are not related to the owner and who, because of impaired capacity for independent living, elect protective oversight, personal services and social care but do not require regular twenty-four hour medical or nursing care.

F. Uncertified Congregate Facility shall be a facility as defined at 10 CCR 2505-10 section 8.485.50.F. that is not certified as an Alternative Care Facility. See 10 CCR 2505-10 section 8.495.1.

G. Continued stay review shall be a re-assessment as defined at 10 CCR 2505-10 sections 8.402.60 and 8.390.1.C.

H. Corrective action plan shall be as defined at 10 CCR 2505-10 section 8.390.1.E.

I. Cost containment shall be defined as the determination that, on an individual client basis, the cost of providing care in the community is less than the cost of providing care in an institutional setting. The cost of providing care in the community shall include the cost of providing HCBS-EBD services and long term home health services.

J. Deinstitutionalized shall be defined as waiver clients who were receiving nursing facility type services reimbursed by Medicaid, within forty-five (45) calendar days of admission to HCBS-EBD. These include hospitalized clients who were in a nursing facility immediately prior to inpatient hospitalization and who would have returned to the nursing facility if they had not elected HCBS-EBD.

K. Diverted shall be defined as HCBS-EBD waiver recipients who were not deinstitutionalized, as defined at 10 CCR 2505-10 section 8.485.50.K.

L. Home and Community Based Services for the Elderly, Blind and Disabled (HCBS-EBD) shall be defined as services provided in a home or community setting to clients who are eligible for Medicaid reimbursement for long term care, who would require nursing facility or hospital care without the provision of HCBS-EBD, and for whom HCBS-EBD services can be provided at no more than the cost of nursing facility or hospital care.

M. Intake/screening/referral shall be as defined 10 CCR 2505-10 section 8.390.1.J.

N. Level of care screen shall be as defined at 10 CCR 2505-10 section 8.401.

O. Provider agency shall be defined as an agency, certified by the Department and which has a contract with the Department to provide one of the services listed at 10 CCR 2505-10 section 8.485.40. A single entry point agency is not a provider agency, as case management is an administrative activity, not a service. Single Entry Point Agencies may become service providers if the criteria at 10 CCR 2505-10 section 8.393.61 are met.

P. Reassessment shall be as defined at 10 CCR 2505-10 section 8.390.1.N.

Q. Service plan shall be as defined 10 CCR 2505-10 section 8.390.1.C., including the funding source, frequency, amount and provider of each service. This case plan shall be written on a State-prescribed Long Term Care Plan form.

R. Single entry point agency shall be defined as an organization as described at 10 CCR 2505-10 section 8.390.1.R..

S. Department shall be defined as the state agency designated as the single state Medicaid agency for Colorado, or any divisions or sub-units within that agency.

T. Three hundred percent (300%) eligible shall be defined as persons:

1) Whose income does not exceed 300% of the SSI benefit level; and

2) Who, except for the level of their income, would be eligible for an SSI payment; and

3) Who are not eligible for medical assistance (Medicaid) unless they are recipients in an HCBS program, or are in a nursing facility or hospitalized for thirty consecutive days.

U. Transition Coordination Agency (TCA) shall be defined as an agency certified by the Department to provide CTS. To be a certified TCA, the agency shall provide at least two independent living core services. Independent living core services means information and referral services, independent living skills training, peer counseling, including cross-disability peer counseling and individual and systems advocacy.

8.485.60 ELIGIBLE PERSONS

.61 HCBS-EBD services shall be offered to persons who meet all of the eligibility requirements below provided the individual can be served within the capacity limits in the federal waiver:

A. Financial Eligibility

Clients shall meet the eligibility criteria as specified in the Income Maintenance Staff Manual of the Colorado Department of Human Services at 9 CCR 2503-1 and the Colorado Department of Health Care Policy and Financing regulations at 10 CCR 2505-10 Section 8.100, Medical Assistance Eligibility, which are hereby incorporated by reference. The incorporation of 9 CCR 2503-1 and 10 CCR 2505-10 10 CCR 2505-10 section 8.100 exclude later amendments to, or editions of, the referenced material. Pursuant to C.R.S. section 24-4-103(12.5), the Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at: Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver Colorado 80203. Certified copies of incorporated materials are provided at cost upon request.

B. Level of Care and Target Group

Clients who have been determined to meet the level of care and target group criteria shall be certified by a Single Entry Point agency as eligible for HCBS-EBD. The Single Entry Point agency shall only certify HCBS-EBD eligibility for those clients:

1. Determined by the Single Entry Point agency to meet the target group definition for functionally impaired elderly, or the target group definition for physically disabled or blind adult, or persons living with AIDS as defined at 10 CCR 2505-10 section 8.400.16; and

2. Determined by a formal level of care assessment to require the level of care available in a nursing facility, according to 10 CCR 2505-10 section 8.401.11 through 8.401.15; or

3. Determined by a formal level of care assessment to require the level of care available in a hospital;

4. A length of stay shall be assigned by the Single Entry Point agency for approved admissions, according to guidelines at 10 CCR 2505-10 section 8.402.60.

C. Receiving HCBS-EBD Services

1. Only clients who receive HCBS-EBD services, or who have agreed to accept HCBS-EBD services as soon as all other eligibility criteria have been met, are eligible for the HCBS-EBD program.

2. Case management is not a service and shall not be used to satisfy this requirement

3. Desire or need for home health services or other Medicaid services that are not HCBS-EBD services, as listed at 10 CCR 2505-10 section 8.485.30, shall not satisfy this eligibility requirement

4. HCBS-EBD clients who have received no HCBS-EBD services for one month must be discontinued from the program.

D. Institutional Status

1. Clients who are residents of nursing facilities or hospitals are not eligible for HCBS-EBD services while residing in such institutions unless the single entry point agency determines the client is eligible for EBD as described in 10 CCR 2505-10 section 8.486.33.

2. A client who is already an HCBS-EBD recipient and who enters a hospital for treatment may not receive HCBS-EBD services while in the hospital. If the hospitalization continues for 30 days or longer, the case manager must terminate the client from the HCBS-EBD program.

3. A client who is already an HCBS-EBD recipient and who enters a nursing facility may not receive HCBS-EBD services while in the nursing facility.

   (a) The case manager must terminate the client from the HCBS-EBD program if Medicaid pays for all or part of the nursing facility care, or if there is a Utilization Review Contractor-certified ULTC-100.2 for the nursing facility placement, as verified by telephoning the Utilization Review Contractor.

   (b) A client receiving HCBS-EBD services who enters a nursing facility for respite care as a service under the HCBS-EBD program shall not be required to obtain a nursing facility ULTC-100.2, and shall be continued as an HCBS-EBD client in order to receive the HCBS-EBD service of respite care in a nursing facility.

E. Cost-effectiveness

Only clients who can be safely served within cost containment, as defined at 10 CCR 2505-10 section 8.485.50, are eligible for the HCBS-EBD program.

F. Waiting List

Persons who are determined eligible for services under the HCBS-EBD waiver, who cannot be served within the capacity limits of the federal waiver, shall be eligible for placement on a waiting list.

1. The waiting list shall be maintained by the Department.

2. The date used to establish the person's placement on the waiting list shall be the date on which eligibility for services under the HCBS-EBD waiver was initially determined.

3. As openings become available within the capacity limits of the federal waiver, persons shall be considered for services based on the following priorities:

   a. Clients being deinstitutionalized from nursing facilities.

   b. Clients being discharged from a hospital who, absent waiver services, would be discharged to a nursing facility at a greater cost to Medicaid.

   c. Clients who receive long term home health benefits who could be served at a lesser cost to Medicaid.

   d. Clients with high ULTC 100.2 scores who are at risk of imminent nursing facility placement.

8.485.70 START DATE

.71 The start date of eligibility for HCBS-EBD services shall not precede the date that all of the requirements at 10 CCR 2505-10 section 8.485.60, have been met. The first date for which HCBS-EBD services can be reimbursed shall be the later of any of the following:

A. Financial: The financial eligibility start date shall be the effective date of eligibility, as determined by the income maintenance technician, according to 10 CCR 2505-10 section 8.100. This may be verified by consulting the income maintenance technician, or by looking it up on the eligibility system.

B. Level of Care: This date is determined by the official Utilization Review Contractor's stamp and the Utilization Review Contractor -assigned start date on the ULTC 100.2 form.

C. Receiving Services: This date shall be determined by the date on which the client signs either a case plan form, or a preliminary case plan (Intake) form, as prescribed by the state, agreeing to accept services.

D. Institutional Status: HCBS-EBD eligibility cannot precede the date of discharge from the hospital or nursing facility.

.72 The start date for CTS may precede HCBS-EBD enrollment when a client meets the conditions set forth at 10 CCR 2505-10 section 8.486.33. The start date for CTS shall be no more than 180 calendar days before a client's discharge from a nursing facility.

8.485.80 CLIENT PAYMENT OBLIGATION-POST ELIGIBILITY TREATMENT OF INCOME (PETI)

.81 When a client has been determined eligible for Home and Community Based Services (HCBS) under the 300% income standard, according to 10 CCR 2505-10 section 8.100, the Department may reduce Medicaid payment for Alternative Care Facility services according to the procedures at 10 CCR 2505-10 section 8.486.60.

8.485.90 STATE PRIOR AUTHORIZATION OF SERVICES

.91 The Department or its agent shall develop the Prior Authorization Request (PAR) form in compliance with all applicable regulations, and determine whether services requested are (a) consistent with the client's documented medical condition, and functional capacity, (b) reasonable

in amount, frequency and duration, (c) not duplicative, (d) not services for which the client is receiving funds to purchase, and (e) do not total more than twenty four (24) hours per day of care.

A. The case manager shall submit prior authorization approvals for all HCBS-EBD services to the fiscal agent within one (1) calendar month after the utilization review contractor's assigned start date and approval of financial eligibility.

B. The Department or its fiscal agent will approve, deny or return for additional information home modification PARs over $1,000 within ten (10) working days of receipt.

.92 When home modifications are denied, in whole or in part, the single entry point agency shall notify the client or the client's designated representative of the adverse action and their appeal rights on a state-prescribed form, according to 10 CCR 2505-10 section 8.057, et. seq.

.93 Revisions requested by providers six months or more after the end date shall always be disapproved.

.94 Approval of the PAR by the Department or its agent shall authorize providers of services under the Service Plan to submit claims to the fiscal agent and to receive payment for authorized services provided during the period of time covered by the PAR. Payment is also conditional upon the client's financial eligibility for long term care medical assistance (Medicaid) on the dates of service; and upon provider's use of correct billing procedures.

.95 Every PAR shall be supported by information on the Service Plan, the ULTC-100.2 and written documentation from the income maintenance technician of the client's current monthly income. All units of service requested on the PAR shall be listed on the Service Plan.

.96 If a PAR is for an Alternative Care Facility client who is 300% eligible, all medical and remedial care requested as deductions shall be listed on the Client Payment form.

.97 The start date on the Prior Authorization Request form shall not precede the start date of eligibility for HCBS-EBD services, according to 10 CCR 2505-10 section 8.485.70, except for CTS. A TCA may provide CTS up to 180 days prior to nursing facility discharge when authorized by the single entry point agency. The TCA is eligible for reimbursement beginning on the first day of the client's HCBS-EBD enrollment.

.98 The PAR shall not cover a period of time longer than the length of stay assigned by the Utilization Review Contractor.

Note: Sections 8.485.100 - 8.485.101 were deleted effective 7/1/02.

8.485.200 LIMITATIONS ON PAYMENT TO FAMILY

.201 In no case shall any person be reimbursed to provide HCBS-EBD services to his or her spouse.

.202 Family members other than spouses may be employed by certified personal care agencies to provide personal care services to relatives under the HCBS-EBD program subject to the conditions below. For purposes of this section, family shall be defined as all persons related to the client by virtue of blood, marriage, adoption or common law.

.203 The family member shall meet all requirements for employment by a certified personal care agency, and shall be employed and supervised by the personal care agency.

.204 The family member providing personal care shall be reimbursed, using an hourly rate, by the personal care agency which employs the family member, with the following restrictions:

A. The total number of Medicaid personal care units for a member of the client's family shall not exceed the equivalent of 444 hours per annual certification for HCBS-EBD.

1. The maximum number of Medicaid personal care units per annual certification for HCBS-EBD shall include any portions of the Medicaid reimbursement which are kept by the personal care agency for unemployment insurance, worker's compensation, FICA, cost of training and supervision, and all other administrative costs.

2. The maximum number of hours for personal care units HCBS-EBD shall be 444. Family members must average at least 1.2164 hours of care per day (as indicated on the client's Service Plan) in order to receive the maximum reimbursement.

    a. If the certification period for HCBS-EBD is less than one year, the maximum reimbursement for relative personal care shall be calculated by multiplying the number of days the client is receiving care by the average hours per day of personal care for a full year (444/365=1.2164).

B. If two or more HCBS-EBD clients reside in the same household, family members may be reimbursed up to the maximum for each client if the services are not duplicative and are appropriate to meet the client's needs.

C. When HCBS-EBD funds are utilized for reimbursement of personal care services provided by the client's family, the home care allowance cannot be used to reimburse the family.

D. Restrictions on allowable personal care units shall not apply to parents who provide Attendant services to their eligible children under In-Home Support Services (10 CCR 2505-10 section 8.552).

E. Services other than personal care shall not be reimbursed with HCBS-EBD funds when provided by the client's family, with the exception of Attendant services provided under In-Home Support Services (10 CCR 2505-10 section 8.552).

8.485.300 CLIENT RIGHTS

.301 The case manager shall inform persons eligible for HCBS-EBD, in writing, of their right to choose between HCBS-EBD services and nursing facility or hospital care. In addition, the case manager shall discuss the option and potential benefits of in-home support services with all eligible HCBS-EBD clients.

8.486 HCBS-EBD CASE MANAGEMENT FUNCTIONS

8.486.10 HCBS-EBD PROGRAM REQUIREMENTS FOR SINGLE ENTRY POINT AGENCIES

Single entry point agencies shall comply with single entry point rules at 10 CCR 2505-10 section 8.390, et. seq., governing case management functions, and shall comply with all HCBS-specific requirements in the rest of this section on HCBS-EBD case management functions.

8.486.20 INTAKE

.21 Refer to 10 CCR 2505-10 section 8.393.21 for single entry point intake procedures. The Intake form shall be completed before an assessment is initiated. The Intake form may also be used as a preliminary case plan form when signed by the applicant, for purposes of establishing a start date.

.22 Based upon information gathered on the Intake form, the case manager shall determine the appropriateness of a referral for a comprehensive uniform long term care client assessment

(ULTC-100), and shall explain the reasons for the decision on the Intake form. The client shall be informed of the right to request an assessment if the client disagrees with the case manager's decision.

8.486.30 ASSESSMENT

.31 If the client is being discharged from a hospital or other institutional setting, the discharge planner shall contact the URC/SEP agency for assessment by emailing or faxing the Initial Intake and Screening form as required at 10 CCR 2505-10 section 8.393.21.

.32 The URC/SEP case manager shall view and document the current Personal Care Boarding Home license, if the client lives, or plans to live, in a congregate facility as defined at 10 CCR 2505-10 section 8.485.50, in order to ensure compliance with 10 CCR 2505-10 section 8.485.20.

.33 A SEP may determine that a client is eligible for HCBS-EBD while the client resides in a nursing facility when the client meets the eligibility criteria as established at 10 CCR 2505-10 section 8.400, *et seq.*, the client requests CTS and the SEP includes CTS in the client's long term care plan. If the client has been evaluated with the ULTC 100.2 and has been assigned a length of stay that has not lapsed, the SEP shall not conduct another review when CTS is requested.

8.486.40 HCBS-EBD DENIALS

.41 If a client is determined, at any point in the assessment process, to be ineligible for HCBS-EBD according to any of the requirements at 10 CCR 2505-10 section 8.485.60, the client or the client's designated representative shall be notified of the denial and the client's appeal rights in accordance with Long Term Care Single Entry Point System regulations at 10 CCR 2505-10 section 8.393.28.

8.486.50 Case Planning

.51 Case planning shall include the following tasks:

A. Documentation of the client's choice of HCBS-EBD services, nursing home placement, or other services, including a signed statement of choice from the client;

B. Documentation that the client was informed of the right to free choice of providers from among all the available and qualified providers for each needed service, and that the client understands his/her right to change providers;

C. Except when a client is residing in an alternative care facility, documentation to include a process, developed in coordination with the client, the client's family or guardian and the client's physician, by which the client may receive necessary care if the client's family or service provider is unavailable due to an emergency situation or to unforeseen circumstances. The client and the client's family or guardian shall be duly informed of these alternative care provisions at the time the case plan is initiated.

8.486.60 CALCULATION OF CLIENT PAYMENT (PETI)

The case manager shall calculate the client payment (PETI) for 300% eligible HCBS-EBD clients according to the following procedures:

A. For 300% eligible HCBS-EBD clients who are not Alternative Care Facility clients, the case manager shall allow an amount equal to the 300% standard as the client maintenance allowance. No other deductions are necessary and no form is required to be completed.

B. For 300% eligible clients who are Alternative Care Facility clients, the case manager shall complete a State-prescribed form, which calculates the client payment according to the following procedures:

1. An amount equal to the current Old Age Pension standard, including any applicable income disregards, shall be deducted from the client's gross income to be used as the client maintenance allowance, from which the state-prescribed Alternative Care Facility room and board amount shall be paid; and

2. For an individual with financial responsibility for only a spouse, an amount equal to the state Aid to the Needy and Disabled (AND) standard, less the amount of any spouse's income, shall be deducted from the client's gross income; or

3. For an individual with financial responsibility for a spouse plus other dependents, or with financial responsibility for other dependents only, an amount equal to the appropriate Temporary Assistance to Needy Families (TANF) grant level less any income of the spouse and/or dependents (excluding pan-time employment earnings of dependent children as defined at 10 CCR 2505-10 section 8.100.1 shall be deducted from the client's gross income; and

4. Amounts for incurred expenses for medical or remedial care for the individual that are not subject to payment by Medicare, Medicaid, or other third party shall be deducted from the client's gross income as follows:

   a. Health insurance premiums if health insurance coverage is documented in the eligibility system and the MMIS; deductible or co-insurance charges; and

   b. Necessary dental care not to exceed amounts equal to actual expenses incurred; and

   c. Vision and auditory care expenses not to exceed amounts equal to actual expenses incurred; and

   d. Medications, with the following limitations:

      1) The need for such medications shall be documented in writing by the attending physician. For this purpose, documentation on the Utilization Review Contractor certification form shall be considered adequate. The documentation shall list the medication; state why it is medically necessary; be; signed by the physician; and shall be renewed at least annually or whenever there is a change.

      2) Medications which may be purchased with the Medical Identification Card shall not be allowed as deductions.

      3) Medications which may be purchased through regular Medicaid prior authorization procedures shall not be allowed.

      4) The full cost of brand-name medications shall not be allowed if a generic form is available at a lower price.

      5) Only the amount spent for medications which exceeds the current Old Age Pension Standard allowance for medicine chest expense shall be allowed as a deduction.

e. Other necessary medical or remedial care shall be deducted from the client's gross income, with the following limitations:1) The need for such care must be documented in writing by the attending physician. For this purpose documentation on the Utilization Review Contractor certification form shall be considered adequate. The documentation shall list the service, supply, or equipment; state why it is medically necessary; be signed by the physician; and, shall be renewed at least annually or whenever there is a change.

2) Any service, supply or equipment that is available under regular Medicaid, with or without prior authorization, shall not be allowed as a deduction.

f. Deductions for medical and remedial care may be allowed up to the end of the next full month while the physician's prescription is being obtained. If the physician's prescription cannot be obtained by the end of the next full month, the deduction shall be discontinued.

g. When the case manager cannot immediately determine whether a particular medical or remedial service, supply, equipment or medication is a benefit of Medicaid, the deduction may be allowed up to the end of the next full month while the case manager determines whether such deduction is a benefit of the Medicaid program. If it is determined that the service, supply, equipment or medication is a benefit of Medicaid, the deduction shall be discontinued.

5. Any remaining income shall be applied to the cost of the Alternative Care Facility services, as defined at 10 CCR 2505-10 section 8.495, and shall be paid by the client directly to the facility; and

6. If there is still income remaining after the entire cost of Alternative Care Facility services is paid from the client's income, the remaining income shall be kept by the client and may be used as additional personal needs or for any other use that the client desires, except that the Alternative Care Facility shall not charge more than the Medicaid rate for Alternative Care Facility services.

C. Case managers shall inform HCBS-EBD Alternative Care Facility clients of their client payment obligation on a form prescribed by the state at the time of the first assessment visit; by the end of each plan period; or within ten (10) working days whenever there is a significant change in the diem payment amount.

1. Significant change is defined as fifty dollars ($50) or more.

2. Copies of client payment forms shall be kept in the client files at the single entry point agency, and shall not be mailed to the State of its agent except as required for a prior authorization request, according to 10 CCR 2505-10 section 8.509.31(G), or if requested by the state for monitoring purposes.

8.486.70 PRUDENT PURCHASE AND SERVICE FUNDING PRIORITIES

.71 The single entry point agency shall be financially responsible for any services which it authorized to be provided to the client which did not meet regulatory requirements, or which continued to be rendered by a provider due to the single entry point agency's failure to timely notify the provider that the client was no longer eligible for services.

8.486.80 COST CONTAINMENT

.81 The case manager shall determine whether the individual meets the cost containment criteria of 10 CCR 2505-10 section 8.485.50.J by using a State-prescribed PAR form to:

A. Determine the maximum authorized costs for all waiver services and long term home health services for the period of time covered by the care plan and compute the average cost per day by dividing by the number of days in the care plan period; and

B. Determine that this average cost per day is less than or equivalent to the individual cost containment amount, which is calculated as follows:

1. Enter (in the designated space on the PAR form) the monthly cost of institutional care for the individual; and

2. Subtract from that amount the individual's gross monthly income; and

3. Subtract from that amount the individual's monthly Home Care Allowance authorized amount, if any, and

4. Convert the remaining amount into a daily amount by dividing by 30.42 days. This amount is the daily individual cost containment amount.

C. An individual client whose service needs exceed the amount allowed under the client's individual cost containment amount may choose to purchase additional services with personal income, but no client shall be required to do so.

Sections 8.486.90 - 8.486.98 deleted by the Medical Services Board February 9, 2001.

8.486.100 REVISIONS

.101 SERVICES ADDED TO THE CARE PLAN

A. Whenever a change in the care plan results in an increase or change in the services to be provided, the case manager shall submit a revised prior authorization request (PAR) to the fiscal agent.

1. The revised care plan form shall list the services being revised and shall state the reason for the revision. Services on the revised care plan form, plus all services on the original care plan form, must re entered on the revised Prior Authorization Request form, for purposes of reimbursement

2. The dates on the revision must be identical to the dates of the original PAR, unless the purpose of the revision is to revise the PAR dates.

B. If a revised PAR includes a new request for home modification service above the Department prescribed amount, the revised PAR shall also include all documentation listed at 10 CCR 2505-10 section 8.493.

.102 DECREASE OF SERVICES ON THE CARE PLAN

A. A revised PAR does not need to be submitted if services on the care plan are decreased or not used, unless the services are being eliminated or reduced in order to add other services while maintaining cost-effectiveness.

B. If services are decreased without the client's agreement, the case manager shall notify the client of the adverse action and of appeal rights, according to Long Term Care Single Entry Point System regulations at 10 CCR 2505-10 section 8.393.28.

8.486.200 REASSESSMENT

.201 The case manager shall complete a reassessment of each SEP-managed waiver client before the end of the length of stay assigned by the Utilization Review Contractor at the last level of care determination. The case manager shall initiate a reassessment more frequently if required by single entry point regulations at 10 CCR 2505-10 section 8.393.25, or when warranted by significant changes that may affect HCBS-EBD eligibility.

.202 The case manager shall submit a continued stay review PAR, in accordance with requirements at 10 CCR 2505-10 section 8.485.90. For clients who have been denied by the Utilization Review Contractor at continued stay review, and are eligible for services during the appeal, written documentation that an appeal is in progress may be used as a substitute for the approved ULTC 100.2. Acceptable documentation of an appeal includes: (a) a copy of the request for reconsideration or the request for appeal, signed by the client and sent to the Utilization Review Contractor or to the Office of Administrative Courts; (b) a copy of the notice of a scheduled hearing, sent by the Utilization Review Contractor or the Office of Administrative Courts to the client; or (c) a copy of the notice of a scheduled court date. Copies of denial letters, and written statements from case managers, are not acceptable documentation that an appeal was actually filed, and shall not be accepted as a substitute for the approved ULTC 100.2. The length of the PAR on appeal cases may be up to one year, with the PAR being revised to the correct dates of eligibility at the time the appeal is resolved.

8.486.300 TERMINATION

.301 In accordance with Long Term Care Single Entry Point System regulations at 10 CCR 2505-10 section 8.393.28, clients shall be terminated from any SEP-managed waiver whenever they no longer meet one or more of the eligibility requirements at 10 CCR 2505-10 section 8.485.60. Clients shall also be terminated from the waiver if they die, move out of state or voluntarily withdraw from the waiver.

8.486.400 COMMUNICATION

.401 In addition to any communication requirement specified elsewhere in these rules, the case manager shall be responsible for the following communications:

A. The case manager shall inform all Alternative Care Facility clients of their obligation to pay the full and current State-prescribed room and board amount, from their own income, to the Alternative Care Facility provider.

B. Within five (5) working days of receipt of the approved PAR form, from the fiscal agent, the case manager shall provide copies to all the HCBS-EBD providers in the care plan.

C. Within five (5) working days of receipt from the Utilization Review Contractor of the certified ULTC 100.2 form, the case manager shall send a copy of the ULTC 100.2 form to all personal care, and adult day services provider agencies on the care plan and to alternative care facilities listed on the care plan.

D. The case manager shall notify the Utilization Review Contractor, on a form prescribed by the Department, within thirty (30) calendar days, of the outcome of all non-diversions, as defined at 10 CCR 2505-10 section 8.485.50.

8.486.500 CASE RECORDING/DOCUMENTATION

.501 Case management documentation shall meet all of the standards found at 10 CCR 2505-10 sections 8.393.16 and 8.393.26.

8.487 HCBS WAIVER PROVIDER AGENCIES

8.487.10 GENERAL CERTIFICATION STANDARDS

.11 Provider agencies shall:

A. Conform to all State established standards for the specific services they provide under this program; and

B. Abide by all the terms of their provider agreement with the Department; and

C. Comply with all federal and state statutory requirements. A provider shall not discontinue or refuse services to a client unless documented efforts have been made to resolve the situation that triggers such discontinuation or refusal to provide services.

.12 Provider agencies shall have written policies and procedures for recruiting, selecting, retaining and terminating employees.

.13 Provider agencies shall have written policies governing access to duplication and dissemination of information from the client's records in accordance with C.R.S. section 26-1-114, as amended. Provider agencies shall have written policies and procedures for providing employees with client information needed to provide the services assigned, within the agency policies for protection of confidentiality.

.14 Provider agencies shall maintain liability insurance in at least such minimum amounts as set annually by the Department of Health Care Policy and Financing, and shall have written policies and procedures regarding emergency procedures.

.15 Provider agencies shall have written policies and procedures regarding the handling and reporting of critical incidents, including accidents, suspicion of abuse, neglect or exploitation, and criminal activity. Provider agencies shall maintain a log of all complaints and critical incidents, which shall include documentation of the resolution of the problem.

.16 Provider agencies shall maintain records on each client. The specific record for each client shall include at least the following information:

A. Name, address, phone number and other identifying information about the client; and

B. Name, address and phone number of the case manager and single entry point agency; and

C. Name, address and phone number of the client's physician; and

D. Special health needs or conditions of the recipient; and

E. Documentation of the services provided, including where, when, to -whom and by whom the service was provided, and the exact nature of the specific tasks performed, as well as the amount or units of service. Records shall include date, month and year of service, and when applicable, the beginning and the ending time of day; and

F. Documentation of any changes in the client's condition or needs, as well as documentation of appropriate reporting and action taken as a result; and

G. For personal care agencies, documentation concerning advance directives shall be present in the client record; and

H. Documentation of supervision of care; and

I. All information regarding a client shall be kept together for easy access and review by supervisors, program monitors and auditors.

.17 Provider agencies shall maintain a personnel record for each employee. The employee record shall contain at least the following:

A. Documentation of employee qualifications.

B. Documentation of training.

C. Documentation of supervision and performance evaluation.

D. Documentation that the employee was informed of all policies and procedures required by these rules.

E. A copy of the employee's job description.

.18 A provider agency may become separately certified to provide more than one type of HCBS-EBD service if all requirements are met for certification. Administration of the different services provided shall be clearly separate for auditing purposes. The provider agency shall also understand and be able to articulate its different functions and roles as a provider of each service, as well as all the rules that separately govern each of the types of services, in order to avoid confusion on the part of clients and others.

.19 Provider agencies shall send billing and other staff to the provider billing training offered by the fiscal agent, at least once each year.

8.487.20 GENERAL CERTIFICATION PROCESS

.21 An agency, as defined at 10 CCR 2505-10 section 8.485.50, seeking certification as an HCBS-EBD provider agency, shall submit a written request to the Department or its agent

.22 Upon receipt of the written request, the Department or its agent shall forward certification information and relevant state application forms to the requesting agency.

.23 Upon receipt of the completed application from the requesting agency, the Department or its agent shall review the information and complete an on-site review of the agency, based on the state regulations for the service for which certification has been requested.

.24 Following completion of the on-site review the Department or its agent shall notify the provider agency applicant of its recommendation by forwarding the following information:

A. Results of the on-site survey;

B. Recommendation of approval, denial or provisional approval of certification;

C. If appropriate, a corrective action plan to satisfy the requirements of a provisional approval.

.25 Determination of certification approval, provisional approval or denial shall be made by the Department within sixty (60) days of receipt of the completed application from the agency.

8.487.30 APPROVAL OF CERTIFICATION

If certification is approved, the Department shall enter into a provider agreement with the certified agency in accordance with 10 CCR 2505-10 section 8.130.

8.487.40 PROVISIONAL APPROVAL OF CERTIFICATION

.41 If agencies do not meet all state established certification standards, but the deficiencies do not constitute a threat to clients' health and safety such agencies may be provisionally certified for a period not to exceed sixty (60) days at the discretion of the state.

.42 If provisional approval has been granted, the Department or its agent shall assure that corrective action has been taken according to the approved plan, and shall conduct an on-site review, if necessary, within the designated time period.

8.487.50 DENIAL OF CERTIFICATION

If the agency is unable to complete an adequate corrective action plan within the prescribed time, certification shall be denied, in accordance with 10 CCR 2505-10 section 8.130.

8.487.60 RECERTIFICATION PROCESS

The Department or its agent shall follow the same procedures as those followed for certification, as described at 10 CCR 2505-10 section 8.487.20.

8.487.70 TERMINATION OF PROVIDER AGREEMENTS

The Department shall initiate termination of a provider agreement if an agency is in violation of any applicable certification standard or provision of the provider agreement and does not adequately respond to a corrective action plan within the prescribed period of time. The state shall follow procedures at 10 CCR 2505-10 section 8.130.

8.487.80 EMERGENCY TERMINATION OF PROVIDER AGREEMENTS

Emergency termination of any provider agreement shall be in accordance with procedures at 10 CCR 2505-10 section 8.050.

8.487.90 TRANSFER OF OWNERSHIP

.91 The provider shall notify the Department or its agent within five (5) working days of any change of ownership.'

.92 Upon transfer of ownership of the provider agency or facility, the provider certification may be assigned to the new owner only upon the prior written consent of the Department or its agent. Such assignment of the duties and obligations of the existing certification to the new owner shall be for a period of time determined at the discretion of the Department, but not to extend beyond the current end date of the original certification period.

.93 Upon transfer of ownership, the previous owner's existing provider agreement with the Department is immediately terminated, and the new owner must enter into a new provider agreement.

8.487.100 PROVIDER RIGHTS

The Department shall notify provider agencies in writing of any adverse action taken by the Department against the agency, and shall inform the agency of its appeal rights in accordance with the procedures described in 10 CCR 2505-10 section 8.050.

8.487.200 PROVIDER REIMBURSEMENT

.201 Payment to certified HCBS-EBD providers for services provided to eligible clients shall be made when claims are submitted in accordance with the following procedures:

A. Claims shall be submitted to the fiscal agent on State-prescribed forms provided by the fiscal agent according to 10 CCR 2505-10 section 8.040 and 10 CCR 2505-10 section 8.043: and

B. Claim forms shall be filled out completely and correctly; and

C. Payment shall not exceed Department established limits as described under the reimbursement sections for each HCBS-EBD service; and

D. Payment shall be made only for the service or services for which the agency is certified; and

E. Payment shall be made only for the types and amounts of services that are prior authorized by the Department or its agent; and

F. Payment shall be made only for services provided by persons employed by the agency at the time the services were provided.

.202 Provider agencies shall maintain adequate financial records for all claims, including documentation of services as specified at 10 CCR 2505-10 section 8.040.02, 10 CCR 2505-10 section 8.130, and 10 CCR 2505-10 section 8.487.10.

8.488 ELECTRONIC MONITORING

8.488.10 DEFINITIONS

.11 Electronic monitoring services means the installation purchase or rental of electronic monitoring devices which:

A. enable the individual to secure help in the event of an emergency;

B. may be used to provide reminders to the individual of medical appointments, treatments, or medication schedules;

C. are required because of the individual's illness, impairment or disability, as documented on the ULTC-100 form and the care plan form; and

D. are essential to prevent institutionalization of the individual.

.12 Electronic monitoring provider means a provider agency as defined at 10 CCR 2505-10 section 8.484.50.Q which has met all the certification standards for electronic monitoring services specified below.

8.488.20 INCLUSIONS

.21 Electronic monitoring services shall include personal emergency response systems, medication reminders, or other devices which comply with the definition above and are not included in the non-benefit items below at 10 CCR 2505-10 section 8.488.31.

8.488.30 EXCLUSIONS, RESTRICTIONS AND NON-BENEFIT ITEMS

.31 Electronic monitoring services shall be authorized only for individuals who live alone, or who are alone for significant parts of the day, or whose only companion for significant parts of the day is too impaired to assist in an emergency, and who would otherwise require extensive supervision.

.32 Electronic monitoring services shall be authorized only for individuals who have the physical and mental capacity to utilize the particular system requested for that individual.

.33 Electronic monitoring services shall not be authorized under HCBS if the service or device is available as a state plan Medicaid benefit

.34 The following are not benefits of electronic monitoring services:

A. Augmentative communication devices and communication boards;

B. Hearing aids and accessories;

C. Phonic ears;

D. Environmental control units, unless required for me medical safety of a client living alone unattended;

E. Computers and computer software;

F. Wheelchair lifts for automobiles or vans;

G. Exercise equipment, such as exercise cycles;

H. Hot tubs, Jacuzzis, or similar items.

8.488.40 CERTIFICATION STANDARDS FOR ELECTRONIC MONITORING SERVICES

.41 Electronic monitoring providers shall conform to all general certification standards and procedures at 10 CCR 2505-10 section 8.487, HCBS-EBD PROVIDER AGENCIES.

.42 In addition, electronic monitoring providers shall conform to the following standards for electronic monitoring services:

A. All equipment, materials or appliances used as part of the electronic monitoring service shall carry a UL (Underwriter's Laboratory) number or an equivalent standard. All telecommunications equipment shall be FCC registered

B. All equipment, materials or appliances shall be installed by properly trained individuals, and the installer shall train the client in the use of the device.

C. All equipment, materials or appliances shall be tested for proper for functioning at the time of installation and at periodic intervals thereafter. Any malfunction shall be promptly repaired and equipment shall be replaced when necessary, including buttons and batteries.

D. All telephone calls generated by electronic monitoring equipment shall be toll-free and all clients shall be allowed to run unrestricted tests on their equipment

E. Electronic monitoring providers shall send written information to each client's case manager about the system, how it works, and how it will be maintained

8.488.50 REIMBURSEMENT METHOD FOR ELECTRONIC MONITORING

.51 Payment for electronic monitoring services shall be the lower of the billed charges or the prior authorized amount The unit of reimbursement shall be one unit per service for non-recurring services, or one unit per month for services recurring monthly.

.52 Effective 2/1/99, there shall be no reimbursement under this section for electronic monitoring services provided in uncertified congregate facilities.

8.489 PERSONAL CARE

8.489.10 DEFINITIONS

.11 Personal care services means services which are furnished to an eligible client in the client's home to meet the client's physical, maintenance and supportive needs, when those services are not skilled personal care as described in the EXCLUSIONS section below, do not require the supervision of a nurse, and do not require physician's orders.

.12 Personal care provider means a provider agency as defined at 10 CCR 2505-10 section 8.484.50.Q which has met all the certification standards for personal care providers listed below.

.13 Personal care staff means those employees of the personal care provider agency who perform the personal care tasks.

.14 Skilled personal care means skilled care which may only be provided by a certified home health aide, as further defined at 10 CCR 2505-10 section 8.522, and in the EXCLUSIONS section below.

.15 Unskilled personal care means personal care which is not skilled personal care, as defined above.

8.489.20 GENERAL PERSONAL CARE RULES

.21 Personal care services shall include unskilled personal care as defined under INCLUSIONS for each personal care task listed in 10 CCR 2505-10 section 8.489.30.

.22 EXCLUSIONS AND RESTRICTIONS

A. Personal care services shall not include any skilled personal care, which must be provided as home health aide services or as nursing services under non-HCBS programs. These services as defined under EXCLUSIONS for each personal care task listed in 10 CCR 2505-10 section 8.489.30, shall not be provided as personal care services under HCBS, regardless of the level of the training, certification, or supervision of the personal care employee.

B. Personal care staff shall not perform tasks that are not included under INCLUSIONS for each personal care task listed in 10 CCR 2505-10 section 8.489.30, or tasks that are not listed. For example, personal care staff shall not provide transportation services and shall not provide financial management services. Clients, family, or others may choose to make private pay arrangements with the provider agency for services that are not Medicaid benefits, such as companionship.

C. The amount of personal care that is prior authorized is only an estimate, including estimated travel time. The prior authorization of a certain number of hours does not create an entitlement on the part of the client or the provider for that exact number of hours. All hours provided and reimbursed by Medicaid must be for covered services and must be necessary to meet the client's needs.

D. Personal care provider agencies may decline to perform any specific task, if the supervisor or the personal care staff feels uncomfortable about the safety of the client or the personal care staff, regardless of whether the task may be included in the INCLUSIONS section for the task.

E. Family members shall not be reimbursed to provide only homemaker services. Family members must provide relative personal care in accordance with 10 CCR 2505-10 SECTION 8.485.200. Documentation of services provided must indicate that the provider is a relative.

8.489.30 SPECIFIC PERSONAL CARE TASKS

.31 The specific personal care tasks shall be authorized and provided according to the following rules.

A. BATHING

1. INCLUSIONS:

Bathing is considered unskilled only when skilled skin care, skilled transfer, or skilled dressing, as described under EXCLUSIONS, is not required in conjunction with the bathing.

2. EXCLUSIONS:

Bathing is considered skilled when skilled skin care, skilled transfer or skilled dressing is required, as described under EXCLUSIONS for skin care at 10 CCR 2505-10 section 8.489.31.B.2. EXCLUSIONS for transfers at 10 CCR 2505-10 section 8.489.31.K.2, or EXCLUSIONS for dressing at 10 CCR 2505-10 section 8.489.31.G.2.

B. SKIN CARE:

1. INCLUSIONS:

Skin care is considered unskilled only when skin is unbroken, and when any chronic skin problems are not active. Unskilled skin care must be of a preventive rather than a therapeutic nature, and may include application of non-medicated lotions and solutions, or of lotions and solutions not requiring a physician's prescription; rubbing of reddened areas; reporting of changes to supervisor, and application of preventive spray on unbroken skin areas that may be susceptible to development of decubiti. Unskilled skin care does not include any of the care described under skilled skin care in the EXCLUSIONS section below.

2. EXCLUSIONS:

Skin care is considered skilled when there is broken skin, or potential for infection due to a chronic skin condition in an active stage. Skilled skin care includes wound care, dressing changes, application of prescription medications, skilled observation and. reporting, but does not include use of sterile technique.

C. HAIR CARE

1. INCLUSIONS:

Hair care is considered unskilled only when skilled skin care, skilled transfer, or skilled dressing, as described under EXCLUSIONS, is not required in conjunction with the hair care. Hair care under these limitations may include shampooing with non-medicated shampoo or shampoo that does not require a physician's prescription, drying, combing and styling of hair.

2. EXCLUSIONS:

Hair care is considered skilled when skilled skin care, skilled transfer, or skilled dressing, as described under EXCLUSIONS for skin care at 10 CCR 2505-10 section 8.489.31.B.2. EXCLUSIONS for transfers at 10 CCR 2505-10 section 8.489.31.K.2. or EXCLUSIONS for dressing at 10 CCR 2505-10 section 8.489.31.G.2is required in conjunction with the hair care.

D. NAIL CARE

1. INCLUSIONS:

Nail care is considered unskilled only when skilled skin care, as described under EXCLUSIONS, is not required in conjunction with the nail care; and only in the absence of any medical conditions that might involve peripheral circulatory problems or loss of sensation. Nail care under these limitations may include soaking of the nails, pushing back cuticles, and trimming and filing of nails.

2. EXCLUSIONS:

Nail care is considered skilled when skilled skin care, as described under EXCLUSIONS for skin care at 10 CCR 2505-10 section 8.489.31.B.2 is required in conjunction with the nail care; and in the presence of medical conditions that may involve peripheral circulatory problems or loss of sensation.

E. MOUTH CARE

1. INCLUSIONS:

Mouth care is considered unskilled only when skilled skin care, as described under EXCLUSIONS, is not required in conjunction with the mouth care. Mouth care under these limitations may include denture care and basic oral hygiene.

2. EXCLUSIONS:

Mouth care is considered skilled when skilled skin care, as described under EXCLUSIONS for skin care at 10 CCR 2505-10 section 8.489.31.B.2 is required in conjunction with the mouth care; or when there is injury or disease of the face, mouth, head or neck; or in the presence of communicable disease; or when the client is unconscious; or when oral suctioning is required.

F. SHAVING

1. INCLUSIONS:

Shaving is considered unskilled only when skilled skin care, as described under EXCLUSIONS, is not required in conjunction with shaving; and only an electric razor may be used.

2. EXCLUSIONS

Shaving is considered skilled when skilled skin care, as described under EXCLUSIONS for skin care at 10 CCR 2505-10 section 8.489.31.B.2 is required in conjunction with shaving.

G. DRESSING

1. INCLUSIONS:

Dressing is considered unskilled only when skilled skin care or skilled transfer, as described under EXCLUSIONS, is not required in conjunction with the dressing. Unskilled dressing may include assistance with ordinary clothing; application of support stockings of the type that can be purchased without a physician's prescription; application of orthopedic devices such as splints and braces, or of artificial limbs, if considerable manipulation of the device or limb is not necessary, and if the client is fully trained in the use of the device or limb and is able to instruct the personal care staff.

2. EXCLUSIONS:

Dressing is considered skilled when skilled skin care or skilled transfer, as described under EXCLUSIONS for skin care at 10 CCR 2505-10 section 8.489.31.B.2 or EXCLUSIONS for transfers at 10 CCR 2505-10 section 8.489.31.K.2 is required in conjunction with the dressing. Skilled dressing may include application of anti-embolic or other pressure stockings that can be purchased only with a physician's prescription; application of orthopedic devices such as splints and braces, or of artificial limbs, if considerable manipulation of the device or limb is necessary, or if the client is still learning to use the device or limb.

H. FEEDING

I. INCLUSIONS:Feeding is considered unskilled only when skilled skin care or skilled dressing, as described under EXCLUSIONS, is not required in conjunction with the feeding, and when oral suctioning is not needed on a stand-by or other basis. Unskilled feeding includes assistance with eating by mouth, using common eating utensils, such as forks, knives and straws.

2. EXCLUSIONS:

Feeding is considered skilled when skilled skin care or skilled dressing, as described under EXCLUSIONS for skin care at 10 CCR 2505-10 section 8.489.31.B.2 or EXCLUSIONS for dressing at 10 CCR 2505-10 section 8.489.31.G.2 is required in conjunction with the feeding, and when oral suctioning is needed on a stand-by or other basis. Syringe feeding is also considered skilled. Feeding is skilled if there is a high risk of choking that could result in the need for emergency measures such as CPR or Heimlich maneuver.

I. AMBULATION

1. INCLUSIONS:

Assistance with ambulation is considered unskilled only when skilled transfers, as described under EXCLUSIONS, are not required in conjunction with the ambulation. In addition, when assisting a client with adaptive equipment, the client must be fully trained in the use of such equipment; and when assisting someone in a cast, there must be no need for observation and reporting to a nurse, and no need for skilled skin care, as described under EXCLUSIONS. Adaptive equipment may include, but is not limited to, gait belts, walkers, canes and wheelchairs.

2. EXCLUSIONS:

Assistance with ambulation is considered skilled when skilled transfers, as described under EXCLUSIONS for transfers at 10 CCR 2505-10 section 8.489.31.K.2 are required in conjunction with the ambulation. In addition, when assisting a client with adaptive equipment, it is considered skilled if the client is still being trained in the use of such equipment; and assisting someone in a cast is considered skilled there is a need for

observation and reporting to a nurse, or if there is a need for skilled skin care, as described under EXCLUSIONS for skin care at 10 CCR 2505-10 section 8.489.31.B.2.

J. EXERCISES

1. INCLUSIONS:

Assistance with exercises is considered unskilled only when the exercises are not prescribed by a nurse or other licensed medical professional. Unskilled assistance with exercise is limited to the encouragement of normal bodily movement, as tolerated, on the par: of the client. Personal care staff shall not prescribe nor direct any type of exercise program for the client.

2. EXCLUSIONS:

Assistance with exercises is considered skilled when the exercises are prescribed by a nurse or other licensed medical professional. This may include passive range of motion.

K. TRANSFERS

1. INCLUSIONS:

Assistance with transfers is considered unskilled only when the client has sufficient balance and strength to assist with the transfer to some extent. Except for Hoyer lifts, adaptive equipment may be used in transfers, provided that the client is fully trained in the use of the equipment and can direct the transfer step by step. Adaptive equipment may include, but is not limited to, gait belts, wheel chairs, tub seats, grab bars.

2. EXCLUSIONS:

Assistance with transfers is considered skilled when the client is unable to assist with the transfer. Use of Hoyer lifts is considered skilled, and use of other adaptive equipment is considered skilled if the client is still being trained in the use of the equipment.

L. POSITIONING

1. INCLUSIONS:

Positioning is considered unskilled only when the client is able to identify to the personal care staff, verbally, non-verbally or through others, when the position needs to be changed; and only when skilled skin care, as described under EXCLUSIONS, is not required in conjunction with the positioning. Positioning may include simple alignment in a bed, wheelchair, or other furniture.

2. EXCLUSIONS:

Positioning is considered skilled when the client is not able to identify to the caregiver when the position needs to be changed, and when skilled skin care, as described under EXCLUSIONS for skin care at 10 CCR 2505-10 section 8.489.31.B.2 is required in conjunction with the positioning.

M. BLADDER CARE

1. INCLUSIONS:

Bladder care is considered unskilled only when skilled transfer or skilled skin care, as described under EXCLUSIONS, is not required in conjunction with the bladder care.

Unskilled bladder care may include assisting the client to and from the bathroom; assistance with bedpans, urinals, and commodes; and changing of clothing and pads of any kind used for the care of incontinence. Emptying of Foley catheter bags or suprapubic catheter bags is considered unskilled only if there is no disruption of the closed system; the personal care staff must be trained to understand what constitutes disruption of the closed system.

2. EXCLUSIONS:

Bladder care is considered skilled whenever it involves disruption of the closed system for a foley or suprapubic catheter, such as changing from a leg bag to a night bag. Care of external catheters is also considered skilled.

N. BOWEL CARE

1. INCLUSIONS:

Bowel care is considered unskilled only when skilled transfer or skilled skincare, as described under EXCLUSIONS, is not required in conjunction with the bowel care. Unskilled bowel care may include assisting the client to and from the bathroom; assistance with bed pans and commodes; and changing of clothing and pads of any kind used for the care of incontinence. Emptying of ostomy bags and assistance with other client-directed ostomy care is unskilled only when there is no need for skilled skin care or for observation and reporting to a nurse.

2. EXCLUSIONS:

Bowel care is considered skilled when skilled transfer or skilled skin care, as described under EXCLUSIONS for transfers at 10 CCR 2505-10 section 8.489.31.K.2 or EXCLUSIONS for skin care at 10 CCR 2505-10 section 8.489.31.B.2 is required in conjunction with the bowel care. Skilled bowel care includes digital stimulation and enemas. Skilled bowel care may include care of ostomies that are new and care of ostomies when the client is unable to self-direct the care, provided that sterile technique is not required.

O. MEDICATION REMINDING

1. INCLUSIONS:

Medication reminding is allowed as unskilled personal care only when medications have been preselected, by the client, a family member, a nurse, or a pharmacist, and are stored in containers other than the prescription bottles, such as medication minders. Medication minder containers must be clearly marked as to day and time of dosage, and must be kept in such a way as to prevent tampering. Medication reminding includes only inquiries as to whether medications were taken, verbal prompting to take medications, handing the appropriately marked medication minder container to the client, and opening the appropriately marked medication minder container for the client if the client is physically unable to open the container. Medication reminding does not include taking the medication out of the container. These limitations apply to all prescription and all over the counter medications, including pm medications. Any irregularities noted in the preselected medications, such as medications taken too often or not often enough, or not at the correct time as marked on the medication minder container, shall be immediately reported by the personal care staff to a supervisor.

2. EXCLUSIONS:

Medication assistance is considered skilled care and consists of putting the medication in the client's hand when the client can self-direct in the taking of medications.

P. RESPIRATORY CARE

1. INCLUSIONS:

Respiratory care is not considered unskilled. However, personal care staff may clean or change the tubing for oxygen equipment, may fill the distilled water reservoir, and may temporarily remove and replace the cannula or mask from the client's face for purposes of shaving or washing the client's face. Adjustments of the oxygen flow are not allowed.

2. EXCLUSIONS:

Respiratory care is skilled care, and includes postural drainage, cupping, adjusting oxygen flow within established parameters, and suctioning of mouth and nose.

Q. ACCOMPANYING

1. INCLUSIONS:

Accompanying the client to medical appointments, banking errands, basic household errands, clothes shopping, and grocery shopping to the extent necessary and as specified on the care plan is considered unskilled, when all the care that is provided by the personal care staff in relation to the trip is unskilled personal care, as described in these regulations. Accompanying the client to other services is also permissible as specified on the care plan, to the extent of time that the client would otherwise receive personal care services in the home.

Personal care for the purpose of accompanying the client shall only be authorized when a personal care provider is needed during the trip to provide one or more other unskilled personal care services listed in this Section. Accompanying the client primarily to provide companionship is not a covered benefit.

2. EXCLUSIONS:

Accompanying is considered skilled when any of the tasks performed in conjunction with the accompanying are skilled tasks. Accompanying does not include transporting the client.

R. HOMEMAKING

Homemaking, as described at 10 CCR 2505-10 section 8.490, may be provided by personal care staff, if provided during the same visit as unskilled personal care, as described in these regulations.

S. PROTECTIVE OVERSIGHT

1. INCLUSIONS:

Protective oversight is considered unskilled when the client requires stand-by assistance with any of the unskilled personal care described in these regulations, or when the client must be supervised at all times to prevent wandering.

2. EXCLUSIONS:

Protective oversight for standby assistance with personal care tasks is considered skilled if any of the tasks performed are skilled tasks. Protective oversight to prevent wandering is considered skilled if any skilled personal care tasks are performed while providing oversight.

.32 Personal care services as described above may be used to provide respite care for primary care givers, provided that the respite care does not duplicate any care which the primary caregiver may be receiving payment to provide.

8.489.40 CERTIFICATION STANDARDS FOR PERSONAL CARE SERVICES

.41 Personal care provider agencies shall conform to all general certification standards and procedures at 10 CCR 2505-10 section 8.487, HCBS-EBD PROVIDER AGENCIES, and shall meet all the additional personal care certification requirements in this section.

.42 Personal care provider agencies shall assure and document that all personal care staff have received at least twenty hours of training, or have passed a skills validation test, in the provision of unskilled personal care as described above. Training, or skills validation, shall include the areas of bathing, skin care, hair care, nail care, mouth care, shaving, dressing, feeding, assistance with ambulation, exercises and transfers, positioning, bladder care, bowel care, medication reminding, homemaking, and protective oversight. Training shall also include instruction in basic first aid, and training in infection control techniques, including universal precautions. Training or skills validation shall be completed prior to service delivery, except for components of training that may be provided in the client's home, in the presence of the supervisor.

.43 All employees providing personal care shall be supervised by a person who, at a minimum, has received the training, or passed the skills validation test, required of personal care staff, as specified above. Supervision shall include, but not be limited to, the following activities:

A. Orientation of staff to agency policies and procedures.

B. Arrangement and documentation of training.

C. Informing staff of policies concerning advance directives and emergency procedures.

D. Oversight of scheduling, and notification to clients of changes; or close communication with scheduling staff.

E. Written assignment of duties on a client-specific basis.

F. Meetings and conferences with staff as necessary.

G. Supervisory visits to client's homes at least every three months, or more often as necessary, for problem resolution, skills validation of staff, client-specific or procedure-specific training of staff, observation of client's condition and care, and assessment of client's satisfaction with services. At least one of the assigned personal care staff must be present at supervisory visits at least once every three months.

H. Investigation of complaints and critical incidents.

I. Counseling with staff on difficult cases, and potentially dangerous situations.

J. Communication with the case managers, the physician, and other providers on the care plan, as necessary to assure appropriate and effective care.

K. Oversight of record keeping by staff.

.44 A personal care agency may be denied or terminated from participation in Colorado Medicaid, according to procedures found at 10 CCR 2505-10 sections 8.050 through 8.051.44, based on good cause, as defined at 10 CCR 2505-10 section 8.051.01. Good cause for denial or termination of a personal care agency shall include, but not be limited to, the following:

A. Improper Billing Practices: Any personal care/homemaker agency that is found to have engaged in the following practices may be denied or terminated from participation in Colorado Medicaid:

1. Billing for visits without documentation to support the claims billed. Acceptable documentation for each visit billed shall include the nature and extent of services, the care provider's signature, the month, day, year, and the exact time in and time out of the client's home, as well as time of departure and time of arrival for all travel time billed. Providers shall submit or produce requested documentation in accordance with rules at 10 CCR 2505-10 section 8.079.62.

2. Billing for excessive hours that are not justified by the documentation of services provided, or by the client's medical or functional condition. This includes billing all units prior authorized when the allowed and needed services do not require as such time as that authorized.

3. Billing for time spent by the personal care provider performing any tasks that are not allowed according to regulations in this 10 CCR 2505-10 section 8.489. This includes but is not limited to companionship, financial management, transporting of clients, skilled personal care, or delegated nursing tasks.

4. Unbundling of home health aide and personal care or homemaker services, which is defined as any and all of the following practices by any personal care/homemaker agency that is also certified as a Medicaid Home Health Agency, for all time periods during which regulations were in effect that defined the unit for home health aide services as one visit up to a maximum of two and one-half hours:

a. One employee makes one visit, and the agency bills Medicaid for one home health aide visit, and bills all the hours as HCBS personal care or homemaker.

b. One employee makes one visit, and the agency bills for one home health aide visit, and bills some of the hours as HCBS personal care or homemaker, when the total time spent on the visit does not equal at least 2 1/2 hours plus the number of hours billed for personal care and homemaker.

c. Two employees make contiguous visits, and the agency bills one visit as home health aide and the other as personal care or homemaker, when the time spent on the home health aide visit was less than 2 1/2 hours.

d. One or more employees make two or more visits at different times on the same day, and the agency bills one or more visits as home health aide and one or more visits as personal care or homemaker, when any of the aide visits were less than 2 1/2 hours and there is no reason related, to the client's medical condition or needs that required the home health aide and personal care or homemaker visits to be scheduled at different times of the day.

e. One or more employees make two or more visits on different days of the week, and the agency bills one or more visits as home health aide and one or more visits as personal care or homemaker, when any of the aide visits were less than 2 1/2 hours and there is no reason related to the client's medical condition or needs that required the home health aide and personal care or homemaker visits to be scheduled on different days of the week.

f. Any other practices that circumvent these rules and result in excess Medicaid payment through unbundling of home health aide and personal care or homemaker services.

5. For all time periods during which the unit of reimbursement for home health aide is defined as hour and/or half-hour increments, all the practices described in 4 above shall constitute unbundling if the home health aide does not stay for the maximum amount of time for each unit billed.

B. Refusal to Provide Necessary and Allowed Personal Care or Homemaker Services Without Also Receiving Payment For Home Health Services. A personal care/homemaker agency that is also certified as a Medicaid Home Health Agency may be terminated from Medicaid participation if the agency refuses to provide necessary and allowed HCBS personal care or homemaker services to clients who do not need Home Health services or who receive their Home Health services from a Home Health Agency not affiliated with the personal care/homemaker agency.

C. Prior Termination From Medicaid Participation. A personal care/homemaker agency shall be denied or terminated from Medicaid participation if the agency or its owner(s) have previously been involuntarily terminated from Medicaid participation as a personal care/homemaker agency or any other type of service provider.

D. Abrupt Prior Closure. A personal care/homemaker agency may be denied or terminated from Medicaid participation if the agency or its owner(s) have abruptly closed, as any type of Medicaid provider, without proper prior client notification.

.45 Any Medicaid overpayments to a provider for services that should not have been billed shall be subject to recovery. Overpayments that are made as a result of a provider's false representation shall be subject to recovery plus civil monetary penalties and interest. False representation means an inaccurate statement that is relevant to a claim which is made by a provider who has actual knowledge of the false nature of the statement, or who acts in deliberate ignorance or with reckless disregard for truth. A provider acts with reckless disregard for truth if the provider fails to maintain records required by the department or if the provider fails to become familiar with rules, manuals, and bulletins issued by the State, the Medical Services Board, or the State's fiscal agent.

.46 When a personal care agency voluntarily discloses improper billing, and makes restitution, the State shall consider deferment of interest and penalties in the context of the particular situation.

8.489.50 REIMBURSEMENT

.51 Payment for personal care services shall be the lower of the billed charges or the maximum rate of reimbursement. Reimbursement shall be per unit of one hour. The maximum unit rate shall be adjusted by the State as funding becomes available.

.52 Payment may include travel time to and from the client's residence, to be billed at the same unit rate as personal care services. The time billed for travel shall be listed separately from, but documented on the same form as, the time for service provision on each visit. Travel time must be summed over a period of at least a week and then rounded to the nearest hour for billing

purposes. Travel time to one client's residence may not also be billed as travel time from another clients residence, as this would represent duplicate billing for the same time period.

.53 When personal care services are used to provide respite for unpaid primary care givers, the exact services rendered must be specified in the documentation.

.54 when an employee of a personal care agency provides services to a client who is a relative, the personal care agency shall bill under a special procedure code, in hourly units, using rates and hours which shall not exceed a total cost to Medicaid of more than $13.00 per day when averaged out over the number of days in the plan period.

.55 If a visit by a personal care staff includes some homemaker services, as defined at 10 CCR 2505-10 section 8.490., the entire visit shall be billed as personal care services. If the visit includes only homemaker services, and no personal care is provided, the entire visit shall be billed as homemaker services.

.56 If a visit by a Home Health Aide from a Home Health Agency includes unskilled personal care, as defined in this section, only the Home Health Aide visit shall be billed.

.57 Effective 2/1/99, there shall be no reimbursement under this section for personal care services provided in uncertified congregate facilities. Case managers may submit a written request to the Department for a waiver not to exceed six months for clients receiving these services in uncertified congregate facilities prior to the effective date of this rule. After that time, services shall be discontinued.

.58 Cost Reporting

A. All personal care agencies shall report and submit to the Department cost report information on a Department prescribed form.

B. By dates set forth by the Department, personal care providers shall submit an annual cost report for the provider agency's most recent complete fiscal year or the State fiscal year.

C. Providers that do not comply with 10 CCR 2505-10 section 8.489.58 shall have their Medicaid provider agreement terminated.

8.490 HOMEMAKER SERVICES

8.490.1 DEFINITIONS

Homemaker Provider Agency means a provider agency that is certified by the state fiscal agent to provide Homemaker Services.

Homemaker Services means general household activities provided in the home of an eligible client provided by a Homemaker Provider Agency to maintain a healthy and safe home environment for a client, when the person ordinarily responsible for these activities is absent or unable to manage these tasks.

8.490.2 ELIGIBLE CLIENTS

8.490.2.A. Homemaker Services are available to clients in the Home and Community Based Services waivers for Elderly, Blind and Disabled and Persons with Mental Illness.

8.490.2.B. Homemaker Services are available to clients in the Home and Community Based Services waiver for Persons with Brain Injury when the client is also receiving personal care services.

8.490.3 BENEFITS

8.490.3.A. Covered benefits shall be for the benefit of the client and not for the benefit of other persons living in the home. Services shall be applied only to the permanent living space of the client.

8.490.3.B. Benefits include:

1. Routine light housecleaning, such as dusting, vacuuming, mopping, and cleaning bathroom and kitchen areas.

2. Meal preparation.

3. Dishwashing.

4. Bedmaking.

5. Laundry.

6. Shopping.

7. Teaching the skills listed above to clients who are capable of learning to do such tasks for themselves. Teaching shall result in a decrease of weekly units required within ninety days. <u>If such a savings in service units is not realized, teaching shall be deleted from the care plan.</u>

8.490.3.C. Benefits do not include:

1. Personal care services.

2. Services the person can perform independently.

3. Homemaker services provided by family members per 10 CCR 2505-10 section 8.485.200.F

8.490.3.D. Homemakers Services provided in uncertified congregate facilities are not a benefit.

8.490.4 HOMEMAKER PROVIDER AGENCY RESPONSIBILITIES

8.490.4.A. All providers shall be certified by the Department as a Homemaker Provider Agency.

8.490.4.B. The Homemaker Provider Agency shall conform to all general certification standards and procedures at 10 CCR 2505-10 section 8.487

8.490.4.C. The Homemaker Provider Agency shall assure and document that all staff receive at least eight hours of training or have passed a skills validation test prior to providing unsupervised homemaker services. Training or skills validation shall include:

1. The areas detailed in 10 CCR 2505-10 section 8.490.3.B.

2. Proper food handling and storage techniques.

3. Basic infection control techniques including universal precautions.

4. Informing staff of policies concerning emergency procedures.

8.490.4.D. All Homemaker Provider Agency staff shall be supervised by a person who, at a minimum, has received training or passed the skills validation test required of homemakers, as specified above. Supervision shall include, but not be limited to, the following activities:

1. Train staff on agency policies and procedures.

2. Arrange and document training.

3. Oversee scheduling and notify clients of schedule changes.

4. Conduct supervisory visits to client's homes at least every three months or more often as necessary for problem resolution, staff skills validation, observation of the home's condition and assessment of client's satisfaction with services.

5. Investigate complaints and critical incidents.

8.490.5 REIMBURSEMENT

8.490.5.A. Payment for Homemaker Services shall be the lower of the billed charges or the maximum rate of reimbursement set by the Department. Reimbursement shall be per unit of 15 minutes.

8.490.5.B. Payment may include travel time to and from the client's residence, to be billed at the same unit rate as Homemaker Services. The time billed for travel shall be listed separately from, but documented on the same form as the actual service provided. Travel time shall be totaled over a period of at least a week and rounded to the nearest 15 minutes for billing purposes. Travel time to one client's residence shall not be billed as travel time from another client's residence.

8.490.5.C. If a visit by a home health aide from a home health agency includes Homemaker Services, only the home health aide visit shall be billed.

8.490.5.D. If a visit by a personal care provider from a personal care provider agency includes Homemaker Services, the Homemaker Services shall be billed separately from the personal care services.

8.490.5.E. Each visit shall be billed to the Medicaid fiscal agent with the following documentation to be retained at the provider agency

1. The nature and extent of services.

2. The provider's signature.

3. The date and time of arrival and departure from a client's home.

4. The date and time of arrival and departure time for travel.

8.491 ADULT DAY SERVICES

.10 Adult Day Services (ADS) means health and social services, individual therapeutic and psychological activities furnished on a regularly scheduled basis in an adult day services center, as an alternative to long term nursing facility care.

.12 Basic Adult Day Services (ADS) Center means a community-based entity that conforms to all state established requirements as described in 10 CCR 2505-10 section 8.130 and 10 CCR 2505-10 section 8.491.14.

.13 Specialized Adult Day Services (SADS) Center means a community-based entity determined by the State to be providing intensive health supportive services for participants with a primary diagnosis of Alzheimer's and related disorders, Multiple Sclerosis, Brain Injury, Chronic Mental Illness, Developmental Disability or post-stroke participants who require extensive rehabilitative therapies. To be determined specialized, two-thirds of an ADS center's population must be participants whose physician has verified one of the above diagnoses and recommended the appropriate specialized services.

In addition, verification and documentation of the participant's diagnosis and the recommended specialized services must be included in each participant's case record and must include the following:

A. For Medicaid participants, the case manager must forward the most recent copy of page 1 of the participant's ULTC-100 to the ADS center as documentation of one of the above diagnoses. Documentation must be verified at the time of admission, reassessment or whenever then; is a significant change in the participant's condition.

B. For participants from other payment sources, diagnosis and recommended specialized services must be documented in an individual care plan, or other admission form, and verified by the participant's physician. This documentation must be verified at the time of admission, or whenever there is a significant change in the participant's condition.

C. The Department or its designee will review an adult day services center's designation as a specialized facility (SADS) on an annual basis.

.14 Only participants whose needs can be met by the Adult Day Services Center within its certification category and populations served shall be admitted to the Center. Adult day services shall include, but are not limited to, the following:

A. Daily monitoring to assure that participants are maintaining activities prescribed; and assisting with activities of daily living (e.g., eating, dressing, bathing).

B. Emergency services including written procedures to meet medical crises.

C. Activities that assist in the development of self-care capabilities, personal hygiene, and social support services.

D. Nutrition services including therapeutic diets and snacks appropriate to the participant's care plan and hours in which the participant is served

E. Daily services provided to monitor the participant's health status, supervise medications, and carry out physicians' orders in participant's care plan as needed.

F. Social and recreational services as prescribed to meet the participant's needs and as documented in the participant's care plan. Participants have the right to choose not to participate in social and recreational activities.

G. Adult day services centers certified on or after July 1, 1996, or upon change of ownership, shall provide basic personal care services including bathing in emergency situations.

H. Any additional services such as physical therapy, occupational therapy and speech therapy, if such services are prescribed by the participant's physician, documented in the participant's care plan and if such services are not being provided in the participant's home. Such services must be included in the budget submitted to the State in accordance with 10 CCR 2505-10 section 8.491.30, and determined by the State to be necessary for adult day services.

8.491.15 DEFINITIONS

A. Director means any person who owns and operates an ADS center, or is a managing employee with delegated authority by ownership to manage, control, or perform the day-to-day tasks of operating the facility as described in 10 CCR 2505-10 section 8.495.C.22.

B. Participant means any individual found to be eligible for adult day services regardless of payment source.

C. Restraint means any physical or chemical device, application of force, or medication, which is designed or used for the purpose of modifying, altering, or controlling behavior for the convenience of the facility, excluding medication prescribed by a physician as part of an ongoing treatment plan or pursuant to a diagnosis.

D. Staff means a paid or voluntary employee of the facility.

E. Universal Precautions refers to a system of infection control which assumes that every direct contact with body fluids is potentially infectious. This includes any reasonably anticipated skin, eye, mucous membrane or contact with blood-tinged body fluids, or other potentially infectious material

8.491.20 CERTIFICATION STANDARDS

All ADS centers shall conform to all of the following State established standards:

A. General

1. Conforms to all established State standards in the section on general provider participation requirements, as defined in 10 CCR 2505-10 section 8.130, has in effect all necessary licenses and insurance, and is in compliance with ADS regulations as determined by an annual on-site survey conducted by the Department of Health Care Policy and Financing or its designee.

2. A completed Provider Agreement between the provider and the Department of Health Care Policy and Financing shall serve as proof of Medicaid certification.

3. Denial, termination, or non-renewal of the Provider Agreement shall be for "Good Cause" as provided in 10 CCR 2505-10 section 8.050 of this staff manual.

B. Environment

1. All providers of ADS shall operate in full compliance with all applicable federal, State and local fire, health, safety, sanitation and other standards prescribed in law or regulations.

2. The agency shall provide a clean environment, free of obstacles that could pose a hazard to participant health and safety.

3. Agencies shall provide lockers or a safe place for participants' personal items.

4. ADS centers shall provide recreational areas and activities appropriate to the number and needs of the participants.

5. Drinking facilities shall be located within easy access to participants.

6. ADS centers shall provide eating and resting areas consistent with the number and needs of the participants being served. Centers certified on or after July 1, 19%, shall provide a minimum of 40 sq. feet per participants

7. ADS centers shall provide easily accessible toilet facilities, land-washing facilities and paper towel dispensers. Centers certified on or after May 1, 1996 must provide a facility for bathing in emergency situations.

8. The center shall be accessible to participants with supportive devices for ambulation or in wheelchairs.

9. There shall be adequate means by which food shall be maintained at the Mowing temperatures: Hot 140° F, Cold: 45° F.

10. All medications shall be stored in a secured area.

11. Centers shall be heated to at least seventy (70) degrees during hours of operation and no more than 76 degrees in the summer months.

12. ADS centers must provide an environment free from restraints as defined at 10 CCR 2505-10 section 8.491.15.C of these rules.

13. ADS Centers, in accordance with 10 CCR 2505-10 section 8.491.14 above, must provide a safe environment for all participants, including participants exhibiting behavioral problems, wandering behavior, or limitations in mental/cognitive functioning.

C. Records and Information

ADS providers shall keep such records and information necessary to document the services provided to participants receiving adult day services. Records shall include but not be limited to:

1. a. Name, address, sex, and age of each participant

   b. Name, address and telephone number of responsible party,

   c. Name, address and telephone number of primary physician

   d. Documentation of the supervision and monitoring of the services provided,

   e. Documentation that all participants were oriented to the center, the policies, and procedures relevant to the facility and the services provided.

   f. A services agreement signed by the participant and/or his or her designated representative and appropriate center staff.

   g. A plan of care. Plans of care for participants from other payment sources, receiving supportive services in a specialized ADS center must include a primary diagnosis and a physician's signature.

2. Medical Information included in the plan of care:

   a. Medications the client participant is taking and whether they are being self-administered.

b. Special dietary needs, if any.

c. Any restrictions on social and/or recreational activities identified by physician in the care plan.

d. Documentation of any nursing or medical interventions; physical, speech, and/or occupational therapy administered to participants whose physician has prescribed such services to be included in the participant's individual plan of care.

e. Any other special health or behavioral management needs.

3. Documentation that the participant and/or other responsible party was provided with written information about his/her rights under state law regarding advance directives in accordance with regulations at 10 CCR 2505-10 section 8.130.65. Documentation as to whether the participant has executed an advance directive shall be kept in his/her case record.

4. All entries into the record shall be legible, written in ink, dated, and signed with name and title designation.

5. Records shall be maintained in such a manner as to ensure safety and confidentiality

D. Staffing Requirements

1. All ADS centers must maintain a staff to participant ratio of 1:8 or lower to provide for the needs of the population served, as described above at 10 CCR 2505-10 section 8.491.12 and .13, and shall provide the following:

a. Supervision of participants at all tunes during the operating hours of the program;

b. Immediate response to emergency situations to assure the welfare of participants;

c. Prescribed recreational and social activities;

d. Nursing services for regular monitoring of the on-going medical needs of participants and the supervision of medications. These services must be available a minimum of two hours daily and must be provided by an RN or LPN. CNAs may provide these services under the direction of a RN or an LPN. Supervision of CNAs must include consultation and oversight on a weekly basis or more according to the participant's needs.

e. Administrative, recreational, social and supportive functions of the ADS center.

2. In addition to the above services, specialized adult day care services (SADS) centers providing a restorative model of care shall have sufficient staff to provide the following:

a. Nursing services during all hours of operation. Nursing services must be provided by a licensed RN or LPN or by a CNA under the supervision of an RN or LPN, as per 10 CCR 2505-10 section 8.491.20.D.1.d, above.

b. Therapies, if included in the center's budget and as prescribed by the participant's physician, to meet the restorative needs of the client participant

E. Training Requirements

1. ADS centers providing medication administration as a service must have qualified persons on their staff who have been trained in accordance with C.R.S. section 25-1.5-302.

2. All staff must be trained in the use of universal precautions as defined at 10 CCR 2505-10 section 8.491.15.E. Facilities certified prior to the effective date of these rules shall have sixty (60) days to satisfy this training requirement

3. The operator and staff must have training specific to the needs of the populations served, e.g., elderly, blind and disabled, and as defined in 10 CCR 2505-10 section 8.491.13 of these rules.

4. All staff and volunteers must be trained in the handling of emergencies including written procedures to meet medical crises.

5. All required training must be documented in employees' personnel files.

F. Written Policies

The ADS center shall have a written policy relevant to its operation. Such policy shall include, but not be limited to, statements describing:

1. Admission criteria that qualify participants to be appropriately served the center;

2. Interview procedure conducted for qualified participants and/or family member prior to admission to the center,

3. The meals and nourishments including special diets that will be provided;

4. The hours that the participants will be served in the center and days of the week services will be available;

5. Medication administration;

6. The personal items that the participants may bring with them to the center, and

7. A written, signed agreement drawn up between the participant or responsible party and the center outlining rules and responsibilities of the center and of the participant each party to the agreement shall be provided a copy.

8.491.30 REIMBURSEMENT METHOD FOR ADULT DAY SERVICES

.31 Reimbursement for ADS services shall be based upon a single all-inclusive payment rate per unit of service for each participating provider which shall be prospectively determined A unit is defined as:

one (1) unit = a partial day = three (3) to five (5)hours of service

two (2) units = a full day = more than five (5)hours of service

8.491.32 The ADS center's rate of reimbursement shall be the lower of:

A. The maximum allowable applicable Medicaid rate for either

1. Basic ADS Centers-the maximum rate shall not exceed $18.00 per unit of service, as defined above, except that the Department may adjust the maximum rate based upon future appropriations; or

2. Specialized ADS Centers-the maximum rate shall not exceed $23.00 per unit, as defined above, except that the Department may adjust the maximum rate based upon future appropriations.

B. The ADS center's private-pay charges to the general public for similar services.

C. The projected cost of ADS, as determined by the Department of Health Care Policy and Financing, after review of a cost report/budget to be submitted by the ADS center annually by such date and in a format as prescribed by the Department, with copies of any and all audit reports prepared within the previous twelve-month period.

Failure to timely submit the required cost report to the Department shall result in the Department assigning the center's costs have not changed and assigning a cost figure at 100% of the prior year's reported cost per unit Failure to submit the cost report a second consecutive year shall result in the Department assigning a cost figure at 00% of the most recently reported met information. Cost reports submitted late shall not be considered until the next year's review.

Cost reports shall be reviewed by the Department for appropriateness, with consideration given to: changes in type and intensity of services being provided, the previous year's reported costs adjusted forward by increases in the annual Consumer Price Index (CPI-W as of the beginning of the State fiscal year), and costs of comparable ADS centers in the State.

The Department shall notify the provider by September 1 of each year of any costs determined to be inappropriate. The provider must submit any additional documentation supporting the costs in question within thirty (30) days of notification supporting documentation received after that thirty-day period will not be considered until the next rate-setting period.

D. The amount billed.

8.491.33 Upon completion of its review, the Department of Health Care Policy and Financing shall notify each ADS center provider of its approved cost per unit and its rate to be effective October 1. Adjustments in the approved cost per unit shall not be made until the next year's cost reporting and rate-setting period.

8.491.34 For new ADS centers the Department shall determine a rate per unit, taking into consideration the following criteria: anticipated costs reported by the provider, costs and rates of comparable ADS centers, any prior owner's reported costs, and proposed private pay charges to the general public for similar services. The determined rate per unit shall remain in effect until the next year's cost reporting and rate-setting period.

8.491.35 EXCLUSIONS:

A. Transportation to and from adult day services centers shall be reimbursed as non-medical transportation, and these costs shall not be included as part of the adult day

services rate. Nothing in this rule shall be construed to prohibit an ADS center from being certified as a transportation provider as specified in the section on NON-MEDICAL TRANSPORTATION below, and receiving reimbursement for transportation of ADS participants.

B. There shall be no reimbursement for ADS provided to any participant who is a resident of any residential care facility, except for services as defined at 10 CCR 2505-10 section 8.491.14.H.

C. There shall be no reimbursement for overnight services in an ADS.

8.492 RESPITE CARE

8.492.10 DEFINITIONS

.11 Respite care means services provided to an eligible client on a short-term basis because of the absence or need for relief of those persons normally providing the care.

.12 Respite care provider means a Class I nursing facility, an alternative care facility or an employee of a certified personal care agency which meets the certification standards for respite care specified below.

8.492.20 INCLUSIONS

.21 A nursing facility shall provide all the skilled and maintenance services ordinarily provided by a nursing facility which are required by the individual respite client, as ordered by the physician.

.22 An alternative care facility shall provide all the alternative care facility services as listed at 10 CCR 2505-10 section 8.495, which are required by the individual respite client.

8.492.30 RESTRICTIONS

.31 An individual client shall be authorized for no more than thirty (30) days of respite care in each calendar year.

.32 Alternative care facilities shall not admit individuals for respite care who are not appropriate for alternative care facility placement, as specified at 10 CCR 2505-10 section 8.495.

.33 Only those portions of the facility that are Medicaid certified for nursing facility or alternative care facility services may be utilized for respite clients.

8.492.40 CERTIFICATION STANDARDS AND PROCEDURES

.41 Respite care standards and procedures for nursing facilities are as follows:

A. The nursing facility must have a valid contract with the State as a Medicaid certified nursing facility. Such contract shall constitute automatic certification for respite care. A respite care provider billing number shall automatically be issued to all certified nursing facilities.

B. The nursing facility does not have to maintain or hold open separately designated beds for respite clients, but may accept respite clients on a bed available basis.

C. For each HCBS-EBD respite client, the nursing facility must provide an initial nursing assessment, which will serve as the plan of care, must obtain physician treatment orders and diet orders; and must have a chart for the client. The chart must identify the client as

a respite client. If the respite stay is for fourteen (14) days or longer, the MDS must be completed.

D. An admission to a nursing facility under HCBS-EBD respite does not require a new ULTC-100.2, a PASRR review, an AP-5615 form, a physical, a dietitian assessment, a therapy assessment, or labwork as required on an ordinary nursing facility admission. The MDS does not have to be completed if the respite stay is shorter than fourteen (14) days.

E. The nursing facility shall have written policies and procedures available to staff regarding respite care clients. Such policies could include copies of these respite rules, the facility's policy regarding self administration of medication, and any other policies and procedures which may be useful to the staff in handling respite care clients.

F. The nursing facility should obtain a copy of the ULTC-100.2 and the approved Prior Authorization Request (PAR) form from the case manager prior to the respite client's entry into the facility.

.42 Respite care standards and procedures for alternative care facilities are as follows:

A. The alternative care facility shall have a valid contract with the Department as a Medicaid certified HCBS-EBD alternative care facility provider. Such contract shall constitute automatic certification for HCBS-EBD respite care.

B. For each respite care client, the alternative care facility shall follow normal procedures for care planning and documentation of services rendered.

.43 Individual respite care providers shall be employees of certified personal care agencies. Family members providing respite services shall meet the same competency standards as all other providers and be employed by the certified provider agency.

8.492.50 REIMBURSEMENT

.51 Respite care reimbursement to nursing facilities shall be as follows:

A. The nursing facility shall bill using the facility's assigned respite provider number, and on the HCBS-EBD claim form according to fiscal agent instructions.

B. The unit of reimbursement shall be a unit of one day. The day of admission and the day of discharge may both be reimbursed as full days, provided that there was at least one full twenty-four hour day of respite provided by the nursing facility between the date of admission and the date of discharge. There shall be no other payment for partial days.

C. Reimbursement shall be the lower of billed charges or the average weighted rate for administrative and health care for Class I nursing facilities in effect on July 1 of each year.

.52 Respite care reimbursement to alternative care facilities shall be as follows:

A. The alternative care facility shall bill using the alternative care facility provider number, on the HCBS-EBD claim form according to fiscal agent instructions.

B. The unit of reimbursement shall be a unit of one day. The day of admission and the day of discharge may both be reimbursed as full days, provided that there was at least one full twenty-four hour day of respite provided by the alternative care facility between the

date of admission and the date of discharge. There shall be no other payment for partial days.

C. Reimbursement shall be the lower of billed charges; or the maximum Medicaid rate for alternative care services, plus the standard alternative care facility room and board amount prorated for the number of days of respite.

.53 Individual respite providers shall bill according to an hourly rate or daily institutional rate, whichever is less.

.54 The respite care provider shall provide all the respite care that is needed, and other HCBS-EBD services shall not be reimbursed during the respite stay.

.55 Effective 2/1/99, there shall be no reimbursement provided under this section for respite care in uncertified congregate facilities.

8.493 HOME MODIFICATION

8.493.1 DEFINTIONS

Eligible Client means a client who is enrolled in a Home and Community Based Services (HCBS) waiver for Persons with Brain Injury, Persons with Major Mental Illness or Persons who are Elderly, Blind and Disabled.

Home Modification means specific modifications, adaptations or improvements in an Eligible Client's existing home setting which, based on the client's medical condition:

1. Are necessary to ensure the health, welfare and safety of the client, and

2. Enable the client to function with greater independence in the home, and

3. Are required because of the client's illness, impairment or disability, as documented on the ULTC-100.2 form and the care plan; and

4. Prevents institutionalization of the client.

Home Modification Provider means a provider agency that has met all the standards for Home Modification described in 10 CCR 2505-10 section 8.493.5.B and is an enrolled Medicaid provider.

8.493.2 BENEFITS

8.493.2.A. Home Modifications, adaptations or improvements may include but are not limited to the following:

1. Installing or building ramps.

2. Installing grab-bars and installing other durable medical equipment as part of a larger Home Modification project.

3. Widening doorways.

4. Modifying bathrooms.

5. Modifying kitchen facilities.

6. Installing specialized electric and plumbing systems that are necessary to accommodate medically necessary equipment and supplies.

8.493.3 EXCEPTIONS AND RESTRICTIONS

8.493.3.A. Modifications to an existing home that are not a direct medical or remedial benefit to the client are not a benefit.

8.493.3.B. Duplicate adaptations, modifications or improvements and modifications as a part of new construction costs are not a benefit.

8.493.3.C. The Department may deny requests for Home Modification projects that exceed usual and customary charges or do not meet industry standards.

8.493.3.D. Home Modification projects are not a benefit in any type of certified or non-certified congregate facility, as defined in 10 CCR 2505-10 section 8.485.50.F and G.

8.493.3.E. There shall be a lifetime cap of $10,000.00 per client.

8.493.3.F. Volunteer work on a Home Modification project approved by the Department shall be completed under the supervision of the Home Modification Provider as stated on the bid.

8.493.4 SINGLE ENTRY POINT AGENCY RESPONSIBILITIES

8.493.4.A. The SEP case manager shall consider alternative funding sources to complete the Home Modification. These alternatives shall be documented in the case record.

8.493.4.B. The SEP case manager shall obtain prior approval by submitting a Prior Authorization request form (PAR) to the Department for Home Modification projects estimated at between $1,000.00 and $10,000.00.

8.493.4.C. The SEP case manager may approve Home Modification projects estimated at less than $1,000.00 without prior authorization.

8.493.4.D. The Department may conduct on-site visits or any other investigations deemed necessary prior to approving or denying the Home Modification request.

8.493.4.E. Home Modifications estimated to cost $1,000.00 or more shall be evaluated according to the following procedures:

1. An occupational therapist shall assess the client's needs and the therapeutic value of the requested Home Modification. When an occupational therapist with experience in Home Modification is not available, a Department-approved physical therapist or other qualified individual may be substituted. A report specifying how the Home Modification would contribute to a client's ability to remain in or return to his/her home, and how the Home Modification would increase the individual's independence and decrease the need for other services, shall be completed before bids are solicited. This evaluation shall be submitted with the PAR.

2. The occupational therapist services may be provided by a home health agency and billed to Medicaid Home Health consistent with Home Health rules set forth in 10 CCR 2505-10 section 8.520, including physician orders and plans of care.

3. The SEP case manager and the occupational therapist shall consider less expensive alternative methods of addressing the client's needs. The case manager shall document these alternatives in the client’s case file.

8.493.4.F. The SEP case manager shall follow a bid process according to the following procedures:

1. The SEP case manager shall solicit and receive bids from at least two Home Modification Providers.

2. The bids shall include a breakdown of the costs of the project including:

    a. Description of the work to be completed.

    b. Estimate of the materials and labor needed to complete the project.

    c. Estimate for building permits, if needed.

    d. Estimated timeline for completing the project.

    e. Name, address and telephone number of the Home Modification Provider.

    f. Signature of the Home Modification Provider.

3. Home Modification Providers have a maximum of 30 days to submit a bid for the Home Modification project after the SEP case manager has solicited the bid.

4. The SEP case manager shall submit copies of the bids and occupational therapist's evaluation with the PAR to the Department. The Department shall authorize payment to the lowest bidder.

5. The SEP case manager may request approval of bid that is not the lowest by submitting a written justification or explanation to the Department with the PAR.

6. If the SEP case manager has made three attempts to obtain a written bid from Home Modification Providers and the Home Modification Providers have not responded within 30 calendar days, the case manager may accept one bid. Documentation of the contacts and an explanation of these attempts shall be attached to the PAR.

7. A revised PAR and bid request shall be submitted according to the procedures outlined in this Section for any changes from the original approved PAR.

8. Home Modification projects shall be initiated within 60 days of signed approval from the Department.

8.493.4.G. If a property to be modified is not owned by the client or the client's family, the SEP case manager shall obtain a letter from the owner of the property authorizing modifications to the property prior to initiation of the project and allowing the client to leave the modification in place if the property is vacated by the client.

8.493.5 PROVIDER RESPONSIBILITIES

8.493.5.A. Home Modification Providers shall conform to all general certification standards and procedures set forth in 10 CCR 2505-10 section 8.487.11.

8.493.5.B. Home Modification Providers shall be licensed in the city or county in which they propose to provide Home Modification services to perform the work proposed, if required by that city or county.

8.493.5.C. The Home Modification Provider shall provide a one-year written warranty on materials and labor from date of final inspection on all completed work.

8.493.5.D. The Home Modification Provider shall assure that the project complies with local and/or state building codes. In areas where there is no building authority, the Home

Modification Provider shall assure that the project complies with the appropriate provisions of the 2003 edition of the International Residential Code and the accessibility provisions contained within the 2003 edition of the International Building Code. The Home Modification project shall also comply with the Colorado Plumbing Code as adopted by the Colorado Examining Board of Plumbers and the National Electrical Code as adopted by the Colorado Electrical Board, effective July 1, 2005. The International Residential Code (2003), the accessibility provisions within the International Building Code (2003), and the Colorado Plumbing Code (2005) are hereby incorporated by reference. The incorporation of those materials exclude later amendments to, or editions of, the referenced material. Pursuant to C.R.S. section 24-4-103(12.5), the Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at: Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver Colorado 80203. Certified copies of incorporated materials are provided at cost upon request.

8.493.5.E. All Home Modification projects shall be inspected and approved by a state, local or county building inspector or a licensed engineer, architect, contractor or any other person as designated by the Department.

8.493.5.F. Copies of building permits and inspection reports shall be submitted to the SEP case manager and all problems noted on inspections shall be corrected before the Home Modification Provider submits a final invoice for the payment. In the event that a permit is not required, the Home Modification Provider shall submit to the SEP case manager a signed statement indicating that a permit is not required.

8.493.6 REIMBURSEMENT

8.493.7 Payment for Home Modification services shall be the lower of the billed charges or the prior authorized amount. Reimbursement shall be made in two payments per Home Modification.

8.493.7.A. The Home Modification Provider may submit a claim for an initial payment of no more than fifty percent of the project cost for materials, permits and initial labor costs.

8.493.7.B. Final payment shall be made when the Home Modification project has been completed and the SEP agency has in the client's file copies of:

1. Signed lien waivers for all labor and materials, including lien waivers from sub-contractors.

2. Required permits.

3. One year written warranty on parts and labor.

4. Final inspection documentation verified by the SEP case manager and documented in the client's file that the Home Modification has been completed through:

    a. Contact with the building inspector or other inspector as referenced at 10 CCR 2505-10 section 8.493.5.E, or

    b. Contact with the client , or

    c. Contact with the family member or responsible party, or

    d. By conducting an on-site visit.

8.493.7.C. The Home Modification Provider shall only be reimbursed for materials and labor for work that has been completed satisfactorily. If another Home Modification Provider is required to

complete the work, the original Home Modification Provider shall be paid only the difference between the amount paid originally to the Home Modification Provider and the amount needed to complete the Home Modification paid to the second Home Modification Provider, up to the $10,000.00 maximum lifetime cap.

8.493.7.D. The Home Modification Provider shall not be reimbursed for durable medical equipment available as a Medicaid state plan benefit unless the purchase and installation of the equipment is part of a larger Home Modification project.

8.494 NON-MEDICAL TRANSPORTATION

8.494.10 DEFINITIONS

.11 Non-medical transportation services means transportation which enable eligible clients to gain personal physical access to non-medical community services and resources, as required by the care plan to prevent institutionalization.

.12 Non-medical transportation provider means a provider agency as defined at 10 CCR 2505-10 section 8.484.50.P which has met all the certification standards for transportation providers listed below.

8.494.20 INCLUSIONS

.21 Non-medical transportation services shall include, but not be limited to, transportation between the client's home and non-medical services or resources such as adult day services, shopping, therapeutic swimming, dentist appointments, counseling sessions, and other services as required by the care plan to prevent institutionalization.

8.494.30 EXCLUSIONS

.31 Non-medical transportation services shall not be used to substitute for medical transportation, which is subject to reimbursement under 10 CCR 2505-10 sections 8.680 through 8.691.

.32 Non-medical transportation services shall only be used after the case manager has determined that free transportation is not available to the client.

8.494.40 CERTIFICATION STANDARDS FOR TRANSPORTATION SERVICES

.41 Transportation providers shall conform to all general certification standards and procedures at 10 CCR 2505-10 section 8.487.

.42 Transportation providers shall assure that:

A. All drivers shall possess a valid Colorado driver’s license, shall be free of physical or mental impairment that would adversely affect driving performance, and have not had two or more convictions or chargeable accidents within the past two years.

B. All vehicles and related auxiliary equipment shall meet all applicable federal, state and local safety inspection and maintenance requirements, and shall be in compliance with state automobile insurance requirements.

8.494.50 LIMITATIONS AND REIMBURSEMENT

.51 Reimbursement for non-medical transportation shall be the lower of billed charges or the prior authorized unit cost at a rate not to exceed the cost of providing medical transportation services.

.52 A provider's submitted charges shall not exceed those normally charged to the general public, other public or private organizations, or non-subsidized rates negotiated with other governmental entities.

.53 No payment shall be made for charges when the recipient is not actually in the vehicle.

.54 Effective 2/1/99, there shall be no reimbursement under this section for non-medical transportation services provided to clients residing in uncertified congregate facilities. Case managers may submit a written request to the Department for a waiver not to exceed six months for clients receiving services in uncertified congregate facilities prior to the effective date of this rule. After that time, services shall be discontinued.

.55 Effective 12/01/2009, excluding transportation to HCBS Adult Day facilities, a client may not receive more than the equivalent of two (2) round trip services per week, or 104 round trip services per annual certification period utilizing NMT, unless otherwise authorized by the Department.

8.495 ALTERNATIVE CARE FACILITIES [Eff. 03/30/2009]

8.495.1 DEFINITIONS

Alternative Care Facility (ACF) as defined in C.R.S. section 25.5-6-303(3) means an Assisted Living Residence as defined at 6 CCR 1011-1, Chapter VII, Section 1.102, licensed by CDPHE, pursuant to certification by the Department to provide Alternative Care Services and Protective Oversight to Medicaid clients.

Alternative Care Services as defined in C.R.S. section 25.5-6-303(4) means, but is not limited to, a package of personal care and homemaker services provided in a state-certified alternative care facility including: assistance with bathing, skin, hair, nail and mouth care, shaving, dressing, feeding, ambulation, transfers, and positioning, bladder & bowel care, medication reminding, accompanying, routine housecleaning, meal preparation, bed making, laundry and shopping.

Life Skills Training means services designed and directed at the development and maintenance of the resident’s ability to independently sustain himself/herself physically, emotionally, and economically in the community.

Medication Administration as defined in C.R.S. section 25-1.5-301 means assisting a person in the ingestion, application, inhalation, or, using universal precautions, rectal or vaginal insertion of medication, including prescription drugs, according to the legibly written or printed directions of the attending physician or other authorized practitioner or as written on the prescription label and making a written record thereof with regard to each medication administered, including the time and the amount taken, but "administration" does not include judgment, evaluation, or assessments or the injections of medication, the monitoring of medication, or the self-administration of medication, including prescription drugs and including the self-injection of medication by the resident.

Non-Medical Leave Days mean days of leave from the ACF by the client for non-medical reasons such as family visits or field trips.

Programmatic Leave Days mean days of leave prescribed for a Medicaid client by a physician for therapeutic and/or rehabilitative purposes.

Protective Oversight means guidance to a resident as defined at 6 CCR 1011-1, Chapter VII, Section 1.102.(32) It is the monitoring and guidance of a resident to assure his/her health, safety, and well being. Protective oversight includes, but is not limited to: monitoring the resident while on the premises, monitoring ingestion and reactions to prescribed medications, if appropriate, reminding the resident to carry out activities of daily living, and facilitating medical and other health appointments. Protective

oversight includes the resident choice and ability to travel and engage independently in the wider community, and guidance on safe behavior while outside the ACF.

Provider means the entity that holds the Assisted Living Residence / Facility license and that shall be responsible or delegate responsibility to appropriate staff for the delivery of Alternative Care Services.

Secured Environment means an ACF that operates as defined in 6 CCR 1011-1, Chapter VII, Section 1.108.

8.495.2 CLIENT ELIGIBILITY

8.495.2.A. Clients who are participating in the Home and Community Based Services (HCBS) Elderly, Blind and Disabled waiver pursuant to 10 CCR 2505-10 section 8.485 or the HCBS Mental Illness waiver pursuant to 10 CCR 2505-10 section 8.509 are eligible to receive Alternative Care Services.

8.495.2.B. Potential clients shall be assessed by a team which includes the client and his/her family and/or guardian, the ACF administrator or appointed representative, Single Entry Point (SEP) case manager, as appropriate case managers and other care givers, to determine that the ACF is an appropriate community setting that will meet the individual's choice and need for independence and community integration.

1. The assessment will be conducted prior to admission, annually and whenever there is a significant change in physical, medical or mental condition or behavior. The assessment will document that the facility is able to support the client and their needs.

2. The assessment will document physical, cognitive, behavioral and social care needs.

8.495.3 CLIENT BENEFITS

8.495.3.A. Alternative Care Services which include, but are not limited to, personal care and homemaker services pursuant to 10 CCR 2505-10 sections 8.489 and 8.490, are benefits to clients residing in an ACF.

1. Medication Administration is an Alternative Care Service included in the reimbursement rate for Alternative Care Services and shall not be additionally reimbursed or billed in any other manner.

8.495.3.B. Room and board shall not be a benefit of ACF services. Clients shall be responsible for room and board in an amount not to exceed the Department annually established rate.

8.495.4 CLIENT RIGHTS

8.495.4.A. An ACF shall foster the independence of the client while promoting each client's individuality, choice of care and lifestyle.

1. The client's choice to live in an ACF shall afford the client the opportunity to responsibly contribute to the home in meaningful ways and shall avoid reducing personal choice and initiative. The client's individual behaviors shall not negatively impact the harmony of the ACF.

8.495.4.B. Clients shall be informed of their rights. Pursuant to 6 CCR 1011-1, Chapter VII, Section 104 (5) (e) (ii), the policy on resident rights shall be posted in a conspicuous place.

8.495.4.C. Clients shall be informed of all ACF rules and/or policies. Rules and/or policies shall apply consistently to the administrator, staff, volunteers, and as appropriate, to clients residing in the facility and their family or friends who visit.

8.495.4.D. Clients shall be informed of the facility's policy regarding the implementation of an individual's advance directives, should the need arise.

8.495.4.E. Clients shall be allowed to decorate and use personal furnishings in their bedrooms in accordance with house rules while maintaining a safe and sanitary environment at all times.

1. If requested by the client, the ACF shall provide bedroom furnishings, including but not limited to a bed, bed and bath linens, a lamp, chair and dresser and a way to secure personal articles.

8.495.4.F. As documented in the admission assessment (10 CCR 2505-10 section 8.495.2.B), the provider will accommodate roommate choices within reason.

8.495.4.G. Clients and their roommates determined capable to control access to private personal quarters, shall be allowed to lock their doors and control access to their quarters.

8.495.4.H. Clients shall have unscheduled access to food and food preparation areas if determined capable to appropriately handle cooking activities.

8.495.4.I. Providers shall not require a Medicaid client to participate in performing household or other tasks unless such tasks have been outlined in the client's individual care plan as necessary Life Skills Training.

8.495.4.J. Clients shall have the right to possess and self-administer medications with a physician's written order, as appropriate.

8.495.5 PROVIDER ELIGIBILITY

8.495.5.A. The Provider shall be licensed in accordance with 6 CCR 1011-1, Chapter VII.

8.495.5.B. Certification Standards for ACFs

1. The Provider shall be Medicaid certified by the Department as an ACF in accordance with 10 CCR, Volume 8.

2. Administrators as defined at 6 CCR 1011-1, Chapter VII, Section 1.102 shall satisfactorily complete the Department authorized training on ACF rules and regulations prior to Medicaid certification.

3. ACF Providers shall maintain any license, permit, certification, insurance or bond as required by state or local authority.

4. Provisional certification may be granted at the discretion of the Department for up to 60 days.

5. Certification shall be denied when a Provider is unable to meet, or adequately correct licensure and/or certification standards as defined at 6 CCR 1011-1, Chapter VII, Section 1.102 and detailed at 6 CCR 1011-1, Chapter VII, Section 1.103.; 10 CCR 2505-10 section 8.495.

8.495.5.C. The Provider shall enter into a Provider Agreement with the Department.

8.495.5.D. Notification to the Department of Significant ACF Change

1. Suspension, Revocation or Termination

a. ACF Providers shall notify the Department within five working days when any required license, permit, certification, insurance or bond has a change in status, including any suspension, revocation or termination.

2. Change of Ownership.

a. Providers shall provide written notice to the Department of intent to change ownership no later than 30 days before the sale of the facility.

i) The new owner shall meet all licensing, certification or approval processes and shall not automatically become a Medicaid Provider.

3. The Department may terminate or not renew the Provider Agreement if a Provider is in violation of any applicable standards or regulations.

8.495.6 PROVIDER RESPONSIBILITIES

8.495.6.A. All documentation, including but not limited to individual resident agreements and care plans, employee files, activity schedules, licenses, insurance policies, claim submission documents and program and financial records, shall be maintained according to 10 CCR 2505-10 section 8.130 and provided to supervisor(s), program monitor(s) and auditors(s) upon request.

8.495.6.B. Using the State approved Critical Incident Reporting Form, Providers shall notify the client's Single Entry Point (SEP) case manager within 24 hours of any incident or situation that would be communicated to other interested parties.

8.495.6.C. Providers shall notify the client's SEP case manager of any client planned or unplanned non-medical and/or programmatic leave for greater than 24 hours.

1. The therapeutic and/or rehabilitative purpose of leave shall be documented as part of the client's care plan.

8.495.6.D. Any additional monies assessed the client or his/her family and/or guardian

1. Shall not be for Medicaid services.

2. Shall be clearly delineated in the client agreement.

3. Shall be fully refunded or withholdings clearly defined on the day of discharge.

8.495.6.E. Environmental Standards

1. Alternative Care Facilities are responsible and shall maintain a home-like quality and feel for all residents at all times.

2. Facilities shall provide an accessible private telephone with toll free local calls.

3. Facilities shall provide a private area where clients in shared bedrooms may have visitors.

4. Facilities shall provide access to common areas that is not through another resident's bedroom.

5. Facilities shall be heated to at least 70 degrees during the day and 65 degrees at night. Bedroom temperatures shall not exceed 85 degrees. During the summer months the facility shall provide at least one common area that can accommodate all residents where the temperature is no more than 76 degrees.

6. Facilities shall have a battery or generator-powered alternative lighting system available in the event of power failure.

7. The monthly schedule of daily recreational and social activities shall be posted in a conspicuous place at all times and developed in accordance with 6 CCR 1011-1, Chapter VII, Section 1.107.2 Social and Recreation Activities.

    a. The daily schedule of recreational and social activities shall be implemented by staff and offered to all clients.

8. Appropriate reading material that reflects the residents' interests and hobbies shall be made available in the common area(s).

9. Facilities shall provide nutritious food and beverage that clients have access to at all times. Access to food and cooking of food shall be in accordance with 6 CCR 1011-1, Chapter VII, Section 1.105(4) House Rules and Section 1.111 (1) Interior Environment. The access to food shall be provided in at least one of the following ways:

    a. Access to the ACF kitchen.

    b. Access to an area separate from the ACF kitchen stocked with nutritious food and beverage.

    c. A kitchenette with a refrigerator, sink, and stove or microwave, separate from the client's bedroom.

    d. A safe, sanitary way to store food in the client's room.

10. The cooking capacity of residents shall be assessed in the original pre-admission team evaluation and on-going care plans.

    a. Cooking may be limited to supervised access, if necessary for the client's safety and well-being.

8.495.6.F. Service Standards

1. The facility shall provide Protective Oversight to clients every day of the year, 24 hours per day.

2. Alternative Care Service Providers shall maintain and follow written policies and procedures for the administration of medication in accordance with 6 CCR 1011-1, Chapter VII and XXIV, Medication Administration Regulations, if the facility administers medication to clients.

3. Providers shall not discontinue nor refuse services to a client unless documented efforts have been ineffective to resolve the conflict leading to the discontinuance or refusal of services.

4. Providers shall have written policies and procedures for employment practices.

5. Providers shall maintain the following records/files:

    a. Personnel files for all staff and volunteers shall include:

        i) Name, home address, phone number and date of hire.

        ii) The job description, chain of supervision and performance evaluation(s).

iii) For staff with direct resident contact, including food handlers, evidence of pre-hire and annual tuberculin (TB) testing or chest x-ray, where appropriate.

b. Client files shall include:

i) The team assessment outlined in 10 CCR 2505-10 section 8.495.2. B. and care plan per 6 CCR 1011-1, Chapter VII, section 1.107(3).

6. The facility shall ensure that its staff has a clear understanding of all regulations pertaining to the facility's licensure and certification by the State of Colorado.

7. The facility shall encourage and assist client's participation in activities within the ACF community and the wider community, when appropriate.

8.495.6.G. Staffing Standards

1. Each facility will divide and document the 24-hour day into two 12 hour blocks which will be considered daytime and nighttime. The designation of daytime and nighttime hours shall be permanently documented in facility policy and disclosed in the written resident agreements. The facility shall comply with the following staffing standards:

a. A minimum of 1 staff to 10 residents during the daytime.

b. A minimum of 1 staff to 16 residents during the nighttime.

c. A minimum of 1 staff to 6 residents in a Secured Environment at all times.

i) There shall be a minimum of one awake staff that is on duty during all hours of operation in a Secured Environment.

2. Prior to receiving consideration for a staffing waiver, the facility shall be free of deficiencies for both fire safety and patient care issues in Life Safety and Health surveys.

3. Subject to Departmental approval, the Department may grant staffing waivers for nighttime hours only except in a Secured Environment.

a. The Provider shall adequately document that a staffing waiver would not jeopardize the health, safety or quality of life of the residents.

b. Any existing staffing waiver may be subject to revocation if a facility is cited with fire safety or patient care deficiencies or substantiated patient care complaints.

c. In the event of a staffing waiver denial or revocation, a facility may reapply for a staffing waiver only after the facility receives an annual survey with no deficiencies in either fire safety or patient care.

d. Existing staffing waivers shall be null and void upon a change in the total number of licensed beds or a change of ownership in a facility.

8.495.6.H. Standards for Secured Environment ACFs

1. Facilities providing a secured environment may be licensed for a maximum of 30 secured beds.

a. A waiver may be granted by the Department when adequate documentation of the need for additional beds has been proven and the number of beds would not jeopardize the health, safety and quality of care of residents.

2. The facilities shall establish an environment that promotes independence and minimizes agitation through the use of visual cues and signs.

3. Doors to bedrooms shall not be locked unless the resident is able to manage the key independently.

4. Provide a secured outdoor area accessible without staff assistance, which shall be level, well maintained and appropriately equipped for the population served.

8.495.6.I. Appropriateness of Medicaid Client Placement

1. An ACF shall not admit, or shall discharge within 30 days, any client, who:

a. Needs skilled services on more than an intermittent basis. Skilled services shall only be provided on an intermittent basis by a certified home health provider.

b. Is incapable of self-administration of medication, and the facility does not administer medications.

c. Is consistently unwilling to take medication prescribed by a physician.

d. Is diagnosed with substance abuse issue and refuses treatment by the appropriate mental health/medical professionals.

e. Has an acute physical illness which cannot be managed through medications or prescribed therapy.

f. Has a seizure disorder which is not adequately controlled.

g. Exhibits behavior that:

i) Disrupts the safety, health and social needs of the home.

ii) Poses a physical threat to self or others, including but not limited to, violent and disruptive behavior and/or any behavior which involves physical, sexual, or psychological force or intimidation and fails to respond to interventions, as outlined in the client's care plan.

iii) Indicates an unwillingness or inability to maintain appropriate personal hygiene under supervision or with assistance.

iv) Is consistently disorientated to time, person and place to such a degree he/she poses a danger to self or others and the ACF does not provide a Secured Environment.

h. Has physical limitations that:

i) Limit ambulation, unless compensated for by assistive device(s) or with assistance from staff.

ii) Require tray food services on a continuous basis.

2. Clients admitted for respite care to the ACF must meet the same criteria as other clients for appropriate placement.

8.495.7 REIMBURSEMENT

8.495.7.A. Effective January 1 of each year, the Department shall establish a uniform room and board payment for all Medicaid clients in ACFs. The standard room and board payment shall be permitted to rise in a dollar-for-dollar relationship to any increase in the Supplemental Security Income grant standard if the Colorado Department of Human Services also raises its grant amounts.

8.495.7.B. Facilities shall bill for reimbursement according to 10 CCR 2505-10 section 8.040.

1. Reimbursement shall be per unit, with one unit equaling one day of care, as estimated on the Prior Authorization (PAR) form.

2. When a client is determined eligible for HCBS services under the 300% income standard pursuant to 10 CCR 2505-10 section 8.100, Medicaid reimbursement shall be determined for Alternative Care Services according to 10 CCR 2505-10 section 8.486.60.

8.495.7.C. Reimbursement shall be the lower of:

1. The Medicaid unit rate; or

2. The rate the ACF charges its private-pay residents for similar services.

8.495.7.D. Non-Medical/Programmatic Leave Reimbursement

1. The ACF may receive reimbursement for a maximum of 42 days in a calendar year for Non-Medical/Programmatic Leave Days combined.

8.496 (Repealed effective March 30, 2014)

8.497 PROGRAM OF ALL-INCLUSIVE CARE FOR THE ELDERLY (PACE)

8.497.1 ENROLLMENT BROKER

8.497.1.A. PACE organizations shall be allowed to contract with the Department's enrollment broker to include information on PACE in materials the enrollment broker provides to clients.

8.497.1.B. PACE organizations shall be responsible for all costs associated with the marketing of PACE through the enrollment broker.

8.497.1.C. PACE organizations must comply with federal marketing regulations at 42 CFR 460.82 which is hereby incorporated by reference. The incorporation of the PACE marketing regulations excludes later amendments to, or editions of, the referenced material. This regulation is available from the U.S. Government Printing Office website at: http://www.gpo.gov/fdsys/pkg/CFR-2011-title42-vol4/pdf/CFR-2011-title42-vol4-part460.pdf. The Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at: Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, CO 80203. Certified copies of incorporated materials are provided at cost upon request.

8.497.2 ENROLLMENT

8.497.2.A. An eligible person, as defined by 25.5-5-412 (7)(b) C.R.S., who is enrolled in a managed care organization, the Accountable Care Collaborative program or other risk-bearing entity may elect to disenroll and enroll in and receive services through a PACE organization. The effective

date of an eligible person's disenrollment shall be no later than the first day of the second month following the month in which the eligible person files the request.

8.497.2.B. PACE organizations and eligible persons shall comply with all applicable federal regulations regarding PACE enrollment and disenrollment at 42 C.F.R. Part 460, subpart I which is hereby incorporated by reference. The incorporation of the PACE enrolment regulations excludes later amendments to, or editions of, the referenced material. This regulation is available from the U.S. Government Printing Office website at: http://www.gpo.gov/fdsys/pkg/CFR-2011-title42-vol4/pdf/CFR-2011-title42-vol4-part460.pdf. The Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at: Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, CO 80203. Certified copies of incorporated materials are provided at cost upon request.

THIS PAGE NOT FOR PUBLICATION

SECRETARY OF STATE
RULES ACTION SUMMARY AND FILING INSTRUCTIONS

SUMMARY OF ACTION ON RULE(S)

1. Department / Agency Name: Health Care Policy and Financing / Medical Services Board
2. Title of Rule: MSB 14-12-03-A, Revision to the Medical Assistance Eligibility Determination Rule Concerning the Medicaid Buy-In Program for Working Adults with Disabilities and the Medicaid Buy-In Program for Children with Disabilities, Section 8.100.6.P and Section 8.100.6.Q
3. This action is an adoption of: an amendment
4. Rule sections affected in this action (if existing rule, also give Code of Regulations number and page numbers affected):

   Sections(s) 8.100.6.P and 8.100.6.Q., Colorado Department of Health Care Policy and Financing, Staff Manual Volume 8, Medical Assistance (10 CCR 2505-10).
5. Does this action involve any temporary or emergency rule(s)? No
   If yes, state effective date:
   Is rule to be made permanent? (If yes, please attach notice of hearing). Yes

PUBLICATION INSTRUCTIONS*

At §8.100.6.P.1.f.ii replace current text with new text provided. Add new subparagraph at §8.100.6.P.3.
At §8.100.6.Q.1.f.ii replace current text with new text provided. Add new subparagraph at §8.100.6.Q.4
All text indicated in blue is for context only and should not be changed. This revision is effective 05/01/2015

*to be completed by MSB Board Coordinator

THIS PAGE NOT FOR PUBLICATION

Title of Rule:	Revision to the Medical Assistance Eligibility Determination Rule Concerning the Medicaid Buy-In Program for Working Adults with Disabilities and the Medicaid Buy-In Program for Children with Disabilities, Section 8.100.6.P and Section 8.100.6.Q
Rule Number:	MSB 14-12-03-A
Division / Contact / Phone:	Eligibility Division / Beverly Hirsekorn / 303-866-6320

STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

   This rule amendment intends to enhance the consumer experience allowing ample time to inform clients about their Buy-In eligibility prior to charging premiums. The rule allows an individual to dis-enroll from a Buy-In program.

2. An emergency rule-making is imperatively necessary

   ☐ to comply with state or federal law or federal regulation and/or

   ☐ for the preservation of public health, safety and welfare.

   Explain:

3. Federal authority for the Rule, if any:

   Sections 1902(a)(10)(A)(ii)(XV), (XVI) and 1916(g) of the Social Security Act for the Medicaid Buy-In Program for Working Adults with Disabilities and Sections 1902(a)(10)(A)(ii)(XIX), 1916(i) and 1902(cc)(2)(A)(ii)(1) of the Social Security Act for the Medicaid Buy-In Program for Children with Disabilities

4. State Authority for the Rule:

   25.5-1-301 through 25.5-1-303, C.R.S. (2014);
   25.5-6-1401 through 25.5-6-1406 C.R.S. (2014) and 25.5-5-206(I)

Initial Review	**02/13/2015**	Final Adoption	**03/13/2015**
Proposed Effective Date	**05/01/2015**	Emergency Adoption	

DOCUMENT #06

THIS PAGE NOT FOR PUBLICATION

Title of Rule:	Revision to the Medical Assistance Eligibility Determination Rule Concerning the Medicaid Buy-In Program for Working Adults with Disabilities and the Medicaid Buy-In Program for Children with Disabilities, Section 8.100.6.P and Section 8.100.6.Q
Rule Number:	MSB 14-12-03-A
Division / Contact / Phone:	Eligibility Division / Beverly Hirsekorn / 303-866-6320

REGULATORY ANALYSIS

1. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

   Disabled children and the category of eligibility under the federal "Ticket to Work and Work Incentives Improvement Act of 1999", Pub.L. 106-170, that provides an opportunity to buy into Medicaid consistent with the federal "Social Security Act", 42 U.S.C. 1396a (a) (10) (A) (ii) (XV), as amended, for each worker with disabilities who is at least sixteen years of age but less than sixty-five years of age and who, except for earnings, would be eligible for the supplemental security income program. A person who is eligible under the basic coverage group may also be a home- and community-based services waiver recipient. Also the category of eligibility under the federal "Ticket to Work and Work Incentives Improvement Act of 1999", Pub.L. 106-170, that provides an opportunity to buy into Medicaid consistent with the federal "Social Security Act", 42 U.S.C. 1496a (a) (10) (A) (ii) (XV), as amended, for each worker with a medically improved disability who is at least sixteen years of age but less than sixty-five years of age and who was previously in the basic coverage group and is no longer eligible for the basic coverage group due to medical improvement. A person who is eligible under the medical improvement group may also be a home- and community-based services waiver recipient.

2. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

   The proposed rule changes give Medicaid clients more options for types of coverage within Medicaid and allow for more timely notification of the owed premiums.

3. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

   Giving clients the ability to opt out of the Buy-In program and initiating premiums after case approval, instead of application, will result in a decrease in fees collected. However the ability to opt out of this program could result in clients moving to more cost efficient eligibility categories, which would reduce expenditure for these clients. Given the offsetting results and the modest size of the program, the Department does not expect a significant

impact. The Department will monitor the federally mandated change and will make adjustments to the budget if necessary through the normal budget process.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

   The change to when premiums are initiated enhances the client experience so they are fully informed about impending costs to access services and can plan accordingly. This also saves administrative efforts for end users, eligibility staff and customer service when clients contact associated entities regarding unexpected premium notices. The ability for a client to dis-enroll from Buy-In programs allows the client to be considered for eligibility for another program in Medicaid that does not cost a premium.

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

   Alternatives to initiating premiums after case approval would heighten administrative burden. The proposed solution benefits clients and does not greatly increase administrative needs.

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

   There are no alternative methods to efficiently and effectively implement the purpose of the proposed rule.

8.100.6.P. Medicaid Buy-In Program for Working Adults with Disabilities.

1. To be eligible for the Medicaid Buy-In Program for Working Adults with Disabilities:

   a. Applicants must be at least age 16 but less than 65 years of age.

   b. Income must be less than or equal to 450% of FPL after income allocations and disregards. See 8.100.5.F for Income Requirements and 8.100.5.H for Income allocations and disregards. Only the applicant's income will be considered.

   c. Resources are not counted in determining eligibility.

   d. Individuals must have a disability as defined by Social Security Administration medical listing or a limited disability as determined by a state contractor.

   e. Individuals must be employed. Please see Verification Requirements at 8.100.5.B.1.c.

   f. Individuals will be required to pay monthly premiums on a sliding scale based on income.

      i) The amount of premiums cannot exceed 7.5% of the individual's income.

      ii) Premiums are charged beginning the month after determination of eligibility. Any premiums for the months prior to the determination of eligibility will be waived.

      iii) Premium amounts are as follows:

         1) There is no monthly premium for individuals with income at or below 40% FPL.

         2) A monthly premium of $25 is applied to individuals with income above 40% of FPL but at or below 133% of FPL.

         3) A monthly premium of $90 is applied to individuals with income above 133% of FPL but at or below 200% of FPL.

         4) A monthly premium of $130 is applied to individuals with income above 200% of FPL but at or below 300% of FPL.

         5) A monthly premium of $200 is applied to individuals with income above 300% of FPL but at or below 450% of FPL./

      iv) The premium amounts will be updated at the beginning of each State fiscal year based on the annually revised FPL if the revised FPL would cause the premium amount (based on percentage of income) to increase by $10 or more.

      v) A change in client net income may impact the monthly premium amount due. Failure to pay premium payments in full within 60 days from the premium due date will result in client's assistance being terminated prospectively. The effective date of the termination will be the last day of the month following the 60 days from the date on which the premium became past due.

2. Retroactive coverage is available according to 8.100.3.E, however is not available prior to program implementation

3. Individuals have the option to request to be disenrolled if they have been enrolled into the Medicaid Buy-In Program for Working Adults with Disabilities. This is also called "opt out."

8.100.6.Q. Medicaid Buy-In Program for Children with Disabilities

1. To be eligible for the Medicaid Buy-In Program for Children with Disabilities:

   a. Applicants must be age 18 or younger.

   b. Household income will be considered and must be less than or equal to 300% of FPL after income disregards. The following rules apply:

      i) 8.100.4.E - MAGI Household Requirements

      ii) 8.100.5.F - Income Requirements

      iii) 8.100.5.F.6 - Income Exemptions

      iv) An earned income of $90 shall be disregarded from the gross wages of each individual who is employed

      v) A disregard of a 33% (.3333) reduction will be applied to the household's net income.

   c. Resources are not counted in determining eligibility.

   d. Individuals must have a disability as defined by Social Security Administration medical listing.

   e. Children age 16 through 18 cannot be employed. If employed, children age 16 through 18 shall be determined for eligibility through the Medicaid Buy-In Program for Working Adults with Disabilities.

   f. Families will be required to pay monthly premiums on a sliding scale based on household size and income.

      i) For families whose income does not exceed 200% of FPL, the amount of premiums and cost-sharing charges cannot exceed 5% of the family's adjusted gross income. For families whose income exceeds 200% of FPL but does not exceed 300% of FPL, the amount of premiums and cost-sharing charges cannot exceed 7.5% of the family's adjusted gross income.

      ii) Premiums are charged beginning the month after determination of eligibility. Any premiums for the months prior to the determination of eligibility will be waived.

      iii) For households with two or more children eligible for the Medicaid Buy-In Program for Children with Disabilities, the total premium shall be the amount due for one eligible child.

      iv) Premium amounts are as follows:

         1) There is no monthly premium for households with income at or below 133% of FPL.

         2) A monthly premium of $70 is applied to households with income above 133% of FPL but at or below 185% of FPL.

         3) A monthly premium of $90 is applied to individuals with income above 185% of FPL but at or below 250% of FPL.

4) A monthly premium of $120 is applied to individuals with income above 250% of FPL but at or below 300% of FPL.

v) The premium amounts will be updated at the beginning of each State fiscal year based on the annually revised FPL if the revised FPL would cause the premium amount (based on percentage of income) to increase by $10 or more.

vi) A change in household net income may impact the monthly premium amount due. Failure to pay premium payments in full within 60 days from the premium due date will result in client's assistance being terminated prospectively. The effective date of the termination will be the last day of the month following the 60 days from the date on which the premium became past due.

2. Retroactive coverage is available according to 8.100.3.E, however is not available prior to program implementation.

3. Verification requirements will follow the MAGI Category Verification Requirements found at 8.100.4.B.

4, Individuals have the option to request to be disenrolled if they have been enrolled into the Medicaid Buy-In Program for Children with Disabilities. This is also called "opt out."

THIS PAGE NOT FOR PUBLICATION

Title of Rule:	Revision to the Medical Assistance Health Programs Office Rule Concerning Emergency Medical Transportation Services, Section 8.018
Rule Number:	MSB 14-10-02-A
Division / Contact / Phone:	Health Programs Office Benefits and Operations Division / Greg Trollan / 4986

SECRETARY OF STATE
RULES ACTION SUMMARY AND FILING INSTRUCTIONS

SUMMARY OF ACTION ON RULE(S)

1. Department / Agency Name: Health Care Policy and Financing / Medical Services Board
2. Title of Rule: MSB 14-10-02-A, Revision to the Medical Assistance Health Programs Office Rule Concerning the Emergency Medical Transportation Services, Section 8.018
3. This action is an adoption of: new rules
4. Rule sections affected in this action (if existing rule, also give Code of Regulations number and page numbers affected):

   Sections(s) 8.018, Colorado Department of Health Care Policy and Financing, Staff Manual Volume 8, Medical Assistance (10 CCR 2505-10).
5. Does this action involve any temporary or emergency rule(s)? No
   If yes, state effective date:
   Is rule to be made permanent? (If yes, please attach notice of hearing). Yes

PUBLICATION INSTRUCTIONS*

This is a new subsection of 10 CCR 2505-10. Insert the new text beginning at §8.018 through the end of §8.018.6 immediately following current text at §8.017.F.3 and immediately preceding §8.040.
This revision is effective 05/01/2015.

*to be completed by MSB Board Coordinator

THIS PAGE NOT FOR PUBLICATION

Title of Rule:	Revision to the Medical Assistance Health Programs Office Rule Concerning Emergency Medical Transportation Services, Section 8.018
Rule Number:	MSB 14-10-02-A
Division / Contact / Phone:	Health Programs Office Benefits and Operations Division / Greg Trollan / 4986

STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

   The Department is updating this rule to include content from the Ambulance Services Benefit Coverage Standard. Specifically, the rule will define the amount, scope and duration of the benefit.

2. An emergency rule-making is imperatively necessary

   ☐ to comply with state or federal law or federal regulation and/or

   ☐ for the preservation of public health, safety and welfare.

   Explain:

3. Federal authority for the Rule, if any:

   §1905(a)(1) of the Social Security Act

4. State Authority for the Rule:

   25.5-1-301 through 25.5-1-303, C.R.S. (2013);

Initial Review	**02/13/2015**	Final Adoption	**03/13/2015**
Proposed Effective Date	**05/01/2015**	Emergency Adoption	

THIS PAGE NOT FOR PUBLICATION

Title of Rule:	Revision to the Medical Assistance Health Programs Office Rule Concerning Emergency Medical Transportation Services, Section 8.018
Rule Number:	MSB 14-10-02-A
Division / Contact / Phone:	Health Programs Office Benefits and Operations Division / Greg Trollan / 4986

REGULATORY ANALYSIS

1. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

This rule will impact clients and providers of Ambulance services.

2. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

Clearly defined and updated rules will improve client access to appropriate, high quality, cost-effective and evidence-based services while improving the health outcomes of Medicaid clients. Established criteria within the rule will provide guidance to clients and providers regarding benefit coverage. For example, the Department previously required a physician's signature for ambulance transport however, this was removed as it created an undue burden on the providers and could have potentially impacted client access. Furthermore, even though the Department does not require prior authorization for Ambulance services, providers requested that we explicitly state this in order to provide clearer guidance.

3. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

This rule does not have any costs to the Department or any other agency as a result of its implementation and enforcement.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

Clearly defined and updated rules increase client access to appropriate services and allow the Department to administer benefits in compliance with federal and state regulations, as well as clinical best practices and quality standards. Defining this benefit in rule will educate clients about their benefits and provide better guidance to service providers. The cost of inaction could result in decreased access to services, poor quality of care, and/or lack of compliance with state and federal guidance.

All of the above translates into appropriate cost-effective care administered by the state.

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

There are no less costly methods or less intrusive methods for achieving the purpose of this rule. The department must appropriately define amount, scope and duration of this benefit in order to responsibly manage it.

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

N/A. The Department also documents its benefit coverage policies in written coverage standards. The benefit coverage policies must be written into rule to have the force of rule.

8.018 EMERGENCY MEDICAL TRANSPORTATION

8.018.1. DEFINITIONS

Advanced Life Support (ALS) means special services designed to provide definitive medical care en route from the client's pickup point to the medical facility or during inter-facility transfers and until responsibility for medical care is assumed by the staff of the receiving medical facility.

Air Ambulance means a helicopter or airplane designed and used to provide transportation for the ill and injured, and to provide personnel, facilities, and equipment to treat clients before and during transportation.

Ambulance means any publicly or privately owned vehicle that is specially designed, constructed, modified or equipped to be used, maintained and operated on streets or highways to transport clients to a hospital or other treatment facility in cases of accident, trauma or severe illness.

Basic Life Support (BLS) means transportation by an ambulance vehicle and medically necessary supplies and services to include cardiopulmonary resuscitation as required to maintain life during transport from the client's pickup point to the provider's facility or during an inter-facility transfer, without cardiac/hemodynamic monitoring or other invasive techniques.

Critical Care Transport means ambulance transportation during which a client receives specialized care for conditions that are life-threatening and who require comprehensive care and constant monitoring from a stabilizing hospital to a hospital with full capabilities for the client's case.

Emergency Medical Technician-Basic (EMT-Basic) means an individual who has a current and valid EMT-Basic certificate issued by the Colorado Department of Public Health and Environment and who is authorized to provide basic emergency medical care in accordance with the rules pertaining to EMS practice and Medical Director oversight.

Emergency Medical Transportation means ambulance transportation during which a client receives needed emergency medical services en route to an appropriate medical facility.

Ground Ambulance means a ground vehicle, including a water ambulance, designed and used to transport the ill and injured and to provide personnel, facilities, and equipment to treat clients before and during transportation.

Non-Emergency Medical Transportation (NEMT) means transportation to or from medical treatment that is not emergency in nature under Section 8.014.1

8.018.2. CLIENT ELIGIBILITY

8.018.2.A. Emergency ambulance service is a benefit for all Colorado Medical Assistance Program clients who have a critical or unknown illness or injury that demands immediate medical attention to prevent permanent injury or loss of life.

8.018.3. PROVIDER ELIGIBILITY

8.018.3.A. Ambulances providing services to Medicaid clients must be licensed, operated, and equipped in accordance with federal and state regulations.

8.018.3.B. Ambulances must be operated by two Emergency Medical Technicians (EMTs). One technician must accompany the patient at all times.

8.018.4 COVERED SERVICES

8.018.4.A. GROUND AMBULANCE

1. The following ground ambulance services are covered:

    a. Transportation to the closest, most appropriate facility.

    b. Basic or advanced life support that is required during transport.

    c. Critical Care Transportation- facility to facility transport requiring medical care above that offered via non-emergency medical transportation.

8.018.4.A. AIR AMBULANCE

1. When the point of pick up is inaccessible by a land vehicle or remoteness or other obstacles prohibit transporting the client by land to the nearest appropriate medical facility, the following air ambulance services are covered:

    a. Basic or advanced life support that is required during transport.

    b. Critical Care Transport- when medically necessary to reach the closest, most appropriate facility.

8.018.5. LIMITATIONS

8.018.5.A. The following services are not reimbursable:

1. Waiting time, cancellations or unapproved additional passengers.

2. Response calls to emergency locations when no transportation is needed or approved.

3. Charges when client is not in the vehicle.

4. Non-benefit services provided at the scene when transportation is not necessary.

5. Transportation which is covered by another entity

6. Transportation to local treatment programs not enrolled in Colorado Medical Assistance Program.

7. Transportation of a client who has been pronounced deceased at the time that the ambulance arrives.

8. Pick up or delivery of prescriptions and/or supplies.

9. Transportation arranged for a client's convenience when there is no reasonable risk of permanent injury or loss of life.

10. Transportation to non-emergency medical appointments.

8.018.6 PRIOR AUTHORIZATION

8.018.6.A. Prior Authorization is not required for ground and air ambulance in emergency situations or for hospital to hospital transport including critical care transport.

THIS PAGE NOT FOR PUBLICATION

Title of Rule:	Revision of Medical Assistance Rule Concerning Treatment of Oral Medical Conditions for Adult Clients, Section 8.201
Rule Number:	MSB 14-11-19-A
Division / Contact / Phone:	Medicaid Programs and Services / Sarah Tilleman / 4623

SECRETARY OF STATE
RULES ACTION SUMMARY AND FILING INSTRUCTIONS

SUMMARY OF ACTION ON RULE(S)

1. Department / Agency Name: Health Care Policy and Financing / Medical Services Board
2. Title of Rule: MSB 14-11-19-A, Revision of Medical Assistance Rule Concerning Treatment of Oral Medical Conditions for Adult Clients, Section 8.201
3. This action is an adoption of: an amendment
4. Rule sections affected in this action (if existing rule, also give Code of Regulations number and page numbers affected):

   Sections(s) 8.201, Colorado Department of Health Care Policy and Financing, Staff Manual Volume 8, Medical Assistance (10 CCR 2505-10).

5. Does this action involve any temporary or emergency rule(s)? No
   If yes, state effective date:
   Is rule to be made permanent? (If yes, please attach notice of hearing). Yes

PUBLICATION INSTRUCTIONS*

Replace all current text beginning at §8.201 through the end of 8.201.6.2 with new text provided. This revision is effective 05/01/2015.

*to be completed by MSB Board Coordinator

THIS PAGE NOT FOR PUBLICATION

Title of Rule:	Revision of Medical Assistance Rule Concerning Treatment of Oral Medical Conditions for Adult Clients, Section 8.201
Rule Number:	MSB 14-11-19-A
Division / Contact / Phone:	Medicaid Programs and Services / Sarah Tilleman / 4623

STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

   The Department is amending the adult dental rule in order to better define amount, scope and duration. The rule amendment is designed to increase access for adults and to reduce burden on providers. The Department is also correcting typos and other technical errors.

2. An emergency rule-making is imperatively necessary

   ☐ to comply with state or federal law or federal regulation and/or

   ☐ for the preservation of public health, safety and welfare.

   Explain:

3. Federal authority for the Rule, if any:

   §1905(a)(10) of the Social Secuirty Act.

4. State Authority for the Rule:

   25.5-1-301 through 25.5-1-303, C.R.S. (2012);
   § 25.5-5-202(1)(w), C.R.S. (2013); § 25.5-5-207, C.R.S. (2014) .

Initial Review	**02/13/2015**	Final Adoption	**03/13/2015**
Proposed Effective Date	**05/01/2015**	Emergency Adoption	

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REGULATORY ANALYSIS

1. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

   This rule amendment will affect Medicaid dental providers and Medicaid eligible clients age 21 years and older.

2. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

Research has shown that untreated oral health conditions negatively affect a person's overall health and that gum disease has been linked to diabetes, heart disease, strokes, kidney disease, Alzheimer's disease, and even mental illness. Regular dental care and prevention are the most cost-effective methods available to prevent minor oral conditions from developing into more complex oral and physical health conditions that would eventually require emergency and palliative care.

Clearly defined and updated rules will improve client access to appropriate, high quality, cost-effective and evidence-based services while improving the health outcomes of Medicaid clients. Established criteria within the rule will provide guidance to clients and providers regarding benefit coverage. For example, in the case of dental, this rule will help ensure providers are knowledgeable of Medicaid coverage through the transparency of guidance available in the rule changes. Medicaid covered residents will also be better served with clear transparent description of the dental benefit. Medicaid covered residents and Medicaid dental providers will experience reductions in administrative barriers due to the removal of unnecessary prior authorizations for certain services, in-line with industry norms and standards regarding utilization management.

3. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

Dental benefits will be capped at $1,000 per client. The fiscal note that accompanied SB 13-242 assumes that clients will use an average of $627 in dental benefits per year. Of the eligible population, The Department estimates approximately 27 percent of eligible clients will use dental benefits, which is prorated in the first year. As a result, caseload is estimated at 43,043 in FY 2013-14 and 82,072 in FY 2014-15.

Total adult dental benefit costs are $28.8 million in FY 2013-14 and $58.8 million in FY 2014-15. However, a portion of the adult dental benefit costs are assumed to be offset by reduced emergency dental services. The fiscal note assumes savings of 15 percent, or $1.9 million, in FY 2013-14 and 30 percent, or $4.0 million, in FY 2014-15

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

Clearly defined and updated rules increase client access to appropriate services and allow the Department to administer benefits in compliance with federal and state regulations, as well as clinical best practices and quality standards. Defining this benefit in rule will educate clients about their benefits and provide better guidance to service providers. The cost of inaction could result in decreased access to services, poor quality of care, and/or lack of compliance with state and federal guidance.

All of the above translates into appropriate cost-effective care administered by the state.

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

   There are no less costly methods or less intrusive methods for achieving the purpose of this rule. The department must appropriately define amount, scope and duration of this benefit in order to responsibly manage it.

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

   The Department also documents its benefit coverage policies in written coverage standards. The benefit coverage policies must be written into rule to have the force of rule.

8.201 ADULT DENTAL SERVICES

8.201.1 DEFINITIONS

Adult Client means an individual who is 21 years or older and eligible for medical assistance benefits.

~~Cleaning is the removal of dental plaque and calculus for teeth, in order to prevent dental caries, gingivitis and periodontis.~~

Comprehensive Oral Evaluation – New or Established Patient means a thorough evaluation and documentation of a client's dental and medical history to include extra-oral and intra-oral hard and soft tissues, dental caries, missing or unerupted teeth, restorations, occlusal relationships, periodontal conditions (including periodontal charting), hard and soft tissue anomalies, and oral cancer screening~~.~~, as defined by the Current Dental Terminology (CDT).

Comprehensive Periodontal Evaluation means the procedure that is indicated for patients showing signs or symptoms of periodontal disease and for patients with risk factors such as smoking or diabetes. It includes evaluation of periodontal conditions, probing and charting, evaluation and recording of the patient's dental and medical history and general health assessment. It may include the evaluation and recording of dental caries, missing or unerupted teeth, restorations, occlusal relationships and oral cancer evaluation, as defined by the CDT).

Dental Caries is a common chronic infectious transmissible disease resulting from tooth-adherent specific bacteria that metabolize sugars to produce acid which demineralizes tooth structure over time (tooth decay).

Dental professional means a licensed dentist or dental hygienist enrolled with Colorado Medicaid.

Detailed and Extensive Oral Evaluation – Problem Focused, By Report means a detailed and extensive problem focused evaluation entailing extensive diagnostic and cognitive modalities based on the findings of a comprehensive oral evaluation. Integration of more extensive diagnostic modalities to develop a treatment plan for a specific problem is required. The condition requiring this type of evaluation shoall be described and documented. Examples of conditions requiring this type of evaluation may include dentofacial anomalies, complicated perio-prosthetic conditions, complex temporomandibular dysfunction, facial pain of unknown origin, conditions requiring multi-disciplinary consultation, etc., as defined by the CDT).

Diagnostic Imaging means a visual display of structural or functional patterns for the purpose of diagnostic evaluation, as defined by the ~~Current Dental Terminology (~~CDT~~) (2014)~~.

Endodontic services means services which are concerned with the morphology, physiology and pathology of the human dental pulp and periradicular tissues.

Emergency Services means the need for immediate intervention by a physician, osteopath or dental professional to stabilize an oral cavity condition. ~~Immediate Intervention or Treatment means services rendered within twelve (12) hours.~~

Evaluation means a patient assessment that may include gathering of information through interview, observation, examination, and use of specific tests that allows a dentist to diagnose existing conditions, as defined by the CDT ~~(2014)~~.

High Risk of Caries is indicated in Adult Clients who present with demonstrable caries, a history of restorative treatment, dental plaque, and enamel demineralization.

Immediate Intervention or Treatment is when a patient presents with symptoms and/or complaints of pain, infection or other conditions that would require immediate attention.

Limited Oral Evaluation – Problem Focused means an evaluation limited to a specific oral health problem or complaint, as defined by the CDT.~~.~~

Oral Cavity means the jaw, mouth or any structure contiguous to the jaw.

Palliative Treatment for Dental Pain means emergency treatment to relieve the client of pain; it is not a mechanism for addressing chronic pain.

Periodic Oral Evaluation means an evaluation performed on a client of record to determine any changes in the patient's dental and medical status since a previous comprehensive or periodic evaluation. This includes an oral cancer evaluation and periodontal screening where indicated, and may require interpretation of information acquired through additional diagnostic procedures, as defined by the CDT).

Periodontal Treatment means the therapeutic plan intended to stop or slow periodontal (gum) disease progression.

Preventive services means services concerned with promoting good oral health and function by preventing or reducing the onset and/or development of oral diseases or deformities and the occurrence of oro-facial injuries, as defined by the CDT~~) (2014)~~.

Prophylaxis (Cleaning) is the removal of dental plaque and calculus from teeth, in order to prevent dental caries, gingivitis and periodontitis.

Re-Evaluation - Limited, Problem Focused (Established Patient; Not Post-Operative Visit) means assessing the status of a previously existing condition. For example, a traumatic injury where no treatment was rendered but patient needs follow-up monitoring, an evaluation for undiagnosed continuing pain,;or a soft tissue lesion requiring follow-up evaluation, as defined by the CDT.

Restorative means services rendered for the purpose of rehabilitation of dentition to functional or aesthetic requirements of the client, as defined by the CDT ~~(2014)~~.

Year begins on the date of service.

8.201.2 BENEFITS

8.201.2.A Covered Services

1. Covered Evaluation Procedures:

a. Periodic Oral Evaluation~~,~~

i. Shall be limited to two (2) per year~~s~~.

ii. Is limited to any combination of two (2) periodic oral evaluations, comprehensive oral evaluations, or comprehensive periodontal oral evaluations per year.

iii. Must be rendered by a dental professional.

b.

Limited Oral Evaluations – Problem Focused; ~~are~~ available to ~~c~~Adult Clients presenting with a specific oral health condition or problem

i. Shall be limited to two (2) per year per provider or location.

ii.

ii. Is limited to any combination of two (2) limited problem-focused oral evaluations, detailed and extensive problem-focused oral evaluations, or re-evaluation of limited and problem-focused oral evaluations per year per provider or location.

iii. ~~iii. If rendered by the same dental provider or the same dental practice, shall be deemed as one of two (2) periodic oral evaluations allowed per year.~~

~~Dental hygienists may only provide limited oral evaluations for a client of record.~~Does not count towards other oral evaluation frequencies.

iv. Must be rendered by a dental professional. Dental hygienists shall only provide limited oral evaluations for an Adult Client of record.

v. Limited Oral Evaluation – Problem Focused will not be reimbursed if it is provided on the same day as a periodic oral evaluation, a comprehensive oral evaluation, or a comprehensive periodontal evaluation. When both are provided on the same day, only the periodic oral evaluation, the comprehensive oral evaluation, or the comprehensive periodontal evaluation will be reimbursed.

c.

Comprehensive Oral Evaluation, New or Established Patient~~new clients only,~~

i. Shall be limited to one (1) every three (3) years per provider or location.

ii. Is limited to any combination of two (2) periodic oral evaluations, comprehensive oral evaluations, or comprehensive periodontal oral evaluations per year.

iii. Must be rendered by a dentist only.

d. Detailed and Extensive Oral Evaluation – Problem Focused, By Report

i. Shall be limited to two (2) per year per provider or location.

ii. Is limited to any combination of two (2) limited problem-focused oral evaluations, detailed and extensive problem-focused oral evaluations, or re-evaluation of limited and problem-focused oral evaluations per year.

iii. Does not count towards other oral evaluation frequencies.

iv. Must be rendered by a dental professional.

v. wWill not be reimbursed if it is provided on the same day as a peroic oral evaluation, a comprehensive oral evaluation, or a comprehensive periodontal evaluation. When both are provided on the same day, only the periodic oral evaluation, the comprehensive oral evaluation, or the comprehensive periodontal evaluation will be reimbursed.

e. Re-evaluation – Limited, Problem Focused (Established Patient; Not Post-Operative Visit)

i. Shall be limited to two (2) per year per provider or location.

ii. Is limited to any combination of two (2) limited problem-focused oral evaluations, detailed and extensive problem-focused oral evaluations, or re-evaluation of limited and problem-focused oral evaluations per year.

iii. Does not count towards other oral evaluation frequencies.

iv. Must be rendered by a dental professional.

v. wWill not be reimbursed if it is provided on the same day as a periodic oral evaluation comprehensive oral evaluation, or a comprehensive periodontal evaluation. When both are provided on the same day, only the periodic oral evaluation, the comprehensive oral evaluation, or the comprehensive periodontal evaluation will be reimbursed.

f.

Comprehensive Periodontal Oral Evaluation

i. ~~,~~ Shall be limited to one (1) every three (3) years.

ii. Is limited to any combination of two (2) periodic oral evaluations, comprehensive oral evaluations, or comprehensive periodontal oral evaluations per year.

iii. Must be rendered by a dental professional.

2. ~~2.~~ Covered Diagnostic Imaging Procedures:

a. Intra-oral - C; ~~c~~omplete S~~s~~eries of Radiographic Images, shall be limited to one (1) per five (5) years; minimum of ten (10) (periapical or posterior bitewing) ~~films~~images intended to display the crowns and roots of all teeth, periapical areas and alveolar bone required in the radiographic survey. ~~C~~ counts as one (1) set of bitewings per year.

b. Intra-oral - Periapical ~~f~~First ~~periapical x-ray~~ Radiographic Image, shall be limited to six~~six~~ (~~6~~6) per ~~five~~one (~~5~~1) year~~s~~. ~~-~~Intra-oral first periapical x-ray will not be reimbursed if it is provided on the same day as an intra-oral - complete series. Where both are provided on the same day, only the intra-oral - complete series will be reimbursed.~~Providers may not bill the same day as full mouth series.~~

c. Intra-oral - Periapical Each A~~a~~dditional Radiographic Image ~~periapical x-ray~~. Each additional periapical x-ray will not be reimbursed if it is provided on the same day as an intra-oral - complete series. Where both are provided on the same day, only the intra-oral - complete series will be reimbursed. ~~Providers may not bill the same day as a full mouth series.~~ Working and final treatment films for endodontics are not covered.

d. Bitewing – S; ~~s~~ingle Radiographic ~~i~~Image, shall be limited to one (1) set per year; one (1) set is equal to one~~two~~ (~~2~~1) to four (4) films.

e. Bitewing~~; t~~ – Two Radiographic ~~i~~Images, shall be limited to one (1) set per year; one (1) set is equal to two (2) to four (4) films.

f. Bitewing – Three Radiographic Images~~Bitewing; three images;~~, shall be limited to one (1) set per year; one (1) set is equal to two (2) to four (4) films.

g. Bitewing – Four Radiographic Images~~Bitewing; four images~~, shall be limited to one (1) set per year; one (1) set is equal to two (2) to four (4) films.

h. Vertical B~~b~~itewings – S; ~~s~~even (7) to ~~e~~Eight (8) Radiographic ~~i~~Images, shall be limited to ~~as~~ one (1) every five (5) years per provider or location. Counts as an intra-oral - complete series~~full mouth series~~.

i. Panoramic Radiographic ~~i~~Image; with or without bitewing, shall be limited to one (1) per five (5) years per provider or location. Counts as an intra-oral - complete series~~full mouth series.~~

3. Covered Preventive Services

~~Clients determined to fit into a high-risk category, as described below, are eligible for any combination of the following periodontal maintenance and cleanings, but are limited to a maximum of four (4) per year:~~

a. Prophylaxis~~Cleaning,~~ (cleaning) shall be limited to two (2) per year. ~~; unless client falls into a high risk category.~~Tooth brushing alone does not qualify as a prophylaxis.

i. Adult Clients who indicate as~~at~~ high risk ~~for~~of periodontal disease or high risk of~~for~~ caries may receive any combination of up to a total of four (4) prophylaxes ~~-~~ (cleanings) or four (4) periodontal maintenance visits per year. ~~H~~Indicators of high risk of periodontal disease include ~~is indicated by~~:

1. Demonstrable caries a~~ctive and untreated caries (decay) a~~t the time of examination;

2. H~~h~~istory of periodontal scaling and root pla~~n~~ning;

3. ~~h~~History of periodontal surgery;

4. Ddiabetic diagnosis; or

5. Ppregnancy.

b. Topical Application of Fluoride vVarnish, shall be limited to two (2) per year, limited to for Adult Cclients with:

i. History of dry mouth; and/or

ii. hHistory of head or neck radiation; or

iii. iii. Indication of high caries risk for caries as that term is defined at Section 8.201.1. High risk is indicated by active and untreated caries (decay) at the time of examination. If, at the end of the year they Adult Client no longer hasve active decay demonstrable caries, he or she they areis no longer considered high risk.

iv. Limited to any combination of two (2) topical application of fluoride varnish or topical application of fluorideations ar.

v.

c. Topical Application of Ffluoride, shall be limited to two (2) per year, limited to for Adult c Clients with:

i. History of dry mouth; and/or

ii. Hhistory of head or neck radiation; or

iii. Indication of high risk for caries as that term is defined at Section 8.201.1. If, at the end of the year the Adult Client no longer has demonstrable caries, he or she is no longer considered high risk.

iv. Limited to any combination of two (2) fluoride varnish or topical fluoride applications per year.high caries risk. High risk is indicated by active and untreated caries (decay) at the time of examination. If, at the end of the year they no longer have active decay, they are no longer considered high risk.

4. Covered Minor Restorative Services.

a. Routine amalgam and composite fillings on posterior and anterior teeth are covered services.

b. Amalgam and composite fillings shall be limited to one (1) time per surface per tooth, every three (3) years. The limitation shall begin on the date of service and multi-surface fillings are allowable. Amalgam and composite fillings will not be reimbursed if it is provided on the same day of treatment as a crown on the same tooth. Where both are provided on the same day, only the crown will be reimbursed.The occlusal surface is exempt from the three (3) year frequency limitations listed below when a multi-surface restoration is required or following endodontic therapy.

cb. Amalgam and composite fillings shall be limited to one (1) time per surface per tooth, every three (3) years. The limitation shall begin on the date of service and

~~multi-surface fillings are allowable.~~The occlusal surface is exempt from the three (3) year frequency limitations listed under Section 8.201.2.A.4.b. when a multi-surface restoration is required or following endodontic therapy.

d. Prefabricated Stainless Steel Crown, Permanent Tooth; may be replaced once every three (3) years.

e. Prefabricated Stainless Steel Crown, with Resin Window; may be replaced once every three (3) years.

f. Protective Restoration, shall be limited to once per lifetime per tooth, primary and permanent teeth.

5. Covered Major Restorative Services

a. The following crowns are covered:

i. Single crowns, shall be limited to one (1) per tooth every seven (7) years.

ii. Core build-up~~;~~, building~~,~~ shall be limited to one (1) per tooth every seven (7) years.

iii. Pre-fabricated post and core, shall be limited to one (1) per tooth every seven (7) years.

b. Crowns are covered services only when all of the following conditions are met:

i. The tooth is in occlusion; and

ii. The cause of the problem is either decay or fracture; and

iii. The tooth is not a third molar; and

iv. The tooth is not a second molar, unless crowning the second molar is necessary to support a partial denture or to maintain eight (8) artificial or natural posterior teeth in occlusion; and

v. The Adult C~~c~~lient's record reflects evidence of good and consistent oral hygiene; and

~~vi. Either~~ O~~o~~ne of the following is also true:

1. The tooth in question requires a multi-surface restoration and it cannot be restored with other restorative materials; or

2. A crown is requested by the dental professional for cracked tooth syndrome and the tooth is symptomatic and appropriate testing and documentation is provided.

c. Crown materials are limited to porcelain, full porcelain, ~~and~~ noble metal, or high noble metal on anterior teeth and premolars.

6. Covered ~~—~~Endodontic Services

a. The following endodontic procedures are covered:

i. Pulpal debridement shall be limited to one (1) per tooth per lifetime, permanent teeth only.

1. Covered in emergency situations only.

2. Exempt from prior authorization process but may be subject to post-treatment and pre-payment review.

3. Will not be reimbursed when root canal is completed on the same day by the same dental provider or location.

ii. Root ~~c~~Canal, Anterior~~; anterior~~ ~~t~~Tooth ~~,~~shall be limited to one (1) per tooth per lifetime, permanent teeth only.~~.~~

iii. Root Ccanal~~; premolar~~, Bicuspid Tooth~~,~~ shall be limited to one (1) per tooth per lifetime, permanent teeth only.~~.~~

iv~~ii~~. Root canal~~,; m~~ Molar Tooth~~,~~ shall be limited to one (1) per tooth per lifetime, permanent teeth only.~~.~~

~~iv. Pulpal debridement, one (1) per tooth per lifetime:~~

~~1. Covered in emergency situations only;~~

~~2. Is exempt from prior authorization process but may be subject to post-treatment and pre-payment review.~~

v. Retreatment of Pprevious ~~r~~Root Ccanal Ttherapy~~;~~, Aanterior Ttooth~~,~~ shall be limited to one (1) per lifetime; permanent teeth only. Will not be reimbursed~~only~~ if the original treatment was previously reimbursed to the same dental provider or location ~~not paid~~ by Colorado Medicaid. Requires prior authorization.

vi. Retreatment of Pprevious ~~r~~Root Ccanal Ttherapy~~,;~~ Bicuspid ~~premolar~~ ~~t~~Tooth~~,~~ shall be limited to one (1) per lifetime; permanent teeth only. Will not be reimbursed ~~only~~ if the original treatment was previously reimbursed to the same dental provider or location d~~n~~ot paid by Colo~~rado Medi~~caid. Requires prior authorization.

vii. Retreatment of Pprevious ~~r~~Root ~~c~~Canal ~~t~~Therapy~~,;~~ ~~m~~Molar ~~t~~Tooth~~,~~ shall be limited to one (1) per lifetime; permanent teeth only. Will not be reimbursed ~~only~~ if the original treatment was previously reimbursed to the same dental provider or location d~~n~~ot paid by Colo~~rado Medi~~caid. Requires prior authorization.

b. Endodontic procedures are covered services when:

i. The tooth is not a third molar; and

ii. The tooth is not a second molar; root canal treatment on second molars is covered only when the second molar is necessary to support a partial denture or to maintain eight (8) artificial or natural posterior teeth in occlusion; and

iii. The Adult Client's record reflects evidence of good and consistent oral hygiene; and

1. The cause of the problem is either decay or fracture; and one of the following is also true:

a. The tooth is in occlusion; or

b. A root canal is requested by the dental professional for cracked tooth syndrome and the tooth is symptomatic and appropriate testing and documentation is provided.

~~i. The tooth is not a second or third molar. Root canals for third molars are not covered; root canals for second molars are covered only when the second molar is essential to keep eight posterior teeth or more in occlusions or when it is necessary to support a partial denture;~~

~~ii. The tooth is in occlusion;~~

~~iii. A root canal is requested for cracked tooth syndrome and the tooth is symptomatic and appropriate testing and documentation is provided;~~

~~iv. The client's record reflects evidence of good and consistent oral hygiene; and~~

~~v. the cause of the problem is either decay or fracture.~~

~~c.~~ c. In all instances in which the Adult C~~c~~lient is in acute pain or there exist acute trauma, the dentist should take the necessary steps to relieve the pain and complete the ~~necessary e~~Emergency Services~~treatment~~. In these instances, there may not be time for prior authorization. Such emergency services~~procedures may~~ shall be subject to post-treatment and pre-payment review.

d. Working films (including the final treatment film) for endodontic procedures are considered part of the procedure and will not be paid for separately.

7. Covered Periodontal Treatment

a. Gingivectomy or Gingivoplasty, Four or More Contiguous Teeth or Tooth Bounded Spaces per Quadrant shall be limited to one (1) per three (3) years per Adult Client per quadrant. Includes six (6) months of postoperative care.

b. Gingivectomy or gingivoplasty, One to Three Contiguous Teeth or Tooth Bounded Spaces per Quadrant shall be limited to one (1) per three (3) years per Adult Client per quadrant. Includes six (6) months of postoperative care.

c. Gingivectomy or Gingivoplasty to Allow Access for Restorative Procedure, per Tooth shall be limited to one (1) per three (3) years per Adult Client per quadrant.

d. Full Mouth Debridement to Enable Comprehensive Evaluation and Diagnosis; shall be limited to one (1) per three (3) years per Adult Client.

i. Full mouth debridement will not be reimbursed if Adult Client's patient record demonstrates that the Adult Client has had a prophylaxis

(cleaning) or periodontal maintenance in the previous twelve (12) month period.

ii. Other periodontal treatments will not be reimbursed when provided on the same date as full mouth debridement. Where other periodontal services are provided on the same day, only the full mouth debridement will be reimbursed.

iii. Prophylaxis (cleaning) will not be reimbursed if it is provided on the same day as full mouth debridement. Where both are provided on the same day, only the full mouth debridement will be reimbursed.

ea. Periodontal Sscaling and rRoot pPlannning,; fFour (4) or Mmore tTeeth per qQuadrant, shall be limited to one (1)ce per quadrant every three (3) years. Requires prior authorization.

i. Only covered by report. Periodontal disease must be documented in the patient record.

ii. Prophylaxis (cleaning) will not be reimbursed if it is provided on the same day as a periodontal scaling and root planing, four (4) or more teeth per quadrant. Where both are provided on the same day, only the periodontal scaling and root planing,;four (4) or more teeth per quadrant will be reimbursed.Prophylaxis shall not be billed on the same day.

iii. No more than two (2) quadrants per day.

fb. Periodontal Sscaling and rRoot pPlannning,/ oOne (1) to tThree (3) Tteeth per Qquadrant, shall be limited to onece (1) per quadrant every three (3) years. Requires prior authorization.

i. Only covered by report. Periodontal disease must be documented in the patient record.

ii. Prophylaxis (cleaning) will not be reimbursed if it is provided on the same day as a periodontal scaling and root planing, one (1) to three (3) teeth per quadrant. Where both are provided on the same day, only the periodontal scaling and root planing, one (1) to three (3) teeth per quadrant will be reimbursed.

Prophylaxis shall not be billed on the same day.

iii. No more than two (2) quadrants per day.

gc. Periodontal Mmaintenance, shall be limited to two (2) times per year; counts as a prophylaxis (cleaning).

i. Adult Clients who indicate as high risk of periodontal disease or high risk of caries may receive any combination of up to a total of four (4) prophylaxes (cleanings) or four (4) periodontal maintenance visits per year. Indicators of high risk of periodontal disease include:

1. Demonstrable caries ct the time of examination; or

2. History of periodontal scaling and root planing;

3. History of periodontal surgery;

4. Diabetic diagnosis; or

5. Pregnancy.

~~Can only be approved when history of periodontal disease as evidenced by a history of scaling and root planning and/or osseous surgery.~~

~~ii. Clients with diabetes and pregnant women with histories of periodontal disease are entitled to four (4) per year.~~

~~d. Clients who are determined to fit into the high risk category, are eligible for any combination of periodontal maintenance and cleanings, up to four (4) per year~~h. In all instances in which the Adult Client is in acute pain or there exist acute trauma, the dentist should take the necessary steps to relieve the pain and complete the Emergency Services. In these instances, there may not be time for prior authorization. Such emergency services shall be subject to post-treatment and pre-payment review.~~.~~

8. Covered Removable Prosthetics

a. Removable prosthetics are not covered if eight (8) or more posterior teeth (natural or artificial) are in occlusion. Anterior teeth shall be~~are~~ covered, irrespective of the number of teeth in occlusion.

b. Removable prosthetics covered include:

i. Complete Upper Dentures shall be limited to one (1) time every seven (7) years. Includes initial six (6) months of relines. Requires prior authorization.

ii. Complete Lower Dentures shall be limited to one (1) time every seven (7) years. Includes initial six (6) months of relines. Requires prior authorization.

iii. ~~a.~~ Removable ~~p~~Partial ~~u~~Upper ~~d~~Denture~~,~~ ~~; r~~Resin ~~b~~Based~~,~~ shall be limited to one (1) time every seven (7) years. Requires prior authorization.

~~b~~iv. Removable Pp~~p~~artial L~~l~~ower D~~d~~enture~~,~~ ~~; r~~Resin ~~b~~Based~~,~~ shall be limited to one (1) time every seven (7) years. Requires prior authorization.

~~c~~v. Removable Pp~~p~~artial ~~u~~Upper ~~d~~Denture~~,~~ ~~; c~~Cast ~~m~~Metal ~~f~~Framework~~,~~ shall be limited to one (1) time seven (7) years. Requires prior authorization.

vi.~~d.~~ Removable Ppartial ~~l~~Lower ~~d~~Denture, ~~; c~~Cast ~~m~~Metal ~~f~~Framework~~,~~ shall be limited to one (1) time every seven (7) years. Requires prior authorization.

vii~~e~~. Removable ~~p~~Partial ~~u~~Upper ~~d~~Denture,~~;~~ ~~f~~Flexible ~~b~~Base~~,~~ shall be limited to one (1) time every seven (7) years. Requires prior authorization.

~~f~~viii. Removable Ppartial ~~l~~Lower ~~d~~Denture,~~;~~ ~~f~~Flexible ~~b~~Base~~,~~ shall be limited to one (1) time every seven (7) years. Requires prior authorization.

~~g. Complete Upper Dentures; one (1) time every seven (7) years. Includes initial six (6) months of relines~~

~~h. Complete Lower Dentures; one (1) time every seven (7) years. Includes initial six (6) months of relines.~~

9. Covered Oral Ssurgery, Ppalliative ~~t~~Treatment and Aanesthesia

a. The following surgical and palliative treatments are covered:

i. Simple Eextraction~~,~~ shall be limited to one (1) time per tooth.

ii. Surgical Eextraction~~,~~ shall be limited to one (1) time per tooth.

iii. Incision and D~~d~~rainage of Abscess, concurrent with extraction will be covered by report when narrative of medical necessity can be documented. Will not be reimbursed in same surgical area and on same visit as any other definitive treatment codes,;except for covered services necessary for diagnosis. Such incision and drainage procedures may be subject to post-treatment and pre-payment review.~~, as needed~~

iv. Minor surgical procedures to prepare the mouth for removable prostheses~~,~~ shall be limited to one (1) time per lifetime per quadrant.

v. Palliative T~~t~~reatment of D~~d~~ental P~~p~~ain will not be reimbursed on same visit as any definitive treatment codes; except for radiographs necessary for diagnosis. Will not be reimbursed when only other service is writing a prescription.~~.~~

~~1. Not payable on the same visit as any definitive treatment codes; except for covered service necessary for diagnosis.~~

vi. Deep Ssedation~~/; g~~General ~~a~~Anesthesia.

1. Only covered for Adult Clients when there is sufficient evidence to support medical necessity.

2. Where multiple levels of anesthesia are provided on the same day, only the highest level of anesthesia administered will be reimbursed.

vii. Intravenous Conscious Sedation.

1. Only covered for Adult Clients when there is sufficient evidence to support medical necessity.

2. Where multiple levels of anesthesia are provided on the same day, only the highest level of anesthesia administered will be reimbursed.~~General anesthesia and/or deep sedation is not covered when it is for the preference of the client or the provider and there are no other medical considerations.~~

b. In all instances in which the Adult Client is in acute pain or there exist acute trauma, the dentist should take the necessary steps to relieve the pain and complete the Emergency Services. In these instances, there may not be time for prior authorization. Such emergency services shall be subject to post-treatment and pre-payment review.~~In all instances in which the client is in acute pain, the dentist should take the necessary steps to relieve the pain and complete the necessary emergency treatment. In these instances, there may not be time for prior authorization. Such emergency procedures may be subject to post-treatment and pre-payment review.~~

c. Biopsies are covered only in instances where there is a suspicious lesion.

d. Removal of third molars is only covered in instances of acute pain and overt symptomatology.

10. Covered Hospital-Based Services

a. Dental treatment is covered in a hospital or outpatient facility, under deep sedation or general anesthesia, only when there is medical necessity.

b. Under this Section 10, medical necessity shall be limited to the following:

i. Patients with a documented physical, mental or medically compromising condition.

ii. Patients who have a dental need and for whom local anesthesia is ineffective because of acute infection, anatomic variation or allergy.

iii. Patients who are extremely uncooperative, unmanageable, anxious or uncommunicative and who have dental needs deemed sufficiently urgent that care cannot be deferred. Evidence of the attempt to manage in an outpatient setting must be provided; or

iv. Patients who have sustained extensive orofacial and dental trauma.

c. All operating room cases require prior authorization, even if the complete treatment plan is not available.

d. General anesthesia and sedation are not covered services when the patient is cooperative and requires minimal dental treatment, or when the patient has a concomitant medical condition which would make general anesthesia or sedation unsafe.

8.201.2.B. Exclusions.

1. The following services/treatments are not a benefit for Adult Clients age 21 years and older under any circumstances:

   a. Cosmetic Procedures.

   ~~b. Inlay and onlay restorations.~~

   b~~c~~. Crowns in the following categories:

      i. Cosmetic Crowns (i.e., crowns solely for cosmetic purposes);

      ii. Multiple units of crown and bridge;

      iii. To restore vertical dimension;

      iv. When an Adult C~~c~~lient has active and advanced periodontal disease;

      v. When the tooth is not in occlusion; or

      vi. When there is evidence of periapical pathology.

   ~~d~~c. Implants.

   ~~e~~d. Screening and assessment.

   ~~e~~f. Periodontal surgery.

   ~~g. Protective restorations.~~

   ~~h. Full mouth debridement.~~

   ~~i~~f. Graft procedures.

   g~~j~~. Endodontic surgery.

   h~~k~~. Treatment for temporomandibular joint disorders.

   ~~l. General Biopsies.~~

   ~~m~~i. Orthodontic treatment.

   ~~n~~j. Tobacco cessation counseling.

   ~~o~~k. Oral hygiene instruction.

   l~~p~~. Any service that is not listed as covered.

8.201.3 PRIOR AUTHORIZATION REQUEST

1. Emergency Services do not require a prior authorization before services can be rendered, and shall be subject to pre-payment review.~~.~~

2. Prior authorizations or benefits shall be denied for reasons of poor dental prognosis, lack of dental necessity or appropriateness or because the requested services do not meet the generally accepted standard of dental care.

32. The following services require prior authorization:

a. ~~Single crowns; core build-ups; post and cores~~

~~b. CC~~Complete and ~~p~~Partial dentures.

b~~c~~. Scaling and root planing (periodontal maintenance).

c. Retreatment of root canals.

d. ~~Root canals; prior authorization is not required for pulpal debridement in instances of acute pain~~

~~e Non-emergency surgical extractions~~

~~f. i~~nor surgical procedures

Hospital-based services when treatment is required.

e. Unspecified procedures, by report.

~~g. General anesthesia and deep sedation except in instances of acute pain or medical necessity.~~

8.201.4. ~~P~~PROVIDER REQUIREMENTS/REIMBURSEMENT

8.201.4.A. Dental services shall only be provided by a licensed dental professional ~~licensed dentist or dental hygienist~~ who is enrolled with Colorado Medicaid. Providers shall only provide covered services that are within the scope of their practice.

8.201.4.B. The following billing limitations apply:

1. Restorations:

a. Tooth preparation, anesthesia, all adhesives, liners and bases, polishing and occlusal adjustments shall be included within the reimbursement rate for restoration. Unbundling of dental restorations for billing purposes is not allowed.

b. Amalgam and composite restorations shall be reimbursed at the same rate.

c. Claim payment to a dental provider for one (1) or more restorations for the same tooth shall be limited to a total of four (4) or more tooth surfaces.

8.201.5 ELIGIBLE~~ligible~~ CLIENTS~~lients~~

Dental services described in 8.201.2 shall apply~~be available~~ to Adult Clients age 21 years and older.

8.201.6 ANNUAL~~nnual~~ LIMIT~~imits~~

1. Dental services for A~~a~~dult Clients age 21 years ~~of age~~ and older ~~are~~shall be limited to a total of $1,000 per ~~adult~~ Medicaid Adult Client~~recipient~~ per state fiscal year. An Adult ~~c~~ Client may make personal expenditures for any dental services that exceed the ~~beyond the~~ $1,000 annual limit. ~~and shall be charged the lower of the Medicaid Fee Schedule or submitted charges.~~

2. The complete and partial dentures benefit shallwill be subject to prior authorization and shallwill not be subject to the $1,000 annual maximum for dental services for Aadult Clients age 21 years and olderver. Although the complete and partial dentures benefit is not subject to the $1,000 annual maximum for the adult dental services, it shallwill be subject to a set Medicaid allowable rate.

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Tracking number: 2015-00066

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

Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)

on 03/13/2015

10 CCR 2505-10

MEDICAL ASSISTANCE - STATEMENT OF BASIS AND PURPOSE, AND RULE HISTORY

The above-referenced rules were submitted to this office on 03/13/2015 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

March 20, 2015 14:21:16

Frederick R. Yarger

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

Emergency Rules Adopted

Department

Department of Revenue

Agency

Division of Motor Vehicles

CCR number

1 CCR 204-30

Rule title

1 CCR 204-30 DRIVER'S LICENSE-DRIVER CONTROL 1 - eff 03/15/2015

Effective date

03/15/2015

DEPARTMENT OF REVENUE

Division of Motor Vehicles

DRIVER TESTING AND EDUCATION PROGRAM RULES AND REGULATIONS

1 CCR 204-30 Rule 8 Emergency Rule

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

PURPOSE

The Department of Revenue, Division of Motor Vehicles, Driver Testing and Education Section developed rules, regulations and certification requirements to establish the working and operational instructions for the conduct of certified Commercial Driver Education programs, Basic Operators Skills Testing Organizations, and third party testers.

The rules, regulations and requirements will furnish guidelines as necessary for certified Commercial Driving Schools to remain current with changing laws and new programs promoting the safety and welfare of the citizens of Colorado and to aid in the detection of fraudulent activities.

STATUTORY AUTHORITY

Sections: 24-4-103, 42-1-204, 42-2-106 and 42-2-111 C.R.S and in adopting such rules, the Department shall use the guidelines concerning Commercial Driving Schools promulgated by the United States Department of Transportation 12-15-116(3) C.R.S

(100) DEFINITIONS

a) **BOST: (Basic Operators Skills Test):** Means either the Basic Operator Skills Drive Test (BOSD) or the Basic Operators Skills Written Knowledge Test (BOSW) or both.

b) **Basic Operator Skill Tester:** An individual employed by a Commercial Driving School who has successfully passed the training required by the Department, has successfully met the additional company training requirements, and is certified to administer the BOST.

c) **Basic Operator's skill testing Organization (BOSTO):** A Commercial Driving School certified by the Department to conduct the BOST for a permit or driver's license.

d) **Behind-the-Wheel training (BTW):** An extension of classroom instruction that provides students with opportunities for traffic experiences under real conditions.

e) **Behind-the-Wheel instructor (BTWI):** An instructor employed by an approved Commercial Driving School who is certified by the Department for behind-the-wheel training.

f) **Clock Hours:** Full hour consisting of sixty (60) minutes. Section 12-15-101 (1), C.R.S.

g) **CMV:** Commercial motor vehicle.

h) **Commercial Driving School (CDS):** Any business or any person who, for compensation, provides or offers to provide training or examinations that are statutorily mandated for a driver's license or instruction permit. The aforementioned does not include secondary schools and institutions of higher education offering programs approved by the

Department of Education and/or private occupational schools offering programs approved by the private occupational school division.

i) **Commercial driving instructor:** An individual employed by a Commercial Driving School (CDS) as an instructor/tester of students.

j) **Curriculum Content:** The content of a course of instruction set by the Department that meets the minimum requirements to obtain a driving permit.

k) **Department:** The Department of Revenue.

l) **DTES:** Driver Testing and Education Section.

m) **Expanded driver awareness program/driver awareness program (EDAP/DAP):** A four-hour pre-qualification driver awareness program approved by the Department. Section 42-2-106(1)(d)(I), C.R.S.

n) **Instruction Permit:** A driving document issued by the Department to allow an individual to drive a motor vehicle or motorcycle, as provided for in section 42-2-106, C.R.S., prior to receiving a Colorado driver's license.

o) **Revocation of testing certification:** The permanent withdrawal of a BOST tester's or a BOSTO's testing privileges by the Department.

p) **Shadow drive:** Additional practice in drive testing before certification or re-certification.

q) **Suspension of testing certification:** An action taken by the Department against a BOST tester or a BOSTO whereby testing privileges are withdrawn for a specified period of time.

(150) APPLICABILITY

This Rule 8 applies only to CDSs t offer statutorily-mandated examinations or statutorily-mandated training for a driver’s license or instruction permit.

(200) GENERAL REQUIREMENTS FOR COMMERCIAL DRIVING SCHOOL CERTIFICATION

a) Commercial Driving Schools (CDS) shall enter into a written contract with the

Department. b) The CDS shall have a commercial driver education course of instruction

approved by the
Department.

c) Application for certification must be submitted on forms provided by the Department and must indicate on the form the type of certification being requested.

d) A copy(s) of the CDS's state, county, or municipal business license(s) or waivers, registration with the Secretary of State, along with any other documentation required by the county or city, must be submitted with an application. Section 12-15-116(2), C.R.S.

e) A CDS's place of business shall be a separate establishment and not part of a residence.

1. All CDS's shall comply with city zoning and code requirements.

2. All CDS's are required to have a mailing address that is not a post office box.

3. A CDS's must request and receive approval from the Department for recordkeeping in a residential home office.

f) Each new owner/manager must complete Records Management/BOSW training prior to certification.

g) **Insurance:** All CDS must have: proof of current and valid vehicle insurance, vehicle registration, general liability insurance, surety bond, and worker's compensation insurance on file with the Department at all times.

1. The Department must be listed on the general liability and vehicle insurance policies as a secondary insured.

2. It is the CDS owner's responsibility to ensure that the insurance company sends the required information to the Department.

3. Failure to provide updated insurance and registration information to the Department within 30 days of expiration is grounds for suspension, and such suspension may be in effect until current insurance and/or registration is received.

4. A CDS is required to provide an inventory of all vehicles used for testing/training, and proof of second brake installation to the Department. Changes to vehicle inventory shall be reported, in writing, to the Department within 30 days of the change.

h) **Bond:** All CDS's shall maintain a surety bond, executed by a surety company authorized to do business in Colorado, in the amount of $10,000 with the Department.

1. The bond shall be for the use and benefit of the Department in the event of a monetary loss within the limitations of the bond attributable to the willful, intentional, or negligent conduct of the CDS, or its agents or employees.

2. The bond may be used to indemnify against loss or damage arising out of the CDS's breach of contract between the CDS and the student.

3. If the amount of the bond is decreased or terminated, or if there is a final judgment outstanding on the bond, the CDS's certification shall be suspended. The suspension shall continue until satisfactory steps are taken to restore the original amount of the bond.

4. The Department shall be named as the beneficiary on the bond.

i) **Physical facilities:** Each CDS requesting certification by the Department must have a place of business with adequate facilities to conduct classes and to maintain all required files and records:

1. All forms issued by the Department shall be kept in locked and limited access areas.

2. A CDS shall obtain written permission from property owners, on a Department approved form, prior to conducting driver education training on the property. The written permission must be submitted to the Department prior to the commencement of training on the property.

3. Each CDS shall post its hours of operation in a conspicuous place and be available to the public during those hours.

4. If a CDS uses approved public facilities as a place of business, then commercial driving instructors for the CDS must maintain a copy of the school's CDS certification and classroom waiver in their possession.

j) CDS's shall monitor and ensure their employees are following all rules, regulations, and statutes.

k) The Department must receive notice in writing within 3 days of any change in the place of business, directors, owners, or managers of any CDS. Certifications are not transferable.

l) If a CDS has a change in ownership, then the new owner must file a new application for certification, sign a new contract with the Department and be approved by the Department before beginning operation under the new ownership. Failure to inform the Department of any ownership change shall be grounds for revocation or suspension of CDS certification.

(201) CURRICULUM

a) CDS that train using behind-the-wheel ride along, simulator, range driving, or homework, may not use this time towards the 6 hours behind-the-wheel training, but may count 2 hours towards classroom hours.

b) Any change in a CDS's course of instruction requires resubmission and recertification.

c) When a course of instruction is submitted for approval, the course of instruction shall include a lesson plan with an instructor guide, course outline, and course content, all in the format required by the Department.

d) A CDS shall teach the approved course of instruction at all times. Failure to teach the approved course of instruction or changing a course of instruction without prior submission and recertification may result in a suspension or revocation of certification of the CDS.

e) Driver education courses must be equal to, or exceed the requirements, for hours of instruction (excluding lunches/breaks) and course content as determined by the Department.

f) The course of instruction requirements for a driver education course, Expanded Driver Awareness program, or behind-the-wheel training are available on the Department's official website.

(202) CURRICULUM WITHDRAWAL

a) Approval of a CDS's course of instruction may be withdrawn for failure to comply with BOST rules and regulations.

b) If a CDS is notified that approval for its course of instruction has been withdrawn, the CDS shall cease instructing and signing all forms that allow an applicant to obtain a permit or license.

c) A CDS may appeal withdrawal of approval for its course of instruction by filing a written appeal within 10 calendar days after receiving notice of withdrawal of approval, with the Department's Hearings Division, whose decision shall be final.

(203) CLASSROOM REQUIREMENTS

a) With the exception of internet and home study, a CDS must provide a classroom that meets the following requirements:

1. has a large enough space to seat all students comfortably, containing at least one adequate; seating and desk/table space for each student, and one program instructor's desk, table, or podium;

2. has curricula presentation equipment for the class;

3. has appropriate clean restroom facilities; and

4. has adequate parking available in close proximity to the classroom.

b) Approval of the classroom by the Department is required prior to scheduling the first class.

c) Modular units must be inspected and approved by the Department prior to any classes being taught at the unit. Motorized mobile units will not be approved.

d) CDS, EDAP and DAP programs shall not be part of a home, mobile home, apartment, or living quarters of any kind. Classrooms must project a professional image and provide students with the proper learning environment.

(300) COMMERCIAL DRIVING SCHOOL OPERATING REQUIREMENTS

a) All CDS shall comply with applicable Colorado revised statutes, Department rules and regulations, and BOST standards.

b) All CDS shall cooperate with any investigation of a written complaint against a tester or a CDS.

c) While a CDS may provide information to applicants regarding documentation required by the Department for the issuance of instruction permits, licenses, or identification cards, a CDS may not act as a liaison between the applicant and the Department.

d) All instructors shall be physically and mentally able to safely operate a motor vehicle and to train others in the operation of a motor vehicle.

e) All employees of a CDS must:

1. have a CBI background check and an original signature on a Department approved form on file with the Department;

2. submit a new background check and an original signature, on a Department approved form, with each renewal packet;

3. submit paperwork for any new hire within 10 days of employment;

4. have a valid Colorado driver's license that has not been suspended, revoked, forfeited, or denied within the last three years; and

5. must ensure that testing/training forms are fully and accurately completed.

f) If the Department has reason to believe or receives information that an employee has been convicted of or pled guilty or nolo contendere to a felony or received a deferred sentence to a felony charge, the Department may deny certification or suspend or revoke testing certification.

A CDS must:

1. have a valid tester number on file with the Department; and

2. account for all forms in his/her possession.

g) Signing a form that represents confirmation that training/testing has been successfully completed when a student has not successfully completed the testing/training, will result in suspension or

revocation of the employee's certification and the certification of the CDS employing the instructor may be suspended or revoked.

h) If an employee drives with students, the employee may not have a personal driving record showing the accumulation of 8 or more points in the past three-year period. The Department will randomly audit motor vehicle records (MVR) of all CDS employees. If upon random audit, it is determined that an employee has accumulated more than 8 points within a 3-year period his/her license has been suspended, revoked, forfeited, or denied, the employee's certification will be suspended or revoked. If a CDS fails to report a change of status with the driving license of one of its employees, the CDS's certification may be suspended or revoked.

i) A CDS must notify the Department of the location of all branch offices. Branch opening notices must include copies of the business license(s)/waivers. A notice must be mailed to the Department within 10 days of opening or closing any branch office, and the notice must include the names of all employees to be added or deleted from the CDS's certification and the date the branch office was opened or closed. A branch office is required to meet all classroom and physical facilities requirements applicable to the main facility.

j) A CDS must keep their current physical and mailing addresses, contact phone numbers, and the name of one contact person on file with the Department.

k) The Department will not accept forms that show evidence of alteration. Forms containing an alteration shall be voided and a new form issued.

l) A CDS shall notify the Department in writing within 3 business days of an employee's change of driving status or departure from the CDS.

m) Home Study programs:

1. must meet minimum curriculum requirements;

2. must provide, in person or online, a final test that is administered prior to sending a completion statement. Test questions must come from a pool of questions that are scrambled each time a student takes a test or quiz;

3. must, if the provider is out of state, maintain a satellite office in Colorado containing student files for audits and maintain copies of completion statements with the student files;

4. must forward completion statements containing an original signature to students (electronic, photocopied or faxed signatures do not meet this requirement); and

5. must NOT issue a completion statement to a student unless the student receives a score of at least 9 correct answers or 80% on the final test.

(301) BEHIND-THE-WHEEL TRAINING

a) Vehicles used by a CDS for behind-the-wheel instruction must:

1. be equipped as defined in section 12-15-114 CRS;

2. be registered and insured as required in article 3 of Title 42 and article 4 of Title 10;

3. be available for inspection at audit and, if found to be out of compliance with requirements, may result in suspension of certification until such time as requirements are met; and

4. be available for inspection by the Department prior to certification of a CDS.

b) All BTW lessons must be in vehicles owned/leased by the CDS. BTW instruction shall not be administered in a student's private vehicle.

c) Behind-the-wheel training shall be recorded on a Department approved form, which form shall be attached to the BTW completion statement.

d) If a second student is in the back seat of the vehicle during BTW training, the second student shall not be given credit towards their 6 hours of BTW, and the CDS must have a waiver or stipulation, signed by the parent or guardian of the second student, stating that the parent or guardian is aware the second student will be in a vehicle driven by another student.

(302) INTERNET PROGRAMS

a) Internet providers shall use the name registered with the Colorado Secretary of State in any advertising within Colorado

b) Curriculum must equal or exceed the current minimum standards of the Department and be approved by the Department prior to being sold in the State of Colorado.

c) All out of state Internet providers must enter into a contract in order to be an approved school, but are not eligible to become a BOSTO or basic operator skills tester.

d) All internet programs must maintain a satellite office in Colorado containing student files for audits. Copies of completion statements must be maintained with the student files.

e) CDS offering internet programs are required to forward completion statements containing an original signature to students. Electronic, photocopied or faxed signatures do not meet this requirement.

f) To be eligible for renewal of certification, a CDS offering Internet programs approved by the State of Colorado must issue Affidavits of Completion of a Driver Education course to at least 50 students in the State of Colorado each year.

g) If a CDS contracts with another CDS to sell an online product, the contract must be submitted to the Department within 10 days of the date on which the contract was fully executed.

h) The Driver Testing and Education Section (DTES) manager and auditor will be issued a user name and password so random audits of student records, test scores, curriculum, and security protocols can be performed.

i) All internet material must contain an explanation of current Colorado laws including:

1. teen permit issuance;

2. behind-the-wheel requirements; and

3. requirements for licensure.

j) Internet programs shall be monitored to ensure applicants had the opportunity to review the curriculum for the required number of hours prior to issuance of a completion statement.

k) Each internet chapter/section must have a question imbedded within it that does not allow progression if a student does not correctly answer the question pertaining to that chapter/section.

l) After two failed attempts to pass a test/quiz, students must review previous material.

m) A final test must be administered prior to sending a completion statement. Test questions must come from a pool of questions that are scrambled each time a student takes a test or quiz.

n) Students must be shown the correct answers to questions they missed on tests and quizzes prior to re-testing.

o) Students must receive a score of at least 80% correct answers before being allowed to go to the next module/section, or being issued a completion certificate.

(303) EDAP/DAP PROGRAMS

a) All entities that teach the Expanded Driver Awareness ("EDAP") program for the purpose of qualifying students for a Colorado instruction permit must be certified as a CDS and meet CDS curriculum and statutory requirements.

b) An approved Driver Awareness Program (DAP) must be approved through the National Safety Council and remain in good standing with the NSC rules, regulations, and teaching standards, and must be certified as a CDS and meet CDS curriculum and statutory requirements.

c) Students must be 15 years and 6 months of age before completing an approved Expanded Driver Awareness program or a Driver Awareness Program.

d) EDAP and DAP completion statements are valid for 6 months from the time of issuance.

(304) ADVERTISING

a) Advertisements shall not imply that a CDS can issue or guarantee the issuance of a Colorado driver's license or permit.

b) Advertisements and CDS employees shall not imply that a CDS or the employee has influence over the Department in the issuance of a Colorado driver's license or permit.

c) No CDS, basic operator skills tester, CDS employee, or CDS agent is permitted to solicit or advertise on the premises of a Colorado driver's license office.

d) Use of the Colorado State seal by a CDS is strictly prohibited.

e) CDS cannot advertise a business practice that violates any statute, rule, or regulation.

(305) CONTRACTS

a) All contracts for driver education and testing between a CDS and any individual or entity must contain, at a minimum, the following:

1. CLASSROOM INSTRUCTION: package rate, the available dates, times and length of each lesson, and the total number of hours of instruction;

2. INTERNET OR HOME STUDY: mandated completion date if any, the total cost, and a telephone contact number for and the times technical and/or informational help is available.

3. BEHIND-THE-WHEEL LABORATORY: package rate, the length of each lesson, the total number of hours, and the rate for any vehicle charges. Cancellation or rescheduling policies must be included in simple language. Contracts shall extend for at least 12 months from the date of permit issuance.

b) All contracts for driver education and testing must contain:

1. A statement that reads: “This agreement constitutes the entire contract between the school and the student, and any verbal assurances or promises not contained herein are not binding on either the school or the student.”

2. A statement that reads: “Under this agreement an instructor may not provide behind-the-wheel training to more than two individual students per session.”

(400) BOSTO AND BOST CERTIFICATION

a) A CDS that is listed as a full time school (teaches required curriculum and offers BTW instruction) with the Department may apply to administer BOST tests. Testing must be equal to the training and examination of the Department. Section 42-2-111(1) (b), C.R.S.

b) Before applying for BOSTO certification, a CDS must submit copies of 25 student classroom completion statements and ten 6-hours BTW completion statements for students under the age of 18 to the Department.

c) BOSTO certification must be renewed annually before the current certification expires.

d) To renew a BOSTO certification, a CDS must provide statements reflecting class completion for 50 students and 6-hours BTW completion for 25 students under the age of 18 for the preceding year. Any CDS that does not meet this requirement will have its BOSTO written and drive testing privileges suspended. A CDS may re-apply for testing privileges with the next yearly renewal packet, if the minimum teaching requirements listed above have been met. Rural schools with limited population may apply for a variance.

e) Owning or operating a CDS does not confer certification to administer the BOST written knowledge or drive test for the State of Colorado. BOST written knowledge or drive tests may only be administered by a CDS certified as BOSTO by the Department.

f) BOST testers who do not follow Department standards, or who sign completion statements for students who have failed written knowledge or drive tests will have their certification as BOST testers revoked or suspended, and the certification of the CDS employing such BOST testers may be suspended or revoked.

g) Requests for training and certification as a BOSTO:

1. must be submitted in writing on a Department approved form;

2. must list all employees for BOST training and certification;

3. employees must be at least 21 years of age; and

4. have a valid Colorado driver license.

h) All forms submitted for BOSTO certification shall be kept by the CDS in a secure location and remain under the control of the CDS.

i) Upon successful completion of the driving skills tester training course, and having met all additional company training and Department requirements, the Department may certify the CDS as a BOSTO. The Department will issue a separate BOST number and certification to each employee successfully completing the required training.

j) A CDS must have at least one employee certified as a BOST tester to maintain BOSTO certification.

k) In the event the BOSTO certification for a CDS is not renewed, or is revoked or suspended, all individual BOST certifications within that CDS will be cancelled.

l) A CDS may cancel their BOSTO certification or the BOST certification of any employee by notifying the Department in writing. Cancellation of a certification does not nullify any of the terms of the contract between the CDS and the Department.

m) CDS must ensure that all their BOST testers continue to meet the training and qualification standards required to conduct BOST tests. Failure of a tester to attend scheduled training may result in suspension of testing privileges.

n) CDS shall ensure that each BOST tester they employ follows the Department's standards for administering BOST tests.

o) Written knowledge and driving skill tests administered by BOST testers must be equal to the training and examination conducted by the Department. Section 42-2-111(1)(b) C.R.S.

p) A CDS suspended from BOST drive testing may also be suspended from written knowledge testing.

q) A BOST tester may be employed by more than one CDS certified as a BOSTO. A BOST tester employed by more than one CDS certified as a BOSTO will be issued a separate certification number for each CDS employing the BOST tester. A BOST tester certification is valid only while the tester is employed by the CDS listed on the certificate.

r) The Department reserves the right to retest any student/applicant at any time.

s) The Department shall issue a unique tester number to each BOST tester. BOST testers shall use only their assigned number. Unauthorized use of certificate numbers will result in revocation or suspension of an individual's BOST certification and may result in revocation of BOSTO certification for the organization employing the BOST tester.

t) BOST testers shall refer the following applicants to a Colorado driver license office:

1. an applicant requesting a required skills test upon completion of a rehabilitation program;

2. an applicant requesting a drive test after having failed 4 previous drive tests;

3. an applicant requesting a written knowledge test after 2 failed attempts;

4. an applicant currently under restraint action;

5. an applicant requesting a re-exam test;

6. an applicant using a one-day permit; and

7. an applicant unable to produce a photo ID.

(401) THE BOST DRIVE TEST

a) Drive test routes must be approved by the Department prior to certification of a CDS as a BOSTO. BOST testers shall administer the BOST drive test only on routes approved by the Department for the CDS employing the tester. CDS must request and receive approval from the Department for any changes to an approved drive route prior to administering a road test.

b) A CDS certified as a BOSTO that has multiple physical locations must request approval for each route prior to testing. Testing on an approved test route must begin from an approved teaching/public location.

c) Two approved drive test routes are required for each testing location

d) CDS are required to maintain copies of approved drive routes in their files.

e) All BOSTO drive testing must be conducted on one of the approved routes. BOST testers must use all routes on a regular basis. Any testing on a route not previously approved may result in suspension or revocation of certification.

f) Using approved testing routes as a “pre-test” or as BTW practice for students will result in suspension or revocation of the tester(s) certification.

g) Only BOST testers may administer the drive test and sign the (DR2735) Basic Operators Driving Skill test completion statement. The DR2735 will remain valid for 180 days from the date of completion.

h) It is the responsibility of the CDS to ensure BOST testers complete all testing forms correctly.

i) A BOST tester's signature on a driver completion statement constitutes a representation by the BOST tester that the applicant whose name is on the completion statement took and passed the drive test.

j) All CDS shall hold the State harmless from liability resulting from the CDS's administration of the BOST drive test.

k) Prior to administering any test, BOST testers shall ensure applicants have, in their immediate possession, a valid permit.

l) A road test is not allowed if an applicant does not meet statutory licensing requirements. Testing an applicant before they meet the statutory requirement and/or postdating a BOST completion statement constitutes fraudulent activity and is grounds for suspension or revocation of BOST tester certification

m) BOST testers must verify that any vehicle used for testing:

1. is properly registered and insured. Both the insurance and the registration cards must be in the vehicle and match the vehicle identification numbers;

2. has both front and rear license plates must be attached to the outside of the vehicle; temporary tags must be visible in the back window of the vehicle.

3. has passed a safety inspection to ensure all necessary equipment is in safe operating order, and that the vehicle meets all applicable state statutes for operation on a city street;

4. has been inspected for compliance with this subsection prior to every drive test, regardless of who owns the vehicle; and

5. is either registered to the CDS as a training vehicle for BTW training or a vehicle provided by the applicant.

n) Prior to administering a BOST drive test, testers shall complete the information section of the (DR2732) score sheet including the date of the test, the name of the applicant, the vehicle, the organization, the tester information, and, after the instructions have been read, fill in the start time on the score sheet. Once the car has been secured at the end of the test, the finish time and applicant's score shall be written on the score sheet, even if the applicant has failed the test.

o) Applicants and testers are prohibited from smoking, drinking, or eating during a drive test. All electronic devices and cell phones must be turned off during the test.

p) Testers must conduct a full driving test in accordance with statutes, rules, contract, and BOST standards. All tests shall be recorded on forms provided by the Department.

q) BOST drive tests may only be administered during daylight hours.

r) After a drive test is completed, testers shall immediately critique the applicant's performance on the test in a location outside of the vehicle. If the applicant is a minor, the critique shall be done in the presence of the parent/guardian if the parent/guardian is present.

s) Upon successful completion of a BOST drive test, testers shall complete the DR2735, Basic Operator's Driving Skills Test completion statement. Tester and applicant shall sign the form. Tester shall staple the pink copy of the DR2735 to the score sheet (DR2732).

t) BOST testers shall note all failures on an applicant's drive test score sheet and fax or email a failed score sheet to DTES within 24 hours of the test.

u) If an applicant fails a drive test, BOST testers are to write "fail" and the date on the back of the applicant's permit with a permanent marker.

v) An applicant under 18 years of age holding an out of state instruction permit may take one drive test on the permit if the minor has met the statutory requirements. An applicant 18 years of age or older with an out of state instruction permit may not be tested by a CDS.

w) A tester shall not administer more than one complete driving test per day to any applicant. Giving an applicant more than one test per day will result in an automatic suspension.

x) No passengers, pets, or interpreters may be in a vehicle during a drive test. Occupants in a vehicle during a driving test are limited to the applicant(s) and the tester, with the following exceptions:

1. A Department representative when an audit is being performed for quality assurance purposes.

2. Another BOST tester may be in a vehicle for training and evaluation purposes with prior notification to the Department.

(402) THE BOST WRITTEN KNOWLEDGE TEST

a) BOST testers administering the written knowledge test shall issue the BOST written knowledge completion statement (DR2238) to the applicant upon successful completion of the written test. The DR2238 form is valid for 180 days from the date of issue. Only certified BOST testers may sign this form.

b) BOST written knowledge testers:

1. shall administer and proctor tests only at an established place of business;

2. shall ensure that applicants are not to be allowed access to written material, cell phones, or electronic devices while testing;

3. shall require applicants to write their full name, date of birth, and the date of the test in the information box provided on the BOST written knowledge test;

4. shall require a score of 80% or higher (0 to 5 incorrect answers) to pass;

5. shall grade correctly using the score key and a red pen;

6. shall provide only two tests per applicant. If an applicant fails two written tests, all subsequent tests shall be taken at a Department driver license office; and

7. shall ensure that if an applicant fails the first test with the BOST organization, then the second test must be a different version of the first test. If an applicant misses more than 10 questions on a first test attempt, the applicant must wait until the next day to test again.

c) An applicant's interpreter shall not be allowed to interpret the BOST written knowledge test. The BOST tester can interpret in the required language and only interpret the questions and answer choices.

d) The BOST written knowledge test shall not be given to any applicant under the age of 14 years and 11 months.

e) BOST written knowledge tests shall not be used as "practice" or "pre" tests.

f) BOST written knowledge tests may not be copied outside the physical facilities unless the BOST written knowledge tests remain under the direct supervision and control of a CDS.

g) Written completion statements shall not be partially or fully completed until after a student has completed and passed the written test.

h) BOST testers administering the written knowledge test shall periodically check with the Department to confirm they have the most current version of tests/keys.

i) Tests must be proctored and graded by a BOST tester with a BOST written certification.

j) The BOST tester signing the DR2238 is responsible for the accurate grading of the test. Tests graded incorrectly may result in a suspension of the signing BOST tester's certification. Repeated incorrect grading of written knowledge tests will result in a revocation of BOST written testing certification.

(403) BOST TESTER REQUIREMENTS

a) BOST testers shall administer at least a minimum of 24 drive tests per year. Failure to complete the minimum number of tests will result in suspension of a tester's certification.

b) Only testers certified by the Department to give the BOST drive test are authorized to administer the drive test and sign the BOST completion statement (DR2735).

c) All BOST testers must have had a valid driver's license for at least 4 years and be at least 21 years of age.

d) BOST drive testers must attend at least one continuing education class for updated testing practices every two years. Failure to attend a Department continuing education class within a two year period will result in a suspension for the tester until continuing education has been successfully completed. Proof of continuing education must be kept by a CDS in the tester's file for periodic review by the Department.

e) BOST testers cannot administer any BOST test to a member of their immediate family. "Immediate family" is defined at section 42-1-102(43.5), C.R.S.

f) A potential BOST tester:

1. must complete and pass the BOST training class;

2. must show proof of four shadow drives on each route the tester will be testing on (all within 3 errors of another certified tester); and

3. must complete all shadow drives within 6 weeks of passing the BOST training class.

g) To be eligible for a BOST class, a potential BOST tester must have conducted at least 24 hours of BTW training or been employed by the school for at least a year.

h) Applicants failing the BOST test with a certified tester shall only be re-tested by a different certified tester (unless the Department determines that this would be a hardship).

i) An expired completion statement (after 180-days) will require the applicant to retake the

test. j) Postdating, pre-dating, or partially completion of any form is not allowed. A form with only a signature and a tester number on it is a form that may be fraudulently used.

(500) RECORDKEEPING AND REPORTING

a) CDS shall use only the Department's forms and shall account for all controlled forms issued to them.

b) Issued forms shall be used in control number order. Each series of assigned completion statements must be completed before a new series is started

c) Records must be stored securely for a period of three years. Records include all contracts, records of student enrollment, BTW logs, written tests, progress reports, student completion statements, and BOST forms.

d) After three years all testing records shall be shredded.

e) All forms issued, including those for passed and failed examinations, shall be logged on a CDS's monthly report.

f) CDS shall submit monthly reports on Department approved forms. Reports shall be submitted electronically to the Department by the 10th day of each month for the previous month's activity, even if there was no activity. Incomplete reports will not be accepted.

g) All voided control numbered forms should be logged on monthly reports, filed in numeric order, with a note stating why the document was voided and the number of the replacement form. All replacement forms must be dated using the same date as the original form, with the exception of a drive retest.

h) Monthly reports submitted by CDS to the Department should report all student and testing activity including, but not limited to, monthly classroom schedules, class completion statements, BTW completion statements, written knowledge completion statements, and drive test completion statements.

i) CDS and testers are responsible for securing both blank and completed forms.

(600) AUDITING

a) CDS shall allow the Department to observe classroom instruction and/or BTW training.

b) CDSs certified as BOSTOs are required to allow onsite inspections, examinations and audits by a Department representative without prior notice in order to:

1. review student completion statements, BTW logs, BOST written knowledge and drive testing records;

2. observe classroom instruction;

3. observe BTW instruction;

4. Inspect vehicles;

5. observe and score live road testing by a BOST tester and compare pass/fail scores;

6. test the skills of BOST testers who administer the drive test; and

7. audit monthly reports for supporting data, advertising, and continuing education certificates.

c) A CDS/BOST tester must surrender testing records to the Department upon request. The CDS/ BOST tester may make copies and retain copies of such records.

d) Audits may be conducted at the CDS office, the Department's office, or at another location as determined by the auditor.

e) To assure that CDS continue to meet the standards established by the Department, a Department representative will conduct on-site or virtual (for internet providers only) compliance inspections as often as the Department deems necessary, to review contracts, student enrollment and progress records, BTW logs, student completion records, classroom facilities, vehicle and testing records. Testing records will be checked for accuracy and completeness, missing or voided records and, in the case of control numbered documents, for numerical filing sequence.

f) During Department compliance audits, CDS shall cooperate with the Department, allow access to testing areas and routes, and supply student names and testing records, results, and any other items as requested by the Department.

g) BOST drive testers will be evaluated either during an actual drive test or a drive test with a Department representative as the driver. BOST testers must follow Department procedures, meet Department standards, and must pass the evaluation with a score of 80% or higher. Failure to pass the evaluation will be grounds for the Department to require additional continuing education or suspension of BOST tester certification.

h) All CDS, BOSTO, and BOST records must be accessible during normal business hours and made available to a Department representative upon request.

(700) CERTIFICATION RENEWAL

a) CDS curriculum approval and BOST certification are valid from July 1st through June 30th of the following calendar year. The Department shall determine when curriculum review is required. Curriculum review will not be conducted more frequently than annually, unless course content changes.

b) BOST certifications, CDS certifications as BOSTOs, and CDS contracts with the Department are subject to annual renewal.

c) Renewal applications are due on June 1 of each calendar year. Applications not received and approved by June 30 will result in placement of a CDS in "not renewed" status, meaning the Department will not honor completion forms or driver education certificates from the CDS.

d) Incomplete renewal applications shall be returned to a CDS.

e) Renewals shall include a breakdown of the hourly costs of each package offered by the CDS.

(800) SUSPENSION/ REVOCATION/ CESSATION OF BUSINESS

a) CDS must return all copies of written knowledge tests and keys, certifications, and any control numbered documents within ten days of cessation of business.

b) Monthly reports not received by the 10th of the month for the previous month may result in a suspension of testing privileges for 30 days, unless a hardship is determined by the Department.

c) Refusing to be audited will result in the suspension of a CDS's testing privileges.

d) Failure of a CDS to address and/or correct problems found in the previous audit may result in suspension of certification.

e) Fraudulent or criminal activity involving any CDS or CDS employee will be grounds for revocation. Such activity may be reported to appropriate State/Federal authorities.

f) A CDS or BOST tester supplying false information to the Department will have their CDS certification or BOST tester certification suspended or revoked. Fraudulent testing or the fraudulent use of the forms and/or completion statements shall result in the suspension and/or revocation of BOST certification.

g) The certification of a CDS, BOSTO, or BOST tester may be suspended or revoked for failure to comply with these rules and regulations, BOST standards, or contract obligations.

h) Any BOSTO or BOST tester who omits any test requirement from a written knowledge or driving skill test, or participates in any illegal activity related to driver licensing, may be subject to penalties including loss of testing certification, criminal prosecution, and restitution for costs and fees incurred by the test applicant and/or the Department.

i) Any information concerning illegal or fraudulent activity concerning, but not limited to written knowledge or driving skills testing, will be referred by the Department to the appropriate law enforcement authority.

j) If an applicant's testing was improper, illegal, or fraudulent, the applicant may have their driver's license canceled. The BOSTO employing the BOST tester administering such test will be liable for the costs associated with retesting.

k) Repeated violations of these rules and regulations by a CDS, BOSTO, or BOST tester will result in a review of testing privileges by the Department.

l) The Department may issue a suspension letter to any CDS, BOSTO, or BOST tester if the Department has credible evidence that a CDS or BOST tester has violated the provisions of these rules and regulations, state statutes, or that the public health, safety, or welfare requires

emergency action. A suspension letter shall serve as notice to immediately cease testing until an investigation or hearing is complete.

m) Upon receipt of a suspension letter, a CDS, BOSTO, and/or BOST tester must immediately stop all BOST testing. A CDS, BOSTO, or BOST tester may file a written appeal with the Department's Hearings Division within 10 calendar days after receipt the suspension letter. The decision of the Department's Hearings Division constitutes final agency action.

n) Written complaints about a CDS, BOSTO, or BOST tester received by the Department regarding the requirements of these rules and regulations may result in an investigation through the Department or the Motor Vehicle Investigative Unit. Section 42-1-222 CRS.

o) If a CDS is found to be in violation of the terms of its contract with the Department, then the contract between the Department and the CDS may be terminated.

(900) GRANDFATHER PROVISIONS

Law enforcement agencies and rehabilitation providers who are licensed as BOSTO's are exempt from the requirements for approval as a CDS.

All publications and statutes incorporated by reference in these Rules and Regulations are on file and available for public inspection by contacting the Department of Revenue, Division of Motor Vehicles, Driver Testing and Education Section, 1881 Pierce Street, Room 114, Lakewood, Colorado, 80214. This rule does not include later amendments to or additions of any materials incorporated by reference.

*Materials incorporated by reference may be examined at any State publication depository library.

Editor's Notes

History

Entire rule eff. 12/__/2014.

STATE OF COLORADO

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John W. Hickenlooper
Governor

Barbara J. Brohl
Executive Director

Colorado Department of Revenue
Motor Vehicles Division

Emergency Rules:

Revised Rule 8, 1 CCR 204-30 –Driver Education and Examination Program Rules and Regulations

Statement of Emergency Justification and Adoption

Pursuant to sections 24-4-103, 42-1-204 and 42-2-111, C.R.S, I, Barbara J. Brohl, Executive Director of the Department of Revenue ("Department"), hereby adopt the aforementioned revised Rule 8, 1 CCR 204-30, which is attached hereto.

Section 24-4-103(6), C.R.S., authorizes the Department to issue emergency rules if the Department that the immediate adoption of the rule is imperatively necessary to comply with a state law or for the preservation of public health, safety, or welfare and compliance with the requirements of section 24-4-103, C.R.S., would be contrary to the public interest.

I find that the immediate adoption of this revised rule is necessary to comply with the statutory mandates of Colorado's Uniform Motor Vehicle Law, articles 1 through 4 of title 42, C.R.S. and to properly regulate the training and examinations required for issuance of driver's licenses in Colorado.

Statutory Authority

The statutory authority for these rules is found at subsections 42-1-104, 42-2-111 and 12-5-116, C.R.S.

Purpose

The purposes of adopting the revisions to Rule 8 on an emergency basis are to respond to concerns raised by the Office of Legislative Legal Services ("OLLS") regarding this rule and to extend the validity period for the Basic Operator Driving Skill Test ("BODS") and Basic Operators Skills Written Knowledge Test ("BOSW").

With regard to the OLLS concerns, first, the revised rule removes paragraph 200(j). Paragraph 200(j) addressed trade names for a Commercial Driving School ("CDS"), a topic outside the Department's authority. Second, the revised rule adds an applicability section to align the Department's practice and statutory authority with the language of the rule.

In practice, the Department currently requires certification of only those CDSs that offer training or examinations required by Colorado's Uniform Motor Vehicle Law in connection with obtaining a driver's license. OLLS, however, has concluded that this limitation is not apparent from the face of the rule. It is

imperative to correct the rule to clarify the scope of the Department's certification program, and to clarify that the program is operating within the Department's statutory authority. The revised rule clarifies that these rules apply only to CDSs that offer statutorily required examinations or statutorily required training for a type of driver's license.

With regard to the extensions of the validity periods for the BODS and BOSW tests, part 5 of article 3 of title 42 requires that the Department issue driver's licenses to qualified individuals not lawfully present or temporarily lawfully present in Colorado. Because of the large number of applicants and limited staff authorized to process the applications, it is often impracticable for the Department complete the application process on a driver's license within the 30 and 60 day time periods within which the test results of the BODS and BOSW tests, respectively, are valid. Thus, the Department is currently prevented from effectively fulfilling its statutory mandate. The revised rule amends paragraph 401(g) and 403(i) to change 60 days to 180 days and amends paragraph 402(a) to change 30 days to 180 days to address this problem.

The purpose of adopting the revision to Rule 8 on an emergency basis is to clarify that the Department's program is consistent with its statutory authority, and to extend the test validity periods to allow the Department to fulfill its statutory licensing obligations. The Department will promptly notice Rule 8 for a permanent rulemaking hearing.

This emergency rule is effective immediately upon adoption.

Barbara J. Brohl
Executive Director
Colorado Department of Revenue

3/15/15
Date

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Attorney General

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Office of the Attorney General

Tracking number: 2015-00168

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

Division of Motor Vehicles

on 03/15/2015

1 CCR 204-30

DRIVER'S LICENSE-DRIVER CONTROL

The above-referenced rules were submitted to this office on 03/16/2015 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

March 26, 2015 12:56:22

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

Emergency Rules Adopted

Department

Department of Health Care Policy and Financing

Agency

Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)

CCR number

10 CCR 2505-10

Rule title

10 CCR 2505-10 MEDICAL ASSISTANCE - STATEMENT OF BASIS AND PURPOSE, AND RULE HISTORY 1 - eff 04/01/2015

Effective date

04/01/2015

THIS PAGE NOT FOR PUBLICATION

SECRETARY OF STATE
RULES ACTION SUMMARY AND FILING INSTRUCTIONS

SUMMARY OF ACTION ON RULE(S)

1. Department / Agency Name: Health Care Policy and Financing / Medical Services Board
2. Title of Rule: MSB 15-02-06-A, Revision to the Medical Assistance Eligibility Rules Concerning Parents and Caretaker Relatives, Sections 8.100.1 and 8.100.4.G.3
3. This action is an adoption of: an amendment
4. Rule sections affected in this action (if existing rule, also give Code of Regulations number and page numbers affected):

   Sections(s) 8.100.4.G.3, Colorado Department of Health Care Policy and Financing, Staff Manual Volume 8, Medical Assistance (10 CCR 2505-10).

5. Does this action involve any temporary or emergency rule(s)? Yes
   If yes, state effective date: April 2015
   Is rule to be made permanent? (If yes, please attach notice of hearing). Yes

PUBLICATION INSTRUCTIONS*

At §8.100.1 insert a new unnumbered paragraph that begins with "MAGI equivalent is the resulting standard . . .". This paragraph is inserted immediately following the unnumbered paragraph that reads "Modified Adjusted Gross Income (MAGI) refers to the methodology . . ." and immediately before the paragraph that reads "MIA - Monthly Income Allowance is the amount . . .".

Replace current text at §8.100.4.G.3 and §8.100.4.G.4 with new text provided. Remove current text at §8.100.4.G.3.a.

All text indicated in blue is for context only and should not be changed. This revision is effective 04/01/0215.

*to be completed by MSB Board Coordinator

THIS PAGE NOT FOR PUBLICATION

Title of Rule:	Revision to the Medical Assistance Eligibility Rules Concerning Parents and Caretaker Relatives, Sections 8.100.1 and 8.100.4.G.3
Rule Number:	MSB 15-02-06-A
Division / Contact / Phone:	Eligibility Division / Ana Bordallo / 303-866-3239

STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

   The purpose of the rule change is to make a revision to the current policy regarding MAGI Parent/Caretaker Relatives Federal Poverty Level (FPL) changing from 100% FPL to 60% MAGI-converted. The state will be updating the Colorado Benefits Management System (CBMS) to be in alignment with our federal regulations effective April 1, 2015. This rule also needs to be updated to ensure the state is in compliance with federal regulations..

2. An emergency rule-making is imperatively necessary

   ☒ to comply with state or federal law or federal regulation and/or

   ☐ for the preservation of public health, safety and welfare.

   Explain:

   Effective April 1, 2015 the rule will not be in compliance with federal regulations if the rule is not updated.

3. Federal authority for the Rule, if any:

   Section 1902(e)(14)(E) of the Social Security Act

4. State Authority for the Rule:

   25.5-1-301 through 25.5-1-303, C.R.S. (2014);

THIS PAGE NOT FOR PUBLICATION

Title of Rule:	Revision to the Medical Assistance Eligibility Rules Concerning Parents and Caretaker Relatives, Sections 8.100.1 and 8.100.4.G.3
Rule Number:	MSB 15-02-06-A
Division / Contact / Phone:	Eligibility Division / Ana Bordallo / 303-866-3239

REGULATORY ANALYSIS

1. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

   The proposed rule will impact those currently enrolled on the Parent/Caretaker Relatives category. Changing the Federal Poverty Level (FPL) percent to 60 % MAGI-converted will transition a number of adults from MAGI Parents/Caretaker Relatives category to the MAGI Adult category. Also, individuals who do not meet the FPL percentage of 60 % MAGI-converted and who currently have Medicare will no longer be eligible for Medicaid. The benefit from the proposed rule is more adults will be eligible for MAGI Adult category.

2. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

   The proposed rule will transition a number of adults from Parent/Caretaker Relatives to MAGI Adult category. Those affected are adults who do not meet the FPL percentage of 60 % MAGI-converted and who are on Medicare will no longer be eligible for Medicaid.

3. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

   A small number of clients could lose eligibility as a result to this change, but the Department assumes that the majority of the clients in this small population could be eligible in other aid categories. Consequently, the actual fiscal impact is anticipated to be nominal.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

   Action is needed for compliance with federal regulation; inaction is not an option.

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

   There is no alternative action available to achieve federal compliance.

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

There are no alternative methods for the proposed rule that were considered.

8.100.1 Definitions

Modified Adjusted Gross Income (MAGI) refers to the methodology by which income and household composition are determined for the MAGI Medical Assistance groups under the Affordable Care Act. These MAGI groups include Parents and Caretaker Relatives, Pregnant Women, Children, and Adults. For a more complete description of the MAGI categories and pursuant rules, please refer to section

MAGI-equivalent is the resulting standard identified through a process that converts a state's net-income standard to equivalent MAGI standards.

MIA - Monthly Income Allowance is the amount of institutionalized spouse's income that the community spouse is allowed to retain to meet their monthly living needs.

MSP - Medicare Savings Program is a Medical Assistance Program to assist in the payment of Medicare premium, coinsurance and deductible amounts. There are four groups that are eligible for payment or part-payment of Medicare premiums, coinsurance and deductibles: Qualified Medicare Beneficiaries (QMBs), Specified Low-Income Medicare Beneficiaries (SLIMBs), Qualified Disabled and Working Individuals (QDWIs), and Qualifying Individuals – 1 (QI-1s).

8.100.4.G. MAGI Covered Groups

1. For MAGI Medical Assistance, any person who is determined to be eligible for Medical Assistance based on MAGI at any time during a calendar month shall be eligible for benefits during the entire month.

2. Children applying for Medical Assistance whose total household income does not exceed 133% of the federal poverty level shall be determined financially eligible for Medical Assistance.

    a. Medical Assistance eligibility is guaranteed for 12 continuous months from the application month regardless of changes in income or household size.

3. Parents and Caretaker Relatives applying for Medical Assistance whose total household income does not exceed 60% of the federal poverty level (MAGI-equivalent) shall be determined financially eligible for Medical Assistance. Parents or Caretaker Relatives eligible for this category shall have a dependent child in the household receiving Medical Assistance.

4. Effective January 1, 2014, Adults applying for Medical Assistance whose total household income does not exceed 133% of the federal poverty level shall be determined financially eligible for Medical Assistance. This category includes adults who are parents or caretaker relatives of dependent children whose income exceeds the income threshold to qualify for the Parents and Caretaker Relatives MAGI category and who meet all other eligibility criteria.

5. Pregnant Women whose household income does not exceed 185% of the federal poverty level are eligible for the Pregnant Women MAGI Medical Assistance program. Medical Assistance shall be provided to a pregnant woman for a period beginning with the date of application for Medical Assistance through the last day of the month following 60 days from the date the pregnancy ends. Once eligibility has been approved, Medical Assistance coverage must be provided regardless of changes in the woman's financial circumstances.

6. A pregnant legal immigrant who has been a legal immigrant for less than five years is eligible for Medical Assistance if she meets the eligibility requirements for expectant mothers listed in 8.100.4.G.3. This population is referenced as Legal Immigrant Prenatal.

7. A child born to a woman receiving Medical Assistance at the time of the child's birth is continuously eligible for one year. This provision also applies in instances when the woman received Medical Assistance to cover the child’s birth through retroactive Medical Assistance. To receive Medical Assistance under this category, the individual need not file an application nor provide a social security number or proof of application for a social security number for the newborn. Anyone can report the birth of the baby verbally or in writing. Information provided shall include the baby's name, date of birth, and mother's name or Medical Assistance number. A newborn can be reported at any time. Once reported, a newborn meeting the above criteria shall be added to the Medical Assistance case according to timelines defined by the Department. Please review the Department User Reference Guide for timeframes. This population is referenced as Eligible Needy Newborn.

COLORADO
Department of Health Care Policy & Financing
Medical Services Board

MARCH 2015 EMERGENCY JUSTIFICATION FOR MEDICAL ASSISTANCE RULES ADOPTED AT THE MARCH 13, 2015 MEDICAL SERVICES BOARD MEETING

MSB 15-02-06-A Revision to the Medical Assistance Eligibility Rules Concerning Parents and Caretaker Relatives, Sections 8.100.1 and 8.100.4.G.3

To comply with state or federal law or federal regulation.

Effective April 1, 2015 the rule will not be in compliance with federal regulations if the rule is not updated.

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Denver, Colorado 80203
Phone (720) 508-6000

Office of the Attorney General

Tracking number: 2015-00165

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

Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)

on 03/13/2015

10 CCR 2505-10

MEDICAL ASSISTANCE - STATEMENT OF BASIS AND PURPOSE, AND RULE HISTORY

The above-referenced rules were submitted to this office on 03/13/2015 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

March 19, 2015 15:37:01

Frederick R. Yarger

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

Terminated Rulemaking

Department

Department of Revenue

Agency

Division of Motor Vehicles

CCR number

1 CCR 204-10

Tracking number

2014-00540

Termination date

03/25/2015

Reason for termination

There is no statutory or operational need for the promulgation of Rule 49 at this time.

Terminated Rulemaking

Department

Department of Revenue

Agency

Division of Motor Vehicles

CCR number

1 CCR 204-10

Tracking number

2014-01259

Termination date

03/26/2015

Reason for termination

This rule was recodified to 1 CCR 204-3 with an effective date of 4/1/15.

Terminated Rulemaking

Department

Department of Revenue

Agency

Division of Gaming - Rules promulgated by Gaming Commission

CCR number

1 CCR 207-1

Tracking number

2015-00117

Termination date

03/19/2015

Reason for termination

The Gaming Commission voted unanimously to make no changes to the rule at this time.

Calendar of Hearings

Hearing Date/Time	Agency	Location
04/30/2015 08:30 AM	Division of Professions and Occupations - Colorado Dental Board	1560 Broadway, Denver, CO 80202 Conference Room 110 D
04/30/2015 09:00 AM	Division of Motor Vehicles	1881 Pierce Street, Lakewood, CO 80214, Room 110 Boards/Commissions Meeting Room
04/30/2015 09:00 AM	Colorado Parks and Wildlife (406 Series, Wildlife)	Clairon Inn, 755 Horizon Drive, Grand Junction 81506
04/30/2015 09:00 AM	Division of Professions and Occupations - Office of Naturopathic Doctor Registration Program	1560 Broadway, Conference Room 1250C, Denver, CO 80202
04/30/2015 01:00 PM	Division of Fire Prevention and Control	690 Kipling Street, Lakewood, CO
04/30/2015 02:00 PM	Division of Motor Vehicles	1881 Pierce Street, Lakewood, CO 80214, Room 110 Boards/Commissions Meeting Room
04/30/2015 02:00 PM	Division of Motor Vehicles	1881 Pierce Street, Lakewood, CO 80214, Room 110 Boards/Commisions Meeting Room
05/01/2015 01:00 PM	Division of Motor Vehicles	1881 Pierce Street, Lakewood, CO 80214, Room 110 Boards/Commissions Meeting Room
05/05/2015 08:00 AM	Colorado Parks and Wildlife (405 Series, Parks)	Clairon Inn, 755 Horizon Drive, Grand Junction 81506
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05/05/2015 01:00 PM	Division of Motor Vehicles	1881 Pierce Street, Lakewood, CO 80214, Room 110 Boards/Commissions Meeting Rm
05/06/2015 11:00 AM	Division of Insurance	1560 Broadway, Ste 850, Denver CO 80202
05/07/2015 02:30 PM	Executive Director of Department of Personnel and Administration	1525 Sherman St. Room 516, Denver, CO 80203
05/08/2015 09:00 AM	Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)	303 East 17th Avenue, 7th Floor, Denver, CO 80203
05/08/2015 09:00 AM	Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)	303 East 17th Avenue, 7th Floor, Denver, CO 80203
05/08/2015 10:00 AM	Income Maintenance (Volume 3)	El Paso County Department of Human Services, Nautilus Room, 1675 W. Garden of the Gods Road, Colorado Springs, Colorado 80907
05/08/2015 10:00 AM	Food Assistance Program (Volume 4B)	El Paso County Department of Human Services, Nautilus Room, 1675 W. Garden of the Gods Road, Colorado Springs, Colorado 80907
05/08/2015 10:00 AM	Social Services Rules (Staff Manual Volume 7; Child Welfare, Child Care Facilities)	El Paso County Department of Human Services, Nautilus Room, 1675 W. Garden of the Gods Road, Colorado Springs, Colorado 80907
05/13/2015 08:00 AM	Lottery Commission	720 S Colorado Blvd, Denver CO 80246
05/13/2015 08:00 AM	Lottery Commission	720 S Colorado Blvd, Denver CO 80246
05/13/2015 08:00 AM	Lottery Commission	720 S Colorado Blvd, Denver CO 80246
05/13/2015 10:15 AM	Passenger Tramway Safety Board	202 Main Street, 2nd Floor, Grand Junction, CO 81501
05/13/2015 10:15 AM	Passenger Tramway Safety Board	202 Main Street, 2nd Floor, Grand Junction, CO 81501
05/13/2015 10:15 AM	Passenger Tramway Safety Board	202 Main Street, 2nd Floor, Grand Junction, CO 81501
05/13/2015 01:00 PM	Colorado State Board of Education	Colorado Department of Education, State Board Room, 201 E. Colfax Ave., Denver, CO 80203
05/13/2015 01:15 PM	Colorado State Board of Education	Colorado Department of Education; State Board Room; 201 E. Colfax Ave; Denver, CO 80203
05/15/2015 10:00 AM	Hazardous Materials and Waste Management Division	The Nature Place Conference and Education Center, 2000 Old Stage Rd., Florrisant, CO 80816
05/21/2015 10:00 AM	Division of Banking	Division of Banking, 975 Conference Room, 1560 Broadway, Suite 975, Denver, CO 80202
06/08/2015 10:00 AM	Water Quality Control Commission (1002 Series)	Florence Sabin Conference Room, CDPHE, 4300 Cherry Creek Drive South, Denver, CO 80246
06/30/2015 09:30 AM	Water Quality Control Commission (1003 Series)	Sabin Conference Room, CDPHE, 4300 Cherry Creek Drive South, Denver, CO 80246